

AMENDMENT BOOKLET **IDT**

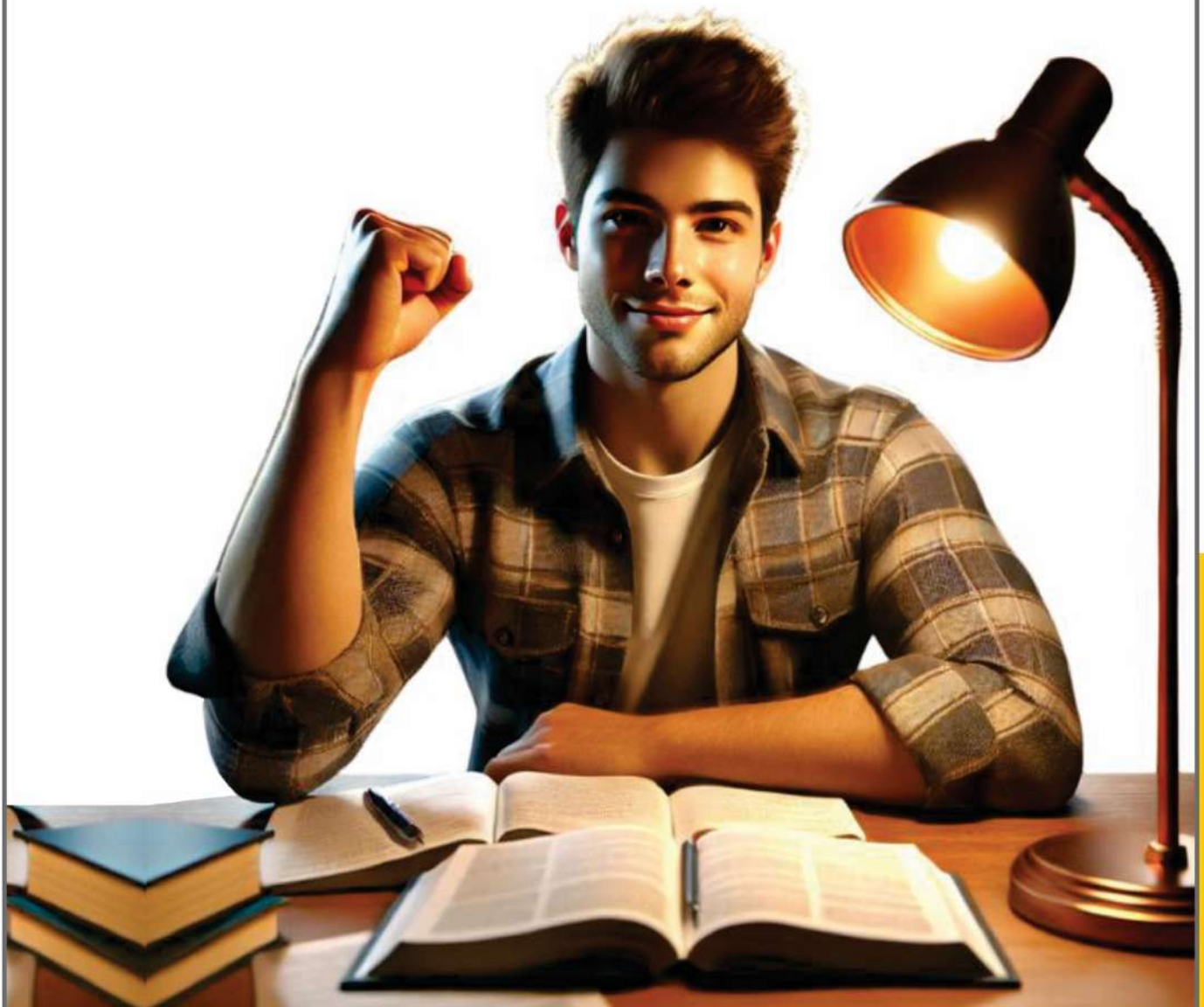
CA-FINAL May 2025 Exams



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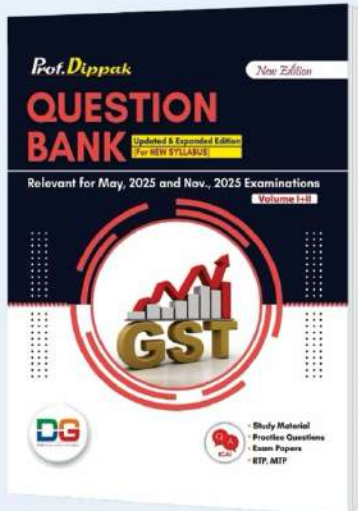
- 01 **GST**
- 02 **CUSTOMS**
- 03 **FTP**



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“
ठोकरें खाता हूँ पर ‘शान’ से चलता हूँ,
मैं खुले आसमान के नीचे
सीना तान के चलता हूँ,
मुश्किल तो साज़ है जिन्दगी का
उठुंगा गिरुंगा फिर उठुंगा
और
आखिर मैं...

” जीतुंगा मैं ही ये ठान के चलता हूँ...



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Prof. Dippak (DG Sir)

-  DG Sir has teaching experience of 20+ years.
-  Graduated from Delhi University with top position in his College. DG Sir is academically excellent and blessed with analytical skills.
-  Qualified CA - single attempt pass at all stages (became CA at age of 21).
-  Ranker in the Foundation and Intermediate level of Chartered Accountancy course.
-  Awarded "Raja Ramnickcher Award" and "Smt. Vandana Suryanarayana Award" by The Institute of Chartered Accountants of India (ICAI) for his remarkable performance in the subject of Indirect Taxation at CA (Final) stage for scoring HIGHEST MARKS therein.
-  Vast experience in the field of INDIRECT TAXATION.
-  Authored books on GST for the students pursuing Chartered Accountancy.
-  Contributor of articles in legal journals / law magazines.

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**CA-Final May 2025****Amendments [IDT (GST + Customs + FTP)]****GST Volume-1 7****1.1: SUPPLY 7**

1. **CBIC Circular 213/07/2024-GST** : Indian Subsidiary offering to its employees - ESOPs as to shares of its foreign holding company. Shares are being directly allotted by foreign holding company and cost is re-imbursed by the Indian Holding Company. Clarified that (i) No GST if actual cost re-imbursed (ii) GST on additional charges if Foreign company charging such additional charges. [Circular dated 26th June, 2024] 7
2. **CBIC Circular 215/09/2024-GST** : Taxability of salvage/wreck value earmarked in claim assessment of damage caused to motor vehicle. Clarified that (i) when insurance company paying full insured value, then Salvage becomes property of insurance company and thus, GST payable by insurance company on its disposal/sale (ii) But if insurance company pays 'insured value less deduction towards salvage', then Salvage remains property of the insured and thus, No GST liability on insurance company. [Circular dated 26th June, 2024] 9

1.2: COMPOSITE SUPPLY VS MIXED SUPPLY 11

1. **CBIC Circular** : Clarified that when ancillary/incidental services are provided by GTA in the course of transportation of goods by road and the GTA also issues consignment note, the service will constitute a composite supply and all such ancillary/incidental services like loading/unloading, packing/unpacking, transshipment, temporary warehousing etc. will be treated as part of the composite supply. [Circular No. 234/28/2024-GST Dated: 11th Oct, 2024] 11
2. **CBIC Circular** : Clarified that PLC is considered part of a composite supply of construction services, where construction service is the principal supply, and PLC is incidental to it.. [Circular No. 234/28/2024-GST Dated: 11th Oct, 2024] 12

2: VALUATION OF SUPPLY 13

1. **Sec 15(1) r/w Sec 15(2)(e) (Non-Govt subsidy forms part of value of Supply) + Circular No. 201/14/2024-GST**: GST applicability on 'Sharing of incentive amounts (received under the RuPay Debit Cards and BHIM-UPI Incentive Scheme by ACQUIRING BANK with other stakeholders : Clarified that Incentive sharing within the NPCI-determined framework for RuPay Debit Cards and BHIM-UPI transactions shall also be considered a subsidy and is not taxable under GST.. [Circular No. 228/22/2024-GST (dated 15th July, 2024)] 13
2. **Sec 15(3) (Exclusion of Discounts from the value) + Circular No. 212/6/2024-GST**: Post Supply discount is deductible from value if conditions stated in Sec 15(3) are fulfilled. One such condition is that corresponding ITC reversal has been made by the recipient. There is no mechanism over the portal to match ITC reversal. CBIC accordingly has clarified that presently, the supplier may procure a certificate from the recipient of supply, issued by the (CA) or (CMA), certifying that the recipient has made the required proportionate reversal of ITC at his end. [Circular No. 212/6/2024-GST -GST Dated: 26th June, 2024] 15
3. **Circular No. 201/14/2024-GST**: Rule 28(1)(a) provides for valuation of 'Value of supply between DISTINCT or RELATED PERSONS,' at 'Open Market Value'. Further, second proviso to Rule 28(1) provides that 'value declared in invoice' shall be accepted as OMV, where the recipient is eligible to avail full ITC on such supply. It has been clarified that in all cases covered by Rule 28, if the recipient is eligible for full ITC but INVOICE has not been issued for the supply, then it may be deemed that 'value declared is NIL and that NIL value is acceptable as OMV'. [Circular No. 201/14/2024-GST (dated 26th June, 2024)] 17
4. **Rule 28 (2) [Supply of 'CORPORATE GUARANTEE' to a Bank/FI on behalf of a recipient who is a related person]**: Amended to following effect (i) Applicable only if recipient is 'located in India'; (ii) Value of '1% of guarantee amount' shall be computed on per annum basis; (iii) if recipient is eligible for full ITC, then any value declared on invoice will be deemed to be the value. [Amendment by the CGST (Amendment) Rules, 2024, w.r.e.f. 26-10-2023.] 19
5. **Circular No. 225/19/2024-GST**: CBIC has issued clarification on various issues pertaining to taxability and valuation of supply of services of providing corporate guarantee between related persons. [Circular No. 225/19/2024-GST (dated 11th July, 2024)] 21
6. **CBIC Circular 218/12/2024-GST** : Supply of Lending Services between RP - Interest charged, but no administrative fee/processing fee charged. Clarified that (1) Interest is exempt and (2) no notional value (OMV) of administrative fee/processing fee need to be considered. [Circular dated 26th June, 2024] 26
7. **Circular No. 214/8/2024-GST**: CBIC has issued clarification as to requirement of reversal of ITC in respect of portion of premium for life insurance policies which is not included in taxable value. [Circular dated 26th June, 2024)] 28
8. **Circular No. 195/07/2023-GST (Dated 17th July, 2023) [further revised by Circular No. 216/10/2024-GST, dated 26-6-2024]**: Revision to following effects (A) Substitution of 'PARTS' with [GOODS or ITS PARTS, as the case may be] - this amendment now extends the clarification in Para 2 of the original Circular to also cover cases where the entire goods are replaced under warranty. (B) Circular now covers the situation where Distributor replaces goods/parts under warranty using own stock, requisitions replenishment from manufacturer via delivery challan [No GST payable on replenishment by manufacturer + No ITC reversal required by the manufacturer]. (C) If the extended warranty is taken at time of original supply but provided by a different supplier, it is treated as a separate supply of services, subject to GST as a service.





(D) The revised clarification specifies that if the extended warranty is supplied separately from the original goods, the supplier will be liable to pay GST on it as a supply of services, irrespective of whether the warranty involves goods or services or is a composite supply. [Circular No. 216/10/2024-GST, dated 26-6-2024] 30

3.1: TIME OF SUPPLY 36

1. Circular No. 221/15/2024-GST:: National Highway Project under (Hybrid Annuity Model – covering construction and operation & maintenance): Private player supplying services to NHAI – Clarified that (i) Supply of Service (Construction of Road + Maintenance of Road) is under a SINGLE CONTRACT. (ii) it is case of Continuous Supply of Service & (ii) Multiple invoicing requirement linked to due date of payment as per Sec 31(5)(a) or date of completion of event as per Sec 31(5)(c) & (iii) Multiple ToS & ToS as per Sec 13(2) – depending upon invoice issued within 30 days of provision of service or belatedly [Circular dated 26th June, 2024] 36
2. Circular No. 222/16/2024-GST:: Supply of Service (right to use natural resources) by Govt to Business Entity which is subject to RCM. Clarified that when supply mode is 'DEFERRED PAYMENT', then (i) it is case of Continuous Supply of Service (ii) Frequency Assignment Letter (FAL) is in the nature of contract and due dates of payment are ascertainable therefrom & (ii) Multiple invoicing requirement linked to due date of payment as per Sec 31(5)(a) & (iii) ToS as per Sec 13(3) [Circular dated 26th June, 2024] 39

3.2: PAYMENT OF TAX..... 41

1. Sec 50(1)/(2) r/w Rule 88-B(1) [Computation of Interest on belated discharge of FCM Liability]: Rule 88-B has been amended (w.e.f. 10th July, 2024) to provide that amount deposited into ECL on/before due date of return but debited therefrom upon belated filing of return, shall not considered for computation of interest liability on 'Output Tax (FCM liability)'. [Amendment- w.e.f. 10-7-2024] 41
2. Rule 86 (E-credit Ledger): Rule 86(4-B) amended to provide that where erroneous refund is granted to a RP (of ITC as per Sec 54(3) or IGST paid on export of goods) but such refund alongwith applicable interest and penalty is deposited back in CASH, then the amount of such erroneous refund deposited shall be credited by PO into the e-credit ledger. [Amendment by CGST (Second Amendment) Rules, 2024, w.e.f. 8th Oct, 2024] 44

3.3 : TDS (Tax Deducted at Source) 46

1. Sec 51 [TDS @2%]: TDS introduced on supply of METAL SCRAP (of specified kind) by RP to RP (= B2B Supply) [for this purpose, 'RPs receiving supply of METAL SCRAP falling under Chapters 72 to 81 of the First Schedule to the Customs Tariff Act, 1975 from other RPs' notified u/Sec 51(1)(d) and thus, mandated to remit TDS] [Original N/N 50/2018-CT amended vide N/N 25/2024-CT (R) – w.e.f. 10th Oct, 2024] 46

3.4 : TCS (Tax Collected at Source) 48

1. Sec 52 (TCS): TCS rate has been reduced from the current 1% (0.5% CGST + 0.5% SGST/UTGST, or 1% IGST) to 0.5% (0.25% CGST + 0.25% SGST/UTGST, or 0.5% IGST) effective from 10th July, 2024. [vide N/N 15/2024-CT dated 10th July, 2024] 48

4: REGISTRATION..... 49

1. Sec 23(2) [Person Exempted from registration- by Notification by Govt]: Vide N/N 5/2017-CT, supplier (goods/services) making taxable supply but only that which is subject to RCM has been exempted from obtaining registration. W.e.f. 10th Oct, 2024, supplier of METAL SCRAP (falling under Chapter 72 to 81) has been excluded from that notification. Consequentially, such supplier shall be liable to take GST registration as when applicable registration threshold is crossed by such supplier. [*Also note, post-registration, RCM will cease to apply and such supplier shall be liable to pay tax under FCM]. [vide N/N 5/2017- amended by N/N 24/2024-CT (dated 10th Oct, 2024)] 49
2. Rule 8 [Application for registration]: Rule 8(4A) requires registration applicant to undergo 'Aadhaar Authentication' on online basis. However, applicant identified as 'risky applicant' shall undergo 'Biometric Based Aadhaar Authentication'. Initially, Biometric Based AA was introduced in Gujarat which was later on expanded to Andhra Pradesh and Puducherry. Other states exempted vide N/N 27/2022-CT issued u/Rule 8(4-B). now, that notification has been rescinded and thus, making Bio-metric based AA applicable to whole of India. [N/N 27/2022-CT has been rescinded (w.e.f. 10th July, 2024)] 50
3. Rule 21 [Registration to be cancelled in certain cases]: Rule 21 amended in 2 respect (i) Rule 21(f) [Mismatch of OS declared in GSTR-1 and Liability paid in GSTR-3B] – consequential amendment made to incorporate reference of GSTR-1A (ii) Rule 21 (ga) inserted to make provision for re-cancellation of registration of person whose registration earlier cancelled was revoked but he failed to file his pending returns within 30 days from date of revocation [amendment (w.e.f. 10th July, 2024)] 51
4. Rule 21-A [Suspension of Registration]: Rule 21-A (2A) (System-based-Suspension of Registration)- consequential amendment made to incorporate reference of GSTR-1A. Now, comparison will be made of (i) 'GSTR-1 (as amended by GSTR-1A) furnished by RP with GSTR-3B furnished by him' and (ii) 'GSTR-1 (as amended by GSTR-1A of previous tax period) furnished by his supplier with his GSTR-2B'. [amendment (w.e.f. 10th July, 2024)] 52

5 : RETURN..... 53

1. Sec 37 r/w Rule 59 [Furnishing of details of Outward Supplies (GSTR-1)]: Rule 59(4) amended to reduce the threshold limit of B2C supplies (Large invoices of Inter-State Supplies) for which invoice-level details shall be furnished in GSTR-1. The threshold shall be 'Invoice value of more than Rs 1,00,000' (instead of earlier 2,50,000) [amendment (w.e.f. 1st Aug, 2024)] 54





2. **Sec 37 r/w Rule 59 [Furnishing of details of Outward Supplies (GSTR-1)]:** Rule 59 amended (i) Proviso inserted in Rule 59(1) to the effect of allowing RP to amend or furnish additional details in GSTR-1 already filed (for this GSTR-1A shall be filed – anytime but before filing of GSTR-3b for the said (ii) Rule 59(4A) inserted to prescribe contents of GSTR-1A (in similar manner as that of GSTR-1) [amendments related to GSTR-1A (w.e.f. – 10th July 2024)] 55
3. **Sec 44(1) [Annual Return]:** Notification issued exempting RP with ATO upto Rs 2 cr for FY 2023-24 from filing Annual Return for FY 2023-24. [N/N 14/2024 issued (w.e.f. 7th July, 2024)] 63
4. **Sec 39(2) r/w Rule 62 [Return of Composition Supplier]:** Rule 62 provides that Composition Supplier shall file 'GSTR-4 (as Sec 39 Return) on ANNUAL BASIS by 30th April. Proviso has been inserted in Rule 62 providing that extending this due date to 30th June on/from FY 2024-25. [amendment (w.e.f. 10th July, 2024)] 63

GST Volume-II Amendment 64

1: EXPORT OF GOODS / SERVICES 64

1. **Exporter of Goods [IGST Refund – Sec 16(4) of IGST Act r/w Rule 96] vs [ITC refund as per Sec 16(3) of IGST Act r/w Rule 89]:** Rule 96(10) has imposed restriction i.r.o. IGST refund on goods exported if benefits of certain concessional/exemption notifications (like Advance Authorization, EoU etc) have been availed on inputs/raw materials imported or procured domestically. Such exporters shall be entitled to claim refund of ITC only and that too as per specific provision laid down in Rule 89(4A) & (4B) of CGST Rules, 2017. Rule 96(10) been omitted and thus, removing this bar of IGST refund. Also, Rule 89(4A) & (4B) has been omitted. Consequently, in the cases where the benefit of concessional/ exemption notifications which were specified in rule 96 (10) had been availed on inputs imported or procured domestically, the refund on account of exports can be claimed through the 'IGST refund route u/Rule 96' or 'ITC refund route as per Rule 89(4)'. [Amendment w.e.f. 8th Oct, 2024] 64
2. **Rule 86(4B):ERRONEOUS REFUND granted of [(ITC refund) or (IGST Refund on export of Goods)] – if such person pays back such refund (with interest & penalty) by GST DRC-03 (Cash), then PO shall pass order in Form GST PMT-03A re-credited the amount of refund into ECR:** Reference of Rule 96(10) has been omitted as Rule 96(10) has been omitted from law. [Amendment w.e.f. 8th Oct, 2024] 66
3. **Sec 54 + Rule 96 (IGST Refund on Export of Goods):**Export of goods at a price which is now revised upward leading to payment of additional IGST. Mechanism for refund of such additional IGST now introduced vide insertion of Rule 89(1B) which is providing for submission of normal refund application [GST RFD-01] to the PO within 2 years from Relevant Date (as applicable for refund claim of Original IGST paid). Rule 89(2)(ba) & (bb) inserted prescribing the relevant supporting documents to be submitted. CBIC issued Circular 226/20/2024-GST clarifying related aspects. [Rule 89(1B) + Rule 89(2)(bb) & (bc) inserted w.e.f. 10th July, 2024 + CBIC Circular 226/20/2024 (dated 11th July, 2024)] 67
3. **Sec 16(3) of IGST Act (Export under Bond/LuT) + Rule 96-A (Execution of Bond/LuT):** Export of Services: Bond/LuT executed by the exporter shall be as to obligation to bring sale proceeds (foreign exchange or Indian Rs, where permitted) within later of following period from date of issue of invoice (a) 1 year or (b) period permissible under FEMA (including extension by RBI). [Rule 96-A (1)(b) substituted w.e.f. 10th July, 2024] 72

2. REFUNDS UNDER GST 73

1. **Sec 55 [Refund of Tax paid on the Inward Supply] + N/N 6/2017-CT:** N/N 6/2017-CT enables CSD (Canteen Stores Department) to claim refund of 50% of GST paid on inward supply (of GOODS) which are for subsequent supply to authorized customers/ other units of CSD. New Rule 95-B has been notified prescribing procedure for claiming such refund. Refund application in Form GST RFD-10A shall be filed electronically. [Rule 95-B notified (w.e.f. 10th July, 2024) + CBIC Circular 227/21/2024-GST] 73

3 : DEMAND & RECOVERY 77

1. **Rule 142 [Notice and Order for Demand of amounts payable under CGST Act]:** Rule 142 amended in following respects (i) When payment is made pre-SCN (voluntarily or during pre-notice consultation) by GST DRC-03, then System-generated acknowledgment of such payment shall be issued in GST DRC-04; & (ii) When partial payment / no payment is during pre-notice consultation, then PO shall issue intimation to the taxpayer in GST DRC-01A (Part-C) & (iii) if Liability in e-liability discharged through GST DRC-03 (instead of against debit in ELL), then such person may submit request in Form GST DRC-03A to adjust payment made through DRC-03 against liability in ELL. [Rule 142 – 142(2) & (2A) amended + Rule 142 (2B) inserted- w.e.f. 10th July, 2024] 77
2. **Sec 78 [Initiation of Recovery Proceedings]:** Proviso to Sec 78 empowers PO to issue direction to the taxable person to pay Govt dues in period earlier than 3 months. The PO for this purpose is 'Jurisdictional Principal Commissioner/ Commissioner'. If the taxpayer still fails to pay, then PO (Jurisdictional AC/DC) to proceed with recovery. Detailed instructions have been issued stating when such early payment direction can be issued and what procedure to be followed for this propose. [Instruction No. 1/2024- GST – dated 30th May, 2024] 80
2. **Sec 78 [Initiation of Recovery Proceedings]:** Assessee lost appeal at first appellate stage and further appeal cant be filed due to GST Tribunal being non-functional. Dept enforcing demand as case lost by assessee but assessee facing challenges due to his inability to file appeal due to non-functional Tribunal. CBIC issued Circular laying guidelines for 'Stay of Recovery in such cases (upon making payment through ELL of amount equivalent to requisite pre-deposit as specified in Sec 112(8) & giving an undertaking as to his intent of filing further appeal to GSTAT) and its adjustment towards 'Pre-Deposit' by using Form GST DRC-03A subsequently. [Circular No. 224/18/2024 – GST – dated 11th July, 2024] 82





4 : APPEAL & REVISION..... 85

1. **Sec 109 [Constitution of Appellate Tribunal and Benches thereof]:** Amendments made as to following (1) GSTAT empowered to conduct an examination or adjudicating the anti-profiteering cases as referred in Sec 171 (2) Such cases will fall within the exclusive domain of the Principal Bench of the Appellate Tribunal (3) Exclusive domain of Principal Bench of GSTAT extended to cover any cases/class of cases as notified by Govt (on recommendation of Council) . [Sec 109(1) & 109(5) Amended by FA (No. 2) 2024 - w.e.f. 27th Sep, 2024] 85
2. **Sec 112 [Appeal to Appellate Tribunal]:** Amendments made as to following (1) Assessee's Appeal: Time limitation of 3 Months (+ 3 Months) + manner of filing (2) Dept. Application/Appeal : Time limitation of 6 Months + manner of Filing. [Sec 112(1) & (3) Amended by FA (No. 2) 2024 - w.e.f. 1st Aug, 2024 + Rule 110 & 111- revised w.e.f. 10th July, 2024] 87
3. **Rule 113-A [Withdrawal of Appeal before GSTAT]:** W.e.f. July, 2024, vide Rule 113-A, enabling provisions have been introduced for taxpayers/Department allowing them to withdraw appeal before GSTAT. [Rule 113-A inserted (w.e.f. 10th July, 2024)] 92
4. **Sec 120 [Appeal not to be filed in Certain Cases]:** Sec 120 empowers CBIC may fix monetary limits below which DEPARTMENT cannot file Appeal / Application with the objective of reduction of litigation at Govt end. Using that, CBIC has issued instructions fixing the monetary limit. [Circular No 207/1/2024-GST (Dated 26th June, 2024)] 93

5: PENALTIES..... 97

1. **Sec 122-A [Penalty for failure to register certain machines used in manufacture of goods as per special procedure]:** Sec 122-A is applicable to 'manufacturers of goods where a SPECIAL PROCEDURE for machine registration has been notified u/Sec 148. it is providing for penalty of ₹1,00,000 for each unregistered machine, in addition to any other applicable penalties. Each unregistered machine is also liable for seizure and confiscation. [inserted by FA, 2024 (15 Feb, 2024), (w.e.f. 1st Oct, 2024)] 97

6: MISCELLANEOUS PROVISIONS..... 98

1. **Section 171 - Anti profiteering measure:** w.e.f. 1st Oct, 2024, 'anti-profiteering' cases will be examined by Principal Bench of GSTAT (and not by the Competition Commission of India). Also, Govt empowered to notify cut-off date beyond which request for examination of 'anti-profiteering cases will not be accepted. [Sec 171 + Sec 109(1) & (5) of the CGST ACT - amended by FA (No. 2), 2024 (w.e.f. 27th Sep, 2024) + N/N 19/2024 - CT & N/N 18/2024 - CT (w.e.f. 1st Oct, 2024)] 98

GST - Volume III Amendments.....101

1: ITC.....101

1. **Sec 16 [Eligibility and conditions for taking ITC]:** (i) **Sec 16(5) inserted** to provide relaxation in time limitation as ITC availment for ITC pertaining to [FY 2017-18, 2018-19, 2019-20, 2020-21]: Time limitation for all these years extended to 30th Nov, 2021 (thus, ITC claimed in any Sec 39 Return (regular return) filed upto 30th Nov, 2021 becomes 'eligible ITC') (ii) **Sec 16(6) inserted** to provide relaxation in time limitation for ITC availment i.r.o. revocation of cancellation of registration:: The returns for the period from date of cancellation of registration/ effective date of cancellation of registration till the date of revocation of cancellation of registration are filed after revocation of cancellation of registration. ITC can be claimed in such return if filed within 30 days from date of revocation order. [Inserted by the FA (No. 2), 2024, w.r.e.f. 1-7-2017] 101
- 1.1. **Sec 148 [SPECIAL PROCEDURE FOR CERTAIN PROCESSES]:** Special procedure notified for rectifying an order confirming incorrect ITC availment u/Sec 16(4), where credit is now available u/Sec 16(5) / (6) and no appeal has been filed. [N/N 22/2024- CT- DATED 8-10-2024] 105
2. **Sec 16(4): Time limitation on availment of 'invoice-based ITC':** CBIC clarified that this limitation as to RCM supply from unregistered supplier shall be considered from the date of issuance of 'SELF-INVOICE' by the recipient [CIRCULAR NO. 211/5/2024-GST (Dated 26th June, 2024)] 108
3. **Sec 17(5)(a) + CBIC Circular 231/25/2024-GST :** Clarification as to availment of ITC on DEMO VEHICLES by the dealer of the vehicle manufacturer : (i) ITC admissible if dealer is supplier of SIMILAR VEHICLES - as Demo Vehicles used for promoting sales of SUCH MV and be considered as being used for making 'making further supply of SUCH motor vehicle'- thus, ITC is not blocked u/Sec 17(5)(a). (ii) ITC not admissible if dealer himself is not supplier of SIMILAR MV (and mere supplier of marketing service / test drive services to the manufacturer of MV). [Circular dated 10th Sep, 2024] 110
4. **Sec 17(5)(ab) + CBIC Circular 217/11/2024-GST :** Entitlement of ITC by the insurance companies on the expenses incurred for repair of motor vehicles in case of reimbursement mode of insurance claim settlement : (i) Insurer (insurance company) is recipient as it is person liable to pay consideration (repair charges) (ii) it is entitled to ITC but only to the extent to approved cost which it is re-imbursing. [Circular dated 26th June, 2024] 113
5. **Sec 17(5)(c)/(d) + CBIC Circular 219/13/2024-GST :** Entitlement of ITC on 'Ducts and Manholes' used in Optical Fire Cables (OFC) Network which is used for providing telecommunication service: Clarified that ITC is admissible as (i) OFC network (= immovable property) is used for providing telecommunication service and (ii) qualifies as 'Plant and Machinery' as defined in Explanation to Sec 17(4) and (ii) thus, ITC not hit by provisions of Sec 17(5)(c) /(d) . [Circular dated 26th June, 2024] 115
6. **Sec 16(2) r/w Rule 36 [Documentary requirements and conditions for claiming ITC]:** Rule 36(3) which was providing restriction as to ITC availment i.r.o. any tax paid in mala-fide cases has been amended to provide for its applicability only i.r.o. demand order passed u/Sec 74. [amendment w.e.f. 8th Oct, 2024] 117





7. Introduction of GSTR-1A in 'Return filing process' and consequential amendments: (i) Rule 36(4)(a) (ITC claimable only if details of OS has been furnished by the Supplier u/Sec 37) (i) Rule 37 (Reversal of ITC where supplier has declared OS u/Sec 37 but failed to pay corresponding tax). (ii) Rule 40(1)(e) (Manner of claiming credit in Special Circumstances – (RP – composition to normal scheme) / (RP – Exempt supply now becoming taxable. [amendment w.e.f. 10th July, 2024] 118

5.1 : REVERSE CHARGE 120

1. RCM on Goods: N/N 4/2017-CT (R): New Entry 8 has been inserted in RCM N/N 4/2017-CT (Rate) introducing RCM on supply of 'METAL SCRAP falling under Chapter 72 to 81 of Customs Tariff Act, 1975' when made by an URP to a RP. This entry has been made effective from 10th Oct, 2024. [amended vide N/N 06/2024-CT (Rate), dated 08th October 2024 – w.e.f. 10th Oct, 2024] 120
2. RCM on Services: N/N 13/2017-CT (R): New Entry 5-AB has been inserted (w.e.f. 10th Oct, 2024) introducing RCM on supply of service of 'Renting of COMMERCIAL PROPERTY (= Immovable Property other than residential dwelling) by an URP to a RP. [amended vide N/N 09/2024-CT (Rate), dated 08th October 2024 – w.e.f. 10th Oct, 2024] 121

2 : PLACE OF SUPPLY 123

1. CBIC issued Circulars clarifying determination of PoS in various situations: (1) PoS of Goods [Sec 10(1)(ca) of IGST Act]– Determination of PoS in case of supply of goods to URP. &. (2) PoS of Services [Sec 13 of IGST Act]– determination of PoS in case of (a) Supply of Advertisement Services (b) Supply of Data Hosting Services (c) Supply of custodial services by Bank to the Foreign Portfolio Investors. [Circular No. 209/3/2024-GST, Circular No. 232/26/2024-GST, Circular No. 230/24/2024-GST, Circular No. 220/14/2024-GST] 123

GST – Volume IV Amendments 133

1. EXEMPTIONS UNDER GST 133

CUSTOMS Amendments 154

1: Types of Customs Duties 154

1. Section 6 of CTA, 1975 [Levy of PROTECTIVE DUTY]: Sec 6 enabling levy of protective duties on recommendations of Tariff Commission, has been omitted as the Commission was wound up in June 2022. [omitted by FA (No. 2), 2024 (16th Aug, 2024)] 154
2. Section 3, 8-B, 9 & 9A of CTA, 1975 [Levy of IGST, Safeguard Duty, CVD, Anti-dumping duty on imported articles]: The amendments ensure uniform application of customs law provisions to various special duties (ADD, CVD, Safeguard Duties, etc.). The amendment explicitly extends all provisions of the Customs Act, 1962 (as well as rules and regulations made thereunder) to duties/taxes/cess imposed under Section 3, Safeguard duty imposed u/Sec 8-B, CVD imposed u/Sec 9 and Anti-dumping duty imposed u/Sec 9-A. [Amendments by FA (No. 2), 2024 (16th Aug, 2024)] 155

2: Warehousing 157

1. Sec 65 [Manufacturing and Other Operations in relation to goods in warehouse]: Proviso inserted in Sec 65(1) empowering CG to notify manufacturing processes/ other operations in relation to a CLASS OF GOODS that shall not be permitted in a warehouse.: [Amendments by FA (No. 2), 2024 (16th Aug, 2024)] 157





Paper 5: INDIRECT TAX LAWS

[May, 2025 Examination - Cut-off date for applicable amendments = 31st Oct, 2024]

GST

Weightage = 80 marks

Finance (No. 1) Act, 2024

Enacted on	15 th Feb, 2024	
Provisions	Effective Date	May 25
Sec 2 (61)	1 st April, 2025. (6 th Aug, 2024)	
Sec 20	1 st April, 2025 (6 th Aug, 2024)	
Sec 122-A	1 st Oct, 2024. (6 th Aug, 2024)	✓

Finance (No. 2) Act, 2024

Enacted on	16 th Aug, 2024	
Provisions	Effective Date	May 25
Sec 9 (1)	1 st Nov, 2024	
Sec 10 (5)	1 st Nov, 2024	
Sec 11-A	1 st Nov, 2024	
Sec 13 (3)	1 st Nov, 2024	
Sec 16 (5)/ (6)	1 st July, 2017 (27 th Sep, 2024)	✓
Sec 17 (5) (i)	1 st Nov, 2024	
Sec 30 (2)	1 st Nov, 2024	
Sec 31 (3) (f)	1 st Nov, 2024	
Sec 35 (6)	1 st Nov, 2024	
Sec 39 (3)	1 st Nov, 2024	
Sec 49 (8)	1 st Nov, 2024	
Sec 50 (1)	1 st Nov, 2024	
Sec 51 (7)	1 st Nov, 2024	
Sec 54 (3)/ (15)	1 st Nov, 2024	
Sec 61/62/63/64/ 65 / 66	1 st Nov, 2024	
Sec 70 (1A)	1 st Nov, 2024	
Sec 73 (11)/ 74(11)	1 st Nov, 2024	
Sec 74-A	1 st Nov, 2024	
Sec 75 (1)/ (2A)/ (10)/ (11) / (12)/ (13)	1 st Nov, 2024	
Sec 107 (6)	1 st Nov, 2024	
Sec 109 (1)/ (5)/ (6)	27 th Sep, 2024	✓
Sec 112 (1)/ (3)/ (6)/ (8)	1 st Aug, 2024 (1 st Nov, 2024)	
Sec 122 (1B)	1 st Oct, 2023 (1 st Nov, 2024)	
Sec 127	1 st Nov, 2024	
Sec 128-A	1 st Nov, 2024	
Sec 171 (2)	27 th Sep, 2024	✓
Schedule III - Para 9& 10	1 st Nov, 2024	
IGST Act		
Sec 5 (1) - IGST Act	1 st Nov, 2024	
Sec 6-A - IGST Act	1 st Nov, 2024	
Sec 16(4) / (5) - IGST Act	1 st Nov, 2024	
Sec 20 - IGST Act	1 st Nov, 2024	

Customs + FTP

Weightage = 20 marks

Finance Act (No. 1), 2024

Enacted on	15 th Feb, 2024	
NO AMENDMENT		

Finance (No. 2) Act, 2024

Enacted on	16 th Aug, 2024	
Provisions	Effective Date	May 25
Sec 28-DA	16 th Aug, 2024	Syllabus
Sec 65 (1)	16 th Aug, 2024	✓
Sec 143-AA	16 th Aug, 2024	Syllabus
Sec 157 (2)	16 th Aug, 2024	Syllabus
CTA, 1975		
Sec 3 (12)	16 th Aug, 2024	✓
Sec 6 - omitted	16 th Aug, 2024	✓
Sec 8-B (12)	16 th Aug, 2024	✓
Sec 9 (7)	16 th Aug, 2024	✓
Sec 9-A (8)	16 th Aug, 2024	✓



**GST Volume-1****1.1: SUPPLY**

- CBIC Circular 213/07/2024-GST : Indian Subsidiary offering to its employees - ESOPs as to shares of its foreign holding company. Shares are being directly allotted by foreign holding company and cost is re-imbursed by the Indian Holding Company. Clarified that (i) No GST if actual cost re-imbursed (ii) GST on additional charges if Foreign company charging such additional charges. [Circular dated 26th June, 2024]**

Circular No. 213/07/2024-GSTDated: 26th June, 2024**Subject: Clarification on the taxability of ESOP/ESPP/RSU provided by a company to its employees through its overseas holding company.****Holding
Foreign Company**

The foreign holding company directly issues shares to employees, and the Indian subsidiary reimburses the cost to the foreign holding company.

**Subsidiary
Indian Company**

Employee Stock Option Plans (ESOPs), Employee Stock Purchase Plans (ESPPs), or Restricted Stock Units (RSUs)

= Incentive Schemes for its employees

= Option to their employees for allotment of securities/shares of their foreign holding company as part of the compensation package as per terms of contract of employment

Employee**Clarification**

- Transaction between Subsidiary Company and its employee [Free shares allotment]- Related Party Transaction**
These are part of employee remuneration to incentivize performance and align employee interests with the company. The ESOP/ESPP/RSU is a part of remuneration of the employee by the employer as per terms of employment. - **Not covered in scope of Supply as per Schedule III (Para 1) - 'services by an employee to the employer in the course of or in relation to his employment are treated neither as supply of goods nor as supply of services'. Also, Transfer of securities is not treated as "goods" or "services" under GST.**

- Transaction between Foreign Holding Company and Indian Subsidiary [Sale of Shares]**
Transfer of securities is not treated as "goods" or "services" under GST.

Cost-to-Cost Reimbursement:

If the Indian subsidiary reimburses the foreign holding company solely for the cost of shares without markup or commission, **it is not considered a supply of services**. Therefore, GST is not leviable.

Markup or Additional Charges:

If the foreign holding company charges additional fees, markup, or commission for facilitating/arranging the transfer of shares, **it is treated as a supply of services**. In such cases, GST is leviable on the additional amount, payable by the Indian subsidiary on a reverse charge basis.

Subject: Clarification on the taxability of ESOP/ESPP/RSU provided by a company to its employees through its overseas holding company.

- It has been represented that some of the Indian companies provide the option to their employees for allotment of securities/shares of their foreign holding company as part of the compensation package as per terms of contract of employment. In such cases, on exercising the option by the employees of Indian subsidiary company, **the securities/shares of foreign holding company are allotted directly by the holding company to the concerned employees of Indian subsidiary company**, and **the cost of such securities/shares is generally reimbursed by the subsidiary company to the holding company**.
- Doubts are being raised regarding taxability of such a transaction under GST, i.e.** whether such transfer of shares/securities by the foreign holding company directly to the employees of the Indian subsidiary company and subsequent re-imburement of the cost of such shares/securities by the Indian subsidiary company to the foreign holding company **can be considered as import of financial services by the Indian subsidiary company from the foreign holding company and whether the same can be considered as liable to GST in the hands of Indian subsidiary company on reverse charge basis.**





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

- The companies are providing option of allotment of securities/shares to their employees as a means of incentivization and the same is commonly referred to as an Employee Stock Purchase Plan (ESPP) or Employee Stock Option Plan (ESOP) or Restricted Stock Unit (RSU). Such specific terminology usage depends on the agreed-upon compensation terms between the employer and the employee. ESPPs and ESOPs are typically presented as 'options' granted to employees, whereas RSUs take the form of awards or rewards contingent upon the employee meeting specific performance standards. Regardless of the terminology used, the fundamental essence of the transaction remains the same i.e. the allocation of securities or shares from the employer to employee as part of compensation package with the aim of motivating enhanced performance.

A transaction involving transfer of ESOP/ESPP/RSU to the employees of domestic subsidiary by the foreign holding company appears to involve the following steps:

- | | |
|---|---|
| • | The domestic subsidiary company gives option/facility of ESOP/ESPP/RSU to its employees as part of compensation package as per terms of employment. |
| • | The employees exercise their stock options, either by purchasing shares at the grant price or by holding the options until they vest. |
| • | The foreign holding company of the domestic subsidiary company issues ESOP/ESPP/RSU, which are securities/shares listed on the foreign stock exchange, to the employees of the domestic subsidiary company. |
| • | The foreign holding company transfers the shares directly to the employees of the subsidiary company. |
| • | The domestic subsidiary company generally reimburses the cost of such shares to the foreign holding company on cost-to-cost basis either through an actual remittance or through an equity transfer as prescribed by the relevant Indian Accounting Standard. |
| • | The employees hold the shares and may sell them at a later date, if they so choose. |
- The foreign holding company issues securities/shares as ESOP/SPP/RSU to the employees of the domestic subsidiary company on the request of the said domestic subsidiary company. However, **Securities under GST Law are considered neither goods nor services in terms of definition of "goods" under clause (52) of section 2 of CGST Act and in terms of definition of "services" under clause (102) of the said section.** Further, securities include 'shares' as per definition of "securities" under section 2(h) of Securities Contracts (Regulation) Act, 1956. Accordingly, purchase or sale of securities/shares, in itself, is neither a supply of goods nor a supply of services. **Therefore, in the absence of such transaction, falling under the supply of 'goods' or 'services' as per GST Act, GST is not leviable on said transaction of sale/purchase/transfer of securities/shares.**
 - Further, the companies offer ESOP/ESPP/RSU to their employees to motivate them to perform better, and to retain the employees, by aligning the interest of employees with that of company. The ESOP/ESPP/RSU is a part of remuneration of the employee by the employer as per terms of employment. As per Entry 1 of Schedule III of the CGST Act, the services by an employee to the employer in the course of or in relation to his employment are treated neither as supply of goods nor as supply of services. Therefore, GST is not leviable on the compensation paid to the employee by the employer as per the terms of employment contract which involve transfer of securities/shares of the foreign holding company to the employees of domestic subsidiary company.
 - The foreign holding company directly transfers the shares/securities to the employees of the domestic subsidiary company on the request of the said domestic subsidiary company. **Reimbursement of such securities/shares is generally done by domestic subsidiary company to foreign holding company on cost-to-cost basis i.e. equal to the market value of securities without any element of additional fee, markup or commission. Since the said reimbursement by the domestic subsidiary company to the foreign holding company is for transfer of securities/shares, which is neither in nature of goods nor services, the same cannot be treated as import of services by the domestic subsidiary company from the foreign holding company and hence, is not liable to GST under CGST Act.**
 - However, if the foreign holding company charges any additional fee, markup, or commission from the domestic subsidiary company for issuing ESOP/ESPP/RSU to the employees of the domestic subsidiary company, **then the same shall be considered to be in nature of consideration for the supply of services of facilitating/arranging the transaction in securities/shares** by the foreign holding company to the domestic subsidiary company. In this case, GST will be leviable on such amount of the additional fee, markup, or commission, charged by the foreign holding company from the domestic subsidiary for issuance of its securities/shares to the employees of the latter. The GST shall be payable by the domestic holding company on reverse charge basis on such import of services from the foreign holding company.
 - Accordingly, it is clarified that **no supply of service appears to be taking place between the foreign holding company and the domestic subsidiary company where the foreign holding company issues ESOP/ESPP/RSU to the employees of domestic subsidiary company, and the domestic subsidiary company reimburses the cost of such securities/shares to the foreign holding company on cost-to-cost basis.** However, in cases where an additional amount

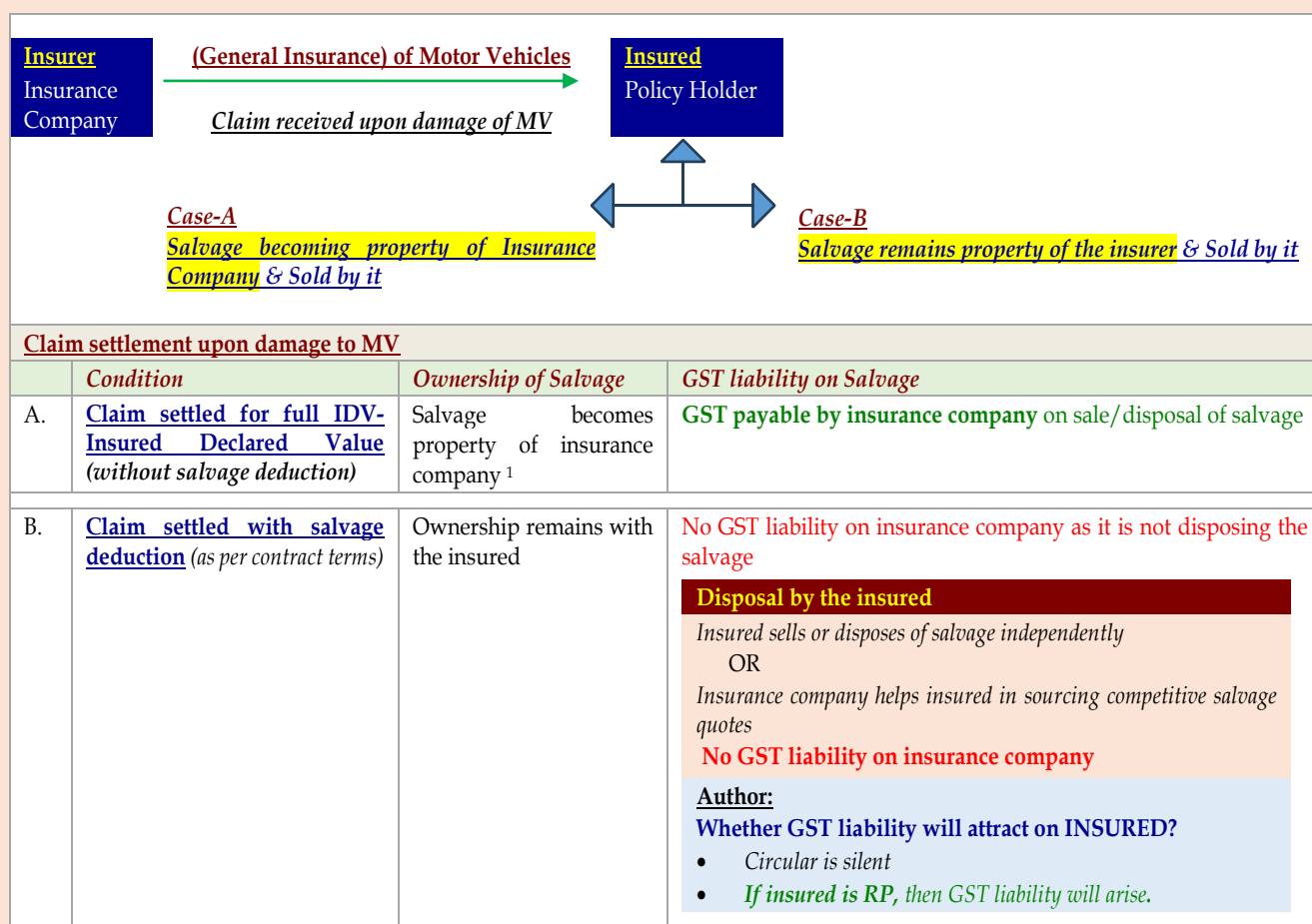




over and above the cost of securities/shares is charged by the foreign holding company from the domestic subsidiary company, by whatever name called, GST would be leviable on such additional amount charged as consideration for the supply of services of facilitating/arranging the transaction in securities/shares by the foreign holding company to the domestic subsidiary company. The GST shall be payable by the domestic subsidiary company on reverse charge basis in such a case on the said import of services.

2. **CBIC Circular 215/09/2024-GST : Taxability of salvage/wreck value earmarked in claim assessment of damage caused to motor vehicle.** Clarified that (i) when insurance company paying full insured value, then Salvage becomes property of insurance company and thus, GST payable by insurance company on its disposal/sale (ii) But if insurance company pays 'insured value less deduction towards salvage', then Salvage remains property of the insured and thus, **No GST liability on insurance company.** [Circular dated 26th June, 2024]

Circular No. 215/9/2024-GST Dated: 26th June, 2024 Subject: Clarification on taxability of salvage/wreck value earmarked in claim assessment of damage caused to motor vehicle.



Subject: **Clarification on taxability of salvage/wreck value earmarked in claim assessment of damage caused to motor vehicle.**

¹ **Author:**

Suppose, insured is a GST registered entity.

When under an insurance claim, insurance company takes ownership of salvage, then whether it can be said to be supply made by insured to the insurance company?

Whether deduction made for salvage can be considered as 'consideration' received by insured from insurance company for supply of salvage to the insurance company?

- This issue has not been addressed in the Circular.
- In personal view of Author, the insurance company's acquisition of the salvage is a consequence of the insurance contract terms, not be treated as a separate supply and consequently, NO GST liability shall arise on the insured.





1. The insurance companies, which are engaged in providing **general insurance services in respect of insurance of motor vehicles**, insure the cost of repairs/damages of motor vehicles incurred by the policyholders. Such damages to the insured vehicle are classified in two categories:—

i.	Total Loss/Constructive Total Loss or Cash Loss; and
ii.	Partial Loss Situation

- 1.1 **Representations have been received from the trade and field formations seeking clarification as to whether in case of motor vehicle insurance, GST is payable by the insurance company on salvage/wreckage value earmarked in the claim assessment of the damage caused to the motor vehicle.**
2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168(1) of the CGST Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues as under:—

Whether the insurance company is liable to pay GST on the salvage/wreckage value earmarked in the claim assessment of the damage caused to the motor vehicle?

Clarification

- Under GST law, supply is the relevant taxable event for levying tax. **For an activity/transaction to be liable to GST, existence of 'supply' as defined under section 7 of CGST Act should be there.**
- Section 7 of CGST Act defines supply to mean 'all forms of supply of goods or services or both made or agreed to be made for a consideration by a person in the course or furtherance of business.' **In the instant case, insurance companies are providing service of insuring the vehicle/automobile for any damages and in return, charging consideration in the form of premium charged from the owner of the vehicle. It is also noted that in respect of insurance services being provided by the insurance companies, it is the responsibility of the insurance company to get the damaged vehicle repaired or to compensate the insured person against the damage caused to the vehicle, to the extent covered under the terms of the insurance.**
- Any Deduction made by the insurance company from the final claim amount paid to the insured is in the form of deductibles which is pre-decided and mutually agreed by the insured and the insurer while signing the insurance contract. **In cases where as per the policy contract, the insurance company's liability to pay the insured is limited to Insured's Declared Value (IDV) of the vehicle less the value of salvage/wreck in cases of total loss to the vehicle,** if the insurance claim is settled by the insurance company as per the terms of the insurance contract by deducting value of salvage/wreckage from the claim settlement amount, **the salvage/wreckage does not become property of insurance company, and the ownership for such wreckage/salvage remains with the insured.** However, in some cases, the insurance company may support sourcing of competitive quotes from various salvage/wreckage buyers and the insured may select the best available offer for sale of wreckage or damaged car. The insured may also source quotes from open markets and dispose the wreckage or damaged car to such a buyer. In any case, the ownership of the wreckage vests with the insured and not with the insurance company. The same can be disposed by the insured either directly, or through the garage, or may not be disposed at all, as per his wish and choice. **The deduction of the value of salvage from the insurance settlement amount, is as per the terms of the insurance contract, and cannot be said to be consideration for any supply being made by insurance company. Accordingly, in such cases, there does not appear to be any supply of salvage by insurance company and as such, there does not appear to be any liability under GST on the part of insurance company in respect of this salvage value.**
- However, **in situations where the insurance contract provides for settlement of claim on full IDV, without deduction of value of salvage/wreck,** the insured will be paid for full claim amount without any deductions on account of salvage value. **In such a situation, the salvage becomes the property of Insurance Company after settling the claim for the full amount and the insurance company is obligated to deal with the same or dispose of the same. In such cases, the outward GST liability on disposal/sale of the salvage is to be discharged by the insurance companies.**

Therefore, in cases where due to the conditions mentioned in the contract itself, general insurance companies are deducting the value of salvage as deductibles from the claim amount, the salvage remains the property of insured and insurance companies are not liable to discharge GST liability on the same. However, in cases, where the insurance claim is settled on full claim amount, without deduction of value of salvage/wreckage (as per the terms of the contract), the salvage becomes the property of the insurance company and the insurance company will be obligated to discharge GST on supply of salvage to the salvage buyer.



**1.2: COMPOSITE SUPPLY VS MIXED SUPPLY**

1. **CBIC Circular :** Clarified that when ancillary/incidental services are provided by GTA in the course of transportation of goods by road and the GTA also issues consignment note, the service will constitute a composite supply and all such ancillary/incidental services like loading/unloading, packing/unpacking, transshipment, temporary warehousing etc. will be treated as part of the composite supply. [Circular No. 234/28/2024-GST Dated: 11th Oct, 2024]

Circular No. 234/28/2024 Dated: 11th Oct, 2024

Services like loading/ unloading, packing/ unpacking, transshipment, and temporary warehousing, provided by GTA	Treatment under GST	Author <u>Illustration</u>
When provided by GTA in the course of transportation of goods	These shall be treated <u>as part of a composite supply</u> . (shall be taxed as part of GTA Service) The method of invoicing (whether combined or separate) does not alter the composite nature of the service if these are provided in the course of transportation of goods.	Illus 1: A GTA provides transportation services along with loading and unloading of goods during transit. Illus 2: A GTA issues an invoice <u>showing transportation, loading, and packing charges separately</u> ; GST still applies at 5%.
When provided by GTA but NOT in the course of transportation of goods	These shall be treated as <u>separate supplies</u> and taxed at their applicable GST rates.	Illus: A GTA provides <u>standalone warehousing services</u> for goods before dispatch, invoiced separately, taxed at 18%..

6. **Whether incidental/ancillary services such as loading/unloading, packing, unpacking, transshipment, temporary warehousing etc., provided in relation to transportation of goods by road is to be treated as part of GTA service, being composite supply, or these services are to be treated as separate independent supplies?**
- 6.1 Representations have been received to clarify whether incidental/ ancillary services such as loading/ unloading, packing, unpacking, transshipment, temporary warehousing etc., provided in relation to transportation of goods by road is to be treated as part of (GTA) service, being composite supply, or these services are to be treated as separate independent supplies.
- 6.2 It has been **brought to notice that enforcement agencies are raising demands for such services holding them leviable to GST at the rate of 18%** by interpreting last para of Question No. 6 of the FAQ issued by CBIC which states that "If such incidental services are provided as separate services and charged separately, whether in the same invoice or separate invoices, they shall be treated as separate supplies", to mean that **if a GTA shows packing charges, loading, unloading charges etc., separately in the invoice, the GTA becomes liable to pay GST at the rate of 18% on these services by treating them as cargo handling services.**
- 6.3 After deliberations on the issue and based on recommendations of the 54th GST Council, **it is hereby clarified that ancillary or incidental services provided by GTA in the course of transportation of goods by road, such as loading/unloading, packing/unpacking, transshipment, temporary warehousing etc. will be treated as composite supply of transport of goods. The method of invoicing used by GTAs will not generally alter the nature of the composite supply of services.** However, if such services are not provided in the course of transportation of goods and are invoiced separately, then these services will not be treated as composite supply of transport of goods.





2. **CBIC Circular: Clarified that PLC is considered part of a composite supply of construction services, where construction service is the principal supply, and PLC is incidental to it.. [Circular No. 234/28/2024-GST: 11th Oct, 2024]**

Circular No. 234/28/2024 Dated: 11th Oct, 2024

GST on (PLC) collected along with consideration for sale/transfer of residential/commercial properties

PLC = Charges collected for allowing a customer to choose a preferred location for their apartment or unit (e.g., sea-facing apartment, higher floor, corner unit).

[e.g. A developer charges an additional ₹2,00,000 for a sea-facing apartment in addition to the basic construction cost.]

Aspect	Clarification	Example
Definition of PLC		
Nature of PLC	PLC is an integral part of the supply of construction services and is naturally bundled with it.	PLC is charged along with the construction cost of an apartment.
Composite Supply	PLC is considered part of a composite supply of construction services, where construction service is the principal supply, and PLC is incidental to it.	The entire consideration, including PLC, is treated as a composite supply of construction services.
Taxability Before Completion Certificate	GST is applicable on PLC at the same rate as the supply of construction services before issuance of the completion certificate of the property.	For a residential complex, GST is charged at 5% on the total consideration, including PLC, before completion.

Author:

Taxability After Completion Certificate: No GST is applicable on the sale of property or related charges, including PLC, **after the completion certificate** is issued, as the sale is outside the scope of GST.

8. Applicability of GST on Preferential Location Charges (PLC) collected along with consideration for sale/transfer of residential/commercial properties:

- 8.1 **Allowing choice of location of apartment is integral part of supply of construction services and therefore, location charge is nothing but part of consideration charged for supply of construction services before issuance of completion certificate.** Being charged along with supply of construction services for the apartment, the same attract GST at same rate as of construction services before issuance of completion certificate.
- 8.2 Therefore, based on the recommendations of the 54th GST Council, it is hereby **clarified that** location charges or Preferential Location Charges (PLC) paid along with the consideration for the construction services of residential/commercial/industrial complex **forms part of composite supply** where supply of construction services is the main service and PLC is naturally bundled with it and are eligible for same tax treatment as the main supply of construction service.



**2: VALUATION OF SUPPLY**

1. **Sec 15(1) r/w Sec 15(2)(e) (Non-Govt subsidy forms part of value of Supply) + Circular No. 201/14/2024-GST: GST applicability on 'Sharing of incentive amounts (received under the RuPay Debit Cards and BHIM-UPI Incentive Scheme by ACQUIRING BANK with other stakeholders : Clarified that Incentive sharing within the NPCI-determined framework for RuPay Debit Cards and BHIM-UPI transactions shall also be considered a subsidy and is not taxable under GST.. [Circular No. 228/22/2024-GST (dated 15th July, 2024)]**

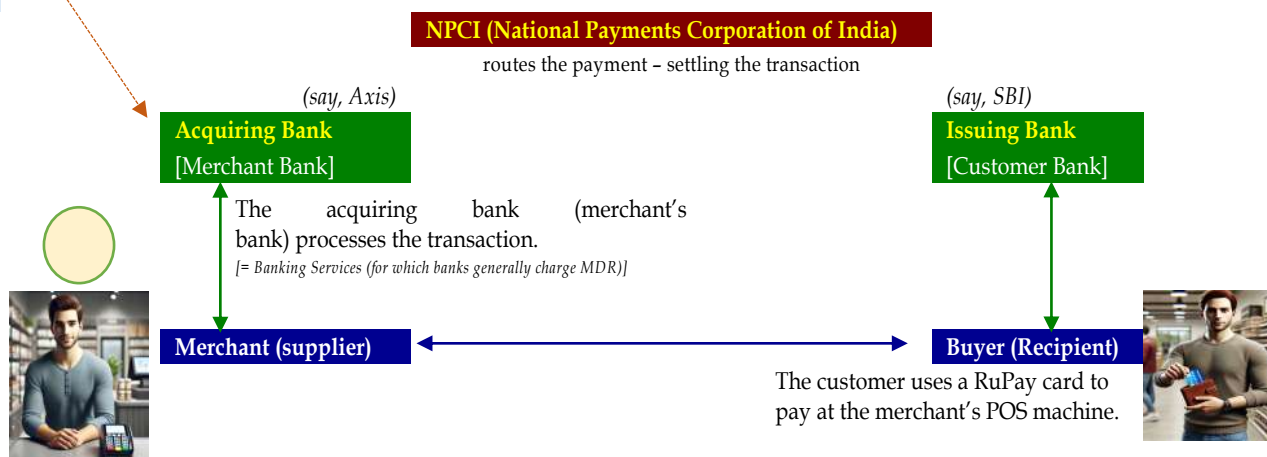
The RuPay Debit Cards and BHIM-UPI Incentive Scheme

Ministry of Electronics and Information Technology (MeitY), GoI

The RuPay Debit Cards and BHIM-UPI Incentive Scheme is a government program that encourages banks, payment system operators, and app providers to promote digital payments. The scheme aims to make digital payments more accessible and affordable across the country.

Incentives: The scheme incentivizes banks and other payment system operators for promoting:

- RuPay Debit Card transactions at point-of-sale (PoS) and through e-commerce (ecom)
- Low-value (up to ₹ 2,000) BHIM-UPI transactions



The Payments and Settlements Systems Act, 2007 prohibits banks and system providers from charging any amount from a person making or receiving a payment through RuPay Debit cards or BHIM-UPI.

Acquiring Banks They provide Lower Merchant Discount Rate (MDR) or zero MDR in such cases. Acquiring banks receive direct financial incentives from the government.

CBIC Circular 190/02/2023 [Dated: 13th Jan, 2023.]

Issue **Whether GST applicable on incentives received by Acquiring Bank?**

Whether it is subsidy to Acquiring Bank (linked to Banking Services supplied to Merchant) or Whether it is consideration for marketing services provided to Govt?

Clarification Acquiring banks provide the same digital payment processing services for RuPay/BHIM-UPI transactions as for other digital payment methods (e.g., Visa, Mastercard). However, instead of merchants paying MDR (Merchant Discount Rate), the government provides an incentive.

Incentive is not paid by CG for any service supplied by the acquiring bank to the CG.

The incentive is in the nature of a subsidy directly linked to the price of the service (Banking Services of Acquiring Bank) and the same does not form part of the taxable value [Sec 2(31) & Sec 15].


CBIC Circular 228/22/2024-GST [Dated: 15th July, 2024.]

Incentives received by Acquiring Bank- further shared with other stakeholders - GST applicability thereon

Sharing Mechanism	Nature of Incentive received	Treatment under GST
<u>Incentives are shared among payment system participants (e.g., issuer banks, (Payer Payment Service Provider (PSP) ¹, UPI apps ²) as per NPCI (National Payments Corporation of India) guidelines.</u>	<u>Incentive sharing within the NPCI-determined framework for RuPay Debit Cards and BHIM-UPI transactions is in the nature of a subsidy</u>	<u>Not taxable under GST</u>
<u>Payer PSPs may further share incentives with Third Party App Providers (TPAPs) based on business agreements, not governed by NPCI guidelines for FY 2021-22 & FY 2022-23.</u>	<u>Not in the nature of Subsidy</u> FY 2021-22 & 2022-23 are mentioned because, only during these years, NPCI did not regulate the sharing of incentives between Payer PSPs & TPAPs.	<u>Taxable under GST</u> (will form part of value of services)

Note:
Why Financial Years 2021-22 and 2022-23 Are Specifically Mentioned?

The mention of FY 2021-22 and 2022-23 in the context of incentive sharing between PSPs (Payment Service Providers) and Third-Party App Providers (TPAPs) is due to a difference in how the incentive was allocated during these years compared to later periods.

Key Reasons for Specific Mention:

- **NPCI Did Not Regulate the Distribution Between Payer PSPs & TPAPs in These Years**
During FY 2021-22 & 2022-23, the proportion of the incentive shared between Payer PSPs and TPAPs was not decided by NPCI. Instead, the distribution was determined solely by business agreements between Payer PSPs & TPAPs (private arrangements). This created a potential ambiguity regarding whether such incentive-sharing should be considered a subsidy (non-taxable) or a commercial payout (taxable under GST).
- **Change in Incentive Distribution Mechanism After FY 2022-23**
From FY 2023-24 onwards, NPCI started overseeing and deciding the proportion of incentives distributed among all payment system stakeholders in consultation with the participating banks. This change ensures that the entire chain of incentive sharing is formally classified as a subsidy and remains exempt from GST under Section 2(31) & Section 15 of the CGST Act, 2017.

Subject : Applicability of GST on the incentive amount shared by acquiring banks with other stakeholders in the digital payment ecosystem under the notified Incentive Scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions.

- Under the notified Incentive Scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions, the Ministry of Electronics and Information Technology (MeitY) pays the acquiring banks an incentive as a percentage of the value of the transactions up to two thousand rupees. Applicability of GST on the incentive paid by the MeitY to acquiring banks under the notified Incentive Scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions was examined in the 48th GST Council meeting held on 17th December, 2022 and based on the recommendations of the GST Council meeting, it was clarified by Circular No. 190/02/2023- GST, dated 13th January, 2023, that incentives paid by MeitY to acquiring banks under the said scheme are in the nature of subsidy and thus, not taxable.
- **The Gazette Notifications dated 17th December, 2021 and 14th January, 2023 issued by MeitY state that the incentives will be shared by the acquiring banks with other payment system participants and the payment system operator, in the proportion and manner decided by the National Payments Corporation of India (NPCI) in consultation with the participating banks.** MeitY pays the incentive to the acquiring bank and it is further shared by the acquiring bank with the issuer bank. Issuer bank further shares the incentive with the Payer Payment Service Provider (PSP), which are typically banks, and the UPI app.

¹ **Payment Service Providers (PSPs)** [e.g. Paytm Payments Bank, Razorpay, PhonePe Business.] - Regulated by RBI: Payment & Settlement Systems Act = **Entities that facilitate electronic payments by connecting banks, merchants, and networks like NPCI.** [Provides PoS terminals, QR codes, Manages merchant onboarding, Processes RuPay & BHIM-UPI payments] - **Acts as a bridge between banks & merchants.**
= PSPs provide infrastructure (PoS, QR, Merchant Onboarding) but do not hold deposits.

² **Payment Apps** [e.g. Google Pay, Amazon Pay.] - Not directly regulated by RBI but must comply with RBI & NPCI rules.
= **Payment Apps act as front-end platforms for users but rely on PSPs & banks for processing.**





- The share of incentive paid by the acquiring bank to the issuer bank and further shared by the issuer bank to the Payer PSPs and the UPI app are decided by the NPCI in consultation with participating banks. Payer PSPs may choose to further share this incentive with Third Party App Providers (TPAP). However, the proportion of the incentive shared by Payer PSPs with TPAPs is not being decided by NPCI in consultation with the participating banks for Financial Years 2021- 22 and 2022-23 and was determined by the business agreement between the Payer PSPs and TPAP.
 - GST Council in its 53rd meeting held on 22nd June, 2024 has recommended to clarify that further sharing of the incentive amount by the acquiring bank with other stakeholders, up to the point where the incentive is distributed in the proportion and manner as decided by NPCI in consultation with the participating banks under the notified Incentive Scheme, is in the nature of a subsidy and thus, not taxable.
 - Thus, as recommended by the 53rd GST Council, it is hereby **clarified that further sharing of the incentive amount by the acquiring bank with other stakeholders, up to the point where the incentive is distributed in the proportion and manner as decided by NPCI** in consultation with the participating banks under the notified Incentive Scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions, **is in the nature of a subsidy and is thus, not taxable.**
2. **Sec 15(3) (Exclusion of Discounts from the value) + Circular No. 212/6/2024-GST: Post Supply discount is deductible from value if conditions stated in Sec 15(3) are fulfilled. One such condition is that corresponding ITC reversal has been made by the recipient. There is no mechanism over the portal to match ITC reversal. CBIC accordingly has clarified that presently, the supplier may procure a certificate from the recipient of supply, issued by the (CA) or (CMA), certifying that the recipient has made the required proportionate reversal of ITC at his end. [Circular No. 212/6/2024-GST -GST Dated: 26th June, 2024]**

Circular No. 212/6/2024-GST Dated: 26th June, 2024

Post Supply Discounts eligible for deduction from 'Value of Supply' only upon fulfilment of all conditions of Section 15(3)(b)(ii)

Conditions for Excluding Discount from Taxable Value

- Discount must be established as per a prior agreement.
- It must be linked to relevant invoices.
- ITC attributable to the discount must be reversed by the recipient.

Issue: How to ensure compliance of condition of ITC reversal by the recipient?

Verification Issue

No facility exists on the common portal for suppliers or tax officers to check ITC reversal.

Solution Until Portal Functionality is Available

Total tax (CGST+SGST+IGST+ GST Cess) on such discounts Given to a Recipient. in a FY	Evidence as to ITC Reversal by the Recipient Obtain from recipient - [Certificate issued by CA/CMA]. OR. [Self-Declaration]
More than ₹ 5,00,000. [> ₹5,00,000]	Suppliers may obtain a certificate from the recipient, issued by a CA/CMA certificate confirming ITC reversal by the recipient. Details in CA/CMA Certificate - Credit note details - Invoice number (against which CN has been issued) - Amount of ITC reversal in respect of each of the said CNs - Details of GST DRC-03/return used for ITC reversal Such certificate must contain UDIN (which can be verified (via ICAI/ICMAI websites))
Upto ₹ 5,00,000. [≤ ₹5,00,000]	Instead of CA/CMA certificate, recipient's self-declaration confirming ITC reversal is acceptable.

Notes

Keep in record and submit on demand: The supplier shall produce such certificates/undertakings before the tax officers, if required, during any proceedings such as scrutiny, audit, investigations, etc.

Applicability to Past Periods: Even for prior periods, suppliers can submit such certificates/undertakings to tax authorities to prove ITC reversal compliance.





Subject: Clarification on mechanism for providing evidence of compliance of conditions of Sec 15(3)(b)(ii) by suppliers

1. In cases where the discounts are offered by the suppliers through tax credit notes, after the supply has been effected, the said discount is not to be included in the taxable value only if the condition of **Sec 15(3)(b)(ii)** of the CGST Act, **for reversal of the ITC attributable to the said discount** by the recipient, is satisfied. Representations have been received from the trade and the field formations mentioning that there is presently no facility available to the supplier as well as the tax officers on the common portal to verify whether the ITC attributable to the said discount has been reversed by the recipient or not. Request has been made to provide a suitable mechanism for enabling the suppliers as well as tax officers to verify fulfilment of the condition of section 15(3)(b)(ii) of the CGST Act regarding proportionate reversal of ITC by the recipients in respect of such discounts given by the supplier by issuing tax credit notes after the supply has been effected.

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

2.1. **Section 15 of the CGST Act** provides for value of taxable supply of goods or services or both. Sub-section (3) of the said section provides that the value of supply shall not include discount given by the supplier, subject to certain conditions. As per clause (b) of the said sub-section, any discount which is given after the supply has been effected shall not be included in the value of the supply, only if it satisfies the following conditions:—

i.	Such discount is established in terms of an agreement entered into at or before the time of such supply;
ii.	Such discount must be specifically linked to the relevant invoices
iii.	ITC attributable to such discount on the basis of document issued by the supplier has been duly reversed by the recipient.

2.2 Accordingly, wherever any discount is offered by the supplier to the recipient, by issuance of a tax credit note as per section 34 of the CGST Act, after the supply has been effected, the said discount can be excluded from the value of taxable supply only if the conditions of **Sec 15(3)(b)(ii)** of the CGST Act are fulfilled. Such conditions *inter-alia* includes the requirement of reversal of ITC by the recipient attributable to the said discount.

2.3 However, **there is no system functionality/facility presently available on the common portal** to enable the supplier or the tax officer to verify the compliance of the said condition of proportionate reversal of ITC by the recipient.

2.4 In view of the above, **till the time a functionality/facility is made available** on the common portal to enable the suppliers as well as the tax officers to verify whether the ITC attributable to such discounts offered through tax credit notes has been reversed by the recipient or not, **the supplier may procure a certificate from the recipient of supply, issued by the Chartered Accountant (CA) or the Cost Accountant (CMA), certifying that the recipient has made the required proportionate reversal of ITC at his end in respect of such credit note issued by the supplier.**

2.5 The said CA/CMA certificate may include details such as the details of the credit notes, the details of the relevant invoice number against which the said credit note has been issued, the amount of ITC reversal in respect of each of the said credit notes along with the details of the FORM GST DRC-03/return/any other relevant document through which such reversal of ITC has been made by the recipient.

2.6 **Such certificate issued by CA or CMA shall contain UDIN (Unique Document Identification Number).** UDIN of the certificate issued by CAs can be verified from ICAI website <https://udin.icai.org/search-udin> and that issued by CMAs can be verified from ICMAI website <https://eicmai.in/udin/VerifyUDIN.aspx>.

2.7 In cases, **where the amount of TAX (CGST+SGST+IGST and including compensation cess, if any) involved in the discount given by the supplier to a recipient through tax credit notes in a Financial Year is not exceeding Rs. 5,00,000 (rupees five lakhs only), then instead of CA/CMA certificate, the said supplier may procure an undertaking/certificate from the said recipient that the said ITC attributable to such discount has been reversed by him, along with the details mentioned in Para 2.5 above.**

2.8 Such certificates issued by the CA/CMA or the undertakings/certificates issued by the recipient of supply, as the case may be, shall be treated as a suitable and admissible evidence for the purpose of section 15(3)(b)(ii) of the CGST Act, 2017. **The supplier shall produce such certificates/undertakings before the tax officers, if required, during any proceedings such as scrutiny, audit, investigations, etc.** Even for the past period, where ever any such evidence as per section 15(3)(b)(ii) of CGST Act in respect of credit note issued by the supplier for post-sale discounts is required to be produced by him to the tax authorities, the concerned taxpayer may procure and provide such certificates issued by CA/CMA or the undertakings/certificates issued by the recipients of supply, as the case may be, to the concerned investigating/audit/adjudicating authority as evidence of requisite reversal of ITC by his recipients.





3. **Circular No. 201/14/2024-GST: Rule 28(1)(a)** provides for valuation of 'Value of supply between DISTINCT or RELATED PERSONS,' at 'Open Market Value'. Further, second proviso to Rule 28(1) provides that 'value declared in invoice' shall be accepted as OMV, where the recipient is eligible to avail full ITC on such supply. It has been clarified that in all cases covered by Rule 28, if the recipient is eligible for full ITC but INVOICE has not been issued for the supply, then it may be deemed that 'value declared is NIL and that NIL value is acceptable as OMV'. [Circular No. 201/14/2024-GST (dated 26th June, 2024)]

Rule 28 : Value of supply of goods or services or both between DISTINCT or RELATED PERSONS, other than through an agent

- (1) The value of the supply of goods or services or both between distinct persons as specified in section 25(4) or (5) or where the supplier and recipient are related, other than where the supply is made through an agent,

shall,-

(a)		be the open market value of such supply [OMV defined at end of Chapter IV]
(b)	if open market value is not available,	be the value of supply of goods or services or both of like kind and quality; [Supply of like kind and quality - defined at end of Chapter IV]
(c)	if the value of supply is not determinable under clause (a) or clause (b),	be the value as determined by application of rule 30 or rule 31, in that order:

Exception-1: (For Supply of GOODS which are further intended to be supplied as such by the recipient)

Provided that

where goods are intended for further supply as such by the recipient,	the value shall, at the option of the supplier, be an amount equivalent to 90% of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:
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Exception-2: (For Supply of GOODS/SERVICES which the recipient is entitled to full ITC)

Provided further that

where the recipient is eligible for full ITC,	the value declared in the invoice shall be deemed to be the open market value of goods or services.
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Author:

- This is very sensible provision as when the recipient can take the entire ITC, there cannot be any intention to evade tax.
- Acceptance of 'Value Declared in Invoice' as OMV (= Value of Supply), where recipient is eligible for full ITC**

Situation	Declaration of value in invoice	Applicability of second proviso to R-28(1)
Invoice issued by the supplier	Value declared	Applicable <i>The value declared on the invoice shall be deemed to be OMV of such services, irrespective of the fact whether cost of any particular component of such services, like employee cost etc., has been included or not in the value of the services in the invoice</i> [*i.e. Any value declared shall be accepted as OMV] [Circular No. 199/11/2023-GST, dated 17 th July, 2023 (issued in context of supply of Sr by HO to BO)]
Invoice not issued by the supplier	Value not declared at all	Applicable <i>The value of such services may be deemed to be declared as Nil and (this NIL value may be deemed as OMV)</i> [Circular No. 199/11/2023-GST, dated 17 th July, 2023 (issued in context of supply of Sr by HO to BO)]





Circular No. 201/14/2024-GST, dated 26th June, 2024:

The second proviso to Rule 28(1) of CGST Rules, is applicable in ALL THE CASES involving supply of goods or services or both between the distinct persons as well as the related persons, in cases where full ITC is available to the recipient.

Special case: Import of Sr – Taxable in hands of the Indian Recipient under RCM, but no SELF-INVOICE issued by the Indian recipient and no RCM liability paid:

Circular No. 201/14/2024-GST, Even where SELF-INVOICE not issued by the Indian recipient but he is entitled to full ITC, then the value of such services may be deemed to be declared as Nil, and may be deemed as OMV in terms of second proviso to rule 28(1) of CGST Rules.

Circular No. 210/4/2024-GST

Dated: 26th June, 2024

Subject: Clarification on valuation of supply of import of services by a related person where recipient is eligible to full ITC

SIMPLIFIED DISCUSSION

Issue:

Activities between RELATED PARTIES (without consideration)- international transaction

- No invoicing by foreign supplier
- Indian Recipient has also not accounted for supplies- **No self-invoice raised, no GST paid thereon**
- Now demands raised by Dept [Import of Service (without consideration) – RCM applicable]
- Trade requested that where recipient eligible for full ITC, demand shall not raised
(**REASONING:** though no value declared in invoice, but treat it as NIL value declared in Invoice and such value deemed OMV and thus, no GST liability) – earlier same clarification has been issued in Circular No. 199/11/2023-GST, dated 17-7-2023 (in context of domestic supply of Sr by HO to BO)]

Import of service: RELEVANT LEGAL PROVISION

			<u>Specific Situation resolved in Circular</u>
<u>Taxability</u>	<u>Taxable</u> <ul style="list-style-type: none"> • <u>For consideration: Taxable in all case</u> • <u>Without consideration: Taxable when between RP or DDP</u> 	<u>Sec 7</u> <ul style="list-style-type: none"> • <u>Sec 7(1)(a)</u> • <u>Sec 7(1)(c) [Schedule 1 (Para 4)]</u> 	<u>Import of Sr (without consideration)</u>
<u>Collection</u>	<u>RCM (from recipient)</u>	<u>Sec 9(3)</u>	<u>RCM not discharged by the recipient.</u>
<u>Invoicing</u>	<u>Self-invoicing (from recipient)</u>	<u>Sec 31(3)(f)</u>	<u>Self-invoicing not done by the recipient.</u>
<u>Valuation</u>	<u>In general</u>	<u>Sec 15(1)</u>	
	<u>Supply between RP/DDP</u>	<u>Sec 15(4) r/w R-28</u>	<u>Circular No. 201/14/2024-GST</u> Recipient if entitled to ITC- then in terms of 2 nd proviso to R-28(1), 'value may be deemed to be declared as Nil and such Nil may be deemed as OMV'

Clarification on valuation of supply of IMPORT OF SERVICES by a related person where recipient is eligible to full ITC

ISSUE:

Representations have been received from trade and industry stating that demands are being raised by some of the field formations against the RPs seeking tax on reverse charge basis in respect of certain activities undertaken by their related persons based outside India, by considering the said activities as import of services by the RP in India, based on an expansive interpretation of the deeming fiction in S.No. 4 of Schedule I of CGST Act, though no consideration is involved in the said activities and the same are not considered as supplies by the said related person in India.

It has been represented that the same treatment, **which is being given to domestic related parties/distinct persons** as per clarification provided by Circular No. 199/11/2023-GST, dated 17-7-2023, may also be provided in cases where a foreign entity is providing service to its related party located in India, in cases where full ITC is available to the said recipient located in India.

CBIC CLARIFICATION:



**Earlier Clarification****Circular No. 199/11/2023-GST, dated 17-7-2023****Taxability of services provided by an office of an organization in one State to the office of that organisation in another State, both being distinct persons.**

It has been clarified in the said circular that **as per the second proviso to rule 28(1) of CGST Rules, in respect of supply of services by Head Office(HO) to Branch Offices(BO) of an organisation, the value of the said supply of services declared in the invoice by HO shall be deemed to be open market value of such services, if the recipient BO is eligible for full ITC.** [Author: herein it was also state that the value declared on the invoice by HO to the said BO in respect of a supply of services shall be deemed to be the OMV of such services, irrespective of the fact whether cost of any particular component of such services, like employee cost etc., has been included or not in the value of the services in the invoice.]

It has also been clarified vide the said circular that in cases **where full ITC is available to the recipient, if HO has not issued a tax invoice to the BO in respect of any particular services being rendered by HO to the said BO, the value of such services may be deemed to be declared as Nil by HO to BO, and may be deemed as open market value in terms of second proviso to rule 28(1) of CGST Rules.**

New Clarification

The second proviso to Rule 28(1) of CGST Rules, is applicable in ALL THE CASES involving supply of goods or services or both between the distinct persons as well as the related persons, in cases where full ITC is available to the recipient.

Accordingly, it is evident that the clarification which has been issued vide Circular No. 199/11/2023-GST, dated 17-7-2023 in respect of supplies of services between distinct persons in cases where full ITC is available to the recipient, is equally applicable in respect of import of services between related persons.

- In case of import of services by a RP in India from a related person located outside India, the tax is required to be paid by the RP in India under RCM. In such cases, the RP in India is required to issue self-invoice under section 31(3)(f) of CGST Act and pay tax on reverse charge basis.

In view of the above, **it is clarified that in cases where the foreign affiliate is providing certain services to the related domestic entity, and where full ITC is available to the said related domestic entity, the value of such supply of services declared in the invoice by the said related domestic entity may be deemed as open market value in terms of second proviso to rule 28(1) of CGST Rules. Further, in cases where full ITC is available to the recipient, if the invoice is not issued by the related domestic entity with respect to any service provided by the foreign affiliate to it, the value of such services may be deemed to be declared as Nil, and may be deemed as open market value in terms of second proviso to rule 28(1) of CGST Rules.**

4. **Rule 28 (2) [Supply of 'CORPORATE GUARANTEE' to a Bank/FI on behalf of a recipient who is a related person]: Amended to following effect (i) Applicable only if recipient is 'located in India'; (ii) Value of '1% of guarantee amount' shall be computed on per annum basis; (iii) if recipient is eligible for full ITC, then any value declared on invoice will be deemed to be the value. [Amendment by the CGST (Amendment) Rules, 2024, w.r.e.f. 26-10-2023.]**

Rule 28 : Value of supply of goods or services or both between DISTINCT or RELATED PERSONS, other than through an agent

(1)

(2) ***Notwithstanding anything contained in sub-rule (1),***

The value of the **supply of SERVICES by a supplier to a recipient who is a related person located in India, by way of providing corporate guarantee to any banking company or financial institution on behalf of the said recipient,**

shall be deemed to be

... **1% of the amount of such guarantee offered per annum, or**

... **the actual consideration, whichever is higher.**





Exception-1: (For Supply of above service where the recipient is entitled to full ITC) [w.e.f. 26th Oct, 2023]

Provided that

where the recipient is eligible for full ITC,

the value declared
in the invoice

shall be
deemed to be

value of said supply
of services.

Amendment in Simplified Form

Supply of CORPORATE GUARANTEE between RELATED PERSONS

Rule 28(2) shall be applicable if

1. Recipient = Related person + Located in India
AND
2. Corporate guarantee (= Guarantee provided by a company/corporate entity) is provided to any Banking Company or Financial Institution on behalf of said recipient

Valuation as per R-28(2). – w.e.f. 26th Oct, 2023

Higher of

- (a) Actual Consideration
- (b) 1% of amount of guarantee offered p.a.

Proviso to R-28(2). – w.e.f. 26th Oct, 2023

If recipient is eligible to avail full ITC,
then Invoice Value = Deemed Value

Rule 28(1) shall be applicable if

1. Recipient = Related person + Located out of India
2. Corporate guarantee is provided to a person other than Banking Company or Financial Institution on behalf of the recipient (whether recipient is India or outside India) ¹

Valuation as per R-28(1)

Any of following (to be applied sequentially)

- R-28(1)(a): OMV
- R-28(1)(b): Value of supply of like kind/quality
- R-28(1)(c): Value as per R-30 or R-31

Second proviso to R-28(1)

If recipient is eligible to avail full ITC,
then Invoice Value = Deemed OMV (= Value) ²

Illustration:

A Ltd. (Holding Co) Located in India	Supply of service by way of providing corporate guarantee to bank/FI for AN AMOUNT OF Rs 1000 Cr (guarantee period is 5 years)	B Ltd. (Subsidiary Co – RP of Holding Co.) + Located in India
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Case-A: A Ltd. charged consideration for providing such corporate guarantee (60 crores)

Case-B: A Ltd. didn't charge consideration for providing such corporate guarantee

Determine value of supply in above cases if such activity is taxable under GST.

	Taxability	Consideration	Section	Valuation	
Case-A	Taxable (Supply for consideration)	₹ 60 Cr	Sec 15(4) + R-28(2)	Higher of (a) Actual Consideration = 60 cr (b) 1% of amount of guarantee offered p.a. = $\frac{1}{100} \times (1000 \text{ Cr}) \times 5 \text{ years} = 50 \text{ Cr}$	₹ 60 Cr
Case-B	Taxable (Supply without consideration to RP)	No consideration	Sec 15(4) + R-28(2)	Higher of (a) Actual Consideration = Nil (b) 1% of amount of guarantee offered = $\frac{1}{100} \times (1000 \text{ Cr}) \times 5 \text{ years} = 50 \text{ Cr}$	₹ 50 Cr

¹ Rule 28(2) is not applicable to PERSONAL GUARANTEE provided to a person other than Banking Company or Financial Institution on behalf of the recipient (whether recipient is India or outside India)-

[*supported by CIRCULAR NO. 204/16/2023-GST (Dated 27-10-2023)] – (clarifying taxability of Personal Guarantee by the Director of a company to a Bank/FI (treating this transaction as the supply of service between RP)- these shall be valued as per Rule 28(1))

² Valuation u/Rule 28(1) – Valuation disputes will prevail where recipient is not eligible to avail full ITC

- Rule 28(1) (a) OMV- difficult to determine OMV
- Rule 28(1) (b) Difficulty in determining value of supply of like and similar kind
- Rule 28(1) (c)
 - R-30. (difficult to apply as cost of provisioning is not determinable)
 - R-31 (Best Judgment – dispute)



Author:

<u>Location of Supplier</u>	<u>Location of Recipient</u>	<u>PoS</u>	<u>Taxability</u>	<u>Valuation</u>
<u>In India</u>	<u>In India</u>	<u>In India</u>	<u>Taxable</u>	<u>Rule 28(2)</u>
	<u>Outside India</u>	<u>Outside India</u>	<u>Taxable [Export (if conditions satisfied)]</u>	<u>Rule 28(1)</u>
<u>Outside India</u>	<u>In India</u>	<u>In India</u>	<u>Taxable [Import. (RCM)]</u>	<u>Rule 28(2)</u>
	<u>Outside India</u>	<u>Outside India</u>	<u>Non-Taxable</u>

5. **Circular No. 225/19/2024-GST:** CBIC has issued clarification on various issues pertaining to taxability and valuation of supply of services of providing corporate guarantee between related persons. [Circular No. 225/19/2024-GST (dated 11th July, 2024)]

Circular No. 225/19/2024-GSTDated: 11th July, 2024

Subject: Section 15 r/w Rule 28(2) - Clarification On Various Issues Pertaining To Taxability And Valuation Of Supply Of Services Of Providing Corporate Guarantee Between Related Persons

Clarifications on various issues pertaining to the TAXABILITY and VALUATION of the supply of services of providing corporate guarantee between related persons as per the Rule 28(2)

1. Whether rule 28(2) will apply to the **CORPORATE GUARANTEES issued prior to insertion of the said sub-rule on 26th October 2023?**

Also, where **INTRA-GROUP corporate guarantees have been issued before 26th October 2023**, which are still in force today, would they be liable to pay GST on "1% of the amount of such guarantee offered" on such guarantees?

Author:

<u>Supply of providing CG</u>	<u>Taxability</u>	<u>Valuation</u>
<u>Prior to insertion of R-28(2)</u> (i.e. prior to 26 th Oct, 2023)	<u>Taxable</u>	<u>Valuation as per R-28(1) (as then existed)</u> [i.e. OMV or other values] However, RENEWAL of such CG on/after 26th Oct, 2023- shall be covered by R-28(2).
<u>Post insertion of R-28(2)</u> (i.e. on/after 26 th Oct, 2023)	<u>Taxable</u>	<u>Valuation as per R-28(2) (if falling here)</u>

Clarification: It is to be clarified that the **supply of service of providing corporate guarantee** to any banking company or financial institution by a supplier to a related recipient, on behalf of the said recipient, **was taxable even before the insertion of rule 28(2) of CGST Rules w.e.f. 26th October 2023.**

- Rule 28(2) of CGST Rules is only for determination of the value** of the taxable supply of providing corporate guarantee to any banking company or financial institution by a supplier to a related recipient, on behalf of the said recipient and not regarding the taxability of the said supply itself. **Prior to the insertion of the said sub-rule**, i.e., before 26th October 2023, **the valuation** of service of providing corporate guarantee to any banking company or financial institution by a supplier to a related recipient, on behalf of the said recipient, was to be done **as per the provisions of Rule 28 of CGST Rules, as it existed then.**
- Therefore, in respect of supply of services of providing corporate guarantee between related persons, in respect of corporate guarantee issued or renewed before 26th October 2023, the valuation of the said supply is to be done in accordance with Rule 28, as it existed during that time.

However, if the corporate guarantee is issued or renewed on or after 26th October 2023, then the valuation of the said supply will be required to be done as per Rule 28(2) of CGST Rules.

2. **In cases where the corporate guarantee is provided for a particular amount, whereas the loan is only partly availed or not availed at all by the recipient, what will be the value of supply of corporate guarantee.**
Also, whether the recipient would be eligible to avail full ITC even before total loan is disbursed?



Author:

Supply of providing CG	Loan Amount (as actually disbursed)	Valuation
<u>Rs 100 Crore</u>	<u>Rs 60 Crore</u>	<u>Valuation based on 100 Cr (amount guaranteed)</u> Accordingly, ITC admissibility is not linked to actual disbursement of loan.

Clarification:

The activity of supply of the service of providing a corporate guarantee is not linked with the actual disbursal of the loan. The service that is provided by the guarantor to the guarantee is that of taking on the risk of default. Therefore, it is clarified that the **value of supply** of the service of providing a corporate guarantee **will be calculated based on the amount guaranteed** and **will not be based on the amount of loan actually disbursed to the recipient of the corporate guarantee**.

Further, it is also clarified that **the recipient** of the service of providing corporate guarantee shall be **eligible to avail the ITC**, subject to other conditions specified in the Act and the Rules made thereunder, **irrespective of when the loan is actually disbursed to the recipient, and irrespective of the amount of loan actually disbursed**.

- 3 In the case of **takeover of EXISTING LOANS**, since there is merely an assignment of an already issued corporate guarantee, whether GST would be applicable again?

Author:

LOAN TAKEOVER: Loan given by Bank-1 – taken over by Bank-2

Event	Status	Taxability
<u>Assignment of already supplied CG</u>	<u>No fresh supply of Service</u>	<u>no GST impact</u>
<u>Supply of fresh CG</u>	<u>Fresh supply of Service</u>	<u>Taxable</u>

Clarification:

In the service of providing corporate guarantee to any banking company or financial institution by a supplier to a related recipient, on behalf of the said recipient, the supplier of the service is the corporate entity providing the corporate guarantee and the recipient is the related entity for whom the corporate guarantee is provided by the said supplier.

Therefore, **if the loan issued by the banking company/ financial institution is taken over by another banking company/ financial institution, the said activity of taking over of the loan does not fall under the service of providing corporate guarantee to any banking company or financial institution by a supplier to a recipient**. Therefore, it is clarified that in such cases, there will be **no impact on GST**, unless there is issuance of fresh corporate guarantee or there is a renewal of the existing corporate guarantee.

However, if the takeover of the loan is followed/ accompanied by issuance of fresh corporate guarantee, then GST would be payable on the same.

- 4 Where **corporate guarantee is provided by more than one entity / co-guarantor**, what is the amount on which GST is payable by each co-guarantor?

Author:

Supply of CG (single guarantee but jointly supplied by many supplier): say, amount guaranteed Rs 200 Cr

Case-A

Co-guarantor	Amount guaranteed	Consideration Charged	Corporate Guarantee
A	60%	2 crore	Single Guarantee for an account of 200 Cr
B	40%	1 crore	

Ans.

Valuation	Tax Liability
<u>Value = 3 Cr</u>	<u>Each co-guarantor is independently liable to pay GST</u>
Higher of	
• <u>Actual Consideration</u> <u>[Total to A & B] = 3 cr</u>	• <u>Liability of A: on 2 Cr</u>
• <u>1% of amount of guaranteed offered p.a. (1% of 200 Cr = 2 Cr)</u>	• <u>Liability of B: on 1 Cr</u>



Case-B

Co-guarantor	Amount guaranteed	Consideration Charged	Corporate Guarantee
A	60%	1 crore	Single Guarantee for an account of 200 Cr
B	40%	0.5 crore	

Ans.

Valuation	Tax Liability
<u>Value = 2 Cr</u> Higher of <ul style="list-style-type: none"> Actual Consideration <u>Total to A & B = 1.5 cr</u> 1% of amount of guaranteed offered p.a. (1% of 200 Cr = 2 Cr) 	<u>Each co-guarantor is independently liable to pay GST</u> <ul style="list-style-type: none"> Liability of A: <u>on (60% of 2 Cr)</u> Liability of B: <u>on (40% of 2 Cr)</u>

Clarification:

In cases where corporate guarantee is being provided by multiple related entities, **the value of such services** of providing corporate guarantee shall be **the sum of the actual consideration paid/ payable to co-guarantors, if the said amount of total consideration is higher than 1% of the amount of such guarantee offered.**

- In cases **where the sum of the actual consideration is less than 1% of the amount of such guarantee offered**, then **GST shall be payable by each co-guarantor proportionately on 1% of the amount guaranteed by them.**

For instance, if there are two co-guarantors, A and B, who jointly provide a corporate guarantee to a banking/ financial institution on behalf a related recipient C for ₹ 1 crore, then A and B shall each pay GST on 0.5% of the amount guaranteed.

However, if in the above case of A and B providing corporate guarantee jointly to a banking/ financial institution on behalf a related recipient C for ₹ 1 crore, A provides guarantee for 60% of the guarantee amount and B provides guarantee for the remaining 40% of the guaranteed amount, then GST shall be payable by A and B proportionately i.e., 0.6% and 0.4% of the amount guaranteed. This is to say that A shall pay GST on 1% of the amount guaranteed by A, i.e., 1% on ₹ 60 lakhs and B shall pay GST on 1% of the amount guaranteed by B, i.e., 1% on ₹ 40 lakhs.

- 5 **Where INTRA-GROUP corporate guarantee is issued, whether GST may be paid by the recipient under reverse charge, as in the absence of actual invoice and payment, the recipient entity may not be able to claim ITC of tax paid by the domestic guarantor?**

Author:

Intra-Group corporate guarantee	Taxability -FCM or RCM	Invoicing
<u>Issued by domestic entity</u>	<u>Taxable (FCM)</u> [*valuation as per R-28(2)]	<u>Invoicing by (Supplier)</u> [*valuation as per R-28(2)]
<u>Issued by foreign/overseas entity</u>	<u>Taxable (RCM)</u> [*valuation as per R-28(2)]	<u>Self-Invoicing by (Recipient)</u>

Clarification:

It is clarified that in cases **where domestic corporate issue intra-group guarantees, GST is to be paid under forward charge mechanism**, AND invoice is to be issued by the supplier of the service of providing corporate guarantee to the related recipient under Section 31 of CGST Act, 2017 read along with the relevant rules.

- However, **in cases where such guarantee is provided by the foreign/ overseas entity** for a related entity located in India, **then GST would be payable under reverse charge mechanism**, by the recipient of service, i.e., the related entity located in India.

- 6 **Whether the discharge of tax liability on corporate guarantee @ 1% of such guarantee offered is to be done one time or on yearly basis or on monthly basis and when issued for a fixed term of say, five years or ten years as per tenure of the loan?**

Author:

Issuance of Corporate Guarantee - [Amount guaranteed = 200 Cr] [Consideration Charged = 3 Cr]

Guarantee Period	Valuation
<u>For 1 year</u>	<u>Value = 3 Cr</u>





	Higher of
	<ul style="list-style-type: none"> Actual Consideration [Total to A & B] = 3 Cr 1% of amount of guaranteed offered p.a. $[(1\% \text{ of } 200 \text{ Cr} = 2 \text{ Cr}) * 1 \text{ year}] = 2 \text{ Cr}$
<u>For 5 year</u>	Value = 10 Cr
	Higher of
	<ul style="list-style-type: none"> Actual Consideration [Total to A & B] = 3 Cr 1% of amount of guaranteed offered p.a. $[(1\% \text{ of } 200 \text{ Cr} = 2 \text{ Cr}) * 5 \text{ years}] = 10 \text{ Cr}$
<u>For 6 months</u>	Value = 3 Cr
	Higher of
	<ul style="list-style-type: none"> Actual Consideration [Total to A & B] = 3 Cr 1% of amount of guaranteed offered p.a. $[(1\% \text{ of } 200 \text{ Cr} = 2 \text{ Cr}) * \frac{1}{2} \text{ Year}] = 1 \text{ Cr}$

[*ToS in each of above case = Single ToS computed with reference to issuance of corporate guarantee]

Guarantee Period = 1 year and renewal on yearly basis for 5 times

[*ToS in such case = Multiple ToS computed with reference to issuance of corporate guarantee and renewal activity]

Clarification:

Rule 28(2) has been amended retrospectively w.e.f. 26th October 2023, vide N/N 12/2024 -CT, dated 10-7-2024.

Therefore, it is clarified that the value of supply of the service of providing corporate guarantee to a banking company or a financial institution on behalf of a related recipient shall be 1% of the amount guaranteed per annum or the actual consideration, whichever is higher.

Accordingly, **the value of supply** of the service of providing corporate guarantee to a banking company or a financial institution on behalf of a related recipient for a particular number of years shall be **1% of the amount of such guarantee offered multiplied by the number of years for which the said guarantee is offered** or **the actual consideration** whichever is higher.

- In addition to the above, **in cases where the corporate guarantee is provided for a period less than a year, say 6 months (half a year)**, then in those cases as well, **the valuation may be done on proportionate basis for the said period**, i.e., in this case, the value of the said supply of services may be taken as half of 1% of the amount of such guarantee offered (6/12 * 1%), or the actual consideration, whichever is higher.

To illustrate the same, if a corporate guarantee is issued for a period of say five years, then the value of such guarantee is to be calculated at 1% per year of the amount of such guarantee offered, or the actual consideration, whichever is higher, i.e., the value of such corporate guarantee provided would be 5% of the amount guaranteed or the actual consideration, whichever is higher. Therefore, GST would be payable on such amount at the time of issuance of such corporate guarantee, i.e., 5% of the amount guaranteed or the actual consideration, whichever is higher.

HOWEVER, if a corporate guarantee is issued, say for a period of one year and is renewed five times, for a period of one year each, then tax would be payable on 1% of the amount of such guarantee offered, or the actual consideration, whichever is higher, **on the issue of such corporate guarantee in the first year as well as on every renewal in subsequent years.**

- 7 **Whether the benefit of second proviso to sub-rule (1), which states that value declared in invoice is deemed to be the open market value in cases where full ITC is available to the recipient of services, is not applicable in cases falling under sub-rule (2)?**

Author:

<u>Valuation of 'Issuance of CG'</u>	<u>Deeming Provision (as to acceptance of 'Value declared in Invoice')</u>	
<u>Rule 28(1) : [based on OMV]</u>	<u>Proviso to Rule 28(1)</u>	
<u>Rule 28(1) : [based on higher of 2 amounts]</u>	<u>Proviso to Rule 28(2)</u>	
	<u>[inserted in Rule 28(2), retrospectively w.e.f. 26th October 2023 vide N/N 12/2024 -CT]</u>	



**Clarification:**

Proviso has been inserted in Rule 28(2), retrospectively w.e.f. 26th October 2023 vide N/N 12/2024 -CT, dated 10-7-2024, similar to that provided in the second proviso to Rule 28(1) to provide the benefit in cases involving supply of service of corporate guarantees provided between related persons.

Accordingly, it is **clarified that** in cases involving the supply of service of corporate guarantees provided between related persons, **where ITC is available to the recipient of services, the value declared in the invoice shall be deemed to be the value of supply of the said service.**

- 8 **Whether the valuation in terms of Rule 28(2) of CGST Rules will apply to the EXPORT of the service of providing corporate guarantee between related persons?**

Author:

<u>Location of Supplier</u>	<u>Location of Recipient</u>	<u>PoS</u>	<u>Taxability</u>	<u>Valuation</u>
<u>In India</u>	<u>In India</u>	<u>In India</u>	<u>Taxable</u>	<u>Rule 28(2)</u>
	<u>Outside India</u>	<u>Outside India</u>	<u>Taxable [Export]</u>	<u>Rule 28(1)</u>
<u>Outside India</u>	<u>In India</u>	<u>In India</u>	<u>Taxable [Import. (RCM)]</u>	<u>Rule 28(2)</u>
	<u>Outside India</u>	<u>Outside India</u>	<u>Non-Taxable</u>

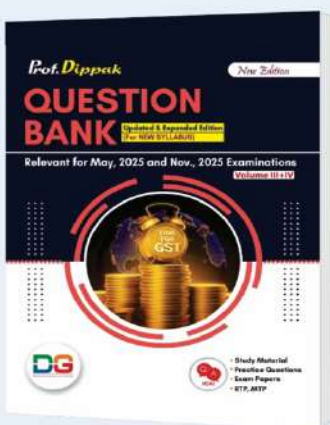
Clarification:

As per the amendment done in Rule 28(2) retrospectively w.e.f. 26th October 2023 vide N/N 12/2024 -CT, dated 10-7-2024, the provisions of the said sub-rule will not apply in cases where the recipient of the services of providing corporate guarantee between related persons is located outside India. Accordingly, the provisions of the said sub-rule shall not apply to the export of the services of providing corporate guarantee between related persons.

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6. **CBIC Circular 218/12/2024-GST : Supply of Lending Services between RP – Interest charged, but no administrative fee/processing fee charged. Clarified that (1) Interest is exempt and (2) no notional value (OMV) of administrative fee/processing fee need to be considered. [Circular dated 26th June, 2024]**

Circular No. 218/12/2024-GST

Dated: 26th June, 2024

Subject: Clarification regarding taxability of the transaction of providing loan by an overseas affiliate to its Indian affiliate or by a person to a related person

Holding Foreign Company

X entity

Supply of Sr by way of Grant of Loans

Consideration

- only by way of interest or discount
- No consideration in the nature of processing fee/administrative charges/loan granting charges etc

Subsidiary Indian Company

Related Party

Clarification

Consideration = Interest

Exempted
vide **Entry 27(a) of N/N 12/2017-CT(Rate).**

No consideration in the nature of processing fee/administrative charges/loan granting charges etc

Doubts as to taxability

Whether these can be taxed deemed it as supply as per Sec 7(1)(c), r/w para 2 and para 4 of Schedule I of CGST Act?

Clarification:

in case of loans provided between related parties, there may not be the activity of 'processing' the loan, and no administrative cost may be involved in granting such a loan.

Accordingly, **there is no question of levy of GST on the same by resorting to OMV for valuation of the same as per Rule 28 of CGST Rules, 2017.**

Author: In author's person view, there is single supply of service by way of 'grant of loan' (and not separate activities – (a) grant of loan and (b) processing of loan). In instant case, there is single activity of 'grant of loan' is for a total consideration of (Interest + zero processing cost). That being so, this is simple case of supply of service for consideration, **which is supply as per Sec 7(1)(a) but exempted vide Entry 27(a) of N/N 12/2017-CT(Rate).**

Subject: Clarification regarding taxability of the transaction of providing loan (A) by an overseas entity to its Indian related entity or (B) by a person in India to a related person

Whether the activity of providing loans by an overseas affiliate to its Indian affiliate or by a person to a related person, where there is no consideration in the nature of processing fee/administrative charges/loan granting charges etc., AND the consideration is represented only by way of interest or discount, will be treated as a taxable supply of service under GST or not?

Clarification

- As per **Sec 7(1)(c)**, read with **para 2 and para 4 of Schedule I of CGST Act**, **supply of goods or services or both between related persons, when made in the course or furtherance of business, shall be treated as supply, even if made without consideration.** Therefore, it is evident that the service of granting loan/credit/advances by an entity to its related entity is a supply under GST.
- Services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services) are exempted under **Entry 27(a) of N/N 12/2017-CT(Rate).** Therefore, it is clear that the **supply of services of granting loans/ credit/ advances, in so far as the consideration is represented by way of interest or discount, is fully exempt under GST.**
- It is mentioned that **overseas affiliates or domestic related persons are generally charging no consideration in the form of processing fee/service fee, other than the consideration by way of interest or discount on the loan amount. Doubts are being raised regarding the taxability of the services of processing/ administering/ facilitating the loan in such cases, by deeming the same as supply as per Sec 7(1)(c), read with para 2 and para 4 of Schedule I of CGST Act.** The processing fee/service fee is generally a one-time charge that lenders levy on applicants when they apply for a loan. This fee is generally non-refundable and is used to cover the administrative cost of processing the loan application. Charges of any other nature in respect of loan, other than by way of interest or discount, would represent taxable consideration for providing the facilitation/processing/administration services for the loan and hence





would be liable to GST. This has been clarified at serial number 42 in the Sectoral FAQ on Banking, Insurance and Stock Brokers Sector issued by CBIC.

4. It is significant to note that **the processing/service fee is generally charged by the bank/financial institution from the recipient of the loan in order to cover the administrative cost of processing the loan application.** An independent lender may carry out a thorough credit assessment of the potential borrower to identify and evaluate the risks involved and to consider methods of monitoring and managing these risks. Such credit assessment may include understanding the business of the applicant, as well as the purpose of the loan, financial standing and credibility of the applicant, how it is to be structured and the source of its repayment which may include analysis of the borrower's cash flow forecasts, the strength of the borrower's balance sheet, and where any collateral is offered, due diligence on the collateral offered may also be required to be carried out. To cover such costs, the independent lender generally collects a fee that is in the nature of processing fee/administrative charges/ service fee/ loan granting charges, which is leviable to GST.
5. However, **when an entity is extending a loan to a related entity, it may not require to follow such processes as are followed by an independent lender.** For example, it may not need to go through the same process of information gathering about the borrower's business, his financial standing and credibility and other details, as the required information may already be readily available within the group, or between related persons. The lender may not also take any collateral from the borrower. **Accordingly, in case of loans provided between related parties, there may not be the activity of 'processing' the loan, and no administrative cost may be involved in granting such a loan.** Therefore, it may not be desirable to place the services being provided for processing the loans by banks or independent lenders vis-à-vis the loans provided by a related party, on equal footing.
6. Even in case of loans provided between unrelated parties, there may not be any processing fee/administrative charges/loan granting charges etc., based on the relationship between the bank/independent lender and the person taking the loan. The lender might waive off the administrative charges in full, based on the nature and amount of loan granted, as well as based on the relationship between the lender and the concerned person taking the loan.
7. Accordingly, in the cases, where no consideration is charged by the person from the related person, or by an overseas affiliate from its Indian party, for extending loan or credit, other than by way of interest or discount, it cannot be said that any supply of service is being provided between the said related persons in the form of processing/facilitating/administering the loan, by deeming the same as supply of services as per Sec 7(1)(c), read with para 2 and para 4 of Schedule I of CGST Act. **Accordingly, there is no question of levy of GST on the same by resorting to open market value for valuation of the same as per rule 28 of CGST Rules, 2017.**
8. However, **in cases of loans provided between related parties, wherever any fee in the nature of processing fee/administrative charges/service fee/loan granting charges etc. is charged, over and above the amount charged by way of interest or discount, the same may be considered to be the consideration for the supply of services of processing/facilitating/administering of the loan, which will be liable to GST as supply of services by the lender to the related person availing the loan.**





7. **Circular No. 214/8/2024-GST: CBIC has issued clarification as to requirement of reversal of ITC in respect of portion of premium for life insurance policies which is not included in taxable value. [Circular dated 26th June, 2024]**

Circular No. 214/8/2024-GST

Dated: 26th June, 2024

Subject: Clarification On Requirement Of Reversal Of ITC In Respect Of Portion Of Premium For Life Insurance Policies Which Is Not Included In Taxable Value

Life Insurance Policy (composite policy) – premium (risk component + saving/investment component)

Valuation as per Sec 15(5) r/w Rule 32(4) of CGST Rules, 2017

TV = [Total Premium – Amount allocated towards saving/investment component]

Issue:

- Whether value of non-taxed component can be treated as 'value of EXEMPT SUPPLY (non-taxable supply)' and thus, requiring pro-rata ITC reversal in terms of Rule 42 or rule 43 of CGST Rules, read with Sec 17(1) & (2) of the CGST Act, in respect of the said amount

Exempt Supply Section 2(47) of the CGST Act

Means Nil Rated
Wholly Exempt

Includes Non-Taxable Supply
NTS - Section 2(78) of the CGST Act
a supply of goods or services or both which is not leviable to tax under the CGST Act or under the IGST Act.

Circular No. 214/8/2024-GST

Saving/investment component in the Insurance Premium (which is not includible in the Value of Life Insurance Service);

This portion cannot be considered as pertaining to an exempt supply
There is no requirement of reversal of ITC as per provisions of Rule 42 or rule 43 of CGST Rules, r/w Sec 17(1) & (2) of the CGST Act, in respect of the said amount.

Author: In simple words, a supply of which part of value is taxed cannot be considered as non-taxable/exempt supply.

Subject: Clarification On Requirement Of Reversal Of ITC In Respect Of Portion Of Premium For Life Insurance Policies Which Is Not Included In Taxable Value

Issue Whether the amount of insurance 'premium, which is not included in the taxable value as per Rule 32(4) of CGST Rules applicable for life insurance business, shall be treated as pertaining to a non-taxable supply/exempt supply for the purpose of reversal of ITC as per Sec 17(1) of CGST Act, read with Rules 42 & 43 of CGST Rules.

Clarification

Life insurance business' has been defined in Section 2(11) of the Insurance Act, 1938 as below:

"2(11) **Life insurance business** means the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, and any contract which is subject to payment of premiums for a term dependent on human life and shall be deemed to include--

(a)	the granting of disability and double or triple indemnity accident benefits, if so provided in the contract of insurance,
(b)	the granting of annuities upon human life ; and
(c)	the granting of superannuation allowances and benefit payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment or of the dependents of such persons;

Explanation. – For the removal of doubts, it is hereby **declared that life insurance business shall include** any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, **which provides a component of investment and a component of insurance issued by an insurer** referred to in clause (9) of this section.

Life insurance companies are providing service of insuring the life of the insured and in return, are charging consideration in the form of premium from the insured. A number of life insurance companies are providing policies which may consist of a **component of investment** in addition to the **component for the risk cover** of the life insurance and accordingly, in such cases, the premium charged also includes the component which is allocated for investment or saving on behalf of the policy holder. **As per definition of 'Life insurance business' provided in Section 2(11) of the Insurance Act, 1938, life insurance business includes any unit linked insurance policy or scrips or any such instrument or unit, by**





whatever name called, which provides a component of investment and a component of insurance issued by an insurer. Accordingly, such life insurance policies, which also include a component of investment along with the component of risk cover for life insurance, are also covered under life insurance business.

It is mentioned that **value of supply of services in relation to life insurance business is to be determined as per provisions of rule 32(4) of CGST Rules**. The said sub-rule provides that **the value of supply of services** in respect of life insurance business is primarily to be determined **by deducting the amount of premium allocated for investment/savings on behalf of the policy holder from the gross premium charged from the policy holder**. The said sub-rule also provides for determination of value of supply of such services based on certain percentage of the gross premium in other situations. However, where the entire premium is only towards the risk cover in life insurance, the value of supply is not required to be determined under the said sub-rule as in such cases whole of the consideration i.e. gross premium is towards life insurance services.

- As per **section 2(47) of the CGST Act**, **EXEMPT SUPPLY** means supply of any goods or services or both **which attracts nil rate of tax or which may be wholly exempt** from tax under section 11, or under section 6 of the IIGST Act, 2017 (hereinafter referred to as the "IGST Act"), and includes **non-taxable supply**. The said definition of exempt supply has the following three limbs:-
 - Supply of service which is nil rated;
 - Supply of service which is wholly exempted from tax under section 11 of CGST Act or under section 6 of IGST Act; or
 - Supply of service which is non-taxable supply.
- Further, as per **section 2(78) of CGST Act**, **non-taxable supply** means **a supply of goods or services or both which is not leviable to tax under the CGST Act or under the IGST Act**.

It is mentioned that **there is no doubt about taxability of supply of service of providing life insurance services by the insurance company to the insured/ policy holder but the only issue is regarding the treatment of the amount of premium which is not included in the taxable value of supply, as determined under the provisions of Rule 32(4) of CGST Rules**. The service of providing life insurance cover is neither nil rated, nor there is any notification issued under section 11 of CGST Act by virtue of which the said service or any portion of the said service has been exempted from GST.

- It is also mentioned that the **supply can be considered as a non-taxable supply only when it is not leviable to tax under the CGST Act or under the IGST Act**. It is not a case where the tax is not leviable on the supply of life insurance services provided by life insurance companies to the insured/policy holder. The value of the said supply of service in respect of life insurance business as determined under Rule 32(4) of CGST Rules, 2017 may not include some portion of gross premium as per methodology provided in the said rule. **This portion of premium which is not includible in taxable value as per provisions of Rule 32(4) of CGST Rules is neither nil rated, nor wholly exempted from tax under section 11 of CGST Act and also not a non-taxable supply**. Therefore, just because some amount of consideration is not included in value of taxable supply as per the provisions of the statute, it cannot be said that the said portion of consideration becomes attributable to a non-taxable or exempt supply.
- Further, **Rule 42 of the CGST Rules provides for reversal of ITC in certain scenarios**. As per the said rule, only that ITC which attract the provisions of Sec 17(1) & (2) of the CGST Act needs to be determined and reversed thereof. Further, **Sec 17(1) & (2) of the CGST Act restrict the amount of credit only in a case where the RP uses the goods or services partly for business or other purposes or partly for making taxable supplies or exempt supplies**. However, as discussed in above, **the portion of premium, which is not includible in taxable value of supply as per Rule 32(4) of CGST Rules, cannot be considered as pertaining to an exempt supply**.

In view of this, **it is clarified that** the amount of the premium for taxable life insurance policies, which is not included in the taxable value as determined under rule 32(4) of CGST Rules, cannot be considered as pertaining to a non-taxable or exempt supply and therefore, **there is no requirement of reversal of ITC** as per provisions of Rule 42 or rule 43 of CGST Rules, read with Sec 17(1) & (2) of the CGST Act, in respect of the said amount.





8. **Circular No. 195/07/2023-GST (Dated 17th July, 2023) [further revised by Circular No. 216/10/2024-GST, dated 26-6-2024]:** Revision to following effects (A) Substitution of 'PARTS' with [GOODS or ITS PARTS, as the case may be] - this amendment now extends the clarification in Para 2 of the original Circular to also cover cases where the entire goods are replaced under warranty. (B) Circular now covers the situation where Distributor replaces goods/parts under warranty using own stock, requisitions replenishment from manufacturer via delivery challan [No GST payable on replenishment by manufacturer + No ITC reversal required by the manufacturer]. (C) If the extended warranty is taken at time of original supply but provided by a different supplier, it is treated as a separate supply of services, subject to GST as a service. (D) The revised clarification specifies that if the extended warranty is supplied separately from the original goods, the supplier will be liable to pay GST on it as a supply of services, irrespective of whether the warranty involves goods or services or is a composite supply. [Circular No. 216/10/2024-GST, dated 26-6-2024]

Summary Table of Revised Clarifications

Scenario	Remarks	Example
(A) Substitution of 'PARTS' with [GOODS or ITS PARTS]	The clarification now covers the replacement of entire goods under warranty, not just parts.	If a distributor replaces an entire defective product under warranty, GST will apply to the goods replaced, as it falls under the warranty supply rules.
(B) Distributor replaces goods/parts using own stock and requests replenishment via delivery challan	No GST is payable on replenishment by the manufacturer, and no ITC reversal is required.	A distributor replaces faulty parts using their own stock and later asks the manufacturer to replenish without charging consideration.
(C) Extended warranty taken at time of original supply but provided by a different supplier	Extended warranty is treated as a separate supply of services subject to GST, not a composite supply.	If the original supplier provides goods and another company offers extended warranty, the warranty is treated as a taxable service under GST.
(D) Extended warranty supplied separately from original goods	GST is payable on the extended warranty as a separate service, regardless of whether it involves goods or services.	A customer purchases a car and separately buys an extended warranty from a different company; GST applies to the warranty as a service.



subsequently:

- | | |
|--------------------------------|--------------------|
| (1) Replacement of Goods/Parts | : Free (No charge) |
| (2) Supply of Repair Services | : Free (No charge) |

- Whether ITC availed i.r.o. (such goods / parts) / such repair services shall be reversed?

NO

(Such supplies cannot be considered as EXEMPT SUPPLIES)

- Whether GST is payable on warranty free replacement?

NO

(The value of original supply includes the likely cost of replacement of goods / parts and / or repair services to be incurred during the warranty period. Tax already stands paid at the time of original supply of goods.)

- HOWEVER, if any additional consideration is charged by the manufacturer from the customer, either for replacement of any goods / part or for any service, then GST will be payable on such supply with respect to such additional consideration.





1

- Distributor arranges/buys GOODS/PARTS and charges manufacturer for the same by issuing tax invoice.

Distributor:

- This activity amounts to supply (by distributor to manufacturer): GST payable
- ITC admissible on GST paid on such replaced goods/parts/ services provided

MANUFACTURER

- ITC admissible to manufacturer of such supply by distributor to manufacturer.

- Whether GST is payable on warranty free replacement?

NO

(The value of original supply includes the likely cost of replacement of goods / parts and / or repair services to be incurred during the warranty period. Tax already stands paid at the time of original supply of goods.)

- HOWEVER, if any additional consideration is charged by the distributor from the customer, either for replacement of any goods / part or for any service, then GST will be payable on such supply with respect to such additional consideration.

2

- Distributor** : Distributor replaces the goods /its parts to the customer under warranty by using his stock and then raises a requisition to the manufacturer for the goods/the parts the manufacturer then provides the said goods/ the parts to the distributor through a delivery challan, without separately charging any consideration at the time of such replenishment.

MANUFACTURER

- NO GST liability
- No ITC reversal is required in respect of the goods/the parts so replenished to the distributor.

3

- Distributor** : Requisition of GOODS/PARTS from manufacturer and manufacturer sends requisite goods/part to distributor.

MANUFACTURER

- NO GST liability
- No ITC reversal is required

4

- Manufacturer supplied goods/parts in advance to distributor to keep in stock. Such goods/parts subsequently used by Distributor and usage reported to manufacturer.

MANUFACTURER

- At time of initial supply of such goods/parts : Activity amounts to 'supply'
- Subsequently, manufacturer shall issue CN in terms of Sec 34(2) and adjust its tax liability (subject to the condition that the said distributor has reversed the ITC availed against the goods/parts so replaced)

In all above cases, Where the distributor provides repair service, in addition to replacement of goods/parts or otherwise, to the customer without any consideration, as part of warranty, on behalf of the manufacturer but charges the manufacturer for such repair services either by way of issue of tax invoice or a debit note,

THEN, there is a supply of service by the distributor to the manufacturer and thus, GST would be payable by the distributor and the manufacturer would be entitled to avail the ITC of the same, subject to other conditions of CGST Act.





1

• AVAILABLE at the time of original Supply.

- The consideration for such extended warranty becomes part of the value of the **COMPOSITE SUPPLY**, the principal supply being the supply of goods, and GST would be payable accordingly.

Distributor making sale and extended warranty provided by OEM/Third party)

However, if the supply of extended warranty is made by a person different from the supplier of the goods, then supply of extended warranty will be treated as a separate supply from the original supply of goods and will be taxable as supply of services.

• Available subsequently (before the expiry of the standard warranty period.

- The same is a **SEPARATE CONTRACT** and GST would be payable by the service provider, whether manufacturer or the distributor or any third party, then the same shall be treated as a supply of **SERVICES** distinct from the original supply of goods and the supplier of the said extended warranty shall be liable to discharge GST liability applicable on such supply of services.

2



Circular No. 195/07/2023-GST (Dated 17th July, 2023)

[further revised by **Circular No. 216/10/2024-GST**, dated 26-6-2024, w.e.f. 26-6-2024.]

Clarification on availability of ITC i.r.o. WARRANTY REPLACEMENT of parts/goods & repair services during warranty period

1.

There are cases where the **ORIGINAL EQUIPMENT MANUFACTURER [OEM]** offers warranty for the goods supplied by him to the customer and provides replacement of **parts** [goods or its parts, as the case may be] and/ or repair services to the customer during the warranty period, **without separately charging any consideration at the time of such replacement/ repair services.**

Whether GST would be payable on such replacement of **parts** [goods or its parts, as the case may be] or supply of repair services, without any consideration from the customer, as part of warranty?

Clarification

The value of original supply of goods (provided along with warranty) by the manufacturer to the customer includes the likely cost of replacement of **parts** [goods or its parts, as the case may be] and / or repair services to be incurred during the warranty period, on which tax would have already been paid at the time of original supply of goods.

As such, where the manufacturer provides replacement of **parts** [goods or its parts, as the case may be] and/ or repair services to the customer during the warranty period, without separately charging any consideration at the time of such replacement/ repair services, **no further GST is chargeable on such replacement of parts [goods or its parts, as the case may be] and/ or repair service during warranty period.**

HOWEVER, if any ADDITIONAL CONSIDERATION is charged by the manufacturer from the customer, either for replacement of parts [goods or its parts, as the case may be] or for any service, then GST will be payable on such supply with respect to such additional consideration.

Circular No. 216/10/2024-GST, dated 26-6-2024,

Substitution of PARTS with [GOODS or ITS PARTS, as the case may be].

Logic





*In cases where warranty is provided by the manufacturer/suppliers to the customers in respect of any goods, and if any defect is detected in the said goods during the warranty period, the manufacturer may be required to replace either **one or more parts** or **the goods as such**, depending upon the extent of damage/defect noticed in the said goods.*

*Earlier Circular only clarifies in respect of the situations involving replacement of part/parts and **does not specifically refer to the situation involving replacement of goods as such**.*

Now, Circular amended to clarify to the effect that the clarification provided in Para 2 of the said circular is also applicable in case where the goods as such are replaced under warranty.

*** Similar amendments have been made in all the paras..*

- 2** **Whether in such cases, the manufacturer is required to reverse the ITC in respect of such replacement of **parts** [goods or its parts, as the case may be] or supply of repair services as part of warranty, in respect of which no additional consideration is charged from the customer?**

Clarification

In such cases, the value of original supply of goods (provided along with warranty) by the manufacturer to the customer includes the likely cost of replacement of **parts** [goods or its parts, as the case may be] and/ or repair services to be incurred during the warranty period.

Therefore, **these supplies cannot be considered as exempt supply** and accordingly, the manufacturer, who provides replacement of **parts** [goods or its parts, as the case may be] and/ or repair services to the customer during the warranty period, is **not required to reverse the ITC in respect of the said replacement parts or on the repair services provided**.

- 3** **Whether GST would be payable on replacement of **parts** [goods or its parts, as the case may be] and/ or repair services provided by a DISTRIBUTOR without any consideration from the customer, as part of warranty on behalf of the manufacturer?**

Clarification

There may be instances where a distributor of a company provides replacement of **parts** [goods or its parts, as the case may be] and/ or repair services to the customer as part of warranty on behalf of the manufacturer and no separate consideration is charged by such distributor in respect of the said replacement and/ or repair services from the customer.

In such cases, as no consideration is being charged by the distributor from the customer, no GST would be payable by the distributor on the said activity of providing replacement of **parts** [goods or its parts, as the case may be] and/ or repair services to the customer.

HOWEVER, **if any additional consideration is charged** by the distributor from the customer, either for replacement of **parts** [goods or its parts, as the case may be] or for any service, **then GST will be payable on such supply with respect to such additional consideration**.

- 4** **In the above scenario where the distributor provides replacement of **parts** [goods or its parts, as the case may be] to the customer as part of warranty on behalf of the manufacturer, whether any supply is involved between the distributor and the manufacturer and whether the distributor would be required to reverse the ITC in respect of such replacement of **parts** [goods or its parts, as the case may be]?**

Clarification

- (a) There may be cases **where the distributor replaces the **parts** [goods or its parts, as the case may be] to the customer under warranty either by using his stock or by purchasing from a third party AND charges the consideration for the **parts** [goods or its parts, as the case may be] so replaced from the manufacturer, by issuance of a tax invoice, for the said supply made by him to the manufacturer. In such a case, GST would be payable by the distributor on the said supply by him to the manufacturer** and **the manufacturer would be entitled to avail the ITC of the same, subject to other conditions of CGST Act.** In such case, no reversal of ITC by the distributor is required in respect of the same.

Author: After this, read (d) and thereafter read (b) and (c)

- (b) **There may be cases where the distributor raises a requisition to the manufacturer for the **parts** [goods or its parts, as the case may be] to be replaced by him under warranty** and the manufacturer then provides the said **parts** [goods or its parts, as the case may be] to the distributor for the purpose of such replacement to the customer as part of warranty. In such a case, where the manufacturer is providing such **parts** [goods or its parts, as the case may be] to the distributor for replacement to the customer during the warranty period, without separately charging any consideration at the time of such replacement, **no GST is payable on such replacement of **parts** [goods or its parts, as the case may be] by the manufacturer.** Further, **no reversal of ITC** is required to be made by the manufacturer in respect of the **parts** [goods or its parts, as the case may be] so replaced by the distributor under warranty.

- © **There may be cases where the distributor replaces the **parts** [goods or its parts, as the case may be] to the customer under warranty out of the supply already received by him from the manufacturer and the manufacturer issues a**





credit note in respect of the ~~parts~~ [goods or its parts, as the case may be] so replaced subject to provisions of Sec 34(2) of the CGST Act. Accordingly, the tax liability may be adjusted by the manufacturer, subject to the condition that the said distributor has reversed the ITC availed against the parts so replaced.

Inserted by Circular No. 216/10/2024-GST (Dated 26-6-2024)

- (d) There may be cases where the distributor replaces the goods or its parts to the customer under warranty by using his stock and then raises a REQUISITION to the manufacturer for the goods or the parts, as the case may be. The manufacturer then provides the said goods or the parts, as the case may be, to the distributor through a DELIVERY CHALLAN, without separately charging any consideration at the time of such replenishment. In such a case, no GST is payable on such replenishment of goods or the parts, as the case may be. Further, no reversal of ITC is required to be made by the manufacturer in respect of the goods or the parts, as the case may be, so replenished to the distributor.

- 5 Where the distributor provides repair service, in addition to replacement of ~~parts~~ [goods or its parts, as the case may be] or otherwise, to the customer without any consideration, as part of warranty, on behalf of the manufacturer but charges the manufacturer for such repair services either by way of issue of tax invoice or a debit note, whether GST would be payable on such activity by the distributor?

In such scenario, there is a supply of service by the distributor and the manufacturer is the recipient of such supply of repair services in accordance with the provisions of Sec 2 (93)(a) of the CGST Act, 2017.

Clarification

Hence, GST would be payable on such provision of service by the distributor to the manufacturer and the manufacturer would be entitled to avail the ITC of the same, subject to other conditions of CGST Act.

- 6 Sometimes companies provide offers of EXTENDED WARRANTY to the customers which can be availed at the time of original supply or just before the expiry of the standard warranty period.

Whether GST would be payable in both the cases?

Clarification

- (a) If a customer enters in to an agreement of extended warranty with the manufacturer at the time of original supply, then the consideration for such extended warranty becomes part of the value of the composite supply, the principal supply being the supply of goods, and GST would be payable accordingly.
- (b) However, in case where a consumer enters into an agreement of extended warranty at any time after the original supply, then the same is a separate contract and GST would be payable by the service provider, whether manufacturer or the distributor or any third party, depending on the NATURE OF THE CONTRACT (i.e. whether the extended warranty is only for goods or for services or for composite supply involving goods and services).

Substituted by Circular No. 216/10/2024-GST (Dated 26-6-2024)

- (a) If a customer enters into an agreement of extended warranty with the supplier of the goods at the time of original supply, then the consideration for such extended warranty becomes part of the value of the composite supply, the principal supply being the supply of goods, and GST would be payable accordingly. HOWEVER, if the supply of extended warranty is made by a person different from the supplier of the goods, then supply of extended warranty will be treated as a separate supply from the original supply of goods and will be taxable as supply of SERVICES.
- (b) In case where a consumer enters into an agreement of extended warranty at any time after the original supply, then the same shall be treated as a supply of services distinct from the original supply of goods and the supplier of the said extended warranty shall be liable to discharge GST liability applicable on such supply of SERVICES.

Author:

		Supply of Extended Warranty at the time of original supply	Supply of Extended Warranty at any time after the original supply
Distributor	Supply of Goods + Supply of extended Warranty	Composite Supply [Treatment = Supply of Goods]	Separate Supplies Supply of Goods Supply of Services**
		Separate Supplies	
Distributor	Supply of Goods	Supply of Goods	
OEM/ Third Party	Supply of extended Warranty	Supply of Services**	

Author





**** Cases where supply of extended warranty is made subsequent to the original supply of goods, or where supply of extended warranty is to be treated as a separate supply from the original supply of goods**

Issue: Such warranty will be covering charges of services as well as goods (means a composite supply in itself) – Industry asked whether it shall be treated as 'supply of goods' or 'supply of services'

Earlier clarification: GST on the same would be payable depending on the nature of the contract (i.e. whether the extended warranty is only for goods or for services or for composite supply involving goods and services).

Revised clarification: The supplier of the said extended warranty shall be liable to discharge GST liability applicable on such supply of services

Reasoning:

Supply of extended warranty is an assurance to the customers by the manufacturer/third party that the goods will operate free of defects during the extended warranty coverage period, and in case of any defect attributable to faulty material or workmanship at the time of manufacture, the same will be repaired/replaced by the said manufacturer/third party. Further, whether the goods will later on require replacement of parts or just repair service or neither during the said extended warranty period, is also not known at the time of sale/supply of extended warranty. Thus, **extended warranty is in the nature of conveying of an "assurance" and not an actual replacement of part or repairs.**

QUESTION BANK

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3.1: TIME OF SUPPLY

- Circular No. 221/15/2024-GST:: National Highway Project under (Hybrid Annuity Model - covering construction and operation & maintenance): Private player supplying services to NHAI - Clarified that (i) Supply of Service (Construction of Road + Maintenance of Road) is under a SINGLE CONTRACT. (ii) it is case of Continuous Supply of Service & (ii) Multiple invoicing requirement linked to due date of payment as per Sec 31(5)(a) or date of completion of event as per Sec 31(5)(c) & (iii) Multiple ToS & ToS as per Sec 13(2) - depending upon invoice issued within 30 days of provision of service or belatedly [Circular dated 26th June, 2024]**

National Highway Authority of India (NHAI) - Different Models used for National Highway project

Model	Key Features	Funding	Revenue Risk	Role of Private Player
<u>EPC</u> (Engineering, procurement, & construction)	Government pays the contractor for the entire project.	Fully funded by the government.	<u>Revenue risk on government.</u> (toll collection by Govt).	Construction only.
	Party	Revenue		
	Government	No direct revenue during construction (Full ownership & operational control post-construction)		
	Private player	Contract value for construction paid by the government. (No toll or annuity rights)		
	e.g. Delhi-Meerut Expressway (Package-1) – The NHAI awarded the project under the EPC model, where the government fully funded the construction, and toll collection remained with the government.			
<u>BOT (Toll)</u> (Build, operate, and transfer)	Private player collects toll revenue for a fixed period.	Fully funded by the private player (by equity/ debt)	<u>Revenue risk on private player</u> (Toll revenue by Private Party – which depends on traffic).	Financing, Construction, O&M.
	Party	Revenue		
	Government	No Direct Revenue (Gains full ownership of the highway after the concession period)		
	Private player	Toll revenue collected directly from road users.		
	e.g. Mumbai-Pune Expressway (Old BOT project) – The project was developed under the BOT (Toll) model, where the private concessionaire collected toll revenue for a fixed concession period before transferring the highway back to the government..			
<u>BOT (Annuity)</u> (Build, operate, and transfer)	Government pays the private player <u>annuity over the concession period.</u>	<u>Private player funds construction; government pays annuity to recover costs (that includes interest element also)</u>	<u>Revenue risk on government.</u> (toll collection by Govt).	Financing, construction, O&M.
	Party	Revenue		
	Government	No Direct Revenue (Gains full ownership of the highway after the concession period)		
	Private player	Fixed Annuity payments from the government during the concession period (for construction and O&M. (No toll revenue as toll rights remain with the government.)		
	e.g. Nagpur-Betul Highway (NH-47) – Developed under the BOT (Annuity) model, where the private player received fixed annuity payments from the government without collecting toll revenue directly..			
<u>HAM</u> (Hybrid Annuity Model)	A mix of EPC (40%) and BOT-Annuity (60%).	<u>Split Funding</u> Government: 40%; Private: 60%.	<u>Revenue risk on government.</u> (toll collection by Govt).	<u>Partial funding</u> , Construction, O&M.
	Party	Revenue		
	Government	No Direct Revenue (Gains full ownership of the highway after the concession period)		
	Private player	Receives 60% of the project cost via annuity payments and interest during the O&M period (No toll revenue as toll rights remain with the government.)		
	e.g. Delhi-Vadodara Expressway (part of the Delhi-Mumbai Expressway project) – The project followed the HAM model, with 40% funding from the government and 60% investment by the private player, who receives annuity payments over time..			



**Circular No. 221/15/2024-GST** Dated: 26th June, 2024**Subject: Clarification on time of supply in respect of supply of services of construction of road and maintenance thereof of National Highway Projects of National Highways Authority of India (NHA) in Hybrid Annuity Mode (HAM) model****Supplier -
Concessionaire****Supply of Service****Service = Services of construction of road AND maintenance thereof**
[under Contract in nature of HAM (Hybrid Annuity Model)]**Recipient**
National
Highways
Authority of
India (NHA)**The payment terms are so staggered** that the concessionaire is held accountable for the repair and maintenance of the highway as well.**FCM [GST]****ToS as per Sec. 13(2)****Payment Terms:**In HAM contract, **the payment is made spread over the contract period in instalments** andpayment for each instalment is to be made **after specified periods, OR on completion of an event as specified in the contract**

	Construction Phase	O&M Phase
Construction payment	40% of Bid Project Cost (BPC): Paid during construction period on milestone basis.	60% of BPC: Paid as annuity in 30 bi-annual installments over 15 years starting 180 days after project completion (COD- completion date).
O&M payments	No payment	Lump sum financial support as bi-annual payments starting from COD, as per agreement terms.

Issue in Dispute: Timing as to taxation

Dept	<u>Separate taxation of</u>	Construction Phase	O&M phase
	Construction Part	<u>CSS : Tax 40% (on staggered basis)</u>	<u>CSS : Tax 60% on completion of construction (single taxation)</u>
	O&M part		<u>CSS: Tax 40% (on staggered basis)</u>
Asseesee	<u>Combined taxation of</u>	Construction Phase	O&M phase
	(Construction Part + O&M part)	<u>CSS : Tax 40% (on staggered basis)</u>	<u>CSS : Tax balance (on staggered basis)</u>

Clarification**Nature Of Service = CSS as defined in Sec 2(33)**

It is 'continuous supply of services' as defined u/Sec 2(33) of the CGST Act, since services are provided for a period exceeding 3 months with periodic payments tied to specific milestones or durations.

Invoicing: Sec 31(5)(a)/ (c)**Sec 31(5)(a): [CSS + Due date of payments ascertainable]: Invoice shall be issued on or before the due date of payment****Sec 31(5)(c): [CSS + Payment linked to completion of an event]: Invoice shall be issued on or before the date of completion of event****ToS: Sec 13(2) [Sr (FCM)]:****Multiple Invoices – Multiple ToS** [GST liability arises progressively for each installment]

Case	ToS
Invoice issued timely (within 30 days of supply of service)	Sec 13(2)(a): Earlier of following dates (i) Date of issue of invoice (ii) Date of receipt of payment
Invoice issued belatedly (after 30 days of supply of service)	Sec 13(2)(b): Earlier of following dates (i) Date of provision of invoice (ii) Date of receipt of payment

In case of CSS, **the date of provision of service may be deemed¹ as the due date of payment as per the contract, as the invoice is required to be issued on or before the due date of payment as per Sec 31(5) of CGST Act.**¹ This deeming fiction seems to be suggested based on **Explanation (i) to Sec 13(2)** which states that 'for the purpose of Sec 13(2)(a)/(b), the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment'.



Valuation: Sec 15

- Payments made by NHAI to the concessionaire (e.g., annuities/installments) often include an INTEREST COMPONENT.
- This interest must be included in the taxable value as per Section 15(2)(d) of the CGST Act.

1. 'Continuous supply of services' - Sec 2(33) of the CGST Act

"Continuous Supply of Services" [CSS]

means	a supply of services which is <u>provided</u> , or <u>agreed to be provided</u> , <u>continuously</u> or <u>on recurrent basis</u> , <u>under a contract</u> , <u>for a period exceeding 3 months</u> with <u>periodic payment obligations</u> ,
and includes	<u>supply of such services as the Government may</u> , subject to such conditions, as it may, <u>by notification</u> , <u>specify</u> ;

Subject: Clarification on time of supply i.r.o. supply of services of construction of road and maintenance thereof of National Highway Projects of National Highways Authority of India (NHAI) in Hybrid Annuity Mode (HAM) model

- Under the **Hybrid Annuity Model (HAM) of concession agreements**, the highway development projects are under Design, Build, Operate and Transfer model (DBOT), wherein the concessionaire is required to undertake new construction of Highway, as well as the Operation and Maintenance (O&M) of Highways. The payment terms for the construction portion as well as the O&M portion of the contract are provided in the agreement between National Highways Authority of India (NHAI) and the concessionaire.
- A HAM contract is a single contract for construction as well as operation and maintenance of the highway.** The payment terms are so staggered that the concessionaire is held accountable for the repair and maintenance of the highway as well. The contract needs to be looked at holistically based on the services to be performed by the concessionaire and cannot be artificially split into two separate contracts for construction and operation and maintenance, based on the payment terms. The concessionaire is bound contractually to complete not only the construction of the highway but also to operate and maintain the same.
- In HAM contract, **the payment is made spread over the contract period in installments and payment for each installment is to be made after specified periods, or on completion of an event as specified in the contract.** The same appears to be covered under the 'Continuous supply of services' as defined under section 2(33) of the CGST Act.
- As per clause (a) of Section 13(2) of CGST Act, the time of supply in respect of a supply of services shall be the date of issue of Invoice, or date of receipt of payment, whichever is earlier, in cases where invoice is issued within the period prescribed under section 31 of CGST Act. Further, as per clause (b) of Section 13(2) of CGST Act, in cases where invoice is not issued within the period prescribed under section 31, the time of supply of service shall be date of provision of the service or date of receipt of payment, whichever is earlier. However, as per section 31(5) of CGST Act, in cases of continuous supply of services, where the payment is made periodically, either due on a specified date or is linked to the completion of an the invoice is required to be issued on or before the specified date or the date of completion of that event.
- Accordingly, **as per section 13(2) of CGST Act, read with section 31(5) of CGST Act, time of supply of services under HAM contract, including construction and O&M portion, should be the date of issuance of such invoice, or date of receipt of payment, whichever is earlier, if the invoice is issued on or before the specified date or the date of completion of the event specified in the contract, as applicable. However, in cases, where the invoice is not issued on or before the specified date or the date of completion of the event specified in the contract, as per clause (b) of section 13(2), time of supply should be the date of provision of the service, or date of receipt of payment, whichever is earlier. In case of continuous supply of services, the date of provision of service may be deemed as the due date of payment as per the contract,** as the invoice is required to be issued on or before the due date of payment as per the provisions of Section 31(5) of CGST Act.
- In the light of above, it is **clarified that** the tax liability on the concessionaire under the HAM contract, including on the construction portion, would arise at the time of issuance of invoice, or receipt of payments, whichever is earlier, if the invoice is issued on or before the specified date or the date of completion of the event specified in the contract, as applicable. If invoices are not issued on or before the specified date or the date of completion of the event specified in the contract, tax liability would arise on the date of provision of the said service (i.e., the due date of payment as per the contract), or the date of receipt of the payment, whichever is earlier.
- It is **also clarified that as the installments/annuity payable by NHAI to the concessionaire also includes some interest component, the amount of such interest shall also be includible in the taxable value** for the purpose of payment of tax on the said annuity/installment in view of the provisions of section 15(2)(d) of the CGST Act.





2. **Circular No. 222/16/2024-GST:: Supply of Service (right to use natural resources) by Govt to Business Entity which is subject to RCM. Clarified that when supply mode is 'DEFERRED PAYMENT', then (i) it is case of Continuous Supply of Service (ii) Frequency Assignment Letter (FAL) is in the nature of contract and due dates of payment are ascertainable therefrom & (iii) Multiple invoicing requirement linked to due date of payment as per Sec 31(5)(a) & (iii) ToS as per Sec 13(3) [Circular dated 26th June, 2024]**

Circular No. 222/16/2024-GST

Dated: 26th June, 2024

Subject: Clarification on TIME OF SUPPLY of services of SPECTRUM USAGE and other similar services under GST**Supplier**

[Sr provider]

Supply of Service

['Spectrum Allocation Service' (the right to use spectrum)]

Recipient

[Sr receiver]

RCM [GST]**ToS as per Sec. 13(3)****SPECTRUM ALLOCATION MODEL of DoT****MODEL-1 FULL UPFRONT PAYMENT****Nature Of Service = CSS as defined in Sec 2(33)**

It is not 'continuous supply of services' as defined u/Sec 2(33) of the CGST Act, since there are no periodic payment obligations.

Invoicing: Sec 31(2)(a) [Normal Supply of Sr]Invoice shall be issued before provision of service or after provision of service within 30 days.**ToS: Sec 13(3) [Sr (RCM): Earlier of (a) Payment (b) Invoice + 61st Day]****Single Invoice - Single ToS**

[GST liability arises in one go]

MODEL-2 DEFERRED PAYMENT/ INSTALLMENT PAYMENTIf the telecom operator chooses the option to make payment in instalments, the payment has to be made spread over the contract period in instalments and payment for each instalment is to be made after specified periods, as specified in the Frequency Assignment Letter of DoT, which is in the nature of contract.

(1)	(2)	(3)	(4)	(5)	(6)
₹	₹	₹	₹	₹	₹

Clarification**Nature Of Service = CSS as defined in Sec 2(33)**It is 'continuous supply of services' as defined u/Sec 2(33) of the CGST Act, since the supply of services (spectrum usage) is agreed to be provided by the supplier (DoT) to the recipient (telecom operator) continuously for a period which is exceeding 3 months with periodic payment obligations.¹**Invoicing: Sec 31(5)(a) [CSS + Due date of payments ascertainable]**

Invoice shall be issued on or before the due date of payment

ToS: Sec 13(3) [Sr (RCM): Earlier of (a) Payment (b) Invoice + 61st Day]**Multiple Invoices - Multiple ToS**

[GST liability arises progressively for each instalment]

1. 'Continuous supply of services' - Sec 2(33) of the CGST Act**"Continuous Supply of Services" [CSS]**

means	a supply of services which is <u>provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period exceeding 3 months with periodic payment obligations,</u>
and includes	<u>supply of such services as the Government may, subject to such conditions, as it may, by notification, specify;</u>

¹ **DISPUTE: Whether service can be considered to be provided at a single point of time with the issuance of Frequency Assignment Letter (FAL) issued by the DoT?:** - Some of Officers were taking a view that 'Supply of service is complete with issuance of FAL' and 'FLA = Document in lieu of invoice' and 60 days post its issuance will trigger GST liability in terms of Sec 13(3)(b) of the CGST Act. This resulted in onetime GST liability burden on telecom operator (creating huge working capital issue).

Industry was of view that GST shall be payable in staggered manner as in case of 'Continuous supply of services (CSS)'. Under ST also, service tax was being paid in staggered manner.

CBIC clarified that 'FAL is in the nature of a bid acceptance document and is in nature of a contract'. FAL providing for periodic payment obligations, such service shall be considered as 'CSS'. Due date of payments being ascertainable from such contract/FAL, the invoicing shall be raised based on such due dates.

Note: DoT is registered under GST. Even though supply is under RCM, the DOT is liable to issue tax invoice.





2. 'Time of supply of services (RCM)' - Sec 13(3) of the CGST Act

ToS shall be earliest of the following dates

Sec 13(3)(a):

Earlier of the following two dates

(The date of payment as entered in the books of account of the recipient) OR

(The date on which the payment is debited in the bank account of the recipient)

Sec 13(3)(b):

The date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier

Subject: Clarification on TIME OF SUPPLY of services of Spectrum Usage and other similar services under GST

1. Under the spectrum allocation model followed by DoT, bidder (the telecom operator) bids for securing the right to use spectrum offered by the government. Here, service provider is the Government of India (through DoT) and service recipient is the bidder/telecom operator. The GST is to be discharged on the supply of spectrum allocation services by the recipient of services (the telecom operator) on reverse charge basis [N/N 13/2017-CT(Rate), dated 28th June, 2017 referred].
- 2.1 In respect of the said supply of spectrum allocation services, if the telecom operator chooses the option to make payment in instalments, the payment has to be made spread over the contract period in instalments and payment for each instalment is to be made after specified periods, as specified in the Frequency Assignment Letter of DoT, which is in the nature of contract. The same is a 'continuous supply of services' as defined under section 2(33) of the CGST Act, since the supply of services (spectrum usage) is agreed to be provided by the supplier (DoT) to the recipient (telecom operator) continuously for a period which is exceeding three months with periodic payment obligations.
- 2.2 As per section 13(1) of CGST Act, the liability to pay tax on supply of services shall arise at the time of supply. In case of forward charge supplies, the time of supply of services is governed by section 13(2) of CGST Act, which is the earlier of date of issue of invoice by the supplier or date of provision of service or the date of payment, as the case may be.
- 2.3 However, in respect of supply of services, on which tax is paid or liable to be paid on reverse charge basis, as per Section 13(3) of CGST Act, 2017, the time of supply of services shall be the earlier of the following dates, namely:-
 - (a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or
 - (b) the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier.
- 2.3.1 Some of the field formations are considering the Frequency Assignment Letter issued by DoT as akin to any other document, by whatever name called, in lieu of an invoice mentioned in section 13(3)(b) of CGST Act and are demanding interest on instalments paid after 60 days from the date of issue of the same.
- 2.3.2 It is observed that Frequency Assignment Letter is in the nature of a bid acceptance document intimating the telecom operator that the result of the auction has been accepted by the competent authority and the details of blocks and spectrum allotted to the telecom operator. The Frequency Allotment Letter also mentions the options and the amounts to be paid by the telecom operator in each of the two options.
- 2.4 Further, as per section 31(5)(a) of CGST Act, in cases of continuous supply of services, where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before such due date of payment. In the instant case, the date of payment to be made by the telecom operator to DoT is clearly ascertainable from the Notice Inviting Applications read with the Frequency Assignment Letter. Accordingly, tax invoice will be required to be issued in respect of the said supply of services, on or before such due date of payment as per the option exercised by the telecom operator.
3. In the light of above, it is clarified that in case where full upfront payment is made by the telecom operator, GST would be payable when the payment of the said upfront amount is made or is due, whichever is earlier, whereas in case where deferred payment is made by the telecom operator in specified instalments, GST would be payable as and when the payments are due or made, whichever is earlier.

It is also clarified that the similar treatment regarding the time of supply, as is discussed in the above paras, may apply in other cases also where any natural resources are being allocated by the government to the successful bidder/purchaser for right to use the said natural resource over a period of time, constituting continuous supply of services as per the definition under section 2(33) of the CGST Act, with the option of payments for the said services either through an upfront payment or in deferred periodic instalments over the period of time.



**3.2: PAYMENT OF TAX**

1. **Sec 50(1)/(2) r/w Rule 88-B(1) [Computation of Interest on belated discharge of FCM Liability]:** Rule 88-B has been amended (w.e.f. 10th July, 2024) to provide that amount deposited into ECL on/before due date of return but debited therefrom upon belated filing of return, shall not considered for computation of interest liability on 'Output Tax (FCM liability)'. [Amendment- w.e.f. 10-7-2024]

(1) Interest liability computation on 'Outstanding tax liability'**1.1: Self-assessed liability discharged through BELATED RETURN of same tax period****Statement showing computation of Interest Payable**

Tax Liability	Interest- provision	Computation of Interest
FCM Liability: Output Tax Liability (on supplies made)	<p>Sec 50 (1) + (2) + R- 88-B (1) + proviso</p> <p>R- 88-B (1) Consider [*ITC balance as available upto date of discharge of liability]</p> <p>proviso Consider [* Cash balance as available ¹ upto the due date of filing return (and remained till payment date)]</p>	<p>Amount: 'Net tax payable after considering ECRL and ECL'</p> <p>Rate 18% p.a.</p> <p>Period Period of delay in filing of return [**DD of filing of return = Due date of payment of tax]</p> <p>Interest Amount * Rate * Period</p>
RCM Liability: Input Tax Liability (on supplies received)	<p>Sec 50 (1) + (2) + R- 88-B (2)</p> <p>R- 88-B (1) Consider [*ITC balance as available upto date of discharge of liability]</p> <p>proviso Consider [* Cash balance as available upto the due date of filing return]</p>	<p>Amount: Gross Tax Liability</p> <p>Rate 18% p.a.</p> <p>Period From: Due date of payment of Tax (*determined considering ToS) Till: Date of payment of tax</p> <p>Interest Amount * Rate * Period</p>

1.2: ANY OTHER CASE:

FCM liability of a tax period is discharged in return of subsequent tax period (filed timely or belatedly)

FCM liability of a tax period is discharged in return of same tax period filed belatedly but filed after commencement of any proceedings u/Sec 73 or 74 in respect of the said period

Voluntarily payment (pre-SCN): Discharged through **Form GST DRC-03** [Payment through EcrL (FCM) ² and ECL]

Voluntarily payment (post-SCN): Discharged through **Form GST DRC-03** [Payment through EcrL (FCM) and ECL]

Payment in pursuance of Demand Order: Discharged through E-liability Ledger [Payment through EcrL (FCM) and ECL]

Statement showing computation of Interest Payable

Tax Liability	Interest- provision	Computation of Interest
FCM Liability: Output Tax Liability (on supplies made)	<p>Sec 50 (1) + (2) + R- 88-B (2)</p> <p>R- 88-B (1) Consider [*ITC balance as available upto date of discharge of liability]</p> <p>proviso Consider [* Cash balance as available upto the due date of filing return (and remained till payment date)]</p>	<p>Amount: Gross Tax Liability</p> <p>Rate 18% p.a.</p> <p>Period From: Due date of payment of Tax (*determined considering ToS) Till: Date of payment of tax</p> <p>Interest Amount * Rate * Period</p>
RCM Liability: Input Tax Liability (on supplies received)	<p>Sec 50 (1) + (2) + R- 88-B (2)</p> <p>R- 88-B (1) Consider [*ITC balance as available upto date of discharge of liability]</p> <p>proviso Consider [* Cash balance as available upto the due date of filing return (and remained till payment date)]</p>	<p>Amount: Gross Tax Liability</p> <p>Rate 18% p.a.</p> <p>Period From: Due date of payment of Tax (*determined considering ToS) Till: Date of payment of tax</p> <p>Interest Amount * Rate * Period</p>

¹ **Author:** If strictly interpreted, then it will come to notice that proviso to R-88B(1) is considering 'amount credited into ECL as per Section 49(1)' only, which means only direct deposits via RTGS, NEFT, etc is taken. If the amount is credited into cash ledger from TDS/TCS, there same is not considered for relaxation of interest.

² **FCM Liability (Output Tax liability):** It may be discharged by utilizing ITC available on the 'date of discharge' even if such ITC was not available on the time of supply. Thus, if tax liability of April, 20x4 is adjudicated and demanded in Dec, 20x1, then while discharging this liability via GST DRC-03, assessee can utilize whatever ITC is available with him on the date of discharge.





Q Mr. Alok filed GSTR 3B for the month of January, 20x1 on 15th April, 20x1. The tax liability [FCM] discharged in the return is of Rs 5,00,000. From the following information compute the interest liability of Mr Alok:

Ledgers	Bal on 31 st Jan, 20x1 (end of tax period)	Bal on 20 th Feb, 20x1 (Due date of return)	Bal on 15 th April, 20x1 (Due date of return)
E-credit ledger	2,00,000	2,00,000	3,00,000
E-cash Ledger	1,50,000	2,50,000	4,00,000

Presumption: RP is Non-QRMP Taxpayer, i.e., monthly return filer (with due date of tax payment as 20th of Next month).

Ans. Statement showing computation of Interest Payable

Tax Liability	Interest- provision	Computation of Interest
FCM Liability: Output Tax Liability (on supplies made)	Sec 50 (1) + (2) + R- 88-B (1) + proviso R- 88-B (1) Consider [*ITC balance as available upto date of discharge of liability] = 3,00,000 in our case proviso Consider [* Cash balance as available upto the due date of filing return (and remained till payment date)] = 2,50,000 in our case	Amount: 'Net tax payable after considering ECRL and ECL' = Nil Rate 18% p.a. Period Period of delay in filing of return [Total days = 8 days (Feb) + 31 Days (March) + 15 Days (April) = 54 days] Interest = Amount * Rate * Period = Nil * 18% * 54/365 = Nil

Q M/s ABC Ltd. have belatedly filed GST return for January after 60 days from the due date. Details of tax paid and ITC are:

Particulars	IGST (₹)	CGST (₹)	SGST (₹)
Output tax payable	4,50,000	2,85,000	2,85,000
Tax payable under reverse charge	18,000	32,000	32,000
ITC available for utilization (including RCM liability discharged on inward supplies)	2,50,000	55,000	55,000
Tax paid through E-cash ledger	2,18,000	2,62,000	2,62,000

Examine the interest payable as per the provisions of GST law.

Presumption: RP is Non-QRMP Taxpayer, i.e., monthly return filer (with due date of tax payment as 20th of Next month).

Ans. [Return and tax both paid late]- part of FCM liab. + full RCM liab. discharged by cash payment at time of filing return

Tax Liability	Interest- provision	Computation of Interest
FCM Liability: Output Tax Liability (on supplies made) IGST = 4,50,000 CGST = 2,85,000 SGST = 2,85,000	Sec 50 (1) + (2) + R- 88-B (1) + proviso R- 88-B (1) Consider [*ITC balance as available upto date of discharge of liability] = 2,50,000 (IGST) + 55,000 (CGST) + 55,000 (SGST) proviso Consider [* Cash balance as available upto the due date of filing return (and remained till payment date)] Assumed to be NIL	Amount: 'Net tax payable after considering ECRL and ECL' IGST = 4,50,000 - 2,50,000 - Nil = 2,00,000 CGST = 2,85,000 - 55,000 - Nil = 2,30,000 SGST = 2,85,000 - 55,000 - Nil = 2,30,000 Rate 18% p.a. Period Period of delay in filing of return = 60 Days Interest Amount * Rate * Period IGST = 2,00,000 * 18% * 60/365 = 5,917 CGST = 2,30,000 * 18% * 60/365 = 6,805 SGST = 2,30,000 * 18% * 60/365 = 6,805
RCM Liability: Input Tax Liability (on supplies received) IGST = 18,000 CGST = 32,000 SGST = 32,000	Sec 50 (1) + (2) + R- 88-B (2) R- 88-B (1) Consider [*ITC balance as available upto date of discharge of liability] proviso Consider [* Cash balance as available upto the due date of filing return]	Amount: Gross Tax Liability IGST = 18,000 CGST = 32,000. SGST = 32,000 Rate 18% p.a. Period From: Due date of payment of Tax Till: Date of payment of tax = 60 Days Interest Amount * Rate * Period IGST = 18,000 * 18% * 60/365 = 532 CGST = 32,000 * 18% * 60/365 = 946 SGST = 32,000 * 18% * 60/365 = 946



**Section 50 : Interest on Delayed Payment of tax.****(1) Failure to pay TAX (FCM/RCM): Interest @18% p.a.**

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 18% p.a., as may be notified by the Government on the recommendations of the Council.

Exception: Belated tax payment (FCM Liability): Belated payment with belated filing of return of the tax period) :: Interest to be levied only on NET CASH LIABILITY paid through E-Cash Ledger

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 that is paid by debiting the electronic cash ledger.

(2) Computation of Interest: [In manner prescribed u/R-88B]

The interest under sub-section (1) shall be **calculated, in such manner as may be prescribed,** [Rule 88] **from the day succeeding the day on which such tax was due to be paid.**

Rule 88-B : Manner of calculating INTEREST on delayed payment of tax

Interest as per Sec 50(1) [i.e. on Delayed payment of Tax Liability]

(1) Belated payment of Self-Assessed liability [FCM Liability] of a tax period (by belated submission of the return)

In case,

where the supplies made during a tax period are declared in the return for the said period

and

the said return is furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings u/Sec 73 or 74 in respect of the said period,

the interest on tax payable in respect of such supplies shall be calculated

on

that portion of the tax that is paid by debiting the electronic cash ledger.

for

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

at such rate

as may be notified under section 50 (1). [i.e. 18% p.a.]

EXCEPTION: [Cash lying in ECL on the due date of filing of return but debited with belated filing of return: Such amount shall not be considered while computing interest liability]

Provided that. (w.e.f. 10th July, 2024)

where any amount has been credited in the Electronic Cash Ledger [ECL] as per provisions of Sec 49(1) ¹ on or before the due date of filing the said return, but is debited from the said ledger for payment of tax while filing the said return after the due date,

the said amount shall not be taken into consideration while calculating such interest if the said amount is lying in the said ledger from the due date till the date of its debit at the time of filing return.

¹ **Author:** It shall be noted that this proviso has **limited applicability** for the reason that it considers amount credited as per Section 49(1) **only, which means only direct deposits via RTGS, NEFT, etc is taken. If the amount is credited into cash ledger from TDS/TCS, there same is not considered for relaxation of interest.** Also, **if the amount is deposited in e-cash ledger after due-date and return is filed after due-date (e.g. Tax period= Jan, 20x1 - amount deposited into ECL on 27th Feb and return is filed on 28th Feb), then no relaxation in interest is given.**



(2) Other cases (including all bases of belated payment of RCM liability)

In all other cases, where interest is payable in accordance with section 50 (1).

the interest shall be calculated

<u>on</u>	<u>the amount of the tax which remains unpaid,</u>
<u>for the period</u>	<u>starting from the date on which such tax was due to be paid</u> <u>till the date such tax is paid</u>
<u>at such rate</u>	<u>as may be notified under section 50 (1).</u>

[i.e. 18% p.a.]

2. **Rule 86 (E-credit Ledger):** Rule 86(4-B) amended to provide that where erroneous refund is granted to a RP (of ITC as per Sec 54(3) or IGST paid on export of goods) but such refund alongwith applicable interest and penalty is deposited back in CASH, then the amount of such erroneous refund deposited shall be reccredited by PO into the e-credit ledger. [Amendment by CGST (Second Amendment) Rules, 2024, w.e.f. 8th Oct, 2024]

Simplified Discussion

Rule	Erroneous Refund Claimed & Sanctioned	Payback by RP (with applicable interest & penalty)	Action by PO
86(4A)(a)	<u>Refund as per Sec 54(3) = ITC Refund</u> [ITC refund on Zero-rated supplies] + [ITC refund on supply having inverted tax structure] Such ITC was debited/reduced into ECRL.	<u>Repayment in CASH</u> (i.e. through ECL) through FORM GST DRC-03	<u>Re-credit into the ECRL</u> By an ORDER in FORM PMT-03A Its logical as ITC earlier debited/reduced gets re-credited
Pre-Amendment			
86(4A)(b)	<u>Refund as per Rule 96(3), in contravention of rule 96 (10) = IGST Refund (on export of goods)</u> [Automated refund sanctioned by Customs Portal – treating Shipping Bill as deemed refund application] <u>Rule 96(10):</u> In cases where exporter has procured inward supply duty-free and/or concessional rate, then such exporter is banned to take benefit of 'IGST Refund route'. [*Such person is bound to follow 'ITC refund route. He shall claim ITC refund as per Rule 89 (4-A) & (4-B)] Despite that if such person claims IGST refund route, such IGST refund is erroneous.	<u>Repayment in CASH</u> (i.e. through ECL) through FORM GST DRC-03	<u>Re-credit into the ECRL</u> By an ORDER in FORM PMT-03A
Post-Amendment			
86(4A)(b)	<u>Refund as per Rule 96(3) = IGST Refund (on export of goods)</u> [Automated refund sanctioned by Customs Portal – treating Shipping Bill as deemed refund application] Reference of Rule 96(10) has been omitted since Rule 96(10) has been omitted. - Thus, now even where exporter has procured inward supply duty-free and/or concessional rate, then such exporter is free to opt 'IGST Refund route'. [** Also consequentially Rule 89(4A) & (4B) has also been omitted] Such IGST may be paid by debiting/reducing into ECL or ECRL.	<u>Repayment in CASH</u> (i.e. through ECL) through FORM GST DRC-03	<u>Re-credit into the ECRL</u> By an ORDER in FORM PMT-03A Its NOT logical as IGST even paid in Cash (through ECL) gets credited into ECRL



**Rule 86 : Electronic Credit ledger**

(4B) Erroneous Refund in certain cases:: RP voluntarily depositing back such refund (with applicable interest & penalty) in CASH ::-- PO shall make ORDER for credit of equivalent AMOUNT OF REFUND into e-credit ledger of such person

Where a RP deposits the amount of ERRONEOUS REFUND sanctioned to him, -

(a) under section 54(3) of the Act, [i.e. ITC refund]

or

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

[i.e. IGST Refund (Export of Goods)]

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 RP shall be re-credited to the electronic credit ledger by the proper officer by an ORDER made in FORM GST PMT-03A.

QUESTION BANK

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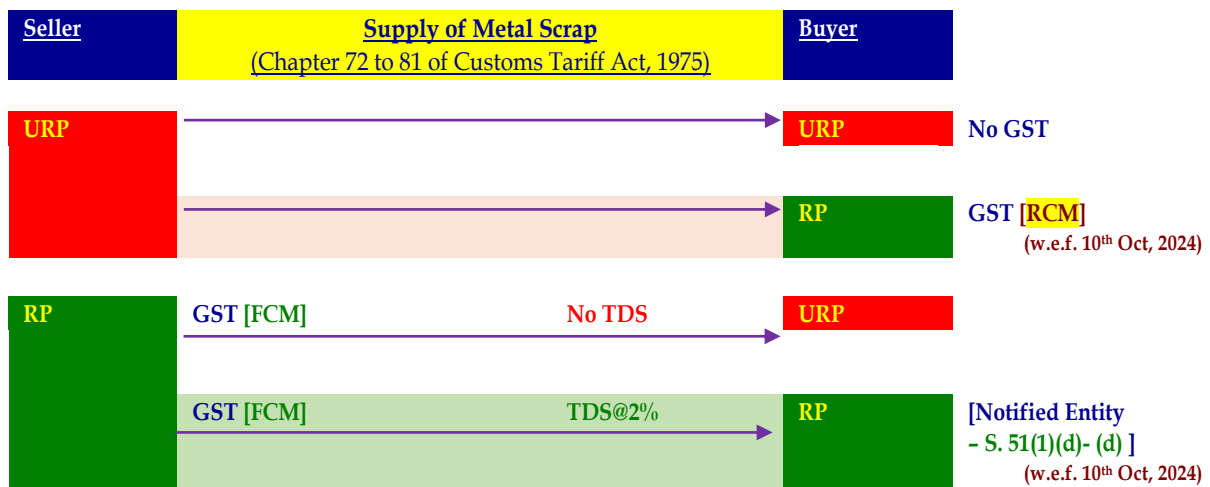


3.3 : TDS (Tax Deducted at Source)

- Sec 51 [TDS @2%]:** TDS introduced on supply of METAL SCRAP (of specified kind) by RP to RP (= B2B Supply) [for this purpose, 'RPs receiving supply of METAL SCRAP falling under Chapters 72 to 81 of the First Schedule to the Customs Tariff Act, 1975 from other RPs' notified u/Sec 51(1)(d) and thus, mandated to remit TDS] [Original N/N 50/2018-CT amended vide N/N 25/2024-CT (R) - w.e.f. 10th Oct, 2024]

Amendment in simplified form

SCRAP Industry



Notes:

Mr X has started business of 'supply of Metal Scrap (Chapter 72-81)'. Discuss the registration requirement as applicable to him under GST law:

Sec 22(1): TO Based Registration

[when ATO > 40 L / 20L / 10L]

Regular Supplier: making intra-state supply

Sec 24: Compulsory Registration

[Special categories of Supplier]

Regular Supplier: making inter-state supply

Casual TP. // Non-resident TP [NTRTP]

Sec 23: Exemption from Registration

23(2)

Exemption by Notification

5/2017-CT

Supplier making only 'RCM Supply'

Exception: Supplier of Metal Scrap (Chapter 72-81)

(w.e.f. 10th Oct, 2024)

Regular Supplier: making intra-state supply of Metal Scrap

Shall be required to take registration as and when ATO crosses the limit

Once registered

RCM

TDS applicable on [B2B Supply]

Regular Supplier: making inter-state supply of Metal Scrap

Casual TP / NTRP

Shall be required to take compulsory registration

Once registered

RCM

TDS applicable on [B2B Supply]



**Sec 51(1):****Persons mandated to deduct tax = Specified Entities + Notified Entities**

Following entities have been mandated following persons to deduct tax at source:

Specified categories of persons - Sec 51(1)(a), (b) & (c)

- a) **a department or establishment of CG/SG**, or
- b) **Local authority**, or
- c) **Governmental agencies**

Notified categories of persons - Sec 51(1)(d)

N/N 50/2018-CT, dated 13th September 2018 issued notifying categories of persons required to make tax deduction. It has been amended to include 'any RP receiving supplies of metal scrap falling under Chapters 72 to 81 in the First Schedule to the Customs Tariff Act, 1975, from other RPs'

N/N 50/2018-CT. [w.e.f. 13th Sep, 2018, as amended w.e.f. 10th Oct, 2024)]

Notified categories of persons - Sec 51(1)(d) [N/N 50/2018-CT]

- (a) **an authority or a board or any other body**, -
 - (i) **set up by an Act of Parliament or a State Legislature; or**
 - (ii) **established by any Government,**
 with 51% or more participation by way of equity or control, **to carry out any function;**
- (b) **Society established by the CG or the SG or a Local Authority under the Societies Registration Act, 1860;**
- (c) **PSU** (public sector undertakings);
- (d) **any RP receiving supplies of metal scrap falling under Chapters 72 to 81 in the First Schedule to the Customs Tariff Act, 1975, from other RPs.**

[(d) inserted vide N/N 25/2024-CT (w.e.f. 10th oct, 2024)]

Provisions (TDS shall **NOT** be required in following cases)

Provided that with respect to persons specified u/Sec 51(1)(a), **nothing in this notification shall apply to the authorities under the Ministry of Defence other than certain specified authorities thereof as specified in Annexure-1 and their offices, with effect from the 1st October, 2018;**

[inserted vide N/N 57/2018-CT (w.e.f. 23rd Oct, 2018)]

Provided further that **nothing in this notification shall apply to** the supply of goods or services or both **from a PSU to another PSU**, whether or not a distinct person, with effect from the 1st October, 2018;

[inserted vide N/N 61/2018-CT (w.e.f. 5th Nov, 2018)]

Provided also that **nothing in this notification shall apply to** the supply of goods or services or both, which takes place **between one person to another person specified under clauses (a), (b), (c) and (d) of Sec 51(1) of the said Act, EXCEPT the person referred to in clause (d) of this notification.**

[inserted vide N/N 73/2018 (w.e.f. 31st Dec, 2018) - recently substituted w.e.f. 10th Oct, 2024)]

ANALYSIS:

Proviso exempts TDS (GST) when a supply occurs between two entities that are both tax deductors u/Sec 51(1)(a), (b), (c), or (d). **Supply by one TAX DEDUCTOR to another TAX DEDUCTOR** (whether of specified category or of notified category)

EXCEPTION: Scrap sales (Chapters 72-81) attract TDS @ 2%, even if both parties are tax deductors.

Example:

- (1) SAIL (PSU) sells scrap to NTPC (PSU) → TDS @ 2% must be deducted.
- (2) Indian Railways sells scrap to BHEL → TDS @ 2% must be deducted





3.4 : TCS (Tax Collected at Source)

1. **Sec 52 (TCS): TCS rate has been reduced from the current 1% (0.5% CGST + 0.5% SGST/UTGST, or 1% IGST) to 0.5% (0.25% CGST + 0.25% SGST/UTGST, or 0.5% IGST) effective from 10th July, 2024. [vide N/N 15/2024-CT dated 10th July, 2024]**

Amendment in Simplified Form

Rate of TCS¹

Upto 9 th July, 2024	Intra-state Supply	0.5% CGST + 0.5% SGST N/N 52/2018-CT	(Sec 52 of CGST Act) + (Sec 52 of SGST Act) Max = 1% CGST + 1% SGST
	Inter-state Supply	1% IGST N/N 02/2018-IT	(Sec 20 of IGST Act read with Sec 52 of CGST Act) Max = 2% IGST
On/from 9 th July, 2024	Intra-state Supply	0.25% CGST + 0.25% SGST N/N 52/2018-CT	(Sec 52 of CGST Act) + (Sec 52 of SGST Act) Max = 1% CGST + 1% SGST
	Inter-state Supply	0.5% IGST N/N 02/2018-IT	(Sec 20 of IGST Act read with Sec 52 of CGST Act) Max = 2% IGST

Reason for reduction in TCS Rate:

Many small traders making supply through ECO. Such supply is with low profit margin and thus, their net liability (cash liability to be discharged through e-cash ledger) is quite less.

TCS collected by TCS and deposited with Govt is made available to such suppliers in their e-cash ledger thereon. It was represented that TCS is leading to working capital issue for small suppliers. Even though unutilized balance in e-cash ledger is refundable, it requires following refund procedure.

N/N 15/2024-CT

(w.e.f. 10th July, 2024.)

Issued in exercise of powers given u/Sec 52(1)

ECO (tax collector) to collect TCS @0.25% (w.e.f. 10th July, 2024)

In exercise of the powers conferred by Sec 52(1), the CG, on the recommendations of the Council, hereby makes the following amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue) No. 52/2018-CT, dated the 20th September, 2018, namely:-

In the said notification, for the words "0.5%", the figure and word "0.25 %" shall be substituted.

[This notification shall come into force from the date of its publication in official gazette.]

- ¹ **GSTN Advisory for reduced TCS rate changes in GSTR 8 applicable from 10th July 2024**

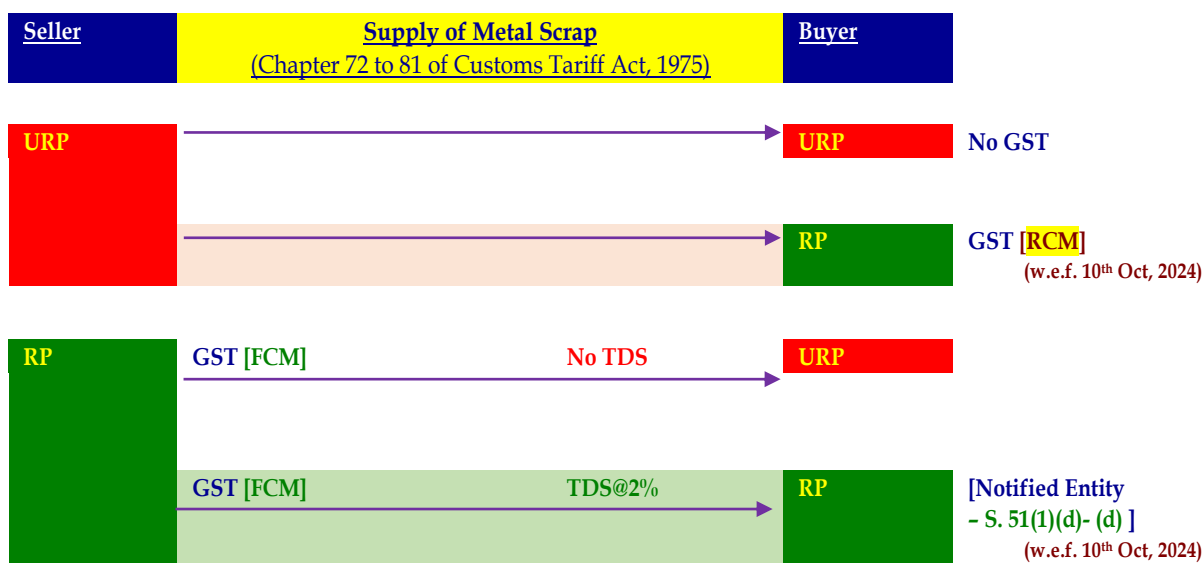
July, 2024	
Upto 9 th July, 2024	On/from 9 th July, 2024
During this period, the old TCS rate of 1% will continue to apply. Taxpayers (ECO) are required to collect & report TCS at this rate for all transactions happened between these dates.	A revised TCS rate of 0.5% is effective on/from 10th July 2024. Taxpayers (ECO) must ensure their systems and processes are updated to reflect this new rate for all transactions happened from 10th July forward.



**4: REGISTRATION**

1. **Sec 23(2) [Person Exempted from registration- by Notification by Govt]:** Vide N/N 5/2017-CT, supplier (goods/services) making taxable supply but only that which is subject to RCM has been exempted from obtaining registration. W.e.f. 10th Oct, 2024, supplier of METAL SCRAP (falling under Chapter 72 to 81) has been excluded from that notification. Consequentially, such supplier shall be liable to take GST registration as when applicable registration threshold is crossed by such supplier. [* Also note, post-registration, RCM will cease to apply and such supplier shall be liable to pay tax under FCM]. [vide N/N 5/2017- amended by N/N 24/2024-CT (dated 10th Oct, 2024)]

Amendment in simplified form

SCRAP IndustryNotes:

Mr X has started business of 'supply of Metal Scrap (Chapter 72-81)'. Discuss the registration requirement as applicable to him under GST law:

Sec 22(1): TO Based Registration

[when ATO > 40 L / 20L / 10L]

Regular Supplier: making intra-state supply

Sec 24: Compulsory Registration

[Special categories of Supplier]

Regular Supplier: making inter-state supply

Casual TP. // Non-resident TP [NTRP]

Sec 23: Exemption from Registration

23(2)

Exemption by Notification

5/2017-CT

Supplier making only 'RCM Supply'

Exception: Supplier of Metal Scrap (Chapter 72-81)

(w.e.f. 10th Oct, 2024)

Regular Supplier: making intra-state supply of Metal Scrap

Shall be required to take registration as and when ATO crosses the limit

Once registered

RCM

TDS applicable on [B2B Supply]

Regular Supplier: making inter-state supply of Metal Scrap

Casual TP / NTRP

Shall be required to take compulsory registration

Once registered

RCM

TDS applicable on [B2B Supply]





Sec 23 (2) NOTIFIED categories of persons exempted from registration

Notwithstanding anything to the contrary contained in Section 22(1) or Section 24, [FA, 2023]
the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein specify the category of persons who may be exempted from obtaining registration under this Act.

Supplier making supplies under RCM [All Goods & Services]

N/N 5/2017-CT

Supplier making only 'Taxable supply covered under RCM' - Exempt from registration

The persons who are only engaged in making supplies of taxable goods or services or both, the total tax on which is liable to be paid on REVERSE CHARGE basis by the recipient shall be exempt from obtaining registration.

[proviso inserted vide N/N 24/2024-CT (w.e.f. 10th Oct, 2024)]

Provided that nothing contained in this notification shall apply to any person engaged in the supply of METAL SCRAP, falling Chapters 72 to 81 in First schedule to the Customs Tariff Act, 1975.

2. **Rule 8 [Application for registration]:** Rule 8(4A) requires registration applicant to undergo 'Aadhaar Authentication' on online basis. However, applicant identified as 'risky applicant' shall undergo 'Biometric Based Aadhaar Authentication'. Initially, Biometric Based AA was introduced in Gujarat which was later on expanded to Andhra Pradesh and Puducherry. Other states exempted vide N/N 27/2022-CT issued u/Rule 8(4-B). now, that notification has been rescinded and thus, making Bio-metric based AA applicable to whole of India. [N/N 27/2022-CT has been rescinded (w.e.f. 10th July, 2024)]

Rule 8 : Application for registration

Enrollment - (PAN + Mobile + Mail) validation - TRN will be generated

Submission of Registration Application (and Aadhar Authentication, where applicable)

(4) Submission of Registration Application [Form GST REG-01] - duly signed / verified

(4A) Aadhaar authentication (Normal or Biometric) when applicant opts for authentication of Aadhaar number
[Date of submission of R/A = Earlier of 2 dates (a) Date of AA (b) 15 days from submission of R/A (Part B)]

(4B) BIOMETETRIC BASED Aadhaar authentication for high-risk applicants

The CG may, on the recommendations of the Council, by notification specify the States or UTs wherein the proviso of sub-rule (4A) shall not apply.

~~N/N 27/2022-CT (Dated 26th Dec, 2022)~~ - [Rescinded by N/N 13/2014-CT (w.e.f. 10th July, 2024)]

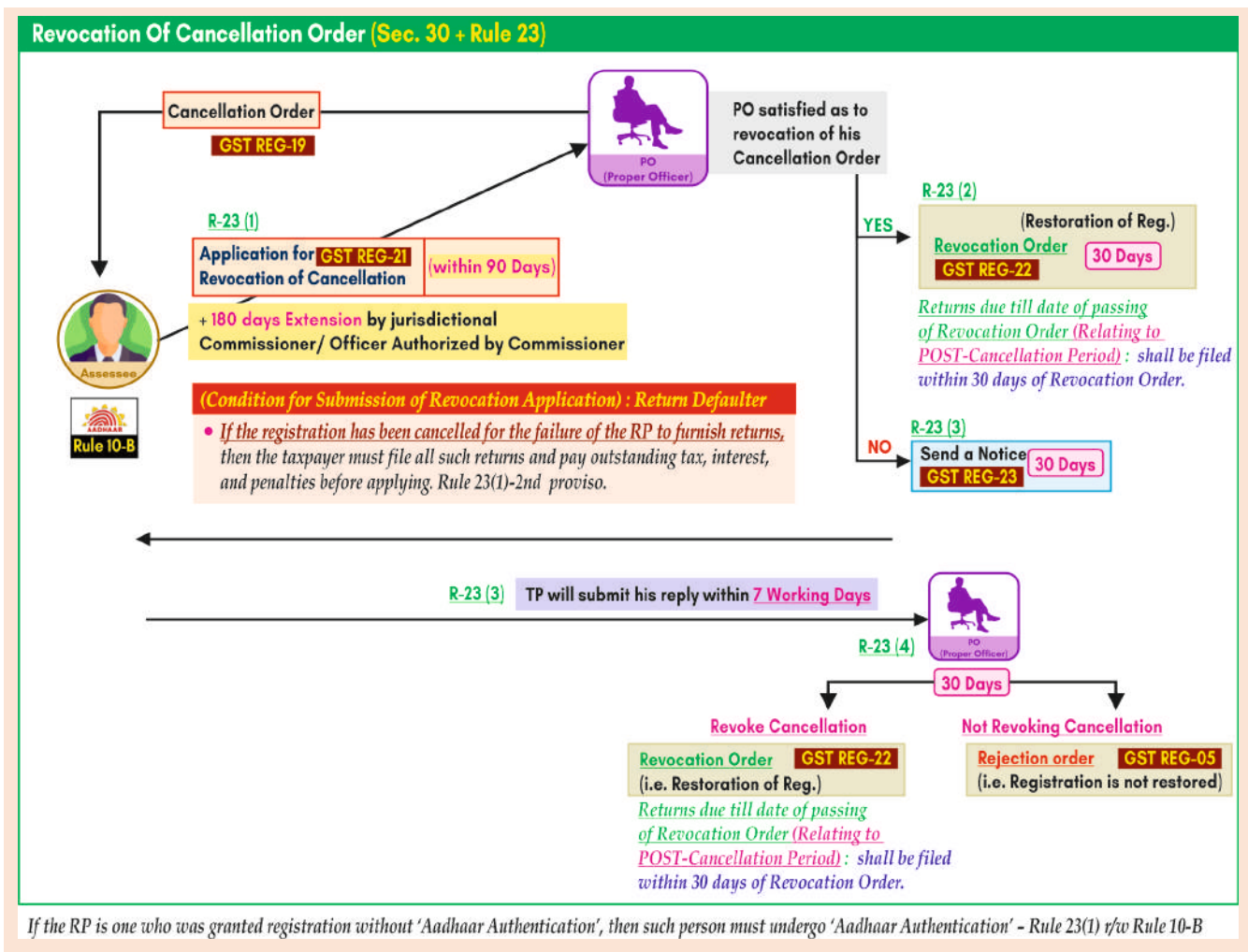
~~The proviso to Rule 8(4A) shall not apply in all the States and UTs except the State of Andhra Pradesh, Gujarat and Puducherry~~

Author: In simple words, presently 'Biometric Based Aadhaar Authentication' is now applicable to entire India.





3. **Rule 21 [Registration to be cancelled in certain cases]: Rule 21 amended in 2 respect (i) Rule 21(f) [Mismatch of OS declared in GSTR-1 and Liability paid in GSTR-3B] - consequential amendment made to incorporate reference of GSTR-1A (ii) Rule 21 (ga) inserted to make provision for re-cancellation of registration of person whose registration earlier cancelled was revoked but he failed to file his pending returns within 30 days from date of revocation [amendment (w.e.f. 10th July, 2024)]**



Rule 21 : Registration to be cancelled in certain cases

The registration granted to a person is liable to be cancelled, if the said person,-

(e)		(i.e. Availment of ITC to which he is not entitled to)
(f)	furnishes the details of outward supplies in FORM GSTR-1 [as amended in FORM GSTR-1A if any.] under section 37 for one or more tax periods which is in excess of the outward supplies declared by him in his valid return under section 39 for the said tax periods;	(i.e., Declaring higher outward supplies but not paying tax thereon) Default of one or more tax period - Default for a single tax period may also lead to cancellation
(g)		
(ga)	violates the provisions of third or fourth proviso to Rule 23(1) ;	(3 rd Proviso: Cancellation of registration- revocation applied and sanctioned - pending returns shall be filed within 30 days of 'revocation order' (4 th Proviso: Cancellation of registration with retrospective effect- revocation applied and sanctioned - pending returns shall be filed within 30 days of 'revocation order' if above returns are not so filed within 30 days from, then the registration would again be cancelled.)

[w.e.f. 10th July, 2024]





4. **Rule 21-A [Suspension of Registration]:** Rule 21-A (2A) (System-based-Suspension of Registration)- consequential amendment made to incorporate reference of GSTR-1A). Now, comparison will be made of (i) 'GSTR-1 (as amended by GSTR-1A) furnished by RP with GSTR-3B furnished by him' and (ii) 'GSTR-1 (as amended by GSTR-1A of previous tax period) furnished by his supplier with his GSTR-2B'. [amendment (w.e.f. 10th July, 2024)]

Rule 21-A : Suspension of Registration

- (1) **Cancellation Applied for by RP = Immediate suspension of registration** (If RP specifies some later date for suspension to be effective, then suspension shall be effected from that date)
- (2) **PO initiating cancellation proceedings = No Deemed Suspension, but PO empowered to suspend registration from any date** (without giving prior opportunity of being heard)

(2A) Suspension by GST System/Portal

[SYSTEM-GENERATED INTIMATION in Form GST REG-31] shall be issued requiring person to reply within 30 days]

Where,

(a) a comparison of the RETURNS furnished by a RP u/Sec. 39 with the details of outward supplies furnished in **FORM GSTR-1** [, as amended in **FORM GSTR-1A** if any,]

or the details of inward supplies derived based on the details of outward supplies furnished by his suppliers in their **FORM GSTR-1**, or in **FORM GSTR-1A** of the previous tax period, if any, [as reflecting in GSTR-2B of such RP]

or

such other analysis, as may be carried out on the recommendations of the Council,

(e.g. Non-filing of returns by RP as specified in Sec 29(2)

(b)/ (c) – System based suspension has been introduced)

show that there are **significant differences or anomalies** indicating contravention of the provisions of the Act or the rules made thereunder, leading to cancellation of registration of the said person,

or

(b) **there is a contravention of the provisions of rule 10A by the RP.**

(i.e. failure to furnish details of Bank A/c within stipulated period post-grant of registration)

the registration of such person **SHALL be SUSPENDED**

(by System Automatically)

and the said person shall be intimated in **FORM GST REG-31**,

electronically, on the common portal, or

by sending a communication to his E-MAIL address* provided at the time of registration or as amended from time to time,

highlighting the said differences, anomalies or non-compliances

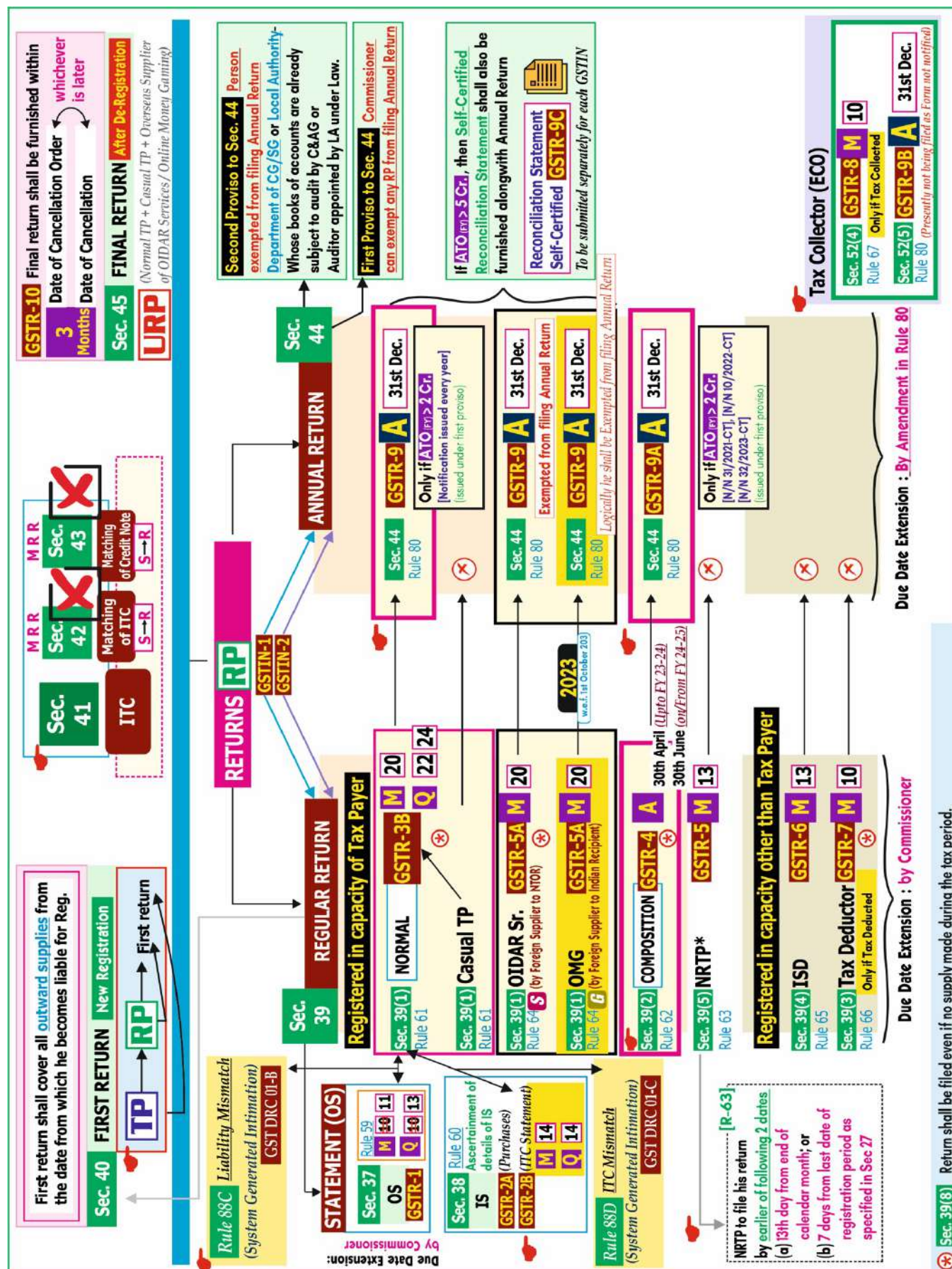
and

asking him to explain, within a period of 30 days [30 D], as to why his registration shall not be cancelled.

(GST REG-31 = Intimation for suspension and notice for cancellation of registration)



5 : RETURN





1. **Sec 37 r/w Rule 59 [Furnishing of details of Outward Supplies (GSTR-1)]: Rule 59(4) amended to reduce the threshold limit of B2C supplies (Large invoices of Inter-State Supplies) for which invoice-level details shall be furnished in GSTR-1. The threshold shall be 'Invoice value of more than Rs 1,00,000' (instead of earlier 2,50,000) [amendment (w.e.f. 1st Aug, 2024)]**

Amendment in simplified form

Manner of Furnishing details of OS in GSTR-1

Invoice level details vs Consolidated Details [Rule 59(4)]

Nature of Supply	Intra or inter (intra-state) or (inter-state)	Details in GSTR-1	
B2B Supply (supply to RP)		Invoice level details to be furnished	
B2C Supply (supply to URP)			
Large B2C Invoice (i.e., invoice value > ₹ 2,50,000) (i.e., invoice value > ₹ 1,00,000)	Inter-State	Invoice level details to be furnished	Report (1) State Wise (say, Delhi, Punjab etc) (2) Rate Wise (say, 5%, 12%, 18%, 28%)
	Intra-State	Consolidated details to be furnished	
Other invoices (i.e., invoice value upto ₹ 2,50,000) (i.e., invoice value upto ₹ 1,00,000)	(intra-state) or (inter-state)	Consolidated details to be furnished	

- Q.** Mr. Gauri Shiva, a RP in Punjab, supplies goods taxable @ 12% in the States of Punjab and Haryana. He has furnished the following details in relation to independent supplies made by him in June, 20x1:-

Supply	Recipient	Nature of Supply	Value (₹)
1.	Mr. A, a RP	Inter-State	2,20,000
2.	Mr. B, a RP	Inter-State	2,55,000
3.	Mr. C, an URP	Intra-State	1,80,000
4.	Mr. D, an URP	Intra-State	2,60,000
5.	Mr. M, an URP	Inter-State	3,00,000
6.	Mr. N, an URP	Inter-State	50,000
7.	Mr. O, an URP	Inter-State	1,50,000
8.	Mr. P, an URP	Inter-State	2,80,000
9.	Mr. Q, a RP	Intra-State	1,50,000
10.	Mr. R, a RP	Intra-State	4,10,000

Discuss the manner in which the details of above supplies are required to be furnished in GSTR-1.

Note: Gauri is RP as normal supplier but has not opted for QRMP Scheme.

[CA Inter- RTP May 2020 (Modified)] [Amendment based Question]

Ans. Considering above provisions, manner of furnishing details shall be as stated below:

Reporting	Recipient	Nature of Supply	Value (₹)	Remarks
Invoice Level Details	Mr. A (RP)	Inter-State (B2B)	2,20,000	
	Mr. B (RP)	Inter-State (B2B)	2,55,000	
	Mr. Q (RP)	Intra-State (B2B)	1,50,000	
	Mr. R (RP)	Intra-State (B2B)	4,10,000	
	Mr. M (URP)	Inter-State (B2C)	3,00,000	(being Inter-State Large B2C invoice)
	Mr. O (URP)	Inter-State (B2C)	1,50,000	(being Inter-State Large B2C invoice)
	Mr. P (URP)	Inter-State (B2C)	2,80,000	(being Inter-State Large B2C invoice)
Consolidated details	Mr. C (URP)	Intra-State (B2C)	1,80,000	(Rate Wise details shall be given.)
	Mr. D (URP)	Intra-State (B2C)	2,60,000	
	Mr. N (URP)	Inter-State (B2C)	50,000	(State wise & Rate Wise details shall be given.)





2. **Sec 37 r/w Rule 59 [Furnishing of details of Outward Supplies (GSTR-1)]: Rule 59 amended (i) Proviso inserted in Rule 59(1) to the effect of allowing RP to amend or furnish additional details in GSTR-1 already filed (for this GSTR-1A shall be filed - anytime but before filing of GSTR-3B for the said (ii) Rule 59(4A) inserted to prescribe contents of GSTR-1A (in similar manner as that of GSTR-1) [amendments related to GSTR-1A (w.e.f. - 10th July 2024)]**

GSTR-1A (introduced w.e.f. 10th July, 2024)

Form GSTR-1A is an optional form which allows a supplier to amend Form GSTR 1 filed for a tax period by a taxpayer.

- Any record filed in a particular GSTR 1 can be amended in the same period GSTR -1A or any mistake committed can be rectified.
- Any record missed to be reported in the current GSTR 1 can be reported in the GSTR 1A of the same tax period.

Following points are noteworthy in this regard:

- Proviso to Rule 59(1) (effective from 10th July, 2024) provides that a RP may, after furnishing the details of outward supplies of goods or service or both in FORM GSTR-1 for a tax period but before filing of return in FORM GSTR-3B for the said tax period, at his own option, amend or furnish additional details of OS in Form GSTR-1A for the same tax period.**

- GSTR-1A can be filed only ONCE for tax period. [Advisory on GSTR-1A]

- Furnishing of GSTR-1 is OPTIONAL.**

- Being optional, there is **no concept of late fee associated with filing of GSTR-1A.** [Advisory on GSTR-1A]
- If amendment /addition in GSTR-1 already filed for a tax period is not made using GSTR-1A for the same tax period, then such amendment/addition can also be made in GSTR-1 of the subsequent tax period.

- Time window for filing of GSTR-1A:**¹ [Time window as per FAQ/Instruction issued - As being applied practically]

Monthly filer (Non-QRMP): GSTR -1A will be open for monthly filer

from the later of the following two dates,

- Due date of filing of GSTR1 (i.e., 11th of the following month) or
- Date of actual filing of GSTR-1

till the actual filing of GSTR-3B of the same tax period:

Quarterly filer (Non-QRMP): GSTR -1A will be open for monthly filer

from the later of the following two dates,

- Due date of filing of GSTR1 (i.e., 13th of the month following the end of quarter) or
- Date of actual filing of GSTR-1 (Quarterly)

till the actual filing of GSTR-3B of the same tax period (Quarter):

¹ **Author:**

Time window as per law (Proviso to rule 59(1)) is different from what has been made available practically.

Proviso to rule 59(1) allows a RP to file GSTR-1A after furnishing GSTR-1 of a tax period (whether GSTR-1 filed on due date or earlier)

Illustration

Mr A (Non-QRMP Taxpayer) - Monthly GSTR-1 and GSTR-3B

Tax period = Oct, 2024 - GSTR-1 for Oct. 24 = Due Date 11th Nov, 2024 GSTR-3B for Oct. 24 = Due Date 20th Nov, 2024

GSTR-1 filed on	GSTR-3B filed on	GSTR-1A filed on (say, missed supply being added)	Impact on Liability of Mr A [Auto-population to GSTR-3B]	Availability of ITC to supplier [Auto-population to GSTR-2B which is made available on Monthly Basis (on 14 th)]
11 th Nov (within due date)	20 th Nov	On 13 th Nov	Liability as per [GSTR-1+ GSTR-1A]	ITC as auto-populated from [GSTR-1]. --- Rule 60 (7)(iia) - refer below
14 th Nov (after due date)	20 th Nov	On 17 th Nov	--same --	ITC relating to details of OS furnished in GSTR-1A shall be made available in next GSTR-2B]
14 th Nov (after due date)	23 th Nov (after due date)	On 21 st Nov	--same --	
8 th Nov (within due date)	20 th Nov	On 10 th Nov	--same --	ITC as auto-populated from [GSTR-1+ GSTR-1A]





Illustration

Mr A (Non-QRMP Taxpayer) - Monthly GSTR-1 and GSTR-3B

Tax period = Oct, 2024 - GSTR-1 for Oct. 24 = Due Date 11th Nov, 2024 GSTR-3B for Oct. 24 = Due Date 20th Nov, 2024

GSTR-1 filed on	GSTR-3B filed on	GSTR-1A filed on (say, missed supply being added)	Impact on Liability of Mr A [Auto-population to GSTR-3B]	Availability of ITC to supplier [Auto-population to GSTR-2B which is made available on Monthly Basis (on 14 th)]
11 th Nov (within due date)	20 th Nov	On 13 th Nov	Liability as per [GSTR-1+ GSTR-1A]	ITC as auto-populated from [GSTR-1]. Rule 60(7)(iia) - refer below]
14 th Nov (after due date)	20 th Nov	On 17 th Nov	--same --	ITC relating to details of OS furnished in GSTR-1A shall be made available in next GSTR-2B]
14 th Nov (after due date)	23 th Nov (after due date)	On 21 st Nov	--same --	
8 th Nov (within due date)	20 th Nov	On 10th Nov (Not allowed)	--same --	ITC as auto-populated from [GSTR-1+ GSTR-1A] ITC relating to details of OS furnished in GSTR-1A shall be made available in next GSTR-2B]

Rule 60(7)(iia): (inserted w.e.f. 10th July, 2024)

An auto-generated statement containing the details of ITC shall be made available to the RP in FORM GSTR-2B, for every month, electronically through the common portal, and shall consist of -

(iia) **the additional details or amendments in details of OS furnished by his supplier in FORM GSTR-1A filed between the day immediately after the due date of furnishing of FORM GSTR1 for the previous tax period to the due date of furnishing of FORM GSTR-1 for the current tax period;**

In simple words, if GSTR-1A is filed upto the due date of furnishing GSTR-1 of the current tax period, then its details shall be made available to the RP (recipient) in GSTR-2B of the month.

• **Impact of furnishing details into GSTR-1A of the same tax period:**

(i) **Impact on Liability of the Supplier:** [GSTR-1/IFF + GSTR-1A - auto-population - GSTR-3B (same tax period)]

The corresponding effect of changes made through GSTR-1A on the liability of the RP shall be reflected in Form GSTR-3B of the same tax period.

(ii) **Impact on ITC of the recipient:** [GSTR-1A - auto-population - GSTR-2B (next period/month)]

At the recipient's end, the ITC for the supplies declared or amended by the suppliers through Form GSTR-1A will be made available to the recipient in Form GSTR-2B generated for the next month.

Illustrations on GSTR-1A

(based on Instructions given in Form GSTR-1A)

1. Mr A = Non-QRMP taxpayer. Tax Period = Jan, 2025

GSTR 1 furnished on 8th Feb 2025

Omissions in GSTR-1 filed = 1 Invoice missed reporting in GSTR-1

GSTR 1A shall be opened for him

= from Later of [(i) Due date of GSTR-1 (11th Feb) OR (ii) Actual filing date of GSTR-1 (8th Sep)]

= From 11th Feb. = i.e. on 12th Feb

GSTR 1 furnished on 15th Feb 2025

• **Liability of Supplier:** [GSTR-1 + GSTR-1A - auto-population - GSTR-3B (Jan, 2025)]

• **Liability of Supplier:** [GSTR-1- auto-population - GSTR-2B (Jan, 2025)]

[GSTR-1A- auto-population - GSTR-2B (Feb, 2025)]

2. Mr A = Non-QRMP taxpayer. Tax Period = Jan, 2025

GSTR 1 furnished on 15th Feb 2025

Omissions in GSTR-1 filed = 1 Invoice missed reporting in GSTR-1

GSTR 1A shall be opened for him

= from Later of [(i) Due date of GSTR-1 (11th Feb) OR (ii) Actual filing date of GSTR-1 (15th Sep)]

= From 15th Feb = i.e. on 16th Feb

GSTR 1 furnished on 17th Feb 2025

• **Liability of Supplier:** [GSTR-1 + GSTR-1A - auto-population - GSTR-3B (Jan, 2025)]





- **Liability of Supplier:** [GSTR-1- auto-population - GSTR-2B (Feb, 2025)]
[GSTR-1A- auto-population - GSTR-2B (Feb, 2025)]

Additional Points:

1. **Manner of furnishing details in GSTR-1A:** - as per Rule 59(4A)
It is similar to manner of furnishing details in GSTR-1.
 - Invoice wise details of [B2B invoices] + [B2C (Large invoices (with invoice value > Rs 1,00,000)) of Inter-state Supply]
 - Consolidated details (rate-wise and state wise) in other cases
2. Similar to GSTR-1, CN and DN issued during the month can also be reported in GSTR-1A : - as per Rule 59(4A)

Rectification of Mistakes (errors or omission) in GSTR-1 [Statement of OS]

Tax Period (say, Jan Month)	Event	Option -1 (w.e.f. 1 st July, 2017)	Option -2 (w.e.f. 10 th July, 2024)																
GSTR-1 filed	Incorrect particulars of OS furnished	Rectification in <u>next period GSTR-1</u> <table><tr><td>Law</td><td>Sec 37(2)</td></tr><tr><td>How</td><td>Amend / Add details in GSTR-1 of the next period</td></tr><tr><td>Impact</td><td>Corresponding GST liability is discharged belatedly – hence, interest shall be payable</td></tr><tr><td>Time limit</td><td>Earlier of the 2: 1. 30th Nov of Next FY 2. Filing of relevant Annual Return of the FY</td></tr></table>	Law	Sec 37(2)	How	Amend / Add details in GSTR-1 of the next period	Impact	Corresponding GST liability is discharged belatedly – hence, interest shall be payable	Time limit	Earlier of the 2: 1. 30 th Nov of Next FY 2. Filing of relevant Annual Return of the FY	Rectification in <u>current period GSTR-1</u> <table><tr><td>Law</td><td>Proviso to Rule 59(1)</td></tr><tr><td>How</td><td>Amend / Add details by furnishing GSTR-1A</td></tr><tr><td>Impact</td><td>Corresponding GST liability is discharged in the same tax period – hence, no interest shall be payable</td></tr><tr><td>Time limit</td><td><u>After furnishing GSTR-1 of the tax period</u> <u>Before: furnishing GSTR-3B of the tax period</u> <u>GSTR-1 filed before due-date:</u> <u>Practically GSTR-1A is made open on the portal only after due date.</u></td></tr></table>	Law	Proviso to Rule 59(1)	How	Amend / Add details by furnishing GSTR-1A	Impact	Corresponding GST liability is discharged in the same tax period – hence, no interest shall be payable	Time limit	<u>After furnishing GSTR-1 of the tax period</u> <u>Before: furnishing GSTR-3B of the tax period</u> <u>GSTR-1 filed before due-date:</u> <u>Practically GSTR-1A is made open on the portal only after due date.</u>
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		Wider Scope FAQs GSTR-1A GSTIN of the recipient can be amended through GSTR-1 of the next period. Taxpayer cannot file GSTR-1A once GSTR-3B is filed for the same tax period. However, records reported in previously filed GSTR-1 can be amended in subsequent GSTR 1.	Restricted Scope FAQs GSTR-1A GSTIN of the recipient cannot be amended through GSTR-1A. GSTR 1A allows to amend the records filed in the GSTR 1 of current tax period only. The records reported in earlier GSTR 1 cannot be amended in current GSTR-1A.																

Author

	GSTR-1 (w.e.f. 1 st July, 2017)	GSTR-1A (w.e.f. 10 th July, 2024)
Provisions	Sec 37 + Rule 59	Proviso to Rule 59(1)
Purpose	Furnishing details of OS made during a tax period	Rectify mistakes in current period GSTR-1 (Amending / Adding details of OS into GSTR-1) Any record furnished for the month of M1 or M2 through IFF can be amended in GSTR 1A of the same tax period which will be available to the taxpayer after filling of GSTR 1 for the quarter. - [FAQs on GSTR-1A]
Mandatory/ optional	Mandatory compliance	Optional [FAQs on GSTR-1A]
Details reported	Invoices + DN/ CN [Details shall be furnished in the manner laid down in Rule 59(4)]	Invoices + DN/ CN [Details shall be furnished in the manner laid down in Rule 59(4A)]. (it is similar to that is used in GSTR-1)





Nil Details	Nil GSTR-1 shall be filed (if there is no OS during the period)	Filing of Nil GSTR 1A is not available. <div>[FAQs on GSTR-1A]</div>								
Due-date	<div><div>for Non-QRMP Taxpayer: Monthly (by 11th)</div><div>for QRMP Taxpayer: Quarterly (by 13th)</div></div> <div>Belated filing attracts late fees as per Sec 47.</div>	<div>No due date for filing of GSTR-1A. It can be filled till the filing of GSTR-3B of the same tax period. [FAQs on GSTR-1A]</div> <div>No question of late fees will arise.</div>								
Open for filing	<div>GSTR-1 for a tax period is open for filing after expiry of that tax period</div> <div>Tax Period = Month / Quarter, as the case may be</div>	<div><div>for MONTHLY filer (i.e. Non-QRMP Taxpayer): GSTR -1A will be open</div><table><tr><td>from</td><td><div>LATER of the following two dates,</div><div>1. Due date of filing of GSTR-1 i.e., 11th of the following month</div><div>2. Date of actual filing of GSTR-1</div></td></tr><tr><td>till</td><td>the actual filing of GSTR-3B of the same tax period</td></tr></table><div>for QUARTERLY filer (i.e. QRMP Taxpayer): GSTR -1A will be open</div><table><tr><td>from</td><td><div>LATER of the following two dates,</div><div>1. Due date of filing of GSTR-1 i.e., 13th of the following month</div><div>2. Date of actual filing of GSTR-1 (Quarterly)</div></td></tr><tr><td>till</td><td>the actual filing of GSTR-3B of the same tax period</td></tr></table><div>[FAQs on GSTR-1A]</div><div>Author: GSTR-1A tile will be visible on portal only after filing of GSTR-1. If GSTR-1 is filed before the due date same tax period. in this case GSTR-1A will be visible only after the due date of GSTR-1.</div></div>	from	<div>LATER of the following two dates,</div> <div>1. Due date of filing of GSTR-1 i.e., 11th of the following month</div> <div>2. Date of actual filing of GSTR-1</div>	till	the actual filing of GSTR-3B of the same tax period	from	<div>LATER of the following two dates,</div> <div>1. Due date of filing of GSTR-1 i.e., 13th of the following month</div> <div>2. Date of actual filing of GSTR-1 (Quarterly)</div>	till	the actual filing of GSTR-3B of the same tax period
from	<div>LATER of the following two dates,</div> <div>1. Due date of filing of GSTR-1 i.e., 11th of the following month</div> <div>2. Date of actual filing of GSTR-1</div>									
till	the actual filing of GSTR-3B of the same tax period									
from	<div>LATER of the following two dates,</div> <div>1. Due date of filing of GSTR-1 i.e., 13th of the following month</div> <div>2. Date of actual filing of GSTR-1 (Quarterly)</div>									
till	the actual filing of GSTR-3B of the same tax period									
Auto-population of liability into GSTR-3B	<div>Details furnished in GSTR-1 are auto-populated to Monthly/ Quarterly GSTR-3B (creating liability)</div> <div>Liability is created into current period GSTR-3B</div> <div>Date of furnishing of GSTR-1 is immaterial.</div>	<div>Details furnished in GSTR-1A are auto-populated to Monthly/ Quarterly GSTR-3B (creating liability)</div> <div>Liability is created into current period GSTR-3B</div> <div>Date of furnishing of GSTR-1 is immaterial.</div>								
Auto-population of ITC into GSTR-2B of recipient	<div>Details furnished in GSTR-1 are auto-populated to the MONTHLY GSTR-2B of the recipient (creating ITC entitlement)</div> <div>If GSTR-1 is furnished after due date (but before due date of next month), then details are auto-populated into GSTR-2B of the next month.</div> <div>Thus, recipient is able to avail ITC in the next month.</div>	<div>Details furnished in GSTR-1A are auto-populated to the MONTHLY GSTR-2B of the recipient (creating ITC entitlement)</div> <div>Since GSTR-1A is allowed to be furnished post due date of GSTR-1, hence details are auto-populated into GSTR-2B of the next month.</div> <div>Thus, recipient is able to avail ITC in the next month.</div>								



**Rule 59 : Form and manner of furnishing Details Of Outward Supplies****(1) GSTR-1 to be filed Monthly/ Quarterly**

Every RP, other than a person referred to in section 14 of the IGST, 2017¹, required to furnish the details of outward supplies of goods or services or both under section 37,

shall furnish such details in FORM GSTR-1 for the month or the quarter, as the case may be, electronically through the common portal, either directly or through a Facilitation Centre as may be notified by the Commissioner.

Exception: GSTR-1 (OS incorrectly declared or OS omitted to be declared)- GSTR-1A can be filed but before filing GSTR-3B for the tax period

Provided that [w.e.f. 10th July, 2024]

the said person may, after furnishing the details of outward supplies of goods or service or both in FORM GSTR-1 for a tax period but before filing of return in FORM GSTR-3B for the said tax period,

at his own option, amend or furnish additional details of outward supplies of goods or services or both in FORM GSTR-1A for the said tax period electronically through the common portal, either directly or through a Facilitation Centre as may be notified by the Commissioner.

(2) Quarterly Filer of GSTR-3B (working under QRMP Scheme): Details of OS for M-1 and M-2 can be furnished using IFF. (Said details can be furnished for B2B invoices for cumulative values of ₹ 50,00,000/- in a month)**(3) Details of OS as furnished in IFF need not be furnished again while filing GSTR-1**

Content of GSTR-1: [Invoices (invoice wise or on consolidated basis (for each tax rate) + DN / CN]

(4) The details of outward supplies of goods or services or both furnished in FORM GSTR-1 shall include the—

- (a) **invoice wise details** of all — [B2B Invoices + B2C (Large Value Invoice of Inter-state supply)]
 - (i) **inter-State and intra-State supplies** made to the RPs; and
 - (ii) **inter-State supplies** with invoice value more than ~~₹ 2,50,000~~ ₹ 1,00,000 made to the URPs; [amended w.e.f. 1st Aug, 2024]
- (b) **consolidated details** of all— [B2C Invoices - All invoices of intra-state supply + Invoices other than large value invoice of Inter-state supply]
 - (i) **intra-State supplies** made to URPs for each rate of tax; and
 - (ii) **State wise inter-State supplies** with invoice value upto ~~₹ 2,50,000~~ ₹ 1,00,000 made to URPs for each rate of tax; [amended w.e.f. 1st Aug, 2024]
- (c) *debit and credit notes, if any, issued during the month for invoices issued previously.*

Content of GSTR-1A. [inserted w.e.f. 10th July, 2024]

[Invoices (invoice wise or on consolidated basis (for each tax rate) + DN / CN]

(4A) The additional details or the amendments of the details of outward supplies of goods or services or both furnished in FORM GSTR-1A may, as per the requirement of the RP, include the —

- (a) **invoice wise details** of all—[B2B Invoices + B2C (Large Value Invoice of Inter-state supply)]
 - (i) **inter-State and intra-State supplies** made to the RPs; and
 - (ii) **inter-State supplies** with invoice value more than ₹ 1,00,000 made to the URPs;
- (b) **consolidated details** of all—[B2C Invoices - All invoices of intra-state supply + Invoices other than large value invoice of Inter-state supply]
 - (i) **intra-State supplies** made to URPs for each rate of tax; and
 - (ii) **State wise inter-State supplies** with invoice value upto ₹ 1,00,000 made to URPs for each rate of tax;
- (c) *debit and credit notes, if any, issued during the month for invoices issued previously.*

¹ As per literal interpretation, overseas supplier of OMG shall be required to file GSTR-1 (as R-59 excludes only person referred to in Sec 14 of IGST Act and not Sec 14-A of the IGST Act).

In personal view of Author, R-59 shall be amended to exclude 'Overseas Supplier of OMG'.




Rule 60 : Form and manner of ascertaining Details Of Inward Supplies
GSTR-2A = Auto-Generated Statement of Inward Supplies

(1)

The details of outward supplies furnished
by the supplier
in FORM GSTR-1 [or FORM GSTR-1A]
or
using the IFF
shall be made available electronically to the concerned RPs (RECIPIENTS)
in Part A of FORM GSTR-2A, (Recipient = Normal Supplier (including casual TP))

in FORM GSTR-4A (Recipient = Composition Supplier) and

in FORM GSTR-6A (ISD- HO of recipient)

through the common portal, as the case may be.

GSTR-2B = Auto-Generated ITC Statement

(7)

 An **AUTO-GENERATED STATEMENT** containing the details of ITC

 ... **shall be made available to the RP in FORM GSTR 2B**, **for every month**, electronically through the common portal, and

 ... **shall consist of –**

(iia)

1

the additional details or amendments in details of outward supplies furnished by his supplier in FORM GSTR-1A filed

[i.e. GSTR -1A furnished by RP (Non-QRMP taxpayer or QRMP Taxpayer)]

 ... **between the day immediately AFTER the due date of furnishing of FORM GSTR-1 for the previous tax period to the due date of furnishing of FORM GSTR-1 for the current tax period;**
Consequential amendments post introduction of GSTR-1A:

Provisions	Subject-matter	Remarks (Simplified language)
Rule 21	<u>Registration to be cancelled in certain cases.</u> The registration granted to a person is liable to be cancelled, if the said person,- (f). furnishes the details of outward supplies in FORM GSTR-1 as amended in FORM GSTR-1A, if any , u/sec 37 for one or more tax periods which is in excess of the outward supplies declared by him in his valid return u/Sec 39 for the said tax periods; or	Cancellation of registration due to mismatch [OS in GSTR-1 (+ GSTR-1A) > OS in GSTR-3B]
Rule 21-A	<u>Suspension of registration.-</u> (2A) Where, a comparison of the returns furnished by a RP u/Sec 39 with the details of outward supplies furnished in FORM GSTR-1 as amended in FORM GSTR-1A, if any; or the details of inward supplies derived based on the details of outward supplies furnished by his suppliers in their FORM GSTR-1 or in FORM GSTR-1A of the previous tax period, if any,	System-Based Suspension of registration due to mismatch [OS in GSTR-1 (+ GSTR-1A) > OS in GSTR-3B] mismatch [ITC in GSTR-2B (derived from GSTR-1 (+ GSTR-1A of the previous tax period) > ITC Claimed in GSTR-3B]
Rule 36	Documentary requirements and conditions for claiming ITC (4) No ITC shall be availed by a RP in respect of invoices or debit notes the details of which are required to be furnished u/Sec 37(1) unless,- (a) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 as amended in FORM GSTR-1A, if any , or using the invoice furnishing facility; and (b) the details of ITC in respect of such invoices or debit notes have been communicated to the RP in FORM GSTR-2B u/Rule 60(7).	RP to avail ITC only when Supplier furnishes details of OS in GSTR-1 (+ GSTR-1A) /IFF which stands auto-populated to his GSTR-2B

 1 Inserted -w.e.f. 10th July, 2024




Rule 37-A	<p><u>Reversal of ITC in the case of non-payment of tax by the supplier and re-availment thereof:-</u></p> <p>Where ITC has been availed by a RP in the return in FORM GSTR-3B for a tax period in respect of such invoice or debit note, the details of which have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 as amended in FORM GSTR-1A, if any, or using the invoice furnishing facility, but the return in FORM GSTR-3B for the tax period corresponding to the said statement of outward supplies has not been furnished by such supplier till the 30th September following the end of FY in which the ITC in respect of such invoice or debit note has been availed, the said amount of ITC shall be reversed by the said RP, while furnishing a return in FORM GSTR- 3B on or before the 30th day of November following the end of such FY:</p>	<p>RP to reverse ITC when</p> <p>Supplier furnishes details of OS in GSTR-1 (+ GSTR-1A) /IFF which stands auto-populated to his GSTR-2B</p> <p>But supplier failed to make tax payment in its GSTR-3B by 30th Sep following end of FY in which ITC has been availed</p>
Rule 40	<p><u>Manner of claiming credit in special circumstances</u></p> <p>(1) The ITC claimed in accordance with the provisions of Sec 18(1) on the inputs held in stock or inputs contained in semi-finished or finished goods held in stock, or the credit claimed on capital goods in accordance with the provisions of clauses (c) and (d) of the said sub-section, shall be subject to the following conditions, namely,-</p> <p>....</p> <p>(e) the ITC claimed in accordance with the provisions of Sec 18(1) (c) and (d) shall be verified with the corresponding details furnished by the corresponding supplier in FORM GSTR-1 and in FORM GSTR- 1A, if any, or as the case may be, in FORM GSTR- 4, on the common portal.</p>	<p><u>Availment of Special ITC as per provisions of Sec 18(1) (c) and (d)</u></p> <p>ITC shall be verified with corresponding details furnished by the corresponding supplier in GSTR-1 (+ GSTR-1A)</p>
Rule 48	<p><u>Manner of issuing invoice</u></p> <p>(3) The serial number of invoices issued during a tax period shall be furnished electronically through the common portal in FORM GSTR-1 or FORM GSTR-1A, if any.</p>	<p>RP shall furnish Serial No. of Invoices in GSTR-1 (+ GSTR-1A)</p>
Rule 60	<p><u>Form and manner of ascertaining details of inward supplies.</u></p> <p>(1) The details of outward supplies furnished by the supplier in FORM GSTR-1 or FORM GSTR-1A or using the IFF shall be made available electronically to the concerned RPs (recipients) in Part A of FORM GSTR-2A, in FORM GSTR-4A and in FORM GSTR-6A through the common portal, as the case may be .</p> <p>(7) An auto-generated statement containing the details of ITC shall be made available to the RP in FORM GSTR-2B, for every month, electronically through the common portal, and shall consist of -</p> <p>(<i>ii</i>a) the additional details or amendments in details of outward supplies furnished by his supplier in FORM GSTR-1A filed between the day immediately after the due date of furnishing of FORM GSTR-1 for the previous tax period to the due date of furnishing of FORM GSTR-1 for the current tax period.</p>	<p>R-60(1)</p> <p>GSTR-2A of the Recipient shall contains details of OS furnished by his supplier in GSTR-1 (+ GSTR-1A) / IFF</p> <p>R-60(7)</p> <p>GSTR-2B of the Recipient shall contains details of OS furnished by his supplier in (GSTR-1A) of previous tax period filed After the due date of GSTR-1 of previous tax period but upto the due date of GSTR-1 of current tax period</p>
Rule 78	<p><u>Matching of details furnished by the ECO with the details furnished by the supplier</u></p> <p>The following details relating to the supplies made through an ECO, as declared in FORM GSTR-8, shall be matched with the corresponding details declared by the supplier in FORM GSTR-1 as amended in FORM GSTR-1A, if any,</p> <p>(a) State of place of supply; and</p> <p>(b) net taxable value:</p>	<p><u>Supplies made through ECO</u></p> <p>with the details declared by ECO in its GSTR-8 shall be matched with details furnished by the supplier GSTR-1 (+ GSTR-1A)</p>
Rule 88-B	<p><u>Manner of dealing with difference in liability reported in statement of outward supplies and that reported in return.</u></p> <p>(1) Where the tax payable by a RP, in accordance with the statement of outward supplies furnished by him in FORM GSTR-1 as amended in FORM GSTR-1A, if any, or using the Invoice Furnishing Facility in respect of a tax period, exceeds the amount of tax payable by such person in accordance with the return</p>	<p>System-Generated INTIMATION due to mismatch [Tax payable as per OS furnished in GSTR-1 (+ GSTR-1A)/IFF > OS in GSTR-3B]</p> <p>either to pay the difference</p>



	<p>for that period furnished by him in FORM GSTR-3B, by such amount and such percentage, as may be recommended by the Council, the said RP shall be intimated of such difference in Part A of FORM GST DRC-01B, electronically on the common portal, and a copy of such intimation shall also be sent to his e-mail address provided at the time of registration or as amended from time to time, highlighting the said difference and directing him to –</p> <p>(a) pay the differential tax liability, along with interest under section 50, through FORM GST DRC-03; or</p> <p>(b) explain the aforesaid difference in tax payable on the common portal, within a period of seven days.</p>	<p>or explain the difference within 7 Days.</p>
Rule 96	<p><u>Refund of IGST paid on goods or services exported out of India.</u></p> <p>(1) The shipping bill filed by an exporter of goods shall be deemed to be an application for refund of IGST paid on the goods exported out of India and such application shall be deemed to have been filed only when:-</p> <p>(a) the person in charge of the conveyance carrying the export goods duly files a departure manifest or an export manifest or an export report covering the number and the date of shipping bills or bills of export; and</p> <p>(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 as amended in FORM GSTR-1A, if any, such application for refund of IGST paid on the goods exported out of India shall be deemed to have been filed on such date when such mismatch in respect of the said shipping bill is rectified by the exporter;</p> <p>(c) the applicant has undergone Aadhaar authentication in the manner provided in rule 10B;</p> <p>(2) The details of the relevant export invoices in respect of export of goods contained in FORM GSTR-1 as amended in FORM GSTR-1A, if any, shall be transmitted electronically by the common portal to the system designated by the Customs and the said system shall electronically transmit to the common portal, a confirmation that the goods covered by the said invoices have been exported out of India.</p>	<p><u>Verification of export of goods</u></p> <p>Export Invoices furnished in GSTR-1 (+ GSTR-1A) – e-transmitted to Customs portal – Customs portal sending confirmation that goods covered by invoice have been exported out of India</p>
Rule 96-A	<p><u>Export of goods or services under bond or Letter of Undertaking</u></p> <p>(2) The details of the export invoices contained in FORM GSTR-1 as amended in FORM GSTR-1A, if any, furnished on the common portal shall be electronically transmitted to the system designated by Customs and a confirmation that the goods covered by the said invoices have been exported out of India shall be electronically transmitted to the common portal from the said system.</p>	<p><u>Verification of export of goods</u></p> <p>Export Invoices furnished in GSTR-1 (+ GSTR-1A) – e-transmitted to Customs portal – Customs portal sending confirmation that goods covered by invoice have been exported out of India</p>
Rule 163	<p><u>Consent based sharing of information</u></p> <p>(1) Where a RP opts to share the information furnished in –</p> <p>(a) FORM GST REG-01 as amended from time to time;</p> <p>(b) return in FORM GSTR-3B for certain tax periods;</p> <p>(c) FORM GSTR-1 as amended in FORM GSTR-1A, if any, for certain tax periods, pertaining to invoices, debit notes and credit notes issued by him, as amended from time to time,</p> <p>with a system referred to in section 158A(1) (hereinafter referred to as “requesting system”), the requesting system shall obtain the consent of the said RP for sharing of such information and shall communicate the consent along with the details of the tax periods, where applicable, to the common portal.</p>	<p><u>Consent based sharing of information of a RP furnished over common portal</u></p> <p>Information furnished by RP in GSTR-1 (+ GSTR-1A) – may be shared with ‘Requesting System’ – with consent of the said RP</p>





3. **Sec 44(1) [Annual Return]:** Notification issued exempting RP with ATO upto Rs 2 cr for FY 2023-24 from filing Annual Return for FY 2023-24. [N/N 14/2024 issued (w.e.f. 7th July, 2024)]

N/N 14/2024-CT

(Dated: 7th July, 2024)

Issued in exercise of powers given u/Sec 44

Exemption to RP from filing annual return whose ATO in the FY 2023-24 is up to 2crore :

In exercise of the powers conferred by the first proviso to Sec44, the Commissioner, on the recommendations of the Council, hereby exempts the RP whose ATO in the FY 2023-24 is up to two crore rupees, from filing annual return for the said FY.

4. **Sec 39(2) r/w Rule 62 [Return of Composition Supplier]:** Rule 62 provides that Composition Supplier shall file 'GSTR-4 (as Sec 39 Return) on ANNUAL BASIS by 30th April. Proviso has been inserted in Rule 62 providing that extending this due date to 30th June on/from FY 2024-25. [amendment (w.e.f. 10th July, 2024)]

Sec 39 : Furnishing of Returns

Types of Returns - Different Returns prescribed for different categories of RP

- (1) **Normal Supplier (including Casual TP): Return is GSTR-3B (Monthly / Quarterly)**
Prescribed due date= by 20th Of Succeeding month / by 22nd / 24th Of Succeeding Quarter

- (2) **Composition Supplier: Return is GSTR-4 (Annually)**
Prescribed due date= upto FY 2023-24: by 30th April / On/from FY 2024-25: by 30th June

A RP paying tax under the provisions of section 10, (Composition Supplier)

shall, for each financial year or part thereof, furnish, a **RETURN** *electronically*, of turnover in the State or Union territory, inward supplies of goods or services or both, tax payable, tax paid and such other particulars, in such form (Form GSTR-4) and manner and within such time (upto FY 23-24: by 30th April / On/from FY 24-25: by 30th June) as may be prescribed (Rule 62)

Rule 62 : Form and manner of submission of statement and return (by composition supplier)

- (1) **Composition Supplier: Quarterly tax payment [Statement GST CMP-08] and Annual Return [GSTR-4]**
Every RP paying tax under section 10 shall-

(i)	furnish a STATEMENT ,	every quarter or, as the case may be, part thereof, containing the details of payment of self-assessed tax in FORM GST CMP-08 ,	till the 18 th day of the month succeeding such quarter;
OR			
(ii)	furnish a return	for every financial year or, as the case may be, part thereof in FORM GSTR-4 ,	till the 30 th day of April following the end of such financial year,

electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

FY 2024-25 & onwards: Return [GSTR-4] shall be submitted by 30th June following end of FY
Provided that (w.e.f. 10th July, 2024)

the return in **FORM GSTR-4** for a financial year from FY 2024-25 onwards shall be required to be furnished by the RP till the 30th day of June following the end of such financial year.





GST Volume-II Amendment

1: EXPORT OF GOODS / SERVICES

- Exporter of Goods [IGST Refund – Sec 16(4) of IGST Act r/w Rule 96] vs [ITC refund as per Sec 16(3) of IGST Act r/w Rule 89]:** Rule 96(10) has imposed restriction i.r.o. IGST refund on goods exported if benefits of certain concessional/exemption notifications (like Advance Authorization, EoU etc) have been availed on inputs/raw materials imported or procured domestically. Such exporters shall be entitled to claim refund of ITC only and that too as per specific provision laid down in Rule 89(4A) & (4B) of CGST Rules, 2017. Rule 96(10) been omitted and thus, removing this bar of IGST refund. Also, Rule 89(4A) & (4B) has been omitted. Consequently, in the cases where the benefit of concessional/ exemption notifications which were specified in rule 96 (10) had been availed on inputs imported or procured domestically, the refund on account of exports can be claimed through the 'IGST refund route u/Rule 96' or 'ITC refund route as per Rule 89(4)'. [Amendment w.e.f. 8th Oct, 2024]

Amendment in Simplified Form

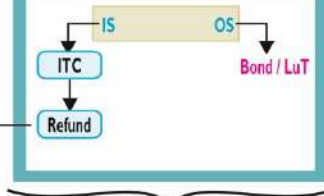
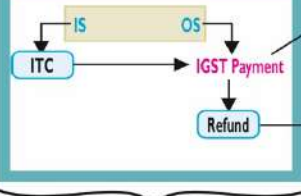
Export of Goods

- Inputs/raw-materials procured (imported or procured domestically) under certain concessional/exemption notifications as specified in the Rule 96(10) (like Advance Authorization, EoU etc)
- Goods manufactured using such inputs now exported

Sec 16 of IGST Act: Zero-rating Benefits

Option-1	Option-2
Sec 16(4) of IGST: IGST Refund Route	Sec 16(3) of IGST: ITC refund Route
Refund as per Sec 54 + Rule 96	Refund as per Sec 54 + Rule 89
Pre-Amendment	
Rule 96(10) bans 'IGST refund route' on such exports.	Only option is to ITC refund as per Rule 89. ITC refund claimable as per specific provision laid down in Rule 89 (4A) & (4B). [& not as per general provision laid down in Rule 89(4) (*formulae based refund)]
Post-Amendment. [w.e.f. 8th Oct, 2024]	
<u>Rule 96(10) has been omitted.</u> <i>Logic:</i> operation of rule 96(10) is leading to unnecessary complications without any intended benefit being served Thus, IGST refund route is now available to such exporter.	<u>Rule 89 (4A) & (4B) have been omitted.</u> Thus, now ITC refund is claimable as per general provision laid down in Rule 89(4) (*formulae based refund). Formulae in Rule 89(4) has also been consequently amended <u>Amendment in Rule 89 (4)</u> <u>clause B</u> [Net ITC = ITC availed on inputs & input services during the relevant period <i>other than the ITC availed for which refund is claimed under sub rules (4A) or (4B) or both</i>] <u>clause C</u> [TO of zero-rated supply of goods = <i>other than the TO of supplies i.ro. which refund is claimed under sub rules (4A) or (4B) or both</i>] <u>clause E</u> [Adjusted Total TO = <i>excluding the TO of supplies i.ro. which refund is claimed under sub rules (4A) or (4B) or both</i>]
Other consequential amendments	
Amendment in Rule 86 (4-B) [Erroneous 'IGST sanctioned u/Rule 96(3) deposited back with interest from e-cash ledger—PO to recredit equivalent amount of erroneous IGST refund to e-credit ledger by passing order GST PMT-04] <u>Reference of Rule 96(10) has been omitted</u>	Amendment in Rule 89(5) [ITC refund due to Inverted Tax Structure] <u>Explanation (a)</u> [Net ITC = ITC availed on inputs during the relevant period <i>other than the ITC availed for which refund is claimed under sub rules (4A) or (4B) or both</i>]



**Export of Goods : ZERO RATING****Sec. 2(5) IGST Act**
Export of GoodsSec. 7(5)(a) Inter-State Supply
Sec. 5 Charge of IGST**Sec. 16 IGST Act**
0-Rated Supply**Sec. 16(3)**Under Bond/LuT
Available to all suppliersRefund Application
GST RFD-01
S-54 + R-89
ITC Refund
S. 16 (3)**Sec. 16(4)**IGST payment
Available ONLY to Notified P G S

Computation of IGST liability

ToS As per Sec. 12

$$\text{IGST} = \frac{\text{Rate}}{\%} \times \frac{\text{Value}}{\text{FoB / CIF}}$$

Sec. 15 = TV

Rule - 34(1)
• Custom Notified Ex-Rate
• ToS (Sec. 12)

Automated Refund by Customs Portal

S-54 + R-96SB/ Bill of Export =
Deemed Refund Application
(filed with Customs)
Refund Processed
(sanctioned + disbursement)
by Customs Portal / Officer**Certain Situations**
(Export Goods SUBJECT TO Export Duty under Customs)

[CBIC: Goods subject to Export Duty = Goods on which export duty is actually payable]

~~Sec. 54(3)~~

✓

Certain Situations
(Inward Supply procured Tax Free / at Concessional Rate)

Refer Note Below:

Exact Refund Rule 89(4A)/(4B)

✓

~~Rule 96(10)~~**All Other Situations**
(Inward Supply procured paying Normal GST)

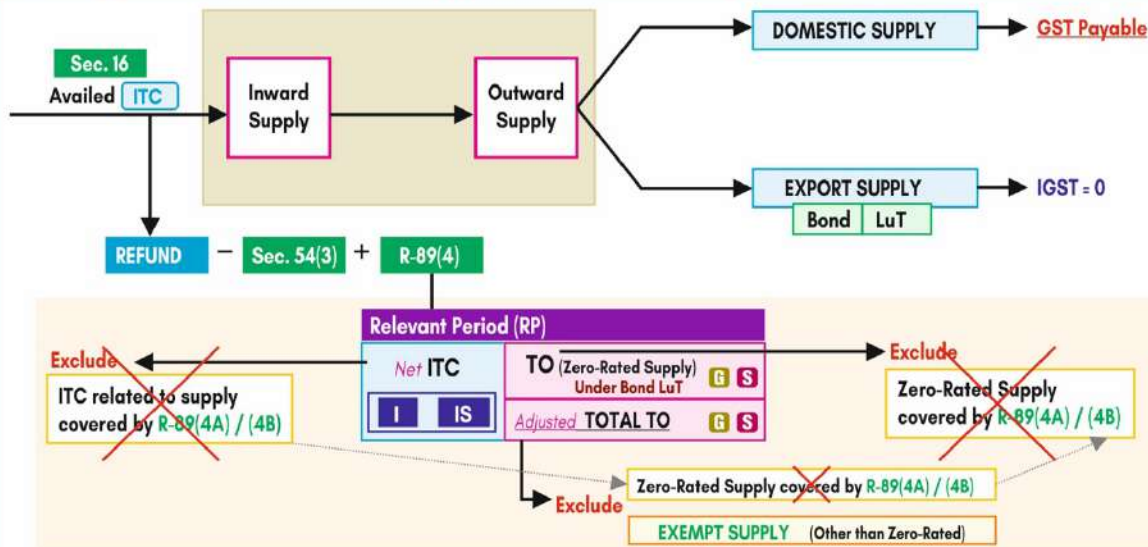
Formula based refund Rule 89(4)

✓

$$= \text{Net ITC} \times \frac{\text{0-Rated To G}}{\text{Adjusted Total To}}$$

Such application shall be deemed to have been filed when:-

- PIC of the conveyance - has filed a Departure Manifest/EGM or an ER.
- the applicant has furnished a valid return in Form GSTR-3B; and
- the applicant has undergone Aadhaar Authentication (as per R-10-B);

RULE 89(4) : ITC Refund on 0-Rated Supplies made under Bond/LuT**Special Supplies** → ITC Refund as per
(Special Exporter of Goods) **R-89(4A)** **R-89(4B)**

Exclude their impact from formulae - from

- Net ITC,
- TO 0-Rated Supply (Goods) &
- Adj. Total TO

*** TO (Zero-Rated Supply) G**
Under Bond LuT

Calculated as follows :

Lower of 2

(A) Value (as per GST law r/w Expl. to R-89(4))

Lower of

(a) FoB Value in the SB/ Bill of Export; and

(b) GST Invoice Value (FoB/ CIF)

(B) 1.5 x (Value of like Goods domestically supplied by same / similar supplier)

*** TO (Zero-Rated Supply) S**
Under Bond LuT

Calculated as follows :

Aggregate Payment received in the relevant period

Add: Advance in earlier period, supply in Relevant period

Less: Advance received in the relevant period but supply will be made in subsequent period



2. **Rule 86(4B):** ~~ERRONEOUS REFUND granted of [(ITC refund) or (IGST Refund on export of Goods)] - if such person pays back such refund (with interest & penalty) by GST DRC-03 (Cash), then PO shall pass order in Form GST PMT-03A re-credited the amount of refund into ECrL : Reference of Rule 96(10) has been omitted as Rule 96(10) has been omitted from law. [Amendment w.e.f. 8th Oct, 2024]~~

Amendment in Simplified Form

R-86 (e-credit ledger)

86(5): *Save as provided in the provisions of this Chapter, no entry shall be made directly in the ECrL under any circumstance.*

Credit Entry (+)

86(1): RP claiming ITC in returns

86(4): Rejection of 'TTC refund claim' (fully / partly)

[ITC reduced at time of submission of Refund Application, is credited back]

86(4A): Tax paid in excess/ wrongly - payment made using ECrL

- Refund to be sanctioned, but not in cash
- **PO to pass ORDER [GST PMT-03]** - re-crediting ITC utilized into the ECrL

86(4B): Erroneous Refund claimed and sanctioned

ITC refund

(Sec 54)

IGST Refund (Export of Goods)

(Rule 96(3), ~~in contravention of Rule 96(10)-~~)

- Refund sanctioned in cash
- RP depositing back 'refund + interest + penalty' - through **GST DRC-03 (Cash)**
- **PO to pass ORDER [GST PMT-03A]** - re-crediting 'refund amount' into the ECrL

Debit Entry (-)

86(2): RP discharging liability. [Return/ GST DRC-03/ ELL]

86(3): Refund of ITC [As allowed u/Sec 54(3)]

[at time of submission of Refund Application, ITC is reduced]

Rule 86 : Electronic Credit ledger

(4B)

¹

Where a RP deposits **the amount of ERRONEOUS REFUND** sanctioned to him, -

under section 54(3) of the Act, [i.e. ITC refund]

or

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

[i.e. IGST Refund (Export of Goods)]

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 RP shall be **re-credited** to the electronic credit ledger **by the proper officer** ²

by an ORDER made in FORM GST PMT-03A.

¹ Inserted - w.e.f. 5th July, 2022. + Amended - w.e.f. 8th Oct, 2024

² **CBIC Circular 174/06/2022-GST [Dated: 6th July, 2022]:** The PO he shall re-credit an amount in e-credit ledger, 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**. [MANUAL REQUEST for re-credit shall be made till the time automated functionality is developed and made available on the portal]





Author: Consider following situations

Refund Applied for		<u>Case-A:: Refund Claim Rejected</u>		<u>Case-B:: Refund Sanctioned erroneously</u> (Refund disbursed)	
<u>ITC refund</u> [as per S. 54(3)]	<u>The refund claimed is erroneous</u> (as it is otherwise not admissible)	<u>Refund Rejection Order</u> - Form GST RFD-06	S. 54	<u>Refund Sanctioned Order (+ Payment Order)</u> - Form GST RFD-06	S. 54
[Amount claimed as refund debited in ECrL]		<u>Order</u> (for Re-credit of ITC in ECrL): - Form GST PMT-03	R-86 (4A)	<u>Refund Disbursed (cash paid)</u>	
				<u>But refund was sanctioned erroneously</u>	
				<u>Repayment of such refund</u> (with applicable Interest & Penalty) - Cash-repayment + - Form GST DRC-03	R-86 (4B)
				<u>Order</u> (for Re-credit of Refunded Amount (ITC) in ECrL): - Form GST PMT-03A	R-86 (4B)

<u>IGST Refund on export of goods</u> [as per Rule 96]	<u>The refund claimed is erroneous</u> (as paid by using ineligible ITC or for any other reason)			<u>Refund Sanctioned (by Customs Portal)</u>	R-96(3)
				<u>Refund Disbursed (cash paid) - Full refund in cash</u>	
				<u>But refund was sanctioned erroneously</u>	
				<u>Repayment of such refund</u> (with applicable Interest & Penalty) - Cash-repayment + - Form GST DRC-03	R-86 (4B)
				<u>Order</u> (for Re-credit of Refunded Amount in ECrL): - Form GST PMT-03A	R-86 (4B)

3. **Sec 54 + Rule 96 (IGST Refund on Export of Goods):** Export of goods at a price which is now revised upward leading to payment of additional IGST. Mechanism for refund of such additional IGST now introduced vide insertion of Rule 89(1B) which is providing for submission of normal refund application [GST RFD-01] to the PO within 2 years from Relevant Date (as applicable for refund claim of Original IGST paid). Rule 89(2)(ba) & (bb) inserted prescribing the relevant supporting documents to be submitted. CBIC issued Circular 226/20/2024-GST clarifying related aspects. [Rule 89(1B) + Rule 89(2)(bb) & (bc) inserted w.e.f. 10th July, 2024 + CBIC Circular 226/20/2024 (dated 11th July, 2024)]

Amendment in simple format

(A)	Upward Revision post export of goods [IGST refund already obtained]	DN issued Additional GST paid	Refund Mechanism for this additional IGST
			<ul style="list-style-type: none"> Rule 89(1B) inserted Rule 89(2) (bb) & (bc) + CBIC Circular 226/20/2024- GST
		Export (IGST payment) Export price = 300,00,000 IGST @18% paid = 54,00,000	Upward Revision of Price Upward Revision = 50,00,000 Addl IGST @18% paid = 9,00,000 [Reason: Linked to international price index or contractual terms.]
1	Refund Provisions Already Existing Sec 54 + R-96		Not existing Newly introduced (w.e.f. 10th July, 2024): Sec 54 + R-89 (1B)
2	Refund claim FORM GST RFD-01 R-96(1) Shipping bill filed by an exporter = Deemed Refund Application		FORM GST RFD-01 to be filed electronically on the common portal.¹

¹ **Presently, temporary Filing Category:** Until a dedicated category is available, file under "Any other" with remarks: "Refund of additional IGST paid on account of increase in price subsequent to export of goods."





3	Time Limit for Filing Refund application	<p>= 2 years from the relevant date</p> <table><tr><th colspan="2">Sec 54: Explanation 2 (a)</th></tr><tr><th></th><th>Relevant Date</th></tr><tr><td>Export of goods by Sea/ Air</td><td>Date on which vessel/aircraft leaves India</td></tr><tr><td>Export of goods by Land</td><td>Date on which goods pass customs frontiers</td></tr><tr><td>Export by Post</td><td>Date of dispatch of goods by the Post Office to outside India</td></tr></table>	Sec 54: Explanation 2 (a)			Relevant Date	Export of goods by Sea/ Air	Date on which vessel/aircraft leaves India	Export of goods by Land	Date on which goods pass customs frontiers	Export by Post	Date of dispatch of goods by the Post Office to outside India	<p>= 2 years from the relevant date</p> <table><tr><th colspan="2">Rule 89(1B)</th></tr><tr><th></th><th></th></tr><tr><td>Relevant Date (RD)</td><td>As per Explanation 2(a) to Sec 54</td></tr></table> <p>HOWEVER, <u>if RD as per Explanation (2)(a) of Sec 54 has expired before the date on which R-89(1B) comes into force (i.e. before 10th July, 2024), then</u></p> <p>RD = Date on which R-89(1B) comes into force (i.e. 10th July, 2024)</p>	Rule 89(1B)				Relevant Date (RD)	As per Explanation 2(a) to Sec 54
Sec 54: Explanation 2 (a)																			
	Relevant Date																		
Export of goods by Sea/ Air	Date on which vessel/aircraft leaves India																		
Export of goods by Land	Date on which goods pass customs frontiers																		
Export by Post	Date of dispatch of goods by the Post Office to outside India																		
Rule 89(1B)																			
Relevant Date (RD)	As per Explanation 2(a) to Sec 54																		
4	Supporting Documents	<table><tr><th colspan="2">Rule 89(2) (b)</th></tr><tr><td colspan="2">a statement containing</td></tr><tr><td colspan="2"><ul style="list-style-type: none">the number and date of export invoicesthe number and date of SB/ BE</td></tr></table>	Rule 89(2) (b)		a statement containing		<ul style="list-style-type: none">the number and date of export invoicesthe number and date of SB/ BE		<table><tr><th colspan="2">Rule 89(2) (ba)</th></tr><tr><td colspan="2">a statement containing</td></tr><tr><td colspan="2"><ul style="list-style-type: none">the number and date of export invoices (+ copy of such invoices),the number and date of SB/ BE (+copy of such SB? BE),the number and date of BRC/FIRC (+ copy of such BRC/FIRC issued by Authorised Dealer-I Bank),the details of refund of IGST already sanctioned u/Rule 96(3),the number and date of relevant supplementary invoices /DNs issued subsequent to the upward revision in prices (+ copy of such supplementary invoices /DNs) ,the details of payment of additional IGST (+ proof of payment)the number and date of FIRC issued by Authorised Dealer-I Bank in respect of additional foreign exchange remittance received (+copy of such FIRC + a certificate issued by a practicing CA/ cost accountant + copy of contract or other documents, as applicable, indicating requirement for the revision in price)</td></tr><tr><th colspan="2">Rule 89(2) (bb)</th></tr><tr><td colspan="2"><u>a Reconciliation Statement</u>, reconciling the value of supplies declared in supplementary invoices/DNs/CNs issued along with relevant details of BRC/FIRC issued by Authorised Dealer-I Bank)</td></tr></table>	Rule 89(2) (ba)		a statement containing		<ul style="list-style-type: none">the number and date of export invoices (+ copy of such invoices),the number and date of SB/ BE (+copy of such SB? BE),the number and date of BRC/FIRC (+ copy of such BRC/FIRC issued by Authorised Dealer-I Bank),the details of refund of IGST already sanctioned u/Rule 96(3),the number and date of relevant supplementary invoices /DNs issued subsequent to the upward revision in prices (+ copy of such supplementary invoices /DNs) ,the details of payment of additional IGST (+ proof of payment)the number and date of FIRC issued by Authorised Dealer-I Bank in respect of additional foreign exchange remittance received (+copy of such FIRC + a certificate issued by a practicing CA/ cost accountant + copy of contract or other documents, as applicable, indicating requirement for the revision in price)		Rule 89(2) (bb)		<u>a Reconciliation Statement</u> , reconciling the value of supplies declared in supplementary invoices/DNs/CNs issued along with relevant details of BRC/FIRC issued by Authorised Dealer-I Bank)	
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<u>a Reconciliation Statement</u> , reconciling the value of supplies declared in supplementary invoices/DNs/CNs issued along with relevant details of BRC/FIRC issued by Authorised Dealer-I Bank)																			
5	Processing Authority	<p>Automated refund - <u>from customs.</u></p> <table><tr><th colspan="2">R-96(3)</th></tr><tr><td colspan="2">Application processed by Customs System</td></tr></table>	R-96(3)		Application processed by Customs System		<p>Jurisdictional GST officer will process refund</p> <table><tr><th colspan="2">CBIC Circular</th></tr><tr><td colspan="2"><ul style="list-style-type: none">Cross-verification of export invoice & DN in GSTR-1 and GSTR-3BEnsures IGST and applicable interest are paid.Validates foreign exchange remittance.</td></tr></table> <p>Refund sanction issued in FORM GST RFD-06, accompanied by detailed speaking order.</p>	CBIC Circular		<ul style="list-style-type: none">Cross-verification of export invoice & DN in GSTR-1 and GSTR-3BEnsures IGST and applicable interest are paid.Validates foreign exchange remittance.									
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6	Minimum Refund Amount	N.A.	Refund not processed if the amount is less than ₹1,000. - Section 54(14) of the CGST Act																

<u>(B)</u>	<u>Downward Revision post export of goods</u> [IGST refund already obtained]	<u>CN issued</u>	<u>Pro-rata IGST shall be paid back</u> • CBIC Circular 226/20/2024- GST
<u>What if there is DOWNWARD REVISION in prices post-export?</u>			
<u>Export price = 300,00,000</u> IGST @18% paid = 54,00,000		<u>Downward Revision = 50,00,000</u> Differential IGST @18% = 9,00,000	
<u>Action on part of Exporter</u>	<u>Shall issue CN and report in his return.</u> [CN to the buyer of Rs 50,00,000 + IGST 9,00,000]		
<u>Export proceeds realization</u>	<u>Export value Stands reduced</u> Net export proceeds realization shall be [300,00,000 – 50,00,000] from the foreign buyer		



Obligation of Exporter

The supplier of goods/exporter is required to deposit the refund of the IGST received in proportion to the reduction in price of exported goods, along with applicable interest.- CBIC Circular 226/20/2024-GST

Illustration: Export of Goods (with IGST payment + Refund): Subsequent upward revision & downward revision in prices

Particulars	Export Supply	Upward Revision in Price [DN]	Downward Revision in Price [CN]
	Initial Export Invoice	After Debit Note	After Credit Note
Export Value	₹ 1,00,00,000	₹1,20,00,000 (+ ₹ 20,00,000)	₹85,00,000 (-₹ 15,00,000)
IGST @ 18%	₹ 18,00,000	₹21,60,000 (+ ₹ 3,60,000)	₹15,30,000 (-₹ 2,70,000)
Action in GSTR-1	Invoice in Table 6A	Debit Note in Table 9B	Credit Note in Table 9B
Action in GSTR-3B	₹18,00,000 in 3.1(b) <u>IGST liability paid</u>	Add ₹3,60,000 in 3.1(b) <u>Additional IGST liability paid</u>	Reduce ₹2,70,000 in 3.1(b) <u>IGST liability adjusted</u>
Refund Adjustment	₹18,00,000 refunded <u>No R/A required (as SB filed with Customs = Deemed R/A)</u> <u>IGST refund processed and sanctioned by Customs Portal</u>	Apply for ₹3,60,000 refund <u>R/A- GST RFD-01 required (as per Rule 89(1B))</u> <u>Supporting documents shall be attached (as per Rule 89(2)(bb) & (bc))</u> <u>Additional IGST refund is processed and sanctioned by GST officer.</u>	Pay back ₹2,70,000 excess <u>Exporter to deposit IGST refund received (with interest)</u> <u>(CBIC Circular 226/20/2024- GST)</u>

Rule 89 : Application for refund of tax, interest, penalty, fees or any other amount**(1B) Refund Claim 'Additional IGST paid on upward revision in price of Export of GOODS': Submit R/A to GST Officer in Form GST REF-01 (within 2 years from Relevant Date) :**

Any person, claiming refund of additional IGST paid under on account of upward revision in price of the goods subsequent to exports, and on which the refund of IGST paid at the time of export of such goods has already been sanctioned as per rule 96,

may, file an application for such refund of additional IGST paid, electronically in FORM GST RFD-01 through the common portal, subject to the provisions of rule 10B, before the expiry of a period of 2 years from the relevant date as per Explanation 2(a) of Sec 54.

Exception: Where T/L as per Explanation 2(a) to Sec 54 is already over on date of Rule 89(1B) comes into force: then RD = Date on which Rule 89(1B) comes into force (i.e. 10th July, 2024)

Provided that

the said application for refund can,

in cases where the relevant date as per Explanation 2(a) of Sec 54 was before the date on which this sub-rule comes into force,

be filed before the expiry of two years from the date on which this sub-rule comes into force.

(i.e Rule 89(1B) is w.e.f. 10th July, 2024)

(2) Documentary Evidence to establish that refund is due

The application under rule 89(1) shall be accompanied by any of the following documentary evidences in Annexure 1 in Form GST RFD-01, as applicable, to establish that a refund is due to the applicant, namely:-

Evidence establishing that refund is due

Refund arising out of Appeal

(a)





<u>Export of Goods / Services</u>		
(b)	in a case where the refund is on account of export of goods (other than electricity)	a STATEMENT containing the number and date of shipping bills or bills of export <i>and</i> the number and the date of the relevant export invoices
<u>Export of Goods – Refund of additional IGST paid due to upward revision in price of Export Goods (w.e.f. 10th July, 2024)</u>		
(bb)	in a case where the in a case where the refund is on account of upward revision in price of export goods subsequent to exports	a STATEMENT containing <ul style="list-style-type: none"> the number and date of export invoices (along with copy of such invoices), the number and date of Shipping Bill / Bill of Export (along with copy of such Shipping Bill / Bill of Export), the number and date of BRC/FIRC (along with copy of such BRC/FIRC issued by Authorised Dealer-I Bank), the details of refund of IGST already sanctioned u/Rule 96(3), the number and date of relevant supplementary invoices /DNs issued subsequent to the upward revision in prices (along with copy of such supplementary invoices /DNs)
(bc)	in a case where the in a case where the refund is on account of upward revision in price of export goods subsequent to exports	a Reconciliation Statement , reconciling the value of supplies declared in supplementary invoices/DNs/CNs issued along with relevant details of BRC/FIRC issued by Authorised Dealer-I Bank

Circular No. 226/20/2024-GSTDated: 11th July, 2024

Subject: Mechanism for refund of additional IGST paid on account of upward revision in price of the goods subsequent to exports

Subject: Section 168, r/w Sec 54 of the CGST Act, 2017 and section 20 of the IGST Act 2017- power to issue instructions or directions - refund of tax - mechanism for refund of additional IGST paid on account of upward revision in price of the goods subsequent to exports

- Representations have been received from trade/ industry requesting for prescribing a mechanism for seeking refund of additional IGST paid on account of upward revision in price of goods subsequent to export. It has been represented that there are cases where the price of export goods needs to be revised, subsequent to their exports, due to various reasons such as linking of the prices of the export commodities to some international index or as per the terms of contract between the two parties etc. **In such cases, where there is upward revision in price of goods subsequent to exports, the exporter is required to pay additional IGST on account of upward price revision along with applicable interest but there exists no mechanism for allowing them to claim refund of such additional IGST paid.**
- In order to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168(1) of the CGST Act, 2017, hereby lays down the following procedure for claim and processing of refunds of additional IGST paid on account of upward revision in prices of goods subsequent to their exports.
- Filing of refund claim for additional IGST paid on account of upward revision of prices of export goods, subsequent to export:**





- 3.1 The refund of IGST paid on account of export of goods is processed by the proper officer of Customs in an automated manner without manual intervention in terms of provision of rule 96 of CGST Rules, 2017. However, there exists no mechanism for processing of refunds of any additional IGST paid on account of upward revision in price of goods, subsequent to exports, by the proper officer of customs. Therefore, it has been decided that such exporter may file an application for refund of such additional IGST paid in FORM GST RFD-01 electronically on the common portal and such application for refunds would be processed by the jurisdictional GST officer of the concerned exporter. Accordingly, CGST Rules have been amended vide Notification No. 12/2024-CT, dated 10-7-2024 to provide for filing of such refund application in FORM GST RFD-01, which shall be dealt with in accordance with provisions of rule 89 of CGST Rules.
- 3.2 GSTN is in the process of development of a separate category of refund in FORM GST RFD-01, for filing an application of refund of such additional IGST paid. However, till the time such separate category for claiming refund of additional amount of IGST paid is developed on the common portal, such exporter(s) may claim refund of the additional IGST paid on account of upward revision in price of goods subsequent to exports, by filing an application of refund in FORM GST RFD-01 under the category "Any other" with remarks "Refund of additional IGST paid on account of increase in price subsequent to export of goods" along with the relevant documents as prescribed in clause (bb) of rule 89(2) of the CGST Rules. The exporter shall also upload the statements 9A & 9B as prescribed in clause (bb) & clause (bc) of rule 89(2) of the CGST Rules along with the said refund claim. The exporter may also upload any other document to establish that the refund is admissible to him.
- 3.3 The said refund application shall be processed based on the documentary proof submitted by the refund applicant. Further, the validated details of shipping bills, amount of IGST involved in such shipping bills, as well as the amount of IGST refund sanctioned by the customs under rule 96(3) of CGST Rules will also be made available to jurisdictional GST officers by GSTN to enable them to process such refund claims of additional IGST paid.
4. **Minimum Refund Amount:** Section 54(14) of the CGST Act provides that no refund under sub-section (5) or sub-section (6) shall be paid to an applicant, if amount is less than one thousand rupees. Therefore, **no such refund shall be paid if the amount claimed is less than one thousand rupees.**
5. **Time limit for filing refund:** Rule 89(1B) of CGST Rules, inserted vide N/N 12/2024-CT, dated 10-7-2024, provides that the application for refund of additional IGST paid can be filed before the expiry of two years from the relevant date as per clause (a) of Explanation (2) of section 54 of the CGST Act. HOWEVER, in cases, where the relevant date as per clause (a) of Explanation (2) of section 54 of the CGST Act was before the date on which rule 89(1B) of CGST Rules has come into force, such refund application can be filed before the expiry of a period of two years from the date on which the said sub-rule has come into force.
6. The following documents are required to be accompanied with the refund claim in order to establish that refund is due to such exporter:
- | | |
|-----|---|
| (a) | Copy of shipping bill or bill of exports; |
| (b) | Copy of original invoices; |
| (c) | Copy of contract/ other document(s), as applicable, indicating requirement for the revision in price of such goods subsequent to exports; |
| (d) | Copy of the original invoices as well as relevant debit note(s)/ supplementary invoices; |
| (e) | Proof of payment of additional IGST and applicable interest and details of the relevant FORM GSTR-1/ FORM GSTR-3B furnished by the applicant in which the said debit note(s)/ supplementary invoice(s) were declared and tax and interest thereon had been paid by the applicant; |
| (f) | Proof of receipt of remittance of additional foreign exchange (FIRC) issued by Authorised Dealer-I banks; |
| (g) | A certificate of a practising chartered accountant or a cost accountant certifying therein that the said additional foreign exchange remittance is on account of such upward revision in price of the goods subsequent to export; |
| (h) | Statement 9A of FORM GST RFD 01; and (i) Statement 9B of FORM GST RFD 01. |
7. The proper officer while processing such refund claim shall verify that the exporter has duly reported the details of the export invoice and the debit note in his statement of outward supplies in FORM GSTR-1 and has duly paid such additional amount of IGST along with applicable interest for which refund is being sought in their FORM GSTR-3B return. The proper officer while ascertaining the eligibility of the refund to the exporter shall verify the revised value declared by the exporter in his FORM GSTR-1/ FORM GSTR-3B and details of foreign exchange remittances received thereof.





8. The proper officer shall scrutinize the application with respect to its completeness and eligibility and only if the proper officer is satisfied that the whole or any part of the amount claimed is payable as refund, he shall proceed to issue the refund sanction order in **FORM GST RFD-06** and the payment order in **FORM GST RFD-05**. The proper officer shall also upload a detailed speaking order along with the refund sanction order in **FORM GST RFD-06** in terms of Instruction No. 3/2022-GST, dated 14-6-2022.
9. Further, **there may be certain cases where there is downward revision in price of goods subsequent to exports, when the export has been made with payment of IGST. In all such cases, the supplier of goods/exporter is required to deposit the refund of the IGST received in proportion to the reduction in price of exported goods, along with applicable interest.** The proper officer while granting the refund as per para 8 above, shall also verify whether the exporter has deposited the excess refund amount in the cases where there is a downward revision in price of goods subsequent to exports, during the relevant tax period, if any.

3. **Sec 16(3) of IGST Act (Export under Bond/LuT) + Rule 96-A (Execution of Bond/LuT): Export of Services: Bond/LuT executed by the exporter shall be as to obligation to bring sale proceeds (foreign exchange or Indian Rs, where permitted) within later of following period from date of issue of invoice (a) 1 year or (b) period permissible under FEMA (including extension by RBI). [Rule 96-A (1)(b) substituted w.e.f. 10th July, 2024]**

Amendment in Simplified Form

Rule 96A - Export of goods or services under BOND / LuT

Furnish a Bond or Letter of Undertaking (LUT) in FORM GST RFD-11 to the jurisdictional Commissioner.

Exporter	Obligation undertaken	Period for Compliance	Extension by Commissioner	Consequences on default
<u>Exporter of Goods</u>	Export of goods out of India	3 months from the date of issue of Export Invoice	Extension can be granted by Commissioner	If goods are not exported within the permissible/extended period, tax + interest u/Sec 50(1) must be paid within 15 days.
<u>Exporter of Services</u>	Payment realization for service exported [Payment in convertible foreign exchange or INR (if permitted by RBI).]	[(1 year) or (Period permissible under FEMA, 1999 (including extension by RBI), whichever is later] from the date of issue of Export Invoice.	Extension can be granted by Commissioner	If payment is not received within the permissible/extended period, tax + interest u/Sec 50(1) must be paid within 15 days.

Logic of Amendment: The amendment to Rule 96A of the CGST Rules, aligning the export obligation period with the later of the following—1 year or the period permissible under FEMA, 1999 (including extensions by the RBI)—was made for several practical and regulatory reasons. Below are the key reasons for this amendment:

- (1) **Synchronization of GST and FEMA timelines:** Previously, the GST law imposed a fixed 1-year timeline for the realization of export proceeds, which could conflict with the extended timelines permitted under FEMA.
- (2) **Prevention of Double Compliance Burden:** Earlier, exporters had to comply separately with GST rules and FEMA timelines, leading to a double compliance burden. The amendment streamlines the process, preventing exporters from being penalized under GST if they are compliant under FEMA.

Rule 96-A : Export of goods or services under bond or Letter of Undertaking

(1) **Execution of Bond / LuT by Exporter (furnish prior to export)**

Any **RP** availing the option to **supply goods or services for export without payment of IGST** shall furnish,
 ... **prior to export,**
 ... **a bond or a Letter of Undertaking** in **FORM GST RFD-11** to the **jurisdictional Commissioner**, **binding himself to pay tax alongwith interest u/Sec 50 within:—**





(a)	fifteen days [15 D], after the expiry of 3 months, or such further period as may be allowed by the Commissioner from the date of issue of the invoice for export	if the goods are not exported out of India
OR		
(b) 1	fifteen days [15 D], after the expiry of '1 year, or the period as allowed under the FEMA, 1999 (including any extension of such period as permitted by the RBI), whichever is later, or such further period as may be allowed by the Commissioner from the date of issue of the invoice for export	if the payment of such services is not received by the exporter in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India

2. REFUNDS UNDER GST

- Sec 55 [Refund of Tax paid on the Inward Supply] + N/N 6/2017-CT: N/N 6/2017-CT enables CSD (Canteen Stores Department) to claim refund of 50% of GST paid on inward supply (of GOODS) which are for subsequent supply to authorized customers/ other units of CSD. New Rule 95-B has been notified prescribing procedure for claiming such refund. Refund application in Form GST RFD-10A shall be filed electronically. [Rule 95-B notified (w.e.f. 10th July, 2024) + CBIC Circular 227/21/2024-GST]**

Amendment in Simplified Form

Sec 55 of CGST Act

Sec 55 empowers Govt to grant (by issuing notification) the **refund of GST paid on notified inward supplies (of goods and services) to certain specified entities/ NOTIFIED ENTITIES.**

Aspect	Details						
Eligibility	<p>Sec 55 r/w N/N 06/2017-CT (Rate), IGST (Rate)- dated 28-06-2017) CSD is entitled to claim a refund of 50% of GST paid on inward supplies of GOODS for subsequent supply to Unit Run Canteens or Authorized Customers.</p> <table border="1"> <tr> <td>N/N 6/2017-CT (Rate) + N/N 6/2017-IT (Rate)</td><td> <p>CSD (Canteen stores Department) making (tax-free) supply to (other Unit Run Canteens of CSD - i.e. DDP) or (the authorized customers of CSD) ²</p> <tr> <td>Notified Inward Supplies eligible for refund</td><td>Only goods are covered (input goods which are purchased and further supplied as mentioned above)</td></tr> <tr> <td>Admissible quantum of refund</td><td>(Refund of 50% of GST paid)</td></tr> </td></tr> </table>	N/N 6/2017-CT (Rate) + N/N 6/2017-IT (Rate)	<p>CSD (Canteen stores Department) making (tax-free) supply to (other Unit Run Canteens of CSD - i.e. DDP) or (the authorized customers of CSD) ²</p> <tr> <td>Notified Inward Supplies eligible for refund</td><td>Only goods are covered (input goods which are purchased and further supplied as mentioned above)</td></tr> <tr> <td>Admissible quantum of refund</td><td>(Refund of 50% of GST paid)</td></tr>	Notified Inward Supplies eligible for refund	Only goods are covered (input goods which are purchased and further supplied as mentioned above)	Admissible quantum of refund	(Refund of 50% of GST paid)
N/N 6/2017-CT (Rate) + N/N 6/2017-IT (Rate)	<p>CSD (Canteen stores Department) making (tax-free) supply to (other Unit Run Canteens of CSD - i.e. DDP) or (the authorized customers of CSD) ²</p> <tr> <td>Notified Inward Supplies eligible for refund</td><td>Only goods are covered (input goods which are purchased and further supplied as mentioned above)</td></tr> <tr> <td>Admissible quantum of refund</td><td>(Refund of 50% of GST paid)</td></tr>	Notified Inward Supplies eligible for refund	Only goods are covered (input goods which are purchased and further supplied as mentioned above)	Admissible quantum of refund	(Refund of 50% of GST paid)		
Notified Inward Supplies eligible for refund	Only goods are covered (input goods which are purchased and further supplied as mentioned above)						
Admissible quantum of refund	(Refund of 50% of GST paid)						
Rule	<p>New Rule 95B notified (w.e.f. 10th July, 2024)</p> <ul style="list-style-type: none"> Refund application must be filed electronically in Form GST RFD-10A via the GST portal. Refund application shall be filed 'once in every quarter' Refund application shall be processed like normal refund claim under Form GST RFD-01. Conditions/Restrictions: <ul style="list-style-type: none"> Inward Supplies were received against a tax invoice AND <i>the supplier has furnished the details of such supplies in FORM GSTR-1 and the said supplier has furnished his return in FORM GSTR-3B for the concerned tax period;</i> Name & GSTIN of CDS is mentioned on the tax invoice. Goods have been received for subsequent supply to Unit Run Canteens or Authorized Customers 						

How refunds were being processed earlier?

- No Rule was prescribed.
- Refund procedure was specified vide **CIRCULAR NO.60/34/2018-GST** (dated 04-09-2018).
 - Refund claims filed manually (same Form GST RFD-10A prescribed in above Circular)

¹ Amended [w.e.f. 10th July, 2024]:

Earlier, permitted period was [1 year] from date of Issue of Invoice]. + Extension as allowed by Commissioner

This fixed 1-year timeline for the realization of export proceeds, were in conflict with the extended timelines permitted under FEMA.

² **Logic of exemption:** CSD has been granted this exemption on the procurement of goods, considering its welfare role for defence personnel.





Circular	
Refund Filing Process	<ul style="list-style-type: none"> Refund application must be filed electronically in Form GST RFD-10A via the GST portal. Refund is based on invoices of inward supplies received. The CSD will also be allowed to file the refund application for multiple quarters, clubbing multiple FYs, as per their option. Supporting documents include: <ol style="list-style-type: none"> Undertaking: Goods were received for subsequent supply. Declaration: No prior refund claimed for the invoices.
Conditions for Refund	<p>Goods must be received against a valid tax invoice.</p> <p>Supplier must furnish invoice details in Form GSTR-1 and file Form GSTR-3B for the relevant tax period.</p> <p>The GSTIN of both the supplier and CSD must be mentioned on the invoice.</p>
Relevant Date	Refund application must be filed within 2 years from the last day of the quarter in which the supply was received , as per Section 54(2) of the CGST Act .
Processing by Officer	<p>Refund claims are processed like those under Form GST RFD-01 (Rule 89).</p> <p><i>The PO while processing the refund application shall validate the GSTIN details of the CSD on the common portal to ascertain whether all the returns in FORM GSTR-1 and FORM GSTR-3B, which were due to be furnished on or before the date on which the refund application is being filed, have been filed.</i></p> <p>PO verifies:</p> <ol style="list-style-type: none"> Supplier compliance (GSTR-1, GSTR-3B has been furnished). Matching of invoices with Form GSTR-2B of the CSD. Refund does not exceed 50% of the tax paid. <p>Refund Order: Verified claims are sanctioned via Form GST RFD-06 with a detailed order.</p>

Rule 95-B : Refund of tax paid on **inward supplies of goods** received by **Canteen Stores Department**

(1) **Refund claim by CSD (u/Sec 55): QUARTERLY refund application in Form GST RFD-10A**

Notwithstanding anything contained in rule 95,

a Canteen Stores Department under the Ministry of Defence, **which is eligible to claim the refund of 50% of the applicable central tax paid by it on all inward supplies of goods received by it for the purposes of subsequent supply of such goods to the Unit Run Canteens of the Canteen Stores Department or to the authorised customers of the Canteen Stores Department as per notification issued under section 55,**

shall **apply for refund in FORM GST RFD-10A**
... **once in every quarter**,
electronically on the common portal.

Circular No. 227/21/2024-GST. (Dated 11th July, 2024)

The CSD will also be allowed to file the refund application for multiple quarters, clubbing multiple FYs, as per their option.

(2) **Form GST RFD-10A: Processed like normal refund application (Form GST RFD-01)**

Such application for refund of tax paid on inward supplies of goods filed in **FORM GST RFD-10A shall be dealt in a manner similar to that of application for refund filed in FORM GST RFD-01** in accordance with the provisions of rule 89.

(3) **Conditions for grant of refund to CSD**

The refund of tax paid by the applicant shall be available if

- the **inward supplies** of goods or services or both were **received from a RP against a tax invoice;**
- name and GSTIN of the applicant** is mentioned in the **tax invoice;** and
- goods have been received by Canteen Stores Department for the purpose of subsequent supply to the Unit Run Canteens of the Canteen Stores Department or to the authorised customers of the Canteen Stores Department.**

[Also refer - Circular No. 227/21/2024-GST. (Dated 11th July, 2024)]



**Circular No. 227/21/2024-GST**Dated: 11th July, 2024**Subject: Sec 54 (Refund of tax) - processing of refund applications filed by canteen stores department (CSD)****Subject: Sec 54 (Refund of tax) - processing of refund applications filed by canteen stores department (CSD)**

- The Central Government, vide N/N 06/2017-CT (Rate), No. 06/2017-IGST (Rate) and N/N 06/2017-UT (Rate), all dated 28th June 2017, had specified the Canteen Stores Department ("CSD" for short), under the Ministry of Defence, as a person who shall be entitled to claim a refund of fifty per cent of the applicable CGST, IGST and UTGST paid by the CSD on all inward supplies of goods received by the CSD for the purposes of subsequent supply of such goods to their Unit Run Canteens or to their authorized customers. Further, vide Circular No. 60/34/2018-GST, dated 4-9-2018, the manner and procedure for filing and processing of such refund claims was specified so as to ensure that the CSD shall apply for refund by filing an application manually to the jurisdictional tax office till the time the online utility for filing such refund claim is made available on the common portal.
- In order to enable such CSD to file application for refund electronically, a new functionality has been made available on the common portal which allows CSD to apply for refund by filing an application electronically on the common portal.** Further, **CGST Rules have been amended and a new rule 95B and FORM GST RFD-10A have been inserted in CGST Rules vide Notification No. 12/2024-Central Tax, dated 10-7-2024.**
- In order to ensure uniformity in the implementation of the provisions of law across field formations, the Board, in exercise of its powers conferred by section 168(1) of the CGST Act, 2017 (hereinafter referred to as "CGST Act"), hereby lays down the following revised procedure for electronic submission and processing of refund application by CSD, in accordance with section 55 of CGST Act, in supersession of Circular No. 60/34/2018-GST, dated 4-9-2018.

Filing of refund application:

- The CSD, who wants to file an application for refund under section 55 of CGST Act, in cases where the refund is claimed of fifty per cent of the applicable central tax, IGST and Union territory tax paid by the said CSD on all inward supplies of goods received by it, for the purposes of subsequent supply of such goods to its Unit Run Canteens or to its authorized customers, shall file an application for refund in **FORM GST RFD-10A** electronically on the common portal and the same shall be processed electronically. The refund to be granted to the CSD shall be based on the invoices of the inward supplies of goods received by it for the purposes of subsequent supply of such goods to its Unit Run Canteens or to its authorized customers.

Filing of refund claim by CSD:

- The CSD may apply for refund with the jurisdictional Central tax/ State tax authority to whom the CSD has been assigned. **In terms of rule 95B of the CGST Rules, the CSD is required to apply for refund once in every quarter. The CSD will also be allowed to file the refund application for multiple quarters, clubbing multiple FYs, as per their option. The refund of the tax paid by the CSD shall be available only if the inward supplies of goods were received from a RP against a tax invoice and details of such supplies have been furnished by the said RP in his details of outward supply in FORM GSTR-1 and the said supplier has furnished his return in FORM GSTR-3B for the concerned tax period.** The CSD while filing the refund application shall ensure that all the invoices declared by it have the GSTIN of the supplier and the GSTIN of the respective CSD clearly mentioned on them. The said refund application form shall be accompanied with the following documents:

- | | |
|------|--|
| (i) | An undertaking stating that the goods on which refund is being claimed have been received by the CSD for the purposes of subsequent supply of such goods to its Unit Run Canteens or to its authorized customers; and |
| (ii) | A declaration stating that no refund has been claimed earlier against the invoices on which the refund is being claimed. |

Relevant date for filing of refund:

- As per **section 54(2) of the CGST Act**, a person notified under section 55 of the CGST Act, **can file the application** for refund of tax paid by it on inward supplies of goods or services or both, **before the expiry of two years from the last day of the quarter in which such supply was received.** Therefore, as the CSD have been notified under section 55 of CGST Act vide N/N 06/2017-CT(Rate), No. 06/2017-IGST (Rate) and No. 06/2017-UT (Rate), all dated 28th June 2017, as a person entitled to claim a refund of fifty per cent of the applicable central tax, IGST and Union territory tax paid by it on all inward supplies of goods received for the purposes of subsequent supply of such goods to its Unit Run Canteens or to its authorized customers, **the CSD can file the refund of fifty per cent of tax paid on such inward supplies of goods before expiry of two years from the last day of the quarter in which such supply was received.**

7. Processing and sanction of the refund claim:

- The proper officer shall process the refund claim filed by the CSD in a manner similar to the refund claims filed in **FORM GST RFD-01** under the provisions of rule 89 of CGST Rules. The proper officer while processing the refund application shall





validate the GSTIN details of the CSD on the common portal to ascertain whether all the returns in FORM GSTR-1 and FORM GSTR-3B, which were due to be furnished on or before the date on which the refund application is being filed, have been filed. The proper officer may scrutinize the details contained in **FORM RFD-10A**, **FORM GSTR-3B** and **FORM GSTR-2B**, for processing the said refund claim. The proper officer shall also verify whether the details of the invoices for which refund has been claimed by the CSD, have been furnished by the concerned supplier in his details of outward supply in **FORM GSTR-1** and the said supplier has furnished his return in **FORM GSTR-3B** for the concerned tax period.

- 7.2 Further, the proper officer shall ensure that the amount of refund sanctioned is not more than 50 % of the central tax, state tax, Union territory tax and IGST paid on the supplies received by CSD. **It may be noted that the invoices uploaded by the CSD while filing will be validated on the portal with FORM GSTR 2B of the applicant and only the validated invoices will be allowed in the application.** The invoices for which refund has already been availed by the CSD will be flagged in the system and will not be allowed for the refund. The Table in Sl. No. 7 of **FORM GST- RFD 10A will be auto-populated on the portal** based on the 50 % of the amount of respective tax (central tax, state tax, Union territory tax and IGST) as per the Col 8, 9 and 10 of the Table in Sl. No. 6 of **FORM GST- RFD 10A**. The Table in Sl. No. 7 of **FORM GST- RFD 10A** shall be kept editable downwards, i.e., the CSD will be able to make a downward revision in the auto-populated amount in the said Table and cannot enhance the auto-populated amount in the said Table. **The proper officer shall also verify whether the ITC in respect of such inward supplies of goods received for the purposes of subsequent supply of such goods to its Unit Run Canteens or to its authorized customers has been reversed by the CSD as clarified in Circular no. 170/02/2022-GST, dated 6-7-2022.**
- 7.3 The proper officer shall scrutinize the application with respect to completeness and eligibility of the refund claim to his satisfaction and issue the order in **FORM GST RFD-06** accordingly. The proper officer shall also upload a detailed speaking order along with the said order in **FORM GST RFD-06**.
8. It is also mentioned that the provisions of the Circular No. 60/34/2018-GST, dated 4-9-2018 shall continue to apply for all refund applications filed manually before the amendments in CGST Rules mentioned in Para 2 above and before the said functionality being made available on the common portal. The said applications filed manually shall continue to be processed manually, according to the earlier circular.

QUESTION BANK

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**3 : DEMAND & RECOVERY**

1. **Rule 142 [Notice and Order for Demand of amounts payable under CGST Act]:** Rule 142 amended in following respects (i) When payment is made pre-SCN (voluntarily or during pre-notice consultation) by GST DRC-03, then System-generated acknowledgment of such payment shall be issued in GST DRC-04; &. (ii) When partial payment / no payment is during pre-notice consultation, then PO shall issue intimation to the taxpayer in GST DRC-01A (Part-C) & (iii) if Liability in e-liability discharged through GST DRC-03 (instead of against debit in ELL), then such person may submit request in Form GST DRC-03A to adjust payment made through DRC-03 against liability in ELL. [Rule 142 - 142(2) & (2A) amended + Rule 142 (2B) inserted- w.e.f. 10th July, 2024]

Note:

Liability	Discharge through	ECrL / ECL	Appropriation
Return related liability Self-assessed liability	Discharge through Return	ECrL (ITC) ECL (Cash)	Not required
Other than return related liability			
Pre-SCN	Ascertained by assessee on his own	Discharge through GST DRC-03	ECrL (ITC) ECL (Cash) Appropriation by System-Generated GST DRC-04 (w.e.f. 10 th July, 2024)
	Intimated by PO [*Pre-Notice consultation] GST DRC-01A, [Part -A]	Assessee accepting liability in full (Full payment) Payment by assessee (full payment) through GST DRC-03	ECrL (ITC) ECL (Cash) Appropriation by System-Generated GST DRC-04 R-142 (2) –(w.e.f. 10 th July, 2024)
	Assessee Not Accepting liability in full – (partial payment or no payment) Reply by assessee in GST DRC-01A, [Part -B] + GST DRC-03 (for partial payment)	ECrL (ITC) ECL (Cash)	Appropriation by PO through GST DRC-01A, [Part -C] R-142 (2A) –(w.e.f. 10 th July, 2024)
SCN GST DRC-01			
Post-SCN	GST DRC-03	ECrL (ITC) ECL (Cash)	Appropriation by PO by issuing intimation (as to conclusion of proceedings) in GST DRC-05 R-142 (3)
Demand Order GST DRC-07	(Liability stands posted in ELL – (Debit Entry)) Discharge through ELL Go to ELL- Pay against Dr entry created there	ECrL (ITC) ECL (Cash)	

Note 1:**Situation:**

PO issued SCN for 50 Lakhs. Assessee replied rejecting liability. PO being not satisfied with reply, passes DO for 50 Lakhs.

DO passed - Liability stands posted in ELL [Part II]. [Debit made]	This liability to be discharged through ELL.
But assessee discharged this liability by using GST DRC-03 .	ELL not impacted. Liability stands as it is. [No corresponding credit entry made]
Pre -Amendment There was no structured mechanism for taxpayers to request adjustments of liability discharged through GST DRC-03 against outstanding liability in ELL. Tax officers manually handled such requests. If request not accepted, then assessee had to again make payment discharging his liability from ELL. As to payment made using GST DRC-03, he was required to claim refund (following provisions of Sec 54)	Post Amendment: [i.e. insertion of Rule 142 (2B)] Assessee may file FORM GST DRC-03A on the GST portal requesting the GST department to adjust the ₹50 lakhs payment against the outstanding demand in the ELL. GST DRC-03A = Application for adjustment of the amount paid through GST DRC-03 against the Demand Order Based on this, the amount so paid and intimated through GST DRC-03 shall be credited in ELL against the debit entry created





for the said demand, as if the said payment was made towards the said demand on the date of such intimation made through FORM GST DRC-03

Note 1: *Payment post-SCN (via GST DRC-03) + Acceptance of payment and Closure of proceedings by PO (via GST DRC-05) :: - now, GST DRC-03-A application cant be made . [proviso to R- 142(2B)]*

Note 2: *Rule 142 (2-B) covers all demands created under Sections 52, 73, 74, 74A, 76, 122-125, 127, 129, 130.*

Note 2:

GST DRC-03.	<u>Intimation of payment made voluntarily or made against the (SCN) or statement or intimation of tax ascertained through GST DRC-01A</u>	R-14 2(2) & (3)
GST DRC-03A	<u>Application for adjustment of the amount paid through GST DRC-03 against the Demand Order</u>	R-142 (2B)
GST DRC-04.	<u>Acknowledgement of payment made voluntarily</u> [This is a system generated acknowledgement and does not require signature]	R-142 (2) & (3)
GST DRC-05	<u>Intimation of Conclusion of Proceedings (initiated by SCN)</u>	R-142 (3)
GST APL-01	<u>Appeal to the Appellate Authority</u>	R-108 (1)

Rule 142 : Notice and order for demand of amounts payable under CGST Act

(1) Service of Notice/ Statement- Summary thereof to be uploaded on portal in Form GST DRC-01

The PO shall

(a)	<u>serve notice issued</u> under section 52 or section 73 or section 74 or. section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130,	<u>along with the a summary thereof electronically in FORM GST DRC-01,</u>
(b)	<u>serve statement</u> under section 73(3) or section 74(3),	<u>along with the a summary thereof electronically in FORM GST DRC-02,</u>

specifying therein the details of the amount payable.

(1-A) Pre-notice Consultation (at discretion of PO): Intimation in Form GST DRC-01A (Part A) as to GST payable

The PO <u>may,</u> <u>before service of notice to the person chargeable with tax, interest and penalty, under Section 73 (1) or Section 74 (1), as the case may be,</u>	<u>communicate the details of any tax, interest and penalty as ascertained by the said officer, in Part A of FORM GST DRC-01A.</u>
--	--

(2) Pre-SCN payment by assessee (whether voluntarily or in pursuance of pre-notice consultation):: Payment through GST DRC-03 (intimation to PO) + followed by System-Generated acknowledgement in GST DRC-04

Where, before the service of notice or statement, the person chargeable with tax makes payment of the tax and interest in accordance with the provisions of section 73 (5), as the case may be, or tax, interest and penalty in accordance with the provisions of section 74 (5).

or

where any person makes payment of tax, interest, penalty or any other amount due in accordance with the provisions of the Act, whether on his own ascertainment or, as communicated by the PO under sub-rule (1A),

he shall inform the PO of such payment in FORM GST DRC-03 and

~~the PO shall issue an acknowledgement, accepting the payment made by the said person in FORM GST DRC-04.~~

an acknowledgement, in FORM GST DRC-04 shall be made available to the person through the common portal electronically

(w.e.f. 10th July, 2024)



**(2-A) Pre-Notice Consultation: (Partial payment + Reply) or (No payment + Reply) by assessee:: Reply in GST DRC 01A (Part B)**

Where the person referred to in **rule 142(1A)**

... **has made partial payment of the amount** communicated to him or

... **desires to file any submissions against the proposed liability,**

he may make such submission in

in **Part B of FORM GST DRC-01A.**

and thereafter **the PO may issue an intimation in Part-C of FORM GST DRC-01A,** accepting the payment or the submissions or both, as the case may be, made by the said person

(w.e.f. 10th July, 2024)

[inserted by the CGST (Second Amendment) Rules, 2024, w.e.f. 10th July, 2024]

(2-B) Liability to be discharged through ELL, but incorrectly discharged through GST DRC-03:: Assessee can submit e-application in GST DRC-03A for adjusting that amount towards discharged of liability in ELL

Where an amount of tax, interest, penalty or any other amount payable by a person under

section 52 or

section 73 or **section 74** or

section 76 or

section 122 or **section 123** or **section 124** or **section 125** or **section 127** or **section 129** or **section 130,**

has been paid by the said person through an intimation in FORM GST DRC-03 under sub-rule (2),

instead of crediting the said amount in the electronic liability register in FORM GST PMT -01 against the debit entry created for the said demand,

the said person **may file an application in FORM GST DRC-03A** electronically on the common portal, and

the amount so paid and intimated through FORM GST DRC-03 shall be credited in Electronic Liability Register in FORM GST PMT -01 against the debit entry created for the said demand, **as if the said payment was made towards the said demand on the date of such intimation made through FORM GST DRC-03.**

EXCEPTION: Restriction on filing of GST DRC-03A: [Payment made voluntarily post-SCN + PO accepted payment passing GST DRC-05 (as to closure of proceedings)]

Provided that

where an order in FORM GST DRC-05 has been issued in terms of sub-rule (3) **concluding the proceedings,** in respect of the payment of an amount in FORM GST DRC-03,

an application in FORM GST DRC-03A cannot be filed by the said person in respect of the said payment.

(3) Payment post-SCN (through GST DRC-03): Taxpayer shall give intimation to PO in GST DRC-03 and PO shall issue INTIMATION (in GST DRC-05) concluding proceedings

Where **the person chargeable with tax** makes payment of

- **tax and interest** under **section 73(8)** or, as the case may be,

- **tax, interest and penalty** under **section 74(8)**

within thirty days [30 D] of the service of a notice under **rule 142(1),**

or

where **the person concerned** makes payment of **the amount referred to in section 129(1)**

within seven days [7 D] of the notice issued u/Sec 129 (3) but before the issuance of order u/Sec 129(3),

he shall inform the PO of such payment in FORM GST DRC-03

and

the PO shall issue an order the PO shall issue an INTIMATION

in FORM GST DRC-05 concluding the proceedings in respect of the said notice.

Author:

PO issues FORM GST DRC-05 (an INTIMATION) to communicate to the taxpayer that, as he has paid the dues voluntarily, proceedings initiated vide SCN in FORM DRC-01 is hereby concluded.





2. **Sec 78 [Initiation of Recovery Proceedings]:** Proviso to Sec 78 empowers PO to issue direction to the taxable person to pay Govt dues in period earlier than 3 months. The PO for this purpose is 'Jurisdictional Principal Commissioner/ Commissioner'. If the taxpayer still fails to pay, then PO (Jurisdictional AC/DC) to proceed with recovery. Detailed instructions have been issued stating when such early payment direction can be issued and what procedure to be followed for this propose. [Instruction No. 1/2024- GST - dated 30th May, 2024]

Instruction No. 1/2024- GST (Dated 30th May, 2024):

Guidelines for initiation of recovery proceedings before 3 months from the date of service of demand order

Govt Dues - Initiation of Recovery Proceedings u/sec 79		
Time limitation for invoking recovery proceedings - Sec 78	Normal Rule - Sec 78 If demand remains outstanding for more than 3 month from the date of service of order, then Recovery proceedings shall be initiated.	Exception - Proviso to Sec 78 To safeguard revenue, PO may direct the taxable person to pay outstanding dues before 3 months . PO under proviso to Section 78 is the jurisdictional Principal Commissioner/ Commissioner (CGST) <i>Reasons for early recovery must be recorded in writing. Such reasons could include high risk to revenue involved in waiting till the completion of 3 month period due to apprehension that the concerned taxable person may close the business operations in near future, or due to possibility of default by the taxable person due to his declining financial conditions or impending insolvency, or likely initiation of proceedings under Insolvency and Bankruptcy Act, etc.</i>
PO for invoking recovery proceedings - Sec 79	Jurisdictional AC/DC (CGST)	Jurisdictional AC/DC (CGST) Procedure (as reduced period needs sanction of <u>Jurisdictional Principal Commissioner / Commissioner</u>) Jurisdictional AC/DC shall place the matter before the Jurisdictional Principal Commissioner / Commissioner, along with the reasons/ justification for early invocation of recovery proceedings. Principal Commissioner / Commissioner : After recording such reasons in writing, he may issue directions to the concerned taxable person to pay the said amount within the period specified by him in the said directions. Copy of such directions must also be sent to the jurisdictional AC/DC for information. <i>If payment is not made, the AC/DC shall initiate recovery under Section 79.</i>

Guidelines for initiation of recovery proceedings before 3 months from the date of service of demand order (u/S 78):

- 1.1. Attention is invited to section 79(1) of the CGST Act, 2017, which provides that where any amount payable by a person to the Government under any of the provisions of CGST Act or Rules made thereunder is not paid, the proper officer shall proceed to recover the amount by one or more of the modes specified in the said sub-section. Attention is further invited to Section 78 of the CGST Act, which provides for the time for initiation of such recovery proceeding. These sections are reproduced below for ease of reference:

"Section 78: Initiation of recovery proceedings. – Any amount payable by a taxable person in pursuance of an order passed under this Act shall be paid by such person within a period of three months from the date of service of such order failing which recovery proceedings shall be initiated:

Provided that where the proper officer considers it expedient in the interest of revenue, he may, for reasons to be recorded in writing, require the said taxable person to make such payment within such period less than a period of three months as may be specified by him."

"Section 79: Recovery of tax, – " Where any amount payable by a person to the Government under any of the provisions of this Act or the rules made thereunder is not paid, the proper officer shall proceed to recover the amount by one or more of the following modes, namely:-





- 1.2 On reading the above sections, it becomes clear that **the general rule for initiating recovery proceedings** is that, where any amount payable by a taxable person in pursuance of an order passed under the CGST Act is not paid within a period of three months from the date of service of such order, **recovery proceedings shall be initiated by the proper officer only after the expiry of the said period of three months.**
- 1.3 **Only in exceptional cases, where it is necessary in the interest of revenue, the proper officer may require the said taxable person to pay the said amount within a period less than the period of three months** from the date of service of the order, as may be specified by him, after recording the reasons for doing so in writing. If the said amount is not paid by the said taxable person within the period specified by the proper officer under the proviso to section 78 of CGST Act or even after the expiry of three months from the date of the service of the order, the same can then be recovered by the proper officer as per provisions of section 79 of CGST Act.
2. **It has been brought to the notice of the Board that some of the field formations are initiating recovery before the specified period of three months from the date of service of the order, even in the cases where the taxable person has not been specifically required by the proper officer, for reasons to be recorded in writing, for payment of such amount within a period less than the period of three months from the date of service of the order.** Therefore, in order to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 of the CGST Act, hereby issues the following instructions to be followed in cases where it is necessary, in the interest of revenue, to initiate recovery before the period of three months from the date of service of the order.
- 3.1 As per Circular No. 3/3/2017- GST, dated the 5th July, 2017, **the proper officer for recovery u/Sec 79 of the CGST Act is the jurisdictional Deputy or Assistant Commissioner of Central Tax. It is also mentioned that the proper officer under proviso to Section 78 is the jurisdictional Principal Commissioner/ Commissioner of Central Tax.**
- 3.2 Therefore, while recovery proceedings under section 79(1) of CGST Act are required to be undertaken by the jurisdictional Deputy or Assistant Commissioner of Central Tax, however, **in the cases, where it is felt that recovery proceedings in respect of an amount payable by a taxable person in pursuance of an order need to be initiated in the interest of revenue before completion of three months from the date of service of the order, the matter needs to be placed by the jurisdictional Deputy or Assistant Commissioner of CGST before the jurisdictional Principal Commissioner/ Commissioner of Central Tax, along with the reasons/ justification for such an action.** The jurisdictional Principal Commissioner/ Commissioner of CGST shall examine the reasons/justification given by the jurisdictional Deputy or Assistant Commissioner at the earliest and if he is satisfied that it is expedient in the interest of revenue to ask the said taxable person to pay the said amount before completion of three months from the date of service of the order, he must record in writing, the reasons as to why the concerned taxable person is required to make payment of such amount within such period, less than a period of three months, as may be specified by him. **After recording such reasons in writing, he may issue directions to the concerned taxable person to pay the said amount within the period specified by him in the said directions.** Copy of such directions must also be sent to the jurisdictional Deputy or Assistant Commissioner of CGST for information.
- 3.3 It is further mentioned that jurisdictional Principal Commissioner/ Commissioner of CGST should provide the specific reason(s) for asking the taxable person for early payment of the said amount, clearly outlining the circumstances prompting such early action. **Such reasons could include high risk to revenue involved in waiting till the completion of the three month period due to apprehension that the concerned taxable person may close the business operations in near future, or due to possibility of default by the taxable person due to his declining financial conditions or impending insolvency, or likely initiation of proceedings under Insolvency and Bankruptcy Act, etc.** Reasons to believe for the apprehension of risk to revenue should be based on credible evidence, which may be kept on record to the extent possible. While issuing any such directions, the proper officer must duly consider the financial health, status of business operations, infrastructure, and credibility of the taxable person, and strike a balance between the interest of the revenue and ease of doing business. It is implicit that such directions for early payment of the confirmed demand should not be issued in a mechanical manner, and must be issued only in cases where interest of revenue is required to be safeguarded due to specific apprehension/ circumstances in the said case.
- 3.4 Wherever such directions are issued by the jurisdictional Principal Commissioner/ Commissioner of CGST as per powers conferred under proviso to section 78 of CGST Act, and where the taxable person fails to make payment of the said amount within the period specified in the said directions, the jurisdictional Deputy or Assistant Commissioner of CGST shall proceed to recover the said amount as per the procedure specified in section 79(1) of CGST Act.





2. **Sec 78 [Initiation of Recovery Proceedings]:** Assessee lost appeal at first appellate stage and further appeal cant be filed due to GST Tribunal being non-functional. Dept enforcing demand as case lost by assessee but assessee facing challenges due to his inability to file appeal due to non-functional Tribunal. CBIC issued Circular laying guidelines for 'Stay of Recovery in such cases (upon making payment through ELL of amount equivalent to requisite pre-deposit as specified in Sec 112(8) & giving an undertaking as to his intent of filing further appeal to GSTAT) and its adjustment towards 'Pre-Deposit' by using Form GST DRC-03A subsequently. [Circular No. 224/18/2024 - GST - dated 11th July, 2024]

Circular No. 224/18/2024 - GST

Dated: 11th July, 2024

Subject: Section 78 (initiation of recovery proceedings) - Guidelines for recovery of outstanding dues, in cases wherein first appeal has been disposed of, till Appellate Tribunal comes into operation

Recovery Proceedings & Pre-deposit:

OIO served on taxpayer for demand of tax. First appeal filed but lost. Taxpayer wants to file further appeal to GSTAT.

Taxpayers are required to pay a pre-deposit as per [Section 112\(8\)](#) to file an appeal before the Tribunal.

[Section 78](#) mandates that if the amount payable in pursuance of an order passed under this Act (in this case, based on the order of the first appellate authority) is not paid within three months, recovery proceedings can be initiated.

Due to the Tribunal's non-operation, taxpayers cannot file an appeal, creating a dilemma for the pre-deposit payment.

And Department may proceed with recovery proceedings as provided in Sec 78.

Issue	Clarification/Guidelines
1 Appeals Pending Due to Non-Operation of Appellate Tribunal	Taxpayers cannot currently file appeals u/Sec 112 <u>due to the non-constitution of the Tribunal.</u> <u>Recovery may be initiated if no pre-deposit is made.</u> However, <u>payment of pre-deposit via the Electronic Liability Register and submission of an undertaking/declaration (that he will be filing appeal)</u> <u>can stay recovery proceedings as per Section 112(9).</u>
2 Mechanism for Payment of Pre-Deposit	Taxpayers can navigate to Services > Ledgers > <u>Payment Towards Demand</u> on the GST portal to make pre-deposit payments. <u>Payments will reduce the demand liability in the Electronic Liability Ledger (ELL) and will be adjusted towards pre-deposit when filing an appeal.</u>
3 Undertaking Requirement	Taxpayers must submit an undertaking to the jurisdictional officer, stating that they will file an appeal with the Tribunal once it is operational. <i>Failure to submit the undertaking or pre-deposit payment may lead to recovery proceedings.</i>
4 Pre-Deposit Payments via FORM GST DRC-03	Taxpayers can adjust amounts paid under <u>Form GST DRC-03</u> (voluntary/others) towards pre-deposit under Sections 107 / 112 . <u>The amount will be considered as payment against the pre-deposit if an application is filed in <u>Form GST DRC-03A</u>. [R-142(2B)]</u>
5 Adjustment of Pre-Deposit Payments	Payments made via FORM GST DRC-03 can be adjusted against pre-deposit requirements by filing <u>Form GST DRC-03A</u> , once the functionality is available on the portal. <u>Until then, taxpayers can intimate the proper officer to defer recovery actions.</u> Recovery actions may be deferred until Form GST DRC-03A functionality is operational. <i>Taxpayers should file Form GST DRC-03A promptly once available.</i>
7 Failure to File Appeal or Failure to File FORM GST DRC-03A	If taxpayers <u>fail to file appeals within the specified timeline</u> or <u>do not submit FORM GST DRC-03A</u> , recovery of the remaining amount will proceed as per Sections 78 and 79 of the CGST Act.

Subject: Section 78 (initiation of recovery proceedings) -- Guidelines for recovery of outstanding dues, in cases wherein first appeal has been disposed of, till appellate tribunal comes into operation

1. Doubts have been raised by the trade and the field formations in respect of recovery of outstanding dues, in cases where the first appellate authority has confirmed the demand created by the adjudicating authority, fully or partially, and where appeal against such order of appellate authority could not be filed under section 112 of the





CGST Act, 2017 due to non- constitution of Appellate Tribunal (hereinafter referred to as 'Tribunal'), as yet. **Doubts have also been raised as to whether the amount that was originally intended to be paid towards the demand created but has inadvertently been paid and intimated by the taxpayer through FORM GST DRC-03 either under the 'voluntary' category or under the 'others' category, can be adjusted against the pre-deposit that is required to be paid by the taxpayer for filing appeal before the appellate authority under section 107, and before the appellate tribunal under section 112 of the CGST Act.**

2. The matter has been examined. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby issues the following clarifications and guidelines.
3. In cases, **where the first appellate authority has confirmed the demand issued by the adjudicating authority, partially or fully, the taxpayers cannot file appeal against the said appellate order at present due to non-operation of GST Appellate Tribunal as yet.** As per Section 112 of the CGST Act, every person has statutory remedy of appeal against the order passed by the first appellate authority or by a revisional authority, before the Tribunal. As per **section 78** of CGST Act, **the recovery proceedings are to be initiated, if the amount payable as per the order issued under the said act is not paid by the concerned person within the said period of three months from the date of service of the said order.** It may further be noted that if any person files an appeal in accordance with the requirement of section 112(8) of the CGST Act (i.e., on payment of prescribed pre-deposit), the recovery proceedings for the balance amount is deemed to be stayed till disposal of the appeal as per section 112(9) of the CGST Act. However, as the taxpayers are not able to file appeal under section 112 in Appellate Tribunal against the orders of appellate authority and therefore, are not able to make the pre-deposit under section 112(8) of CGST Act, in some cases, the tax officers are taking a view that there is no stay against recovery as per section 112(9) of CGST Act. **In some cases, taxpayers have either paid or are willing to pay the requisite amount of pre-deposit as per section 112(8) of CGST Act either by crediting in their electronic liability register against the demand so created, or by depositing the said amount through FORM DRC-03. However, tax officers are still resorting to recovery proceedings after completion of period stipulated u/Sec 78 of CGST Act.**
4. In order to facilitate the taxpayers to make the payment of the amount of pre-deposit as per section 112(8) of CGST Act, and to avail the benefit of stay from recovery of the remaining amount of confirmed demand as per section 112(9) of CGST Act, it is hereby **clarified that in cases where the taxpayer decides to file an appeal against the order of the appellate authority and wants to make the payment of the amount of pre-deposit as per section 112(8) of CGST Act, he can make the payment of an amount equal to the amount of pre-deposit by navigating to Services >> Ledgers>> Payment towards demand, from his dashboard.** The taxpayer would be navigated to Electronic Liability Register (ELL) Part-II in which he can select the order, out of the outstanding demand orders, against which payment is intended to be made. **The amount so paid would be mapped against the selected order and demand amount would be reduced in the balance liability in the aforesaid register. The said amount deposited by the taxpayer will be adjusted against the amount of pre-deposit required to be deposited at the time of filing appeal before the Appellate Tribunal.**
5. **The taxpayer also needs to file an undertaking/ declaration with the jurisdictional proper officer that he will file appeal against the said order of the appellate authority before the Appellate Tribunal, as and when it comes into operation, within the timelines mentioned in section 112 of the CGST Act read with CGST (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019. On providing the said undertaking and on payment of an amount equal to the amount of pre-deposit as per the procedure mentioned in para 4 above, the recovery of the remaining amount of confirmed demand as per the order of the appellate authority will stand stayed as per provisions of section 112(9) of CGST Act.**
6. **In case, the taxpayer does not make the payment of the amount equal to amount of pre-deposit or does not provide the undertaking/ declaration to the proper officer, then it will be presumed that taxpayer is not willing to file appeal against the order of the appellate authority and in such cases, recovery proceedings can be initiated as per the provisions of law.** Similarly, when the Tribunal comes into operation, if the taxpayer does not file appeal within the timelines specified in Section 112 of the CGST Act read with CGST (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019, the remaining amount of the demand will be recovered as per the provisions of law.
- 7.1 It has also been noticed that **some taxpayers have already paid amounts that were intended to have been paid towards a demand, through FORM GST DRC-03.** Attention is invited to Notification No. 12/2024- CT dated 10.07.2024, vide which **Rule 142 (2B)** and **FORM GST DRC-03A** has been inserted in CGST, 2017 providing for a mechanism for cases where the person liable to pay tax, interest and penalty under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 of CGST Act has made payment of such tax, interest and penalty, inadvertently through **FORM GST DRC-03** under sub-rule (2) of Rule 142. In such cases, the said person can file an application in **FORM GST DRC-03A**, electronically on the common





portal, and the amount so paid and intimated through the **FORM GST DRC-03** shall be adjusted as if the said payment was made towards the said demand on the date of such intimation through **FORM GST DRC-03**.

- 7.2 **Accordingly**, in cases where the concerned taxpayer has paid an amount that was intended to have been paid towards a particular demand through **FORM GST DRC-03**, has submitted an application in **FORM GST DRC-03A** on the common portal, the amount so paid and intimated through the **FORM GST DRC-03** will be considered as if the payment was made towards the said demand on the date of such intimation through **FORM GST DRC-03**. **The amount so paid shall ALSO be liable to be adjusted towards the amount required to be paid as pre-deposit under Section 107 and Section 112 of the CGST Act, if and when the taxpayer files an appeal against the said demand, before the appellate authority or the appellate tribunal**, as mentioned in para 4 above, and the remaining amount of confirmed demand as per the order of the adjudicating authority or the appellate authority, as the case may be, will stand stayed as per provisions of section 107 (6) and section 112(9) of CGST Act. However, if the taxpayer does not file appeal within the timelines prescribed in Section 107 and Section 112 of the CGST Act, as the case may be, read with CGST (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019, the remaining amount of the demand will be recovered as per the provisions of law.
- 7.3 In this regard, it is to be mentioned that the application in **FORM GST DRC-03A** for adjustment of demand liability against the payment through **FORM GST DRC-03** cannot be made in cases where against the payment made through the said **FORM GST DRC-03**, proceedings have already been concluded by issuance of an order in **FORM GST DRC-05** as per the Rule 142(3) of CGST Rules, 2017.
- 8.1 Currently, the above-mentioned functionality for filing of an application in **FORM GST DRC-03A**, is not available on the common portal. Therefore, till the time such functionality is made available on the common portal, in respect of cases where an amount of pre-deposit has been inadvertently paid through **FORM GST DRC-03** instead of making the said payment through Electronic Liability Ledger-II against the demand created in the said ledger, the concerned taxpayer may intimate the proper officer about the same, and on such intimation, the proper officer may not insist on recovery for the remaining amount payable by the concerned taxpayer, till the time the said functionality of **FORM GST DRC-03A** is made available on the portal.
- 8.2 Once the functionality of **FORM GST DRC-03A** is made available on the portal, the concerned taxpayer may file an application in **FORM GST DRC-03A**, on the common portal, at the earliest, as mentioned in para 7.1 above and on doing so, the amount paid *vide* **FORM GST DRC-03** may be adjusted against the pre-deposit under section 107 or section 112 of the CGST Act, as the case may be, as detailed in para 7.2 above. However, in case the taxpayer fails to file an application in **FORM GST DRC-03A** on the common portal, the proper officer may proceed to recover the amount payable as per provisions of section 78 and section 79 of CGST Act.

“

Don't Quit

When times are hard, you might stop for a bit,
But it's not over until the moment you quit.
On a river's bridge, failures are the planks;
Take one step at a time until you reach its banks.

Don't give up on your dreams; chase them instead;
You will find, one morning, as you wake up from bed,
That you are the person about whom you dreamed,
And you can reach great heights, impossible though it seemed.

When things go wrong and your back is to the wall,
Try to stand up; no more can you fall.
Life is full of ups and downs; take them in your stride.
You will discover your little star hidden inside.

”



**4 : APPEAL & REVISION**

1. **Sec 109 [Constitution of Appellate Tribunal and Benches thereof]:** Amendments made as to following (1) GSTAT empowered to conduct an examination or adjudicating the anti-profiteering cases as referred in Sec 171 (2) Such cases will fall within the exclusive domain of the Principal Bench of the Appellate Tribunal (3) Exclusive domain of Principal Bench of GSTAT extended to cover any cases/class of cases as notified by Govt (on recommendation of Council) . [Sec 109(1) & 109(5) Amended by FA (No. 2) 2024 - w.e.f. 27th Sep, 2024]

Amendment in Simplified form**Sec 109 of CGST Act**

S. 109 (1)	Constitution	Govt shall, on recommendation of GST Council, establish an Appellate Tribunal , by notification (w.e.f. such date as may be specified in the Notification).	
	Purpose	2 Purposes 1. Hearing Appeals against orders of Appellate Authority and Revisional Authority. 2. Conducting an examination or adjudicating the anti-profiteering cases (Sec 171). [FA (No.2), 2024- w.e.f. 27 th Sep, 2024]	
S. 109 (2)	Jurisdiction, Power & Authority	The jurisdiction, Power & Authority conferred on the AT shall be exercised by the Principal Bench (PB) and the State Benches (SBs).	
		Principal Bench (PB)	State Benches (SBs)
S. 109 (3) & (4)	Creation by	Govt. shall, by notification, constitute a PB at NEW Delhi.	On request of the State , Govt may, by notification, constitute such number of SBs - at such places and with such jurisdiction as may be recommended by GST Council.
	Seat	New Delhi	Places as recommended by GST Council
	Jurisdiction	All over India	Jurisdiction as recommended by GST Council
S. 109 (5)	Order Appealable	Any order passed by [AA / RA] [including order where any issue involved relates to PoS] ¹ <i>*Author:</i> However, it is intended that PB will hear only appeal against those orders where any issue relates to PoS Anti-profiteering cases u/Sec 171(2). <i>[examination & adjudication of these cases only by the Principal Bench]</i> [FA (No.2), 2024- w.e.f. 27 th Sep, 2024] Any other case/cases as notified by Govt <i>[Such notified appeals cases will be heard only by the Principal Bench]</i> [FA (No.2), 2024- w.e.f. 27 th Sep, 2024]	
		Other orders passed by [AA / RA]	
	Further appeal	Appeal to SC	Appeal to HC

¹ **Author:** Legal text of Sec 109 (5)

The Principal Bench and the State Bench shall hear appeals against the orders passed by the Appellate Authority or the Revisional Authority:

EXCEPTION:

Provided that the cases in which **any one of the issues involved relates to the place of supply**, shall be heard **only** by **the Principal Bench.**





Section 109. Constitution of Appellate Tribunal and Benches thereof.

(1) CG to constitute GST Appellate Tribunal

The Government shall, on the recommendations of the Council, by notification, constitute with effect from such date as may be specified therein, an Appellate Tribunal known as the GST Appellate Tribunal

for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority, or

for conducting an examination or adjudicating the cases referred to in Sec 171 (2) [i.e. Anti-profiteering cases], if so notified under the said section.

[inserted by FA (No.2), 2024- w.e.f. 27th Sep, 2024]

(2) GST Tribunal [Principal Bench + State Benches]

(3) GST Tribunal [Principal Bench]:: All India Jurisdiction

Seat : NEW DELHI & Composition = 2 JMs [President + JM] + 2 TMs [TM (Centre) + TM(State)]

(4) GST Tribunal [State Benches]:: Jurisdiction as recommended by by GST Council

Seat : Specified Places & Composition = 2 JMs + 2 TMs [TM (Centre) + TM(State)]

(5) Orders appealable to GSTAT:

The Principal Bench and the State Bench shall hear appeals

against the orders passed by the Appellate Authority or the Revisional Authority:

Exception 1: Order where one of the issue involved in appeal relates to POS is appealable only to PB

Provided that

the cases in which any one of the issues involved relates to the place of supply,

shall be heard only by the Principal Bench.

Exception 2: Anti-profiteering cases shall be examined /adjudicated by the Principal Bench

Provided further that

the matters referred to in Sec 171 (2) [i.e. Anti-profiteering cases]

shall be examined or adjudicated only by the Principal Bench.

[inserted by FA (No.2), 2024- w.e.f. 27th Sep, 2024]

Exception 3: Notified Cases – shall only be heard by the Principal Bench

Provided also that

the Government may, on the recommendations of the Council, notify other cases or class of cases

Which shall be heard only by the Principal Bench.

[inserted by FA (No.2), 2024- w.e.f. 27th Sep, 2024]

(6) President's right : Distribution of business among benches + Transfer of case from one Bench to another

Subject to the provisions of sub-section (5), the President shall, by general or special order,

distribute the business of the Appellate Tribunal among the Benches and may transfer cases from one Bench to another.





2. **Sec 112 [Appeal to Appellate Tribunal]: Amendments made as to following (1) Assessee's Appeal: Time limitation of 3 Months (+ 3 Months) + manner of filing (2) Dept. Application/Appeal : Time limitation of 6 Months + manner of Filing. [Sec 112(1) & (3) Amended by FA (No. 2) 2024 - w.e.f. 1st Aug, 2024 + Rule 110 & 111- revised w.e.f. 10th July, 2024]**

Amendment in Simplified Form

Appeal/ Application to Appellate Tribunal

Aspect	Appeal of Asseeee	Application of Dept. [= Deemed Appeal]
Governing Provision	<u>Sec 112(1)</u>	<u>Sec 112(3)</u>
Appeal Form	GST APL-05 (Appeal)	GST APL-07 (Application)
Time Limitation	<u>Sec 112(1)</u> 3 months from <u>the date on which the order sought to be appealed against is communicated to the person preferring the appeal</u> or <u>the date, as may be notified by the Government, on the recommendations of the Council, for filing appeal before the Appellate Tribunal under this Act,</u> whichever is later. [inserted by FA (No.2), 2024- w.e.f. 1 st Aug, 2024]	<u>Sec 112(3)</u> 6 months from <u>the date on which the said order has been passed</u> or <u>the date, as may be notified by the Government, on the recommendations of the Council, for filing appeal before the Appellate Tribunal under this Act,</u> whichever is later. [inserted by FA (No.2), 2024- w.e.f. 1 st Aug, 2024]
Extension (Condonation of Delay) - Sec 112(6)	3 Months	No Provisions. (= No condonation)



Manner of Filing Rule 110 - [New - w.e.f. 10th July, 2024] Rule 111 - [New - w.e.f. 10th July, 2024]

R-110 [& R-111]

Appeal by Assessee u/Sec 112 (1). [Appeal by Department u/Sec 112 (3)].

Form	Form GST APL -05.	Form GST APL -07
Verification	Appeal shall be signed as per R-26	
Manner of filing	<u>E-filing</u>	<u>General Rule:</u> Appeal shall be filed electronically [= <u>Provisional Acknowledgement</u> issued immediately]
	<u>Manual Filing</u>	<u>Exception:</u> MANUAL APPEAL allowed only if: <u>the Registrar allows the same (by issuing a special or general order to that effect)</u> [= <u>Provisional Acknowledgement</u> issued immediately]
[Explanation 2 to Rule 111] – For the purposes of rule 110 and 111, 'Registrar' shall mean a Registrar appointed by the Government for this purpose, and shall include Joint Registrar, Deputy Registrar and Assistant Registrar.		

Further process:

Order appealed against uploaded on the common portal No requirement of submission/uploading of certified copy  Final acknowledgment will be issued in Form GST APL-02 (with the appeal number)- on removal of defects, if any, <ul style="list-style-type: none"> Date of Appeal = Date of PA 	Order appealed against NOT uploaded on the common portal Requirement of submission/uploading of certified copy (Self-certified copy)  Only after submission/uploading of certified copy, final acknowledgment shall be issued in Form GST APL-02 (with the appeal number)- on removal of defects, if any, <ul style="list-style-type: none"> OIO copy provided within 7 days: Date of Appeal = Date of PA OIO copy provided after 7 days: Date of Appeal = Date of FA
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(3) **Department's appeal to Tribunal:** Commissioner to direct subordinate officer to apply to Tribunal: Such direction & consequent appeal shall be made within 6 months of (Date of Passing of Order) / (Date Notified by the Govt)

The Commissioner may,

- on his own motion, or
- upon request from the Commissioner of State tax or Commissioner of Union territory tax.

call for and examine the record of any order passed by the Appellate Authority or the Revisional Authority under this Act or the SGST Act or the UTGST for the purpose of satisfying himself as to the legality or propriety of the said order

and

may, by order, direct

any officer subordinate to him

to apply to the Appellate Tribunal within 6 months from

- the date on which the said order has been passed

or

- the date, as may be notified by the Government, on the recommendations of the Council, for filing appeal before the Appellate Tribunal under this Act,

whichever is later.

for determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.

Rule 110 : Appeal to the Appellate Tribunal

(1) **Appeal to AT:**

Appeal by assessee (u/Sec 112): Form GST APL-05 (electronically only) + immediate provisional acknowledgment

An appeal to the Appellate Tribunal under section 112(1) (i.e., by the assessee) shall be filed in **FORM GST APL-05**, along with the relevant documents, electronically.

and a provisional acknowledgement shall be issued to the appellant immediately.

EXCEPTION: MANUAL APPEAL allowed only if so notified by the Registrar

Provided that

an appeal to the Appellate Tribunal may be filed **MANUALLY** in **FORM GST APL-05**, along with the relevant documents, only if the Registrar allows the same by issuing a special or general order to that effect, subject to such conditions and restrictions as specified in the said order,

and in such a case, a provisional acknowledgement shall be issued to the appellant immediately.

(2) **MOCO (Memorandum of Cross Objections):** Form GST APL-06 (electronically only)

A memorandum of cross-objections to the Appellate Tribunal under section 112(5), if any, shall be filed electronically in **FORM GST APL-06**.

EXCEPTION: MANUAL MOCO allowed only if so notified by the Registrar

Provided that

the memorandum of cross-objections may be filed manually in **FORM GST APL-06**, only if the Registrar allows the same by issuing a special or general order to that effect, subject to such conditions and restrictions as specified in the said order,

(3) **Signing of Appeal and MOCO – as per Rule 26**

The appeal and the memorandum of cross objections shall be signed in the manner specified in rule 26.



(4)

OIA uploaded on the common portal:: Issuance of final acknowledgment *[Date of PA = Date of Filing Appeal]*

Where the order appealed against is uploaded on the common portal,

a final acknowledgment, indicating appeal number, shall be issued in **FORM GST APL-02** on removal of defects, if any,

and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal under sub-rule (1):

OIA NOT uploaded on the common portal::

- Submission of certified copy of OIO within 7 days: Date of filing appeal is date of issue of provisional acknowledgment
- Submission of certified copy of OIO after 7 days:: Date of filing appeal is date of submission of such copy

Provided that

where the order appealed against is not uploaded on the common portal,

the appellant shall submit or upload a self-certified copy of the said order within a period of seven days from the date of filing of FORM GST APL-05

and a final acknowledgment, indicating appeal number, shall be issued in **FORM GST APL-02** on removal of defects, if any,

and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal:

Provided further that

where the said self-certified copy of the order is submitted or uploaded after a period of seven days from the date of filing of FORM GST APL-05,

a final acknowledgment, indicating appeal number, shall be issued in **FORM GST APL-02** on removal of defects, if any,

and the date of submission or uploading of such self-certified copy shall be considered as the date of filing of appeal."

Explanation.—For the purposes of this rule, the appeal shall be treated as filed only when the final acknowledgement, indicating the appeal number, is issued.

(5)

Appeal Fees (CGST)

The fees for filing of appeal or restoration of appeal

shall be

- ₹ 1,000 for every 1 lakh rupees of
- tax or ITC involved or
 - the difference in tax or ITC involved or
 - the amount of fine, fee or penalty determined in the order appealed against,

subject to a maximum of ₹ 25,000 and a minimum of ₹ 5,000

Provided that

the fees for filing of an appeal in respect of an order not involving any demand of tax, interest, fine, fee or penalty shall be ₹ 5,000.

(6)

No Fee for ROM [Application for 'Rectification of mistakes apparent from record']

There shall be no fee for application made before the Appellate Tribunal

for rectification of errors referred to in section 112(10).

Rule 111 : Application to the Appellate Tribunal

(1)

Application to AT:

Appeal by Dept (u/Sec 112): Form GST APL-07 (electronically only) + immediate provisional acknowledgment

An application to the Appellate Tribunal under section 112(3) (i.e., by the Department) shall be filed

in **FORM GST APL-07**, along with the relevant documents, electronically,

and a provisional acknowledgment shall be issued to the appellant immediately.



**EXCEPTION: MANUAL APPEAL allowed only if so notified by the Registrar****Provided that**

an application to the Appellate Tribunal may be filed **MANUALLY** in **FORM GST APL- 07**, along with the relevant documents, **only if** the Registrar allows the same *by issuing a special or general order to that effect*, subject to such conditions and restrictions as specified in the said order,

and in such a case, **a provisional acknowledgement** shall be issued to the appellant **immediately**.

(2)

MOCO (Memorandum of Cross Objections): Form GST APL-06 (electronically only)

A memorandum of cross-objections to the Appellate Tribunal under **section 112(5)**, if any, shall be filed **electronically** in **FORM GST APL-06**.

EXCEPTION: MANUAL MOCO allowed only if so notified by the Registrar**Provided that**

the memorandum of cross-objections may be filed manually in **FORM GST APL-06**, **only if** the Registrar allows the same *by issuing a special or general order to that effect*, subject to such conditions and restrictions as specified in the said order,

(3)

Signing of Appeal and MOCO – as per Rule 26

The appeal and the memorandum of cross objections shall be signed in the manner specified in **rule 26**.

(4)

OIA uploaded on the common portal:: Issuance of final acknowledgment [Date of PA = Date of Filing Appeal]

Where the order appealed against is **uploaded on the common portal**,

a final acknowledgment, indicating appeal number, shall be issued in **FORM GST APL-02 on removal of defects, if any**,

and the date of **issue of the provisional acknowledgment** shall be considered as **the date of filing of appeal** under sub-rule (1):

OIA NOT uploaded on the common portal::

- **Submission of certified copy of OIO within 7 days: Date of filing appeal is date of issue of provisional acknowledgment**
- **Submission of certified copy of OIO after 7 days:: Date of filing appeal is date of submission of such copy**

Provided that

where the order appealed against is **not uploaded on the common portal**,

the appellant shall submit or upload **a self-certified copy of the said order** *within a period of seven days* from the date of filing of **FORM GST APL-07**

and **a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 on removal of defects, if any**,

and the date of **issue of the provisional acknowledgment** shall be considered as **the date of filing of appeal**:

Provided further that

where the said self-certified copy of the order is **submitted or uploaded after a period of seven days from the date of filing of FORM GST APL-07**,

a final acknowledgment, indicating appeal number, shall be issued in **FORM GST APL-02 on removal of defects, if any**,

and the date of **submission or uploading of such self-certified copy** shall be considered as **the date of filing of appeal**."

Explanation 1.—For the purposes of this rule, the appeal shall be treated as filed only when the final acknowledgment, indicating the appeal number, is issued.

Explanation 2.— For the purposes of rule 110 and 111,

'Registrar' shall mean **a Registrar appointed by the Government for this purpose**, and shall include **Joint Registrar, Deputy Registrar and Assistant Registrar**.





3. **Rule 113-A [Withdrawal of Appeal before GSTAT]:** W.e.f. July, 2024, vide Rule 113-A, enabling provisions have been introduced for taxpayers/Department allowing them to withdraw appeal before GSTAT. [Rule 113-A inserted (w.e.f. 10th July, 2024)]

Amendment in Simplified Form

Provision as to 'Withdrawal of Appeal'

It allows taxpayers to voluntarily withdraw their appeals if they wish to rectify their mistakes, settle disputes, or change their legal strategy.

In Dec, 2022, Rule 109-C introduced allowing withdrawal of appeal filed with first AA.

In July, 2024, Rule 113-A has been introduced allowing withdrawal of appeal filed with GSTAT.

Comparative Table: Rule 109-C [Withdrawal of Appeal before AA] & Rule 113A [Withdrawal of Appeal before GSTAT]:

Aspect	<u>Rule 109C</u> <u>[Withdrawal of Appeal before AA]</u>	<u>Rule 113A</u> <u>[Withdrawal of Appeal before GSTAT]</u>
Applicable Authority	Appellate Authority	Appellate Tribunal
Applicable Appeal Forms	GST APL-01 (Assessee) or GST APL-03. (Department)	GST APL-05 (Appeal) - (Assessee) or GST APL-07 (Application) -(Department)
Appeal Acknowledgment Forms	GST APL-02.	GST APL-02.
Withdrawal Provisions	(w.e.f. 26 th Dec, 2022)	(w.e.f. 10 th July, 2024)
Withdrawal Application Form	GST APL-01W /03W	GST APL-05W /07W
Timeline for Withdrawal	Before the issuance of <u>SCN u/Sec 107(11)</u> or <u>ORDER</u> , whichever is earlier	Before the issuance of <u>GSTAT order</u> (u/Sec 113(1))
Withdrawal where appeal filed has been finally acknowledgment (i.e., Post APL-02)		
Approval Requirement (Post APL-02)	<u>Requires approval of the Appellate Authority</u> after FORM GST APL-02 is issued	<u>Requires approval of the Appellate Tribunal</u> after FORM GST APL-02 is issued
Decision Timeline for Approval	<u>Within 7 days of filing the withdrawal application</u>	<u>Within 15 days of filing the withdrawal application</u>
Fresh Appeal post-withdrawal – Original time limitation applicable		
Time Limit for Fresh Appeal/Application	Must be filed within the time limit u/Sec 107(1) (Assessee) or 107(2) (Department)	Must be filed within the time limit u/Sec 112(1) (Assessee) or 112(3) (Department)

Rule 113-A: Withdrawal of Appeal or Application filed before the Appellate Tribunal.

Appellant may withdraw appeal

The appellant may, at any time **before issuance of the order under Section 113(1)**, in respect of
any appeal filed in FORM GST APL-05 or
any application filed in FORM GST APL-07,

file an application for withdrawal of the said appeal by filing an application in FORM GST APL-05/07W;

Appeal which has been provisionally acknowledged: Withdrawal shall be subject to approval of AT

Provided that

where the final acknowledgment in FORM GST APL-02 has been issued,

the withdrawal of the said appeal or application would be subject to the approval of the Appellate Tribunal and
such application for withdrawal of the appeal shall be decided by the Appellate Tribunal within fifteen days of filing of such application:

Subsequent filing of FRESH APPEAL – Original time limit shall remain applicable

Provided further that

any fresh appeal or application is filed by the appellant pursuant to such withdrawal

shall be filed within the time limit specified in Sec 112(1) or Sec 112(3), as the case may be.





4. **Sec 120 [Appeal not to be filed in Certain Cases]:** Sec 120 empowers CBIC may fix monetary limits below which DEPARTMENT cannot file Appeal / Application with the objective of reduction of litigation at Govt end. Using that, CBIC has issued instructions fixing the monetary limit. [Circular No 207/1/2024-GST (Dated 26th June, 2024)]

Circular No 207/1/2024-GST. (Dated 26th June, 2024)

Reduction of government litigation - fixing monetary limits for filing appeals/applications by the Dept. **before GSTAT, HC, SC**

Aspect	Details	
Monetary Limits for Appeals	Appellate Forum	Monetary Limit (₹)
	GSTAT	₹ 20,00,000
	High Court	₹ 100,00,000
	Supreme Court	₹ 200,00,000
Principles for Applying Limits	Tax Demand Cases	Aggregate tax in dispute, including CGST, SGST/UTGST, IGST, and Compensation Cess, considered. [<i>* Interest/ Penalty etc. shall not be considered</i>]
	Interest-Only Cases	Amount of interest considered.
	Penalty-Only Cases	Amount of penalty considered.
	Late Fees-Only Cases	Amount of late fees considered.
	Erroneous Refund Cases	Aggregate refund in dispute, including CGST, SGST/UTGST, IGST, and Compensation Cess, considered. [<i>* Interest/ Penalty etc. shall not be considered</i>]
	Composite Orders (which disposes more than one appeal/demand notice)	Total disputed amount considered. (and not on the amount involved in individual appeal or demand notice.)
Exclusions	Monetary limits do not apply in the following scenarios:	
	1. Challenge of provisions being Ultra vires	
	<ul style="list-style-type: none"> Act <i>ultra vires</i> to constitutional provisions, Rules <i>ultra vires</i> to Act, Any order, notification, instruction, or circular <i>ultra vires</i> to Act/ Rules. 	
	2. Issues : Valuation, Classification, Refunds, Place of supply, Any Other ISSUE which is recurring in nature and/or involves interpretation:	
	3. Where Adverse comments, strictures and/or cost imposed against the government/department.	
No Precedent Value	4. Any other case / class of cases deemed necessary by the Board in the interest of justice or revenue.	
	Decisions not appealed due to monetary limits do not set precedent and cannot be cited as Department acquiescence.	
Department's Obligation	Department shall clearly record reasons for not filing an appeal due to monetary limits.	
	If taxpayer produces any decision in his support where Department did not file appeal due to monetary limits, then Department shall ensure that courts are informed that appeals were not filed solely due to monetary thresholds.	

Author: Illustrations where Department is allowed to file appeal on MERIT BASIS (Monetary limitation not applicable):

Scenario	Example-1	Example-2
Provision Held Ultra Vires the Constitution of India	A High Court declares Section 132 of the CGST Act (dealing with punishment for tax evasion) as unconstitutional for violating the principles of natural justice. The department may appeal to the Supreme Court, despite the monetary impact, to defend the legal validity of the provision.	A State High Court rules that the reverse charge mechanism under Section 9(4) of the CGST Act violates Article 19(1)(g) (right to practice any profession) and Article 14 (equality before law). The government may file an appeal to uphold the constitutionality of the provision.





Rules/Regulations Held Ultra Vires the Parent Act	Rule 96(10) restricted exporters who had availed benefits under specific notifications from claiming refunds of IGST paid on exports. The Kerala HC in the case of <i>Sance Laboratories (P.) Ltd-2024</i> , declared Rule 96(10) as ultra vires to Section 16 of the IGST Act. <i>The department may appeal to challenge this judgement.</i>	Rule 89(4)(C) (as amended) limited the refund of unutilized ITC for exporters of goods making zero-rated supplies without payment of tax to 1.5 times the value of like goods supplied domestically. The Karnataka High Court, in <i>M/s. Tonbo Imaging India Pvt. Ltd. -2024</i> , struck down the amended Rule 89(4)(C) as ultra vires to the provisions of the GST law. <i>The department may appeal to challenge this judgement.</i>
Order/Notification/Circular Held Ultra Vires the GST Act	A court rules that a notification increasing GST rates on certain medical devices was issued without proper legislative approval, making it ultra vires. The department would appeal to reinstate the notification.	A circular clarifying the non-availability of ITC on certain promotional expenses is struck down as inconsistent with the CGST Act. The department would contest this ruling to uphold its interpretation of ITC eligibility.
Matters Related to Valuation, Classification, Refunds, Place of Supply, or Other Recurring Issues	A taxpayer disputes the inclusion of post-sale discounts in the taxable value. <i>If the ruling goes against the department, they may appeal due to the recurring nature of valuation disputes.</i>	A product is classified under an 18% GST slab instead of 5%, and the ruling favors the taxpayer. <i>The department may appeal to establish a precedent for proper classification.</i>
Strictures/Adverse Comments or Costs Imposed Against the Govt/Dept.	A tribunal imposes personal penalties on tax officers for acting in an "arbitrary manner" in refund denial cases. <i>The department may appeal to protect its officers' conduct if they acted in good faith.</i>	A High Court imposes costs on the department for filing a frivolous appeal. <i>The department may challenge this to clear its reputation if it believes the appeal was justified.</i>

Section 120 of the CGST Act, 2017 - appeal not to be filed in certain cases - reduction of government litigation - fixing monetary limits for filing appeals/ applications by the department before GSTAT, HC, SC

1. Reference is invited to the **National Litigation Policy which was conceived with the aim of optimizing the utilization of judicial resources and expediting the resolution of pending cases**. It underscores the importance of prudent litigation practices by establishing thresholds for filing appeals in Revenue matters. Specifically, **the Policy mandates that appeals should not be pursued when the amount involved is below a specified monetary limit set by Revenue authorities**. Furthermore, it discourages filing appeals in cases where established precedents from Tribunals and High Courts have settled the matter and have not been contested in the Supreme Court.
 - 1.1 Section 120 of the CGST Act, 2017 provides for power to the Central Board of Indirect Taxes & Customs (hereinafter referred to as "the Board") for fixing the monetary limits for filing of appeal or application by the tax authorities as below:—

"Sec 120. Appeal not to be filed in certain cases. –

 - (1) The Board may, on the recommendations of the Council, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal or application by the officer of the CGST under the provisions of this Chapter.
 - (2) Where, in pursuance of the orders or instructions or directions issued under sub-section (1), the officer of the CGST has not filed an appeal or application against any decision or order passed under the provisions of this Act, it shall not preclude such officer of the CGST from filing appeal or application in any other case involving the same or similar issues or questions of law.
 - (3) Notwithstanding the fact that no appeal or application has been filed by the officer of the CGST pursuant to the orders or instructions or directions issued under sub-section (1), no person, being a party in appeal or application shall contend that the officer of the CGST has acquiesced in the decision on the disputed issue by not filing an appeal or application.
 - (4) The Appellate Tribunal or court hearing such appeal or application shall have regard to the circumstances under which appeal or application was not filed by the officer of the CGST in pursuance of the orders or instructions or directions issued under sub-section (1)."
2. Accordingly, in exercise of the powers conferred by Section 120 of the CGST Act, read with section 168 of the CGST Act, the Board, on the recommendations of the GST Council, fixes the following monetary limits below which appeal or application or Special Leave Petition, as the case may be, shall not be filed by the CGST officers before (GSTAT), High Court and Supreme Court under the provisions of CGST Act, subject to the exclusions mentioned in para 4 below:—





Appellate Forum	Monetary Limit (amount involved in ₹)
GSTAT	20,00,000/-
High Court	1,00,00,000/-
Supreme Court	2,00,00,000/-

3. While determining whether a case falls within the above monetary limits or not, the following principles are to be considered:—

i.	Where the dispute pertains to demand of tax (with or without penalty and/or interest), the aggregate of the amount of tax in dispute (including CGST, SGST/UTGST, IGST and Compensation Cess) only shall be considered while applying the monetary limit for filing appeal.
ii.	Where the dispute pertains to demand of interest only, the amount of interest shall be considered for applying the monetary limit for filing appeal.
iii.	Where the dispute pertains to imposition of penalty only, the amount of penalty shall be considered for applying the monetary limit for filing appeal.
iv.	Where the dispute pertains to imposition of late fee only, the amount of late fee shall be considered for applying the monetary limit for filing appeal.
v.	Where the dispute pertains to demand of interest, penalty and/or late fee (without involving any disputed tax amount), the aggregate of amount of interest, penalty and late fee shall be considered for applying the monetary limit for filing appeal.
vi.	Where the dispute pertains to erroneous refund, the amount of refund in dispute (including CGST, SGST/UTGST, IGST and Compensation Cess) shall be considered for deciding whether appeal needs to be filed or not.
vii.	Monetary limit shall be applied on the disputed amount of tax/interest/penalty/late fee, as the case may be, in respect of which appeal or application is contemplated to be filed in a case.
viii.	In a composite order which disposes more than one appeal/demand notice, the monetary limits shall be applicable on the total amount of tax/interest/penalty/late fee, as the case may be, and not on the amount involved in individual appeal or demand notice.

EXCLUSIONS

4. Monetary limits specified above for filing appeal or application by the department before GSTAT or High Court and for filing Special Leave Petition or appeal before the Supreme Court shall be applicable in all cases, except in the following circumstances where the decision to file appeal shall be taken on merits irrespective of the said monetary limits:—

i.	Where any provision of the CGST Act or SGST/UTGST Act or IGST Act or GST (Compensation to States) Act has been held to be ultra vires to the Constitution of India; or										
ii.	Where any Rules or regulations made under CGST Act or SGST/UTGST Act or IGST Act or GST (Compensation to States) Act have been held to be ultra vires the parent Act; or										
iii.	Where any order, notification, instruction, or circular issued by the Government or the Board has been held to be ultra vires of the CGST Act or SGST/UTGST Act or IGST Act or GST (Compensation to States) Act or the Rules made thereunder; or										
iv.	<p>Where the matter is related to –</p> <table border="1"> <tr> <td>a.</td><td>Valuation of goods or services; or</td></tr> <tr> <td>b.</td><td>Classification of goods or services; or</td></tr> <tr> <td>c.</td><td>Refunds; or</td></tr> <tr> <td>d.</td><td>Place of Supply; or</td></tr> <tr> <td>e.</td><td>Any other issue,</td></tr> </table> <p>which is recurring in nature and/or involves interpretation of the provisions of the Act/the Rules/notification/circular/order/instruction etc;</p>	a.	Valuation of goods or services; or	b.	Classification of goods or services; or	c.	Refunds; or	d.	Place of Supply; or	e.	Any other issue,
a.	Valuation of goods or services; or										
b.	Classification of goods or services; or										
c.	Refunds; or										
d.	Place of Supply; or										
e.	Any other issue,										





v.	Where strictures/adverse comments have been passed and/or cost has been imposed against the Government/Department or their officers;
vi.	Any other case or class of cases, where in the opinion of the Board, it is necessary to contest in the interest of justice or revenue.

5. It is pertinent to mention that an appeal should not be filed merely because the disputed tax amount involved in a case exceeds the monetary limits fixed above. Filing of appeal in such cases is to be decided on merits of the case. The officers concerned shall keep in mind the overall objective of reducing unnecessary litigation and providing certainty to taxpayers on their tax assessment while taking a decision regarding filing an appeal.
6. Attention is drawn to sub-sections (2), (3) & (4) of section 120 of the CGST Act, which provide that in cases where it is decided not to file appeal in pursuance of these instructions, such cases shall not have any precedent value. In such cases, the Reviewing Authorities shall specifically record that "even though the decision is not acceptable, appeal is not being filed as the amount involved is less than the monetary limit fixed by the Board."
- 6.1 Non-filing of appeal based on the above monetary limits, shall not preclude the tax officer from filing appeal or application in any other case involving the same or similar issues in which the tax in dispute exceeds the monetary limit or case involving the questions of law.
- 6.2 Further, it is re-iterated that in such cases where appeal is not filed solely on the basis of the above monetary limits, there will be no presumption that the Department has acquiesced in the decision on the disputed issues in the case of same taxpayers or in case of any other taxpayers. Accordingly, in case any prior order is being cited or relied upon by the taxpayer, claiming that the same has been accepted by the Department, it must be checked as to whether such order was accepted only on account of the monetary limit before following them in the name of judicial discipline.
- 6.3 Also, in respect of such cases where no appeal is filed based on the monetary limit, the Departmental representatives/counsels must make every effort to bring to the notice of the GSTAT or the Court, as the case may be, that the appeal in such cases was not filed only for the reason of the amount of the tax in dispute being less than the specified monetary limit and, therefore, no inference shall be drawn that the decisions rendered therein were acceptable to the Department. Accordingly, they should draw the attention of the GSTAT or the Court towards the provisions of section 120(4) of the CGST Act, 2017 as reproduced in para 1.1 above.

“

कोशिशों का सफर

कल मुद्दों बाद कोशिशों के पाँव हिम्मत लेकर मंजिल से मिलने चले...
 मुश्किलों ने रोक के परेशानियों से मिलवाया और हिम्मतें कुछ पस्त होने लगी...
 अगले मोड़ पर रुकावटों भरी थकान ने पकड़ के बिठा दिया...
 हौसले की हवा ने कोशिशों को साहारा दिया और चल पड़ी वो भी इस सफर पे...
 धीरे धीरे तेज होती थापों की ताल सुनके फिर जोश भी साथ हो लिया...
 कदम अब दौड़ रहे थे और मंजिल करीब लग रही थी...

शाम ने आराम के लिए उकसाया और पेड़ों की घनी छाओं से मिलवाया...
 दर्द जाग गया और उठने से मना करके सोने की गुजारिश करने लगा...
 अँधेरे के डरावने काले बादलों ने भी पलट जाने का हुकुम दिया...
 सब की चाँदनी ने बेताब चाहतों को भरोसा दिया और उम्मीदों का वादा किया...
 रौशनी की किरणों ने सोयी कोशिशों को झिझोड़ा...
 अब वो पाँव, फिर हिम्मतों, जोश और हौसले के साथ, मंजिल की ओर बढ़ रहे हैं...

”



**5: PENALTIES**

1. **Sec 122-A [Penalty for failure to register certain machines used in manufacture of goods as per special procedure]:** Sec 122-A is applicable to 'manufacturers of goods where a SPECIAL PROCEDURE for machine registration has been notified u/Sec 148. it is providing for penalty of ₹1,00,000 for each unregistered machine, in addition to any other applicable penalties. Each unregistered machine is also liable for seizure and confiscation. [inserted by FA, 2024 (15 Feb, 2024), (w.e.f. 1st Oct, 2024)]

Amendment in Simplified Form

Special Procedure for (RP) Manufacturing Pan Masala and Notified Tobacco Products. [Sec 148 + N/N 4/2024-CT (15th May, 2024)]

- **RP (Supplier of GOODS):** RP engaged in manufacture of 'Pan Masala and Notified Tobacco Products' have been mandated to follow SRM [Special Reporting Mechanism]. As per this SRM, they are required to do following:
 - Register machines (*packing machines) (and disposal of machines)
 - Submission of monthly filings (detailing inputs used, production, power consumption etc)

SRM [Special Reporting Mechanism]

Form SRM-I	Registration and disposal of packing machines of pan masala and tobacco products
Form GST SRM-II	Monthly Statement of inputs used and the final goods produced by the manufacturer of goods specified in the Schedule
Form GST SRM-III	Certificate of Chartered Engineer (certifying details of machinery)

The intent behind this is to strictly monitor 'filling and packing machines' in the Pan Masala and Tobacco sectors to prevent tax evasion.

- **Penalties for non-compliance may apply under Section 122A of the CGST Act.**

Special Procedure is not part of syllabus. Hence, this penal provisions is also not finding place in ICAI Material.

Provision	Description	Example
Applicability	Applies to manufacturers of goods where a special procedure for machine registration is notified under Section 148.	A textile manufacturer is required to register all fabric weaving machines under a notified rule.
Penalty for Non-Registration (Sec 122A(1))	Penalty of ₹ 1,00,000 for each unregistered machine, in addition to any other applicable penalties.	A company with 5 unregistered machines will pay a penalty of ₹5,00,000 (₹1 lakh × 5).
Seizure and Confiscation (Sec 122A(2))	Each unregistered machine is also liable for seizure and confiscation.	GST authorities can seize the unregistered weaving machines from the manufacturing unit.
Relief from Confiscation	Machines will not be confiscated if: (a) The penalty is paid, and (b) Machines are registered within 3 days of penalty communication.	The manufacturer pays the ₹5 lakh penalty and registers the machines within 3 days, avoiding confiscation.
Additional Penalties	The penalty under this section is in addition to any penalties under Chapter XV or other provisions of the CGST Act.	If other violations (e.g., tax evasion) are detected, additional penalties may apply.

Section 122-A : Penalty for failure to register certain machines used in manufacture of goods as per special procedure.

[Inserted by FA, 2024 (enacted on 15th Feb, 2024) – w.e.f. 1st Oct, 2024]

- (1) **Supplier (= Manufacturer of Goods required to pay GST as per Spl Procedure (Sec 148) requiring registration of machine):** if machine not registered, then Penalty = Rs 1,00,000 for every unregistered machine
- Notwithstanding anything contained in this Act,
- where any person, who is engaged in the manufacture of goods in respect of which any special procedure relating to registration of machines has been notified under section 148, acts in contravention of the said special procedure,
- he shall, in addition to any penalty that is paid or is payable by him under Chapter XV or any other provisions of this Chapter, be liable to pay
- a penalty equal to an amount of one lakh rupees for every machine not so registered.





- (2) **Additionally, unregistered machine shall be liable for seizure and confiscation.**
In addition to the penalty under sub-section (1), every machine not so registered shall be liable for seizure and confiscation:
 Provided that such machine shall not be confiscated where—
 (a) the penalty so imposed is paid; AND
 (b) the registration of such machine is made in accordance with the special procedure within three days (3 Days) of the receipt of communication of the order of penalty.

6: MISCELLANEOUS PROVISIONS

1. **Section 171 - Anti profiteering measure: w.e.f. 1st Oct, 2024, 'anti-profiteering' cases will be examined by Principal Bench of GSTAT (and not by the Competition Commission of India). Also, Govt empowered to notify cut-off date beyond which request for examination of 'anti-profiteering cases will not be accepted. [Sec 171 + Sec 109(1) & (5) of the CGST ACT - amended by FA (No. 2), 2024 (w.e.f. 27th Sep, 2024) + N/N 19/2024 - CT & N/N 18/2024 - CT (w.e.f. 1st Oct, 2024)]**

Amendment in Simplified Form

Authority for purpose of Sec 171

<u>Initially</u>	National Anti-Profiteering Authority - constituted by the CG (on GST Council recommendation)	
<u>w.e.f. 1st Dec, 2022</u>	Competition Commission of India established u/Sec 7(1) of the Competition Act, 2002 - appointed by the CG (on GST Council recommendation)	[Notified vide N/N 23/2022-CT]
<u>w.e.f. 1st Oct, 2024</u>	Principal Bench of the Appellate Tribunal , constituted u/Sec 109(3) of the CGST Act - appointed by the CG (on GST Council recommendation)	[Notified vide N/N 19/2024-CT] Corresponding amendment made in Sec 109 (1) & (5) also by FA (No. 2), 2024 Proviso inserted in Sec 109(5) providing that 'Anti-profiteering cases as referred in Sec 171' shall be examined or adjudicated only by the Principal Bench of the Appellate Tribunal. ¹

Section 171 : Anti-Profiteering measure.

- (1) **[GST Rate Reduction/ Benefit of ITC] -Supplier required to pass benefit to recipient by commensurate reduction in prices**
- (2) **Authority constituted/ appointed u/Sec 171(2)' to examine that there is no profiteering by supplier**
- | | | |
|--|--|--|
| The Central Government may, on recommendations of the Council, by notification ,
- constitute an AUTHORITY , (**National Anti-profiteering Authority was constituted). Or
- empower an existing Authority constituted under any law for the time being in force, | to examine
whether <u>ITC availed by any RP or the reduction in the tax rate</u> | have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him. |
|--|--|--|

¹ **Author:** 'Anti-profiteering cases' as adjudicated by the GST Appellate Tribunal (GSTAT) from 1st October, 2024, can be further appealed to the High Court and subsequently to the Supreme Court. (ofcourse, this is possible only if case is involving substantial question of law)

**** Earlier, orders passed by 'National Anti-profiteering Authority'/'Competition Commission of India' were non-appealable under GST Law.**





Govt. may notify a cut-off date for accepting the request as to examination of anti-profiteering cases:

Provided that

the Government may by notification, on the recommendations of the Council, specify the date from which the said Authority shall not accept any request for examination as to whether ITC availed by any RP or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

[inserted by FA (No.2), 2024- w.e.f. 27th Sep, 2024]

Explanation—For the purposes of this sub-section, the expression

“request for examination”

shall mean

the written application filed by an applicant requesting for examination as to whether ITC availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

[inserted by FA (No.2), 2024- w.e.f. 27th Sep, 2024]

(3) ‘Authority constituted/ appointed u/Sec 171(2)’ to exercise prescribed powers to ensure anti-profiteering

(3A) Authority constituted/ appointed u/Sec 171(2)’ empowered to levy PENALTY = 10% of amount profiteered
[Saving from penalty if paid within 30 days of the Order]

Explanation 1—For the purposes of this section, the expression

“profiteered”

shall mean

the amount determined on account of not passing

– *the benefit of reduction in rate of tax on supply of goods or services or*
– *the benefit of ITC to the recipient by way of commensurate reduction in the price of the goods or services or both*

Explanation 2—For the purposes of this section, the expression.

“Authority”

shall include

the “Appellate Tribunal”

[inserted by FA (No.2), 2024- w.e.f. 27th Sep, 2024]

Section 109. Constitution of Appellate Tribunal and Benches thereof.

(1) CG to constitute GST Appellate Tribunal

The Government shall, on the recommendations of the Council, by notification, constitute with effect from such date as may be specified therein, an Appellate Tribunal known as the GST Appellate Tribunal for hearing appeals against the orders passed **by the Appellate Authority or the Revisional Authority,**

or

for conducting an examination or adjudicating the cases referred to in Sec 171 (2) [i.e. Anti-profiteering cases], if so notified under the said section.

[inserted by FA (No.2), 2024- w.e.f. 27th Sep, 2024]

(5) Orders appealable to GSTAT:

The Principal Bench and the State Bench shall hear appeals

against the orders passed by the Appellate Authority or the Revisional Authority:

Exception 1: Order where one of the issue involved in appeal relates to POS is appealable only to PB

Provided that

the cases in which any one of the issues involved relates to the place of supply,

shall be heard only by the Principal Bench.



Exception 2: Anti-profiteering cases shall be examined /adjudicated by the Principal Bench

Provided further that

the matters referred to in **Sec 171 (2)** [i.e. Anti-profiteering cases]

shall be examined or adjudicated **only** by the Principal Bench.

[inserted by FA (No.2), 2024- w.e.f. 27th Sep, 2024]

Exception 3: Notified Cases – shall only be heard by the Principal Bench

Provided also that

the Government may, on the recommendations of the Council, **notify other cases or class of cases**

Which shall be heard **only** by **the Principal Bench**.

[inserted by FA (No.2), 2024- w.e.f. 27th Sep, 2024]

“

MUM's told me a story (My favorite BEDTIME STORY)
Once upon there was a race... the goal was to reach on the top of a tower. Many people gathered to see and support them. The race began. In reality, the people didn't believe that it was possible that the frogs reached the top of the tower, and all the phrases that one could hear were of this kind... "What pain !!! They will never make it.!" The frogs began to resign, except for the few. The people continued: "....."What pain !!! They will never make it.!" And almost all the frogs admitted the defeat. At the end, all the frogs quit, except for the one who, alone and with the enormous effort, reached at the top of the tower. One of person out of the huge crowd approached him to ask him how he had done it, to finish the race. And discovered that "He was DEAF!

Morals of the story:

- NEVER LISTEN TO PEOPLE WHO HAVE THE BAD HABIT OF BEING NEGATIVE.....
Because they steal the best aspirations from your heart.....
- ALWAYS BE DEAF TO SOMEONE WHO TELLS YOU THAT YOU CAN'T WIN AND WON'T ACHIEVE YOUR GOALS OR MAKE COME TRUE DREAMS YOUR DREAMS.
- A PERSON IS A WINNER NOT BECAUSE HE WAS BRAVEST AMONG ALL, BUT BECAUSE HE WAS BRAVE FOR 10 MORE MINUTES."

”



**GST - Volume III Amendments****1: ITC**

1. **Sec 16 [Eligibility and conditions for taking ITC]:** (i) **Sec 16(5) inserted to provide relaxation in time limitation as ITC availment for ITC pertaining to [FY 2017-18, 2018-19, 2019-20, 2020-21]:** Time limitation for all these years extended to **30th Nov, 2021** (thus, ITC claimed in any Sec 39 Return (regular return) filed upto 30th Nov, 2021 becomes 'eligible ITC') (ii) **Sec 16(6) inserted to provide relaxation in time limitation for ITC availment i.r.o. revocation of cancellation of registration::** The returns for the period from date of cancellation of registration/ effective date of cancellation of registration till the date of revocation of cancellation of registration are filed after revocation of cancellation of registration. ITC can be claimed in such return if filed within 30 days from date of revocation order. **[Inserted by the FA (No. 2), 2024, w.r.e.f. 1-7-2017]**

Special provisions as to time limitation – vide Sec 16(5) and Sec 16(6) as inserted by FA, 2024 (w.e.f 1st July, 2017)

Sec 16(4) RP shall not be entitled to take **ITC in respect of any invoice/DN** for supply of goods or services or both after ~~the due date of furnishing of the return u/Sec 39 for the month of September~~ **the 30th November following the end of FY to which such invoice/ DN pertains** [Amended by FA, 2022 - w.e.f. 01.10.2022] **or** ~~furnishing of the relevant annual return,~~ **whichever is earlier.**

[FA, 2024 (16 Aug, 2024) - w.r.e.f. 1st July, 2017]**Exceptions**[FA, 2024 (16 Aug, 2024) - w.r.e.f. 1st July, 2017]**Exception-1****Sec 16(5)**

ITC can be availed for specific financial years (FY 2017-18, 2018-19, 2019-20, 2020-21) in any return filed upto 30th November 2021.

Exception-2**Sec 16(6)****ITC Entitlement upon restoration of cancelled registration**

Section 16(6) addresses situations where the registration of a registered person is cancelled under Section 29 and later reinstated through:

Section 30 (revocation by the proper officer), or **Orders of the Appellate Authority, Appellate Tribunal, or Court.**

This provision ensures that ITC related to invoices or debit notes during the cancellation period can be claimed if the **following conditions** are met:

- (1) **ITC was not restricted under Section 16(4) as on the date of cancellation order.**
- (2) **ITC is claimed in a return filed by later of the following dates:**
 - (i) **Return filed by 30th November** following the FY to which the invoice/DN pertains (or furnishing of the relevant annual return, whichever is earlier), **OR**
 - (ii) **Return of cancellation period** (from date of cancellation order/ effective date of cancellation to the date of revocation order) **as filed within 30 days** from the date of revocation

Sec 16(5):**Table Showing Normal and Extended Time Limitations for Claiming ITC**

FY	Normal Time Limitation (Sec 16(4))	Extended Time Limitation (Sec 16(5))
	[ITC claimable in return filed upto following date..]	[ITC claimable in return filed upto following date..]
2017-18	25 th Oct, 2018 (filing of GSTR-3B for September 2018)	30 th November 2021
2018-19	20 th Oct, 2019 (filing of GSTR-3B for September 2019)	30 th November 2021
2019-20	20 th / 22 nd / 24 th Oct, 2020 (filing of GSTR-3B for September 2020)	30 th November 2021
2020-21	20 th / 22 nd / 24 th Oct, 2020 (filing of GSTR-3B for September 2021)	30 th November 2021





Reason of amendment

Delayed filing of returns for FYs (FY 2017-18, 2018-19, 2019-20, 2020-21- impacting eligibility to take ITC

During Covid-19 period, economic activities and business at large were adversely impacted and it resulted in delay in filing of returns.

Also, during initial period of implementation of GST also, returns could not be filed by the taxpayers in time due to lack of knowledge about need of filing for each tax period, even in the cases where there was no supply, or where the net cash liability to be paid in a return was nil.

Further, the Government had provided conditional waiver/ relaxation in respect of late fee for delayed filing of GSTR 3B returns for initial years through various amnesty schemes by notifications; **however, no parallel relief was extended in respect of compliance of section 16(4) of CGST Act.**

Although the taxpayers, on availing the benefits of these schemes were able to file their pending returns with relaxation in late fee, however, due to expiry of due date under Section 16(4) of CGST Act, they were not eligible to take ITC in the returns filed beyond the due date under Section 16(4) of the CGST Act 2017.

Consequently, 'ITC availed in such returns = Ineligible ITC' - liable to recovery action u/Sec 73/74 of the CGST Act

It is possible that in large number of such cases, demand notices would have already been issued or would be issued in future, demanding the entire ITC availed through such returns. The same would not only impose a huge financial burden on the taxpayers but also lead to higher work load on the tax authorities for adjudication/ appeal of such cases.

Resolution:: In order to provide relief to taxpayers and to reduce large scale litigation, time limit extended to 31st Dec, 2021

Relaxations has therefore been provided i.r.o. the ITC availed in the Form GSTR 3Bs pertaining to the FYs 2017-18 to 2020-21, which had been filed beyond the due date specified in Section 16(4) of the CGST Act 2017, but where such returns have been filed upto 30.11.2021 (i.e. the last date for filing return as per the last amnesty scheme for late fee relaxation for delayed filing of the returns)

Framework:

Illustration:

Mr X files GSTR-3B for FY 2018-19 on 15th Nov, 2021 under the amnesty scheme and claimed ITC therein.

Status of ITC [on the basis of Sec 16(4)] = Ineligible ITC - as time limitation was 20th Oct, 2019 (liable to be recovered)

Status of ITC [on the basis of Sec 16(5)] = Eligible ITC - as time limitation is 30th Nov, 2021 (not liable to be recovered)

[ITC which was earlier ineligible is now deemed valid due to the retrospective extension of time limitation]

If no action been initiated till date of amendment

No action will be taken now (as ITC has been regularized)

Circular No. 237/31/2024-GST (Dated 15th Oct, 2024)

PO to consider the retrospective provisions of Section 16(5) or 16(6) and take further appropriate actions.

If action has already been initiated prior to amendment
SCN has been issued, but order is pending

Proceedings initiated shall be dropped.

Circular No. 237/31/2024-GST (Dated 15th Oct, 2024)

Adjudicating Authority to consider Section 16(5) or 16(6) and pass a suitable order.

DO has been issued/passed (u/Sec 74 or Sec 74)
No appeal has been filed ¹

N/N 20/2024-CT (w.e.f. 8th Oct, 2024). Issued in exercise of powers given u/Sec 148

Special procedure for rectifying an order confirming incorrect ITC availment u/Sec 16(4), where ITC is now available u/Sec 16(5)/ (6) and no appeal has been filed

Assessee

Files an application for rectification electronically on the common portal, uploading details as per Annexure A within 6 months of the notification date. (i.e. 8th Oct, 2024 + 6 months = 7th April, 2025)

PO

The PO processes the application, rectifies the order, and uploads the summary of the rectified order in Form GST DRC-08 within 3 months.

[** Where the rectification adversely affects the said person, the principles of natural justice shall be followed by the said proper officer. ²]

¹ Situation: DO has been passed and taxpayer in compliance thereof has reversed ITC/ paid back the amount
[No relief to such person] - FA, 2024 (Sec 150 & 151) explicitly providing that 'No refund of tax paid or ITC reversed'

² Circular No. 237/31/2024-GST

ITC claim unrelated to Section 16(4) contravention but involving other issues:: Taxpayer must apply for rectification under Section 161 within its specified time limit.

[e.g. A taxpayer's ITC denial was due to mismatch of invoices rather than a Section 16(4) contravention. They must file a rectification application under Section 161, not under Notification No. 22/2024.]

[* Time limit u/Sec 161= 3 months from the date of issue of the decision, order, notice, or document (extendable for clerical or arithmetical errors).]





DO passed + Taxpayer filed appeal with First Appellate Authority (u/Sec 107) which is pending

Appeal order to be passed in favour of assessee.

Circular No. 237/31/2024-GST (Dated 15th Oct, 2024)

Appellate Authority to consider the retrospective provisions and pass an appropriate order.

DO passed + Taxpayer filed appeal with First Appellate Authority (u/Sec 107) in which demand has been confirmed
+ No further appeal has been filed with Appellate Tribunal

N/N 20/2024-CT (w.e.f. 8th Oct, 2024). Issued in exercise of powers given u/Sec 148

Special procedure for rectifying an order confirming incorrect ITC availment u/Sec 16(4), where ITC is now available u/Sec 16(5)/(6) and no appeal has been filed

Assessee

Files an application for rectification electronically on the common portal, uploading details as per Annexure A **within 6 months of the notification date.** (i.e. 8th Oct, 2024 + 6 Months = 7th April, 2025)

PO

The 'Appellate Authority' processes the application, **rectifies the order, and uploads the summary of the rectified order in Form GST APL-04 within 3 months.**

[** Where the rectification adversely affects the said person, the principles of natural justice shall be followed by the said proper officer.]

Sec 16(6):

Reason of amendment

Registration cancelled but revoked – Impact on ITC during the period if Sec 16(4) limitation has expired by time of revocation

Section 30 of CGST Act and Rule 23 of CGST Rules allow filing of returns for the period from cancellation to revocation, but returns must be filed within 30 day of revocation order.

Issue: Taxpayers may lose ITC eligibility if returns for the period of cancellation are filed after the timeline specified in Section 16(4), even if revocation is approved.

No specific relaxation for ITC eligibility in Section 16(4) for the cancellation period.

Taxpayers filing returns beyond the limitation period of Sec 16(4) (but within 30 days post-revocation) lose ITC as the timeline under Section 16(4) for a particular financial year has already expired.

Consequently, 'ITC availed in such returns = Ineligible ITC' – liable to recovery action u/Sec 73/74 of the CGST Act

It is possible that in large number of such cases, demand notices would have already been issued or would be issued in future, demanding the entire ITC availed in returns filed post-revocation.

Resolution:: In order to provide relief to taxpayers and to reduce litigation, time limit extended (conditionally)

Relaxations has therefore been provided i.r.o. the ITC that could have otherwise been availed within normal limitation period of Sec 16(4) but could not have been availed due to registration cancellation. Post-revocation, such ITC can be claimed (in return) by later of 2 timelines

- (i) Return filed by 30th November following the FY to which the invoice/DN pertains (or furnishing of the relevant annual return, whichever is earlier), OR
- (ii) Return of cancellation period (from date of cancellation order/ effective date of cancellation to the date of revocation order) as filed within 30 days from the date of revocation order.

Sec 16(6): Examples and Analysis

	Invoice Date	Registration Cancelled	Registration Revoked	Conditions for ITC eligibility – Sec 16(6)		
				ITC Eligibility as on date of cancellation order considering Sec 16(4) limitation	ITC Timelines (later of 2) [For filing return for claiming ITC]	Final Admissibility as per Sec 16(6)
1.	15th March 2023 [FY 22-23]	1st April 2023 [FY 23-24]	10th Nov 2024 [FY 24-25]	<u>Eligible</u> (as Sec 16(4) time-limitation is 30th Nov, 2023)	30th Nov following FY 2022-23 (FY to which the Invoice/DN pertains): 30th Nov 2023 30 days from revocation order (pending returns must be filed within this period): 10th Dec 2024	ITC can be claimed in the return filed by 10th December 2024.
2.	10th February 2024 [FY 23-24]	1st January 2024 [FY 23-24]	15th October 2024 [FY 24-25]	<u>Eligible</u> (as Sec 16(4) time-limitation is 30th Nov, 2024)	30th November following FY 2023-24 (FY to which the Invoice/DN pertains): 30th November 2024 30 days from revocation order (pending returns must be filed	ITC can be claimed in the return filed by 30th November 2024.





					<u>within this period</u> : 14th November 2024	
3.	15th March 2023 [FY 22-23]	Reg. cancelled Retrospective from 1st April 2022 [FY 22-23] <u>Cancellation order passed on 1st April 2024</u> [FY 24-25]	20th October 2024 [FY 24-25]	Not Eligible (as Sec 16(4) time-limitation is 30th Nov, 2023 – thus, ITC of such invoice was already restricted u/Sec 16(4) <u>as on date of cancellation order</u>)	<u>30th November following FY 2022-23 (FY to which the Invoice/DN pertains): 30th November 2023</u> <u>30 days from revocation order (pending returns must be filed within this period): 19th November 2024</u>	ITC cannot be claimed as conditions of Sec 16(6) are not fulfilled.

Author: Additional Points

Registration Cancelled, but later on restored (as cancellation revoked):

Case-A:: Returns required to be filed post-revocation are filed within 30 days

Benefit- **Sec 16(5)**
[FA, 2024- w.r.e.f. 1st July, 2017]

Relaxations has therefore been provided i.r.o. the ITC that could have otherwise been availed within normal limitation period of Sec 16(4) but could not have been availed due to registration cancellation. Post-revocation, such ITC can be claimed (in return filed) by later of 2 timelines:

(i) **Return filed by 30th November** following the FY to which the invoice/DN pertains (or furnishing of the relevant annual return, whichever is earlier), **OR**

(ii) **Return of cancellation period** (from date of cancellation order/ effective date of cancellation to the date of revocation order) as filed **within 30 days** from the date of revocation order.

Case-B:: Returns required to be filed post-revocation are NOT filed within 30 days

Loss – Sec 29(2) + **R-21**
[w.e.f. 10th July, 2024]

Non-compliance with the 30-day timeline is a grounds for cancellation of registration u/Sec 29(2).

Rule 21 (ga) The registration granted to a person is liable to be cancelled, if the said person,-
(ga). violates the provisions of **third or fourth proviso to rule 23(1)** ; [w.e.f. 10th July, 2024]

In simple words, in case of a taxpayer whose registration was restored (revoking the earlier cancellation), such registration again can be cancelled by PO if he fails to file returns for the cancellation period within 30 days of revocation order.

Section 16: Eligibility and conditions for taking ITC

(4) Time limitation for availment of 'Invoice/ Debit Note based ITC':

A RP shall not be entitled to take ITC	in respect of any Invoice or Debit Note for supply of goods or services or both	after <u>30th Nov following the end of financial year to which such invoice or debit note pertains</u> or <u>furnishing of the relevant annual return,</u> whichever is earlier.
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[Sec 16(5) & (6) Inserted by the Finance (No. 2) Act, 2024, w.r.e.f. 1-7-2017.]

(5) Relaxation in ITC availment for ITC pertaining to [FY 2017-18, 2018-19, 2019-20, 2020-21]: in any Sec 39 Return (regular return) filed upto 30th Nov, 2021

Notwithstanding anything contained in sub-section (4),

in respect of <u>an invoice or debit note for supply of goods or services or both pertaining to the Financial Years 2017-18, 2018-19, 2019-20 and 2020-21,</u>	the RP shall be entitled to take ITC in any return u/Sec 39 which is filed up to the 30th November, 2021.
--	--

[FA, 2024 (No. 2) (16 Aug, 2024) – w.e.f. 1st July, 2017] – **retrospective amendment**





- (6) **Time limit for Availment of ITC for a person whose cancellation of registration is revoked = Later of the two**
 (a) Normal time limit as available to all. (b) first return which is filed within 30 days of revocation order,

Where registration of a RP is cancelled u/Sec 29 and subsequently the cancellation of registration is revoked by any order, either u/Sec 30 or pursuant to any order made by the Appellate Authority or the Appellate Tribunal or court

and

where availment of ITC in respect of an invoice or debit note was not restricted under sub-section (4) on the date of order of cancellation of registration,

the said person shall be entitled to take the ITC in respect of such invoice or debit note for supply of goods or services or both, in a return under section 39,—

- (i) filed up to 30th November following the financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier; or
- (ii) for the period from the date of cancellation of registration or the effective date of cancellation of registration, as the case may be, till the date of order of revocation of cancellation of registration, where such return is filed within 30 days from the date of order of revocation of cancellation of registration,

whichever is later.

[FA, 2024 (No. 2) (16 Aug, 2024) – w.e.f. 1st July, 2017] – retrospective amendment

Consequential Amendments

- 1.1. **Sec 148 [SPECIAL PROCEDURE FOR CERTAIN PROCESSES]:** Special procedure notified for rectifying an order confirming incorrect ITC availment u/Sec 16(4), where credit is now available u/Sec 16(5) / (6) and no appeal has been filed. [N/N 22/2024– CT- DATED 8-10-2024]

N/N 20/2024-CT (w.e.f. 8th Oct, 2024). Issued in exercise of powers given u/Sec 148

Special procedure for rectifying an order confirming incorrect ITC availment u/Sec 16(4), where ITC is now available u/Sec 16(5)/ (6) and no appeal has been filed

1. In exercise of the powers conferred under the **section 148 of the CGST Act, 2017**, the Central Government, on the recommendations of the Council, hereby notifies **the following special procedure for rectification of order, to be followed by the class of RPs (hereinafter referred to as the said person), against whom any order under section 73 or section 74 or section 107 or section 108 of the said Act has been issued confirming demand for wrong availment of ITC, on account of contravention of provisions of Sec 16(4), but where such ITC is now available as per the provisions of Sec 16(5) or Sec 16(6), and where appeal against the said order has not been filed**, namely:—

Submit rectification application (over portal)

2. **The said person shall file, electronically** on the common portal, **within a period of six months from the date of issuance of this notification** (i.e. 8th Oct, 2024 + 30 days = 7th April, 2025), **an application for rectification of an order issued under section 73 or section 74 or section 107 or section 108 of the said Act, as the case may be, confirming demand for wrong availment of ITC, on account of contravention of provisions of Sec 16(4), but where such ITC is now available as per the provisions of Sec 16(5) or Sec 16(6), and where appeal against the said order has not been filed.**
3. The said person shall, along with the said application, **upload the information in the proforma in Annexure A** of this notification.
4. **The proper officer for carrying out rectification of the said order shall be the authority who had issued such order**, and the said authority **shall take a decision** on the said application and **issue the rectified order, as far as possible, within a period of three months from the date of the said application.**
5. Where any rectification is required to be made in the order referred to in paragraph 1 and, the said authority has issued a rectified order thereof, then **the said authority shall upload a summary of the rectified order electronically-**

- (i) in **FORM GST DRC-08**, in cases where rectification of an order issued under section 73 or section 74 of the said Act is made; and





- (ii) in **FORM GST APL-04**, in cases where rectification of an order issued under section 107 or section 108 of the said Act is made.

6. The rectification is required to be made only in respect of demand of such ITC which has been alleged to be wrongly availed in contravention of provisions of section 16(4) of the said Act, but where such ITC is now available as per the provisions of the Sec 16(5) or Sec 16(6).
7. Where such rectification adversely affects the said person, the principles of natural justice shall be followed by the authority carrying out such rectification.

Special Analysis (only for Brilliant Minds)

Q. A registered person registration has been cancelled on 28 March, 20x5. He applied for revocation of cancellation in 10 Dec, 20x5 (after obtaining necessary extension). PO revoking cancellation restored his registration on 7 Jan 20x6. Whether ITC of purchases made during 28 March, 20x5 (FY 20x4-20x5) and April to 6 Jan 20x5 (FY 20x5-20x6) can be availed by such person? **[Amendment Based Question]**

Ans. Yes, the registered person can avail ITC for purchases made during:

- (i) 28th to 31st March 20x5 (FY 20x4-20x5). (ii) April 20x5 to 6th Jan 20x6 (FY 20x5-20x6)

This is possible due to Section 16(6) of the CGST Act, which extends the ITC claim period when GST registration is cancelled and later revoked.

Legal Justification for ITC Claim:

(A) GST Registration Was Revoked and Restored

The taxpayer's registration was cancelled on 28th March 20x5.

They applied for revocation on 10th Dec 20x5, and the PO restored registration on 7th Jan 20x6.

Since the registration was reinstated, the taxpayer is treated as continuously registered for ITC purposes.

(B) Application of Section 16(6) - Extended ITC Claim Period

If a taxpayer's GST registration is revoked and later restored, ITC can be claimed in any of the following return:

- (i) Return filed **up to 30th November following the financial year or furnishing of the relevant annual return, whichever is earlier;** or
- (ii) Return filed **within 30 days from the revocation order date** (covering the period from cancellation to revocation).

The later of these two deadlines applies.

This provision ensuring taxpayers don't lose ITC due to cancellation.

Application of extended time-limitation:

	Purchases	Registration Cancelled	Registration Revoked	Conditions for ITC eligibility - Sec 16(6)	
				ITC Timelines (later of 2) [For filing return for claiming ITC]	Final Admissibility as per Sec 16(6)
1.	28 th to 31 st March 20x5 (FY 20x4-20x5)	28 March, 20x5 [FY 20x4-20x5]	7 th Jan, 20x6 (FY 20x5-20x6)	30 th Nov following FY 20x4-x5 (FY to which the Invoice/DN pertains): 30th Nov 20x5 30 days from revocation order (pending returns must be filed within this period): 5th Feb 20x6	ITC can be claimed in the return filed by 5th Feb 20x6 . ¹
2.	April 20x5 to 6 th Jan 20x6 (FY 20x5-20x6)	28 March, 20x5 [FY 20x4-20x5]	7 th Jan, 20x6 (FY 20x5-20x6)	30 th November following FY 20x5-x6 (FY to which the Invoice/DN pertains): 30th November 20x6 30 days from revocation order (pending returns must be filed within this period): 5th Feb 20x6	ITC can be claimed in the return filed by 30th November 20x6 .

¹ **Note:** ITC for FY 20x4-20x5 would have been time-barred after 30th Nov 20x5 (as per standard time limitation of Sec 16(4)), but Section 16(6) allows ITC claim within 30 days of revocation (i.e., by 6th Feb 20x6).



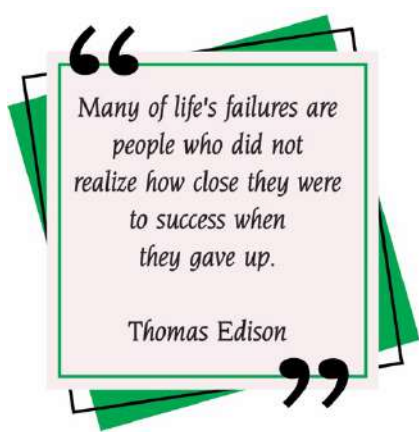


Author: Purchases made during [Cancellation Date till Revocation Date]

Issue of time-limitation resolved by Sec 16(6) – as inserted by FA, 2024 w.r.e.f. 1-7-2017

Issue of GSTR-2B: still pending

When a taxpayer's GST registration is cancelled, the GST portal ceases to generate GSTR-2B statements for that taxpayer. Consequently, purchases made during the cancellation period will not appear in GSTR-2B. This absence poses challenges for availing ITC upon revocation of the cancellation.¹



¹ **FOR YOURS KNOWLEDGE:**

Cancellation of Reg. (say, March, 20x5) Revocation of Cancellation (i.e. restoration of Reg) (by PO) –(say, Jan, 20x6)

Invoicing of any OUTWARD SUPPLIES made during this period:

Issuance of REVISED INVOICES : unattended issue

Sec 31(3)(f): A registered person may, within one month from the date of issuance of the certificate of registration, issue a REVISED INVOICE against the invoices already issued from the effective date of registration till the date of issuance of the registration certificate.

Note: This provision applies to businesses that obtained new GST registration with a retrospective effect.

It allows them to **replace pre-registration invoices with GST-compliant invoices.**

□ **Revocation of Cancellation ≠ Fresh Registration:**

When a cancelled registration is revoked under Rule 23, the taxpayer's GSTIN is restored rather than being issued afresh. The business is not treated as newly registered but rather as if the registration had never ceased.

□ **What This Means:**

Section 31(3)(a) applies only when a new registration is granted.

It does not apply when an earlier cancelled registration is reinstated.

Author:

Unlike 'Revocation of Suspension of Registration'

there is no parallel provision to make Sec 31(3)(f) applicable to this situation of 'Revocation of Cancellation of Registration'

In personal view of Author, the taxpayer must issue regular tax invoices for all supplies made during the cancellation period and report them in the pending GST returns.





2. **Sec 16(4): Time limitation on availment of 'invoice-based ITC':** CBIC clarified that this limitation as to RCM supply from unregistered supplier shall be considered from the date of issuance of 'SELF-INVOICE' by the recipient [CIRCULAR NO. 211/5/2024-GST (Dated 26th June, 2024)]

CIRCULAR NO. 211/5/2024-GST. [Dated 26th June, 2024]

Clarification on time limit u/Sec 16(4) in respect of RCM supplies received from URPs:

Supply under RCM [Supply from RP vs Supply from URP]

Status of Supplier	Tax invoice by Supplier	ITC Availment by the recipient		
		Supporting Document for taking ITC	Applicability of time limitation of Sec 16(4)	Relevant FY for computation of time-limitation
Supplier is RP	Tax invoice	Tax Invoice issued by the supplier	Yes (as it is invoice based ITC)	= FY in which tax invoice is issued by the supplier
Supplier is URP	Tax invoice	Self-Invoice made by the recipient (as per Sec 31(3)(f))	Yes (as it is invoice based ITC) Circular No. 211/5/2024-GST. [26 th June, 2024]	= FY in which Self-Invoice is issued by the recipient

It is clarified that in cases of supplies received from unregistered suppliers, where tax has to be paid by the recipient under reverse charge mechanism (RCM) and where invoice is to be issued by the recipient of the supplies in accordance with section 31(3)(f) of CGST Act, the RELEVANT FINANCIAL YEAR for calculation of time limit for availment of ITC under the provisions of section 16(4) of CGST Act will be the financial year in which the invoice has been issued by the recipient under section 31(3)(f) of CGST Act, subject to payment of tax on the said supply by the recipient and fulfilment of other conditions and restrictions of section 16 and 17 of CGST Act.

Subject: Clarification on time limit u/Sec 16(4) in respect of RCM supplies received from URPs:

- 1.1 Representations have been received from trade and industry seeking **clarity on the applicability of time limit specified u/Sec 16(4) of CGST Act, 2017 for the purpose of availment of ITC by the recipient on the tax paid by him under (RCM) in respect of supplies received from URPs.**

It has been represented that in some cases, where tax is payable on reverse charge basis by the recipient, such as, where an activity is performed by the overseas related person for the entity located in India and no consideration is involved, such an activity may not be considered as supply of services by the concerned recipient in India and accordingly, **no invoice is issued** as well as **no tax is paid by the said recipient under RCM** in respect of the same.

However, later on, either on their own on the basis of some clarification issued by the department or on the basis of some court judgement or on being pointed out by the tax authorities during scrutiny or audit or otherwise, the said recipient issues the invoice and pays the tax under RCM, along with interest, and claims ITC on such tax paid.

- 1.2 It has been represented that **some of the field formations are taking the view** that in such cases, the relevant year of the invoice for the purpose of section 16(4) of CGST Act is the year in which the said supply was received and accordingly, the time limit for availment of ITC under section 16(4) of CGST Act is only upto the September/November of the following financial year, i.e. the financial year following the financial year in which the said services was received.

On the other hand, **industry has represented that** as the invoice in respect of such supplies received from unregistered supplier, where tax has to be paid by the recipient on RCM basis, is to be issued by the recipient as per section 31(3)(f) of CGST Act, the relevant year of invoice for the purpose of section 16(4) of CGST Act is the financial year in which such invoice has been issued and accordingly, ITC should be available on the said invoice under section 16(4) of CGST Act till the September/November of the financial year following the financial year in which such invoice has been issued.

Request has been made to issue clarification in the matter to avoid litigation.

2. The matter has been examined. **In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act, hereby clarifies the issue as follows.**

2.1 As per **section 16(2)(a) of CGST Act**, no RP shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him **unless 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.





2.2 Rule 36(1)(b) of CGST Rules, 2017 prescribes that **ITC shall be availed by a RP inter alia on the basis of an invoice issued in accordance with the provisions of section 31(3)(f) of CGST Act** [Sec 31(3)(f) provides for 'self-invoicing' by the recipient receiving supply subject to RCM from an unregistered supplier], **subject to the payment of tax.**

2.3 Further, **Sec 31(3)(f) of CGST Act** provides that **a RP, who is liable to pay tax u/Sec 9(3) of Sec 9(4), shall issue an invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services or both.** Accordingly, where the supplier is unregistered and recipient is registered, and the recipient is liable to pay tax on the said supply on RCM basis, the recipient is required to issue invoice as per section 31(3)(f) of CGST Act and pay the tax in cash on the same under RCM.

2.4 Section 16(4) of CGST Act, as amended vide the Finance Act, 2022, deals with time limit to avail ITC, and is reproduced below-

"A RP **shall not be entitled to take ITC** in respect of any invoice or debit note for supply of goods or services or both after **the 30th 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.**"

Section 16(4) of CGST Act, before the said amendment vide the Finance Act, 2022, provided as follows:

"A RP **shall not be entitled to take ITC** in respect of any invoice or debit note for supply of goods or services or both after **the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.**"

1.5 It can be seen that **section 16(4) of CGST Act links the time limit for ITC availment with the financial year to which the invoice or debit note pertains.**

- o As discussed in Para 2.3 above, in case of supplies where the supplier is unregistered and recipient is registered and the tax has to be paid by the recipient on RCM basis, the recipient is required to issue invoice in terms of the provisions of section 31(3)(f) of CGST Act and pay the tax on the same in cash under RCM.
- o Further, as discussed in Para 2.1 above, ITC cannot be availed by a RP in respect of any supply of goods or services or both received by him, as per the provisions of section 16(2)(a) of CGST Act, unless he is in possession of a tax invoice or debit note or such other tax paying documents as may be prescribed.

1.6 A combined reading of the above provisions leads to a conclusion that as ITC can be availed by the recipient only on the basis of invoice or debit note or other duty paying document, and as in case of RCM supplies received by the recipient from unregistered supplier, invoice has to be issued by the recipient himself, the relevant financial year, to which invoice pertains, for the purpose of time limit for availment of ITC under section 16(4) of CGST Act in such cases shall be the financial year of issuance of such invoice only. In cases, where the recipient issues the said invoice after the time of supply of the said supply and pays tax accordingly, he will be required to pay interest on such delayed payment of tax.

1.7 Accordingly, **it is clarified that in cases of supplies received from unregistered suppliers, where tax has to be paid by the recipient under (RCM) and where invoice is to be issued by the recipient of the supplies in accordance with section 31(3)(f) of CGST Act, the RELEVANT FINANCIAL YEAR for calculation of time limit for availment of ITC under the provisions of section 16(4) of CGST Act will be the financial year in which the invoice has been issued by the recipient under section 31(3)(f) of CGST Act, subject to payment of tax on the said supply by the recipient and fulfilment of other conditions and restrictions of section 16 and 17 of CGST Act.**

In case, the recipient issues the invoice after the time of supply of the said supply and pays tax accordingly, he will be required to pay interest on such delayed payment of tax. **Further, in cases of such delayed issuance of invoice by the recipient, he may also be liable to penal action under the provisions of Section 122 of CGST Act.**





3. **Sec17(5)(a) + CBIC Circular 231/25/2024-GST : Clarification as to availment of ITC on DEMO VEHICLES by the dealer of the vehicle manufacturer :** (i) ITC admissible if dealer is supplier of **SIMILAR VEHICLES** – as Demo Vehicles used for promoting sales of SUCH MV and be considered as being used for making 'making further supply of SUCH motor vehicle'- thus, ITC is not blocked u/Sec 17(5)(a). (ii) ITC not admissible if dealer himself is not supplier of **SIMILAR MV** (and mere supplier of marketing service / test drive services to the manufacturer of MV). [Circular dated 10th Sep, 2024]

Circular No. 231/25/2024-GST
Subject: Clarification on availability of ITC in respect of DEMO VEHICLES.

 Dated: 10th Sep, 2024

ITC on Demo Vehicles [Vehicle = Passenger Vehicle with seating capacity upto 13 passengers]]

Manufacturer


Purchased on tax invoice

Dealer

Treated as capital assets, and later sold at WDV with applicable taxes

Buyer

Used for trial runs or demonstration purposes

Situations
Dealer = Supplier of Such Vehicle
Similar vehicles are purchased and resold
MV sold to buyer by dealer by issuing tax invoice
ITC Admissible (as used for further supply of SUCH MV) (stands excluded from blocked ITC provisions)

Sec 17(5)(a) of CGST Act – sub-clause(A) : the usage of the words "SUCH motor vehicles" instead of "SAID motor vehicle", implies that the intention of the lawmakers was not only to exclude from the blockage of ITC, the motor vehicle which is itself further supplied, but also to exclude from the blockage of ITC, the motor vehicle which is being used for the purpose of further supply of similar type of motor vehicles. Since demo vehicles assist in the promotion and sale of similar vehicles, they qualify as being used for "further supply of such motor vehicles."

Exceptions (No ITC):

- **Non-qualifying Usage:** Demo vehicles used for purposes unrelated to the sale of similar vehicles (e.g., employee transportation) do not qualify as "further supply," so ITC is blocked.

Treatment on 'subsequent sale'

- **ITC availed = ITC (Capital Goods)**
[Hence, Depreciation not claimed on GST component in compliance with Sec 16(3) of the CGST Act]
- **Sale of MV = Sale of ITC availed MV**
[GST liability as per Sec 18(6) r/w Rule 44 – Higher of (a) GST based on TV (b) (ITC availed * remaining useful life/ 60 Months)]

Dealer = Supplier of 'Marketing Services'
Dealer is not engaged in re-sale of such MV
MV sold to buyer by manufacturer by issuing tax invoice
Dealer provides test-drive services on behalf of the manufacturer but does not sell vehicles directly
ITC NOT Admissible (as cannot be considered to be used for 'further supply' of SUCH MV by the dealer) (stands covered by blocked ITC provisions)

Treatment on 'subsequent sale' - Circular is SILENT

- **Sale of MV = Sale of MV (no ITC availed)**
[GST liability as per Sec 18(6) r/w Rule 44 – GST Liability = Value shall be 'MARGIN Earned' (i.e. Selling Price - Depreciated Value)]





SITUATION: The demo vehicles are the vehicles which the authorized dealers for sale of motor vehicles are required to maintain at their sales outlet as per dealership norms and are used for providing trial run and for demonstrating features of the vehicle to the potential buyers.

These vehicles are purchased by the authorized dealers from the vehicle manufacturers against tax invoices and are typically reflected as capital assets in books of account of the authorized dealers.

As per dealership norms, these vehicles may be required to be held by the authorized dealers as demo vehicle for certain mandatory period and may, thereafter, be sold by the dealer at a written down value and applicable tax is payable at that point of time.

ISSUE-I

Availability of ITC on demo vehicles, which are motor vehicles for transportation of passengers having approved seating capacity of not more than 13 persons (including the driver), in terms of section 17(5)(a) of CGST Act.

Clarification:

Section 17(5)(a) of CGST Act provides that **ITC shall not be available in respect of motor vehicles** for transportation of persons having approved seating capacity of not more than 13 persons (including the driver), **except when they are used for making following taxable supplies, namely:**

- | | |
|----|--|
| A. | further supply of such motor vehicles; or |
| B. | transportation of passengers; or |
| C. | imparting training on driving such motor vehicles. |

The intention of law, as it appears from the use of expression 'when they are used for making the following taxable supplies' in section 17(5)(a), **is to exclude certain cases** (based on the nature of outward taxable supplies being made using the said motor vehicle) **from the restriction on availment of ITC in respect of the specified motor vehicles** i.e. motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver). The taxable supplies, permitted for the purpose of being excluded from the blockage of ITC as per provisions of section 17(5)(a), being further supply of such motor vehicles, transportation of passengers and imparting training on driving such motor vehicles.

**** Demo vehicles are used by authorized dealers to provide trial run and to demonstrate features of the vehicle to potential buyers- whether or not the Demo vehicles in question can be said to be used for making "further supply of such motor vehicles", as specified in the sub-clause (A) of the clause (a) of section 17(5) of CGST Act.**

Regarding the provision for blockage of ITC in respect of motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), **the usage of the words "SUCH motor vehicles" instead of "SAID motor vehicle"**, in sub-clause (A) of the section 17(5)(a) of CGST Act, **implies that the intention of the lawmakers was not only to exclude from the blockage of ITC, the motor vehicle which is itself further supplied, but also to exclude from the blockage of ITC, the motor vehicle which is being used for the purpose of further supply of similar type of motor vehicles.**

As demo vehicles are used by authorized dealers to provide trial run and to demonstrate features of the vehicle to potential buyers, it helps the potential buyers to make a decision to purchase a particular kind of motor vehicle. Therefore, **as demo vehicles promote sale of similar type of motor vehicles, they can be considered to be used by the dealer for making 'further supply of such motor vehicles'. Accordingly, ITC in respect of demo vehicles is not blocked under section 17(5)(a), as it is excluded from such blockage in terms of sub-clause (A) of the said clause.**

There may be some cases where motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver) **are used by an authorized dealer for purposes other than for making further supply of such motor vehicles, say for transportation of its staff employees/ management etc. In such cases, the same cannot be said to be used for making 'further supply of such motor vehicles' and therefore, ITC in respect of such motor vehicles would not be excluded from blockage in terms of sub-clause (A) of section 17(5)(a).**

Further, **there may be cases where the authorized dealer merely acts as an agent or service provider to the vehicle manufacturer for providing MARKETING SERVICE, including providing facility of vehicle test drive to the potential customers of the vehicle on behalf of the manufacturer and is not directly involved in purchase and sale of the vehicles. In such cases, the sale invoice for the vehicle is directly issued by the vehicle manufacturer to the customer. For providing facility of vehicle test drive to the potential customers of the vehicle, the dealer purchases demo vehicle from the vehicle manufacturer. The dealer may sell the said demo vehicle to a customer after a specified time or kilometres as per agreement with the vehicle manufacturer on payment of applicable GST. In such a case, the authorized dealer is merely providing marketing and/or facilitation services to the vehicle manufacturer and is not making the supply of**





motor vehicles on his own account. Therefore, the said demo vehicle cannot be said to be used by the dealer for making further supply of such motor vehicles. Accordingly, **in such cases, ITC in respect of such demo vehicle would not be excluded from blockage in terms of sub-clause (A) of section 17(5)(a) and therefore, ITC on the same would not be available to the said dealer.**

ISSUE-2

Availability of ITC on demo vehicles in cases where such vehicles are capitalized in the books of account by the authorized dealers.

Clarification:

As per provisions of section 16(1), **every RP is entitled to take ITC charged on any supply of goods** and services made to him, where such goods or services are used in the course or furtherance of business of such person, subject to such conditions and restrictions as may be prescribed and in the manner which is specified.

Further, **"goods" has been defined in section 2(52) of CGST Act**, as,

"goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.

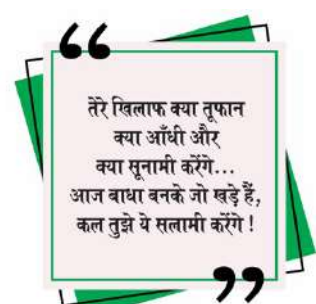
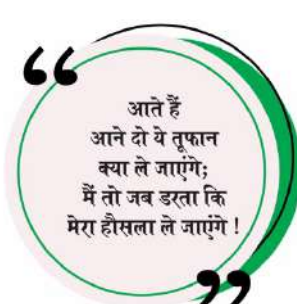
Also, section 2(19) of CGST Act defines "capital goods" as,

"capital goods" means goods, the value of which is capitalized in the books of account of the person claiming the ITC and which are used or intended to be used in the course or furtherance of business.

As mentioned in paras above, as the demo vehicles are used by the authorized dealers to promote further sale of motor vehicles of the similar type and therefore, such vehicles appear to be used in the course or furtherance of business of the authorized dealers. **Where such vehicles are capitalized in the books of accounts by the authorized dealer, the said vehicle falls in the definition of "capital goods" under section 2(19) of CGST Act.** As per provision of section 16(1) of CGST Act, subject to such conditions and restrictions as may be prescribed, a recipient of goods is entitled to take ITC in respect of tax charged on the inward supply of any goods, which as per definition of "goods" under section 2(52) of CGST Act, includes even capital goods. Further, section 2(19) of CGST Act also recognizes that capital goods are used or intended to be used in the course or furtherance of business. Accordingly, **availability of ITC on demo vehicles is not affected by way of capitalization of such vehicles in the books of account of the authorized dealers, subject to other provisions of the Act.**

**** However, it is to be mentioned that in case of capitalization of demo vehicles, availability of ITC would be subject to provisions of section 16(3), which provides that where the RP has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the Income-tax Act, 1961, the ITC on the said tax component shall not be allowed.**

It is further mentioned that **in case demo vehicle, which is capitalized, is subsequently sold by the authorized dealer, the authorized dealer shall have to pay 'an amount or tax' as per provisions of section 18(6) r/w Rule 44(6).**

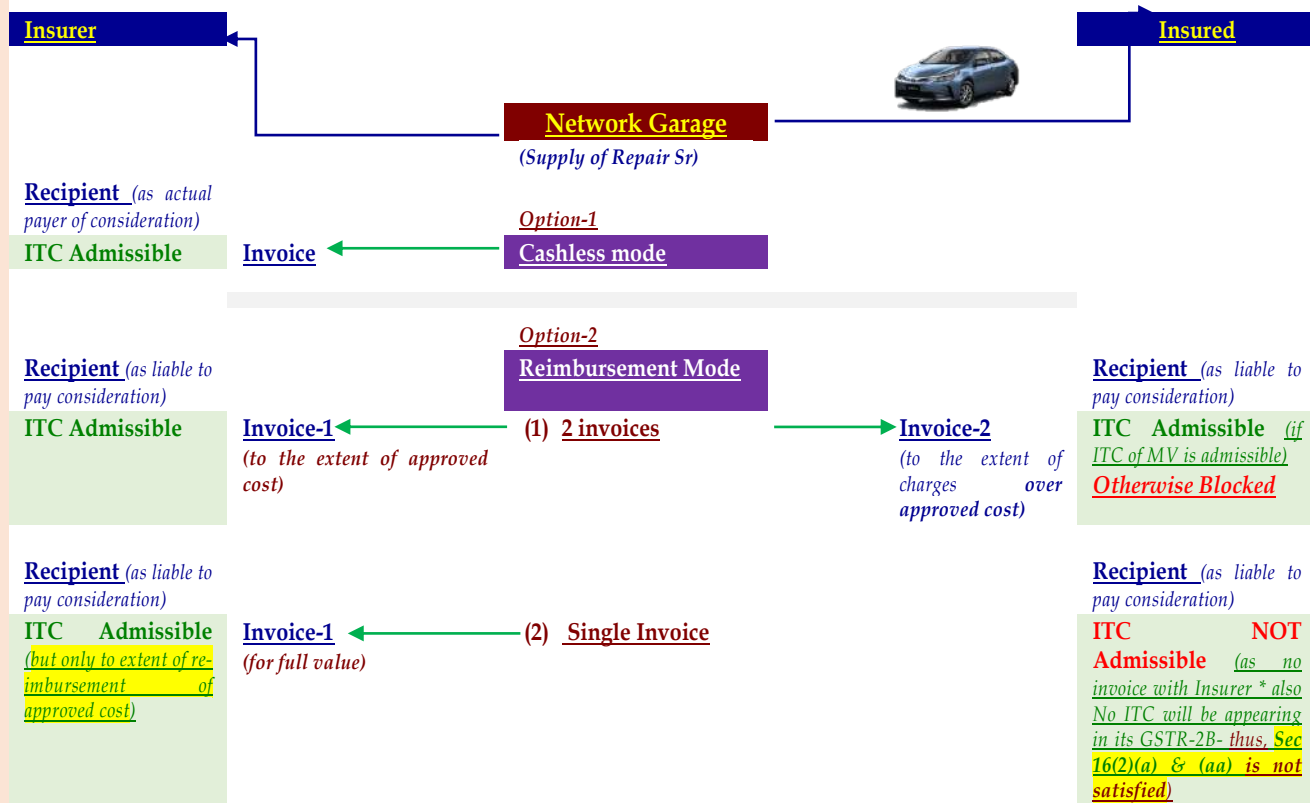




4. **Sec17(5)(ab) + CBIC Circular 217/11/2024-GST : Entitlement of ITC by the insurance companies on the expenses incurred for repair of motor vehicles in case of reimbursement mode of insurance claim settlement : (i) Insurer (insurance company) is recipient as it is person liable to pay consideration (repair charges) (ii) it is entitled to ITC but only to the extent to approved cost which it is re-imbursing. [Circular dated 26th June, 2024]**

Circular No 217/11/2024-GST Dated: 26th June 2024

Entitlement of ITC by the insurance companies on the expenses incurred for repair of motor vehicles



Comparison of ITC Entitlement: Cashless Mode vs. Reimbursement Mode

Aspect	Cashless Mode	Reimbursement Mode
Claim Settlement Process	Insurance company directly pays the network garage for approved repair charges.	Insured pays the non-network garage; insurer reimburses the insured for the approved claim cost.
Invoice Issuance	Invoice is issued by the garage in the name of the insurance company.	Invoice is issued by the non-network garage, usually in the name of the insurance company.
Payment Responsibility	Insurance company directly pays the repair charges.	Insured pays initially; insurer reimburses the insured for approved repair costs.
Recipient of Service (Section 2(93) of the CGST Act)	Insurance company is the recipient of repair services as it bears the liability for repair costs.	Insurance company is deemed the recipient as it bears the liability for the approved repair costs.
Extent of ITC Availability	Full ITC is available on repair charges as per the invoice issued to the insurer.	ITC is limited to the approved repair cost reimbursed to the insured and covered by the invoice.
Invoices for Shared Costs and corresponding ITC to the Insurer	Not applicable as insurer pays full repair costs directly.	<p>If two invoices are issued (one to insurer and other to insured), ITC to insurer is available on the insurer's invoice.</p> <p>If a single invoice is issued (to the insurer), ITC is limited to reimbursed claim costs.</p> <p>In such case, ITC is not available to the insured/policyholder</p> <ul style="list-style-type: none"> As no tax invoice in name of insured (Sec 16(2)(a) not satisfied) Also, ITC will not be appearing in his GSTR-2B (thus, Sec 16(2)(aa) also not satisfied)





Subject: Entitlement of ITC by the insurance companies on the expenses incurred for repair of motor vehicles in case of reimbursement mode of insurance claim settlement

1. **The insurance companies, which are engaged in providing general insurance services in respect of insurance of motor vehicles, insure the cost of repairs/damages of motor vehicles incurred by the policy holders and settle the claims in two modes i.e., Cashless or Reimbursement.**
- 1.2 Under both modes of settlement, **the insurance company accounts for repair liability (as assessed by the Surveyor/Loss Assessor) as claim cost and is liable to make payment of approved repair charges to the garage. In both the cases, the invoices are generally issued by the garages in the name of Insurance companies.** While in case of Cashless Mode, the insurance companies directly make the payment of approved repair charge to the Network Garage, in case of Reimbursement mode, the payment is first made by the Insured to the Non-Network Garage, which is subsequently reimbursed by the insurance company to the Insured, to the extent of approved repair/claim cost. **Accordingly, the insurance companies may be availing ITC (ITC) on the tax paid in respect of such repair services** provided by the garages in Cashless Mode of claim settlement as well as in Reimbursement Mode of claim settlement on the basis of the invoices issued by the garages in their name.
- 1.3 It has been represented by the insurance companies that in case of reimbursement mode of claim settlement, **some field formations are raising objections on availment of ITC by insurance companies in respect of repair invoices issued by the non-network garages on insurance companies.** It is being claimed by the said field formations that in case of reimbursement mode of claim settlement, there is no credit facility offered by the garages to the Insurance Companies and therefore, the supply of repair service is made by the garage to the insured and not to the insurer. Accordingly, it is being claimed that ITC of repair invoices, in such cases, should not be available to the insurance companies.
- 1.4 Request has been received seeking clarity on availability of ITC in respect of repair expenses incurred in case of reimbursement mode of claim settlement.
2. In order to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168(1) of the CGST Act, 2017, hereby clarifies the following:—

1. **The insurance companies, which are engaged in providing general insurance services in respect of insurance of motor vehicles, insure the cost of repairs/damages of motor vehicles incurred by the policyholders and settle the claims in two modes i.e., Cashless or Reimbursement. Whether ITC is available to insurance companies in respect of repair expenses reimbursed by the insurance company in case of reimbursement mode of claim settlement.**

Clarification:

Under reimbursement mode of claim settlement, the insured avails repair services from non-network garages with which the insurance companies do not have routine business relationship. **The said garages issue the invoice in the name of the insurance company while not extending credit facility for the repair costs.** Accordingly, the policy holder/insured makes payment of such repair services, and subsequently, the insurance company reimburses the approved claim cost to the insured.

Section 17(5) of the CGST Act provides that **ITC in respect of services of repair of motor vehicles shall be available where received by a taxable person engaged in the supply of general insurance services in respect of motor vehicles insured by him.**

Section 16 of CGST Act provides that every RP shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49 of the said Act, be entitled to take credit of input tax charged on **any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business** and the said amount shall be credited to the electronic credit ledger of such person.

Further, **section 2(93) of CGST Act** defines "**recipient**" of supply of goods or services or both, **as the person who is liable to pay the consideration, where such consideration is payable for the said supply of goods or services or both.** Moreover, as per **section 2(31) of CGST Act**, "**consideration**" includes **any payment made or to be made in relation to supply of the goods or services or both, whether by the recipient or by any other person.**

In reimbursement mode of claim settlement, the payment is made by the insurance company for the approved cost of repair services through reimbursement to the insured. Further, **irrespective of the fact that the payment of the repair services to the garage is first made by the insured, which is then reimbursed by the insurance company to the insured to the extent of the approved claim cost, the liability to pay for the repair service for the approved claim cost lies with the insurance company, and thus, the insurance company is covered in the definition of "recipient"** in respect of the said supply of services of vehicle repair provided by the garage under section 2(93) of CGST Act, to the extent of approved repair liability. Moreover, **availment of credit in respect of input tax** paid on motor vehicle repair






	<p>services received by the insurance company for outward supply of insurance services for such motor vehicles is not barred under section 17(5) of CGST Act.</p> <p>Accordingly, it is clarified that ITC is available to Insurance Companies in respect of motor vehicle repair expenses incurred by them in case of reimbursement mode of claim settlement.</p>
2.	<p>Where the invoice raised by the garage also includes an amount in excess of the approved claim cost, the insurance company only reimburses the approved claim cost to the garage after considering the standard deductions viz. the compulsory deductibles to be borne by the insured, depreciation, improvements outside the coverage, value of salvage of the damaged parts of the motor vehicles, etc. The remaining amount is to be paid by the insured to the garage.</p> <p>What is the extent of ITC available to the insurer in such cases?</p> <p>Clarification:</p> <p>In cases where the garage issues two separate invoices in respect of the repair services, one to the insurance company in respect of approved claim cost and second to the customer for the amount of repair service in excess of the approved claim cost, ITC may be available to the insurance company on the said invoice issued to the insurance company subject to reimbursement of said amount by insurance company to the customer.</p> <p>However, if the invoice for full amount for repair services is issued to the insurance company while the insurance company makes reimbursement to the insured only for the approved claim cost, then, the ITC may be available to the insurance company only to the extent of reimbursement of the approved claim cost to the insured, and not on the full invoice value.</p>
3.	<p>Whether ITC is available to the insurer where the invoice for the repair of the vehicle is not in name of the insurance company.</p> <p>Clarification:</p> <p>In such a case, condition of clauses (a) and (aa) of section 16(2) of CGST Act is not satisfied and accordingly, ITC will not be available to the insurance company in respect of such an invoice.</p>

5. **Sec 17(5)(c)/(d) + CBIC Circular 219/13/2024-GST : Entitlement of ITC on 'Ducts and Manholes' used in Optical Fire Cables (OFC) Network which is used for providing telecommunication service: Clarified that ITC is admissible as (i) OFC network (= immovable property) is used for providing telecommunication service and (ii) qualifies as 'Plant and Machinery' as defined in Explanation to Sec 17(4) and (ii) thus, ITC not hit by provisions of Sec 17(5)(c) /(d) . [Circular dated 26th June, 2024]**

Circular No 219/13/2024-GST

Dated: 26th June, 2024

Subject: Clarification on availability of ITC on ducts and manholes used in network of OPTICAL FIBER CABLES (OFCS) in terms of section 17(5)

Supplier of Telecom Service		Issue: ITC on ducts & manholes used in network of Optical Fiber Cables (OFCS)	
		<u>Legal Provisions</u>	
		Sec 17(5)(c)	ITC is blocked for works contract services used for construction of immovable property (other than plant and machinery) .
		Sec 17(5)(d)	ITC is blocked for goods/services used for construction of immovable property (other than plant or machinery) on his own account
		<u>Expl. To Sec 17(5)</u>	<p>"plant and machinery"</p> <p>means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both</p> <p>and includes such foundation and structural supports</p> <p>but excludes</p> <p>land, building or any other civil structures;</p> <p>telecommunication towers; and</p> <p>pipelines laid outside the FACTORY premises. (*Author: this excludes applies only to the manufacturer)</p>
		Clarification:	





1. OFC network (laid in ground) = Immovable property
2. Such OFC network is used for making supply of telecommunication services
3. Ducts & manholes are integral components of such OFC network
4. Covered under "plant and machinery" since they are not excluded by the definition (as they are neither in nature of land, building or civil structures nor are in nature of telecommunication towers or pipelines laid outside the factory premises.).

Thus, ITC admissible.

Subject: Clarification on availability of ITC on ducts and manholes used in network of OPTICAL FIBER CABLES (OFCs) in terms of section 17(5)

1. Representations have been received from Cellular Operators Association of India (COAI) submitting that ITC is being denied by some tax authorities on ducts and manholes used in network of optical fiber cables (OFCs) on the ground that the same is blocked as per section 17(5) of the CGST Act, being in nature of immovable property (other than Plant and Machinery). It has been requested to issue clarification in respect of availability of ITC on ducts and manholes used in network of optical fiber cables (OFCs), so as to prevent unwarranted litigation in the telecommunication sector across the country.
2. In order to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168(1) of the CGST Act, hereby clarifies the issue as below.

Whether the ITC on the ducts and manholes used in network of optical fiber cables (OFCs) for providing telecommunication services is barred in terms of section 17(5) (c) & (d) of the CGST Act, read with Explanation to section 17 of CGST Act ?

Clarification

1. **Sec 17(5) of the CGST Act** provides that ITC shall not be available, *inter alia*, in respect of the following:
 - i. works contract services when supplied for **construction of an immovable property (other than plant and machinery)** except where it is an input service for further supply of works contract service; or
 - ii. goods or services or both received by a taxable person for **construction of an immovable property (other than plant or machinery) on his own account** including when such goods or services or both are used in the course or furtherance of business.
1. **Explanation in section 17 of CGST Act** provides that the expression "**plant and machinery**" means **apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes land, building or any other civil structures; telecommunication towers; and pipelines laid outside the factory premises.**
3. **Ducts and manholes are basic components for the optical fiber cable (OFC) network used in providing telecommunication services.** The OFC network is generally laid with the use of PVC ducts/sheaths in which OFCs are housed and service/connectivity manholes, which serve as nodes of the network, and are necessary for not only laying of optical fiber cable but also their upkeep and maintenance. In view of the Explanation in section 17 of the CGST Act, it appears that **ducts and manholes are covered under the definition of "plant and machinery" as they are used as part of the OFC network for making outward supply of transmission of telecommunication signals from one point to another.** Moreover, ducts and manholes used in network of optical fiber cables (OFCs) have not been specifically excluded from the definition of "plant and machinery" in the Explanation to section 17 of CGST Act, as they are neither in nature of land, building or civil structures nor are in nature of telecommunication towers or pipelines laid outside the factory premises.
4. Accordingly, it is clarified that **availment of ITC is not restricted in respect of such ducts and manhole used in network of optical fiber cables (OFCs),** either under clause (c) or under clause (d) of sub-section (5) of section 17 of CGST Act.





6. **Sec 16(2) r/w Rule 36 [Documentary requirements and conditions for claiming ITC]: Rule 36(3) which was providing restriction as to ITC availment i.ro. any tax paid in mala-fide cases has been amended to provide for its applicability only i.r.o. demand order passed u/Sec 74. [amendment w.e.f. 8th Oct, 2024]**

Amendment in Simplified Form

	for FY upto 2023-24		for FY 2024-25 & onwards
	Section 73	Section 74	Section 74A
Demand for tax/ ITC/ erroneous refund	Bona-fide cases	Mala-fide cases	Bona-fide cases + Mala-fide cases
Issuance of DN by supplier - Rule 53	Yes	Yes	Yes
Restriction as passing on ITC u/Rule 53(3) [laid down from angle of the supplier]	N.A. [*thus, ITC can be passed on in bona-fide cases]	Rule 53(3): Any invoice or DN issued in pursuance of any tax payable in accordance with the provisions of Sec 74 shall prominently contain the words "ITC NOT ADMISSIBLE" .	N.A. [*thus, ITC can be passed on in both bona-fide cases as well as mala-fide cases]
Conditions for ITC availment Sec 16(2) : Documentary requirements and conditions for claiming ITC Restriction as availment on ITC u/Rule 36(3). [laid down from angle of the recipient]	N.A. [*thus, ITC can be availed on in bona-fide cases]	Rule 36 (3) : [as amended] No ITC shall be availed i.r.o. any tax that has been paid in pursuance of any order where any demand has been confirmed on account of any fraud, willful misstatement or suppression of facts u/Sec 74. ['u/Sec 74' added w.e.f. 8 th Oct, 2024]	N.A. [*thus, ITC can be availed on in both bona-fide cases as well as mala-fide cases]
Sec 17(5) : Blocked ITC Restriction as availment on ITC u/Sec 17(5)(i) [laid down from angle of the recipient]	N.A. [*thus, ITC can be availed on in bona-fide cases]	Sec 17(5)(i) : [as amended] ITC shall not be admissible i.r.o. any tax paid in accordance with the provisions of Sec 74 in respect of any period up to FY 2023-24 ['FA, 2024 w.e.f. 1 st Nov, 2024]	N.A. [*thus, ITC can be availed on in both bona-fide cases as well as mala-fide cases]

ITC Blockage Under Section 17(5)(i)

Scenario	Provision Reference	ITC (to recipient)	Explanation
1. A taxpayer pays GST through DRC-03 after being penalized for tax evasion in FY 2022-23.	Section 17(5)(i)	No	ITC is blocked because the tax is paid under Section 74 (related to suppression of tax, fraud, or evasion) for a period up to FY 2023-24.
2. GST paid under Section 74-A for FY 2024-25 due to fraud discovered by authorities.	Section 17(5)(i) - Post 2023-24	Yes	ITC is admissible because the blocking provision under Section 17(5)(i) applies only to tax paid for periods up to FY 2023-24 . -[*Refer note below]

Author: Amendment to Sec 17(5)(i) as made by FA, 2024 is not applicable for 'May 2025 exams'. Hence, student shall focus only on ITC blockage as given in example 1 above.

Rule 36 : Documentary requirements and conditions for claiming ITC

- (3) **GST demand order (on mala-fide grounds u/Sec 74 for FY upto 2023-24): Such GST not admissible as ITC**
- No ITC shall be availed** by a RP in respect of **any tax that has been paid in pursuance of any order where any demand has been confirmed on account of any fraud, willful misstatement or suppression of facts under Section 74**. [amended w.e.f. 8th Oct, 2024]





7. **Introduction of GSTR-1A in 'Return filing process' and consequential amendments:** (i) **Rule 36(4)(a)** (ITC claimable only if details of OS has been furnished by the Supplier u/Sec 37) (i) **Rule 37** (Reversal of ITC where supplier has declared OS u/Sec 37 but failed to pay corresponding tax). (ii) **Rule 40(1)(e)** (Manner of claiming credit in Special Circumstances – (RP – composition to normal scheme) / (RP – Exempt supply now becoming taxable). [amendment w.e.f. 10th July, 2024]

ITC related provisions – amended post introduction of GSTR-1A [Amendment of outward supplies for current tax period]

Rule	Provision	Key Points				
Rule 36(4)(a)	Documentary Requirements for ITC Claim	ITC can only be claimed if the supplier furnishes invoice or debit note details in Form GSTR-1 or via IFF [invoice furnishing facility]. [Amendments made in FORM GSTR-1A - shall also be considered]				
Rule 37A	Reversal and Re-availment of ITC (Non-payment by Supplier)	Details of outward supplies furnished by the supplier in Form GSTR-1 or via the IFF , but corresponding tax not paid in FORM GSTR-3B. till the 30th September following the end of financial year in which the ITC in respect of such invoice or debit note has been availed, then the ITC shall be reversed by the recipient (in GSTR-3b furnished by 30th Nov) [Amendments made in FORM GSTR-1A - shall also be considered]				
Rule 40(1)(e)	Claiming ITC in Special Circumstances (Section 18)	<table><tr><td><u>Section 18(1)(c)</u></td><td>When a RP ceases to pay tax under Section 10 (Composition Scheme) and becomes liable to pay tax under Section 9, they can claim ITC on: - Inputs in stock. - Inputs in semi-finished or finished goods. - Capital goods.</td></tr><tr><td><u>Section 18(1)(d)</u></td><td>When a previously exempt supply becomes taxable, the RP can claim ITC on: - Inputs in stock. - Inputs in semi-finished or finished goods. - Capital goods exclusively used for such exempt supply.</td></tr></table> ITC under Section 18(1)(c)/(d) must be verified with the supplier's corresponding details in FORM GSTR-1 on the common portal. [Amendments made in FORM GSTR-1A - shall also be considered for verification]	<u>Section 18(1)(c)</u>	When a RP ceases to pay tax under Section 10 (Composition Scheme) and becomes liable to pay tax under Section 9 , they can claim ITC on: - Inputs in stock. - Inputs in semi-finished or finished goods. - Capital goods.	<u>Section 18(1)(d)</u>	When a previously exempt supply becomes taxable , the RP can claim ITC on: - Inputs in stock. - Inputs in semi-finished or finished goods. - Capital goods exclusively used for such exempt supply.
<u>Section 18(1)(c)</u>	When a RP ceases to pay tax under Section 10 (Composition Scheme) and becomes liable to pay tax under Section 9 , they can claim ITC on: - Inputs in stock. - Inputs in semi-finished or finished goods. - Capital goods.					
<u>Section 18(1)(d)</u>	When a previously exempt supply becomes taxable , the RP can claim ITC on: - Inputs in stock. - Inputs in semi-finished or finished goods. - Capital goods exclusively used for such exempt supply.					

Rule 36 : Documentary requirements and conditions for claiming ITC

- (4) **Invoice or DN based ITC: Such ITC not be admissible unless** (details of such invoice/ DN have been furnished by supplier in (GSTR-1 + 1-A) / IFF) + (such details communicated to the RP in GSTR-2B)

No ITC shall be availed by a RP in respect of invoices or debit notes the details of which are required to be furnished under section 37(1) **unless**,-

- | | | |
|--|-----|---|
| <p>(a) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1, as amended in FORM GSTR-1A if any, or using the invoice furnishing facility [IFF] ;</p> | and | <p>(b) the details of ITC in respect of such invoices or debit notes have been communicated to the RP in FORM GSTR-2B under rule 60 (7).</p> |
|--|-----|---|

Author:

Although, Rule 36(4)(a) says that ITC can be availed when the details of invoices are furnished by the supplier in their GSTR-1A, however as per Rule 60(7) it would appear in GSTR-2B of next month only

i.e. GSTR-1A is only a facility for supplier to declare his outward supplies correctly so that correct figures are auto-populated in GSTR-3B. It is not a facility for the recipient to avail ITC in the same month.



**Rule 37-A : Reversal of ITC in the case of non-payment of tax by the supplier and re-availment thereof**

ITC availed by the Recipient in GSTR-3B:: Supplier failed to furnish his GSTR-3B by 30th Sep following the end of FY in which ITC was availed:: The recipient shall reverse his ITC (by 30th Nov)

Where ITC has been availed by a RP in the return in FORM GSTR-3B for a tax period in respect of such invoice or debit note,

the details of which have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1, as amended in FORM GSTR-1A if any, or using the invoice furnishing facility [IFF],

but the return in FORM GSTR-3B for the tax period corresponding to the said statement of outward supplies has not been furnished by such supplier till the 30th September following the end of financial year in which the ITC in respect of such invoice or debit note has been availed,

the said amount of ITC shall be reversed by the said RP, while furnishing a return in FORM GSTR-3B on or before the 30th November following the end of such financial year:

Rule 40 : Manner of claiming credit in Special Circumstances**(1) Availment of ITC in special circumstances as specified in Sec 18(1)**

The ITC claimed in accordance with the provisions of Section 18(1) on the inputs held in stock or inputs contained in semi-finished or finished goods held in stock,

or the credit claimed on capital goods in accordance with the provisions of Sec 18(1) (c) and (d) of the said sub-section,

shall be subject to the following conditions, namely –

Reduced ITC for CG: Reduction of 5% per quarter or part thereof

E-Declaration in all cases of credit becoming available - furnished within 30 days of ITC becoming available

E-Declaration to contain details of stock (of inputs and CG) as eligible for Special ITC u/Sec 18(1)

E-Declaration to be certified by practicing CA, if ITC (Total) availed exceeds ₹ 2,00,000

Spl ITC availed on old purchases made by RP (of input / CG): Verification shall be made with corresponding suppliers [GSTR-1 + I-A] / GSTR-4

(e) the ITC claimed in accordance with the provisions of section 18(1)(c) or (d)

[i.e., Special ITC availed by RP (of input and CG)- upon EXIT from COMPOSITION LEVY / or EXEMPT SUPPLY now becoming chargeable to GST]

shall be verified with the corresponding details furnished

by the corresponding supplier

in FORM GSTR-1 and in Form GSTR-1A, if any, or as the case may be, in FORM GSTR-4,

on the common portal.

18(1)(a) & 18(1)(b) deals with purchase made while person was URP- hence, verification not made applicable to those.

(2) Subsequent supply of ITC availed 'CG & Plant & Machinery': Determination of liability u/Sec. 18(6)

The amount of credit in case of supply of capital goods or plant and machinery, for the purposes of Section 18(6),

shall be calculated

by reducing

the input tax on the said goods

@ 5% points for every quarter or part thereof (5% per quarter or part thereof)

from the date of issue of invoice for such goods.





5.1 : REVERSE CHARGE

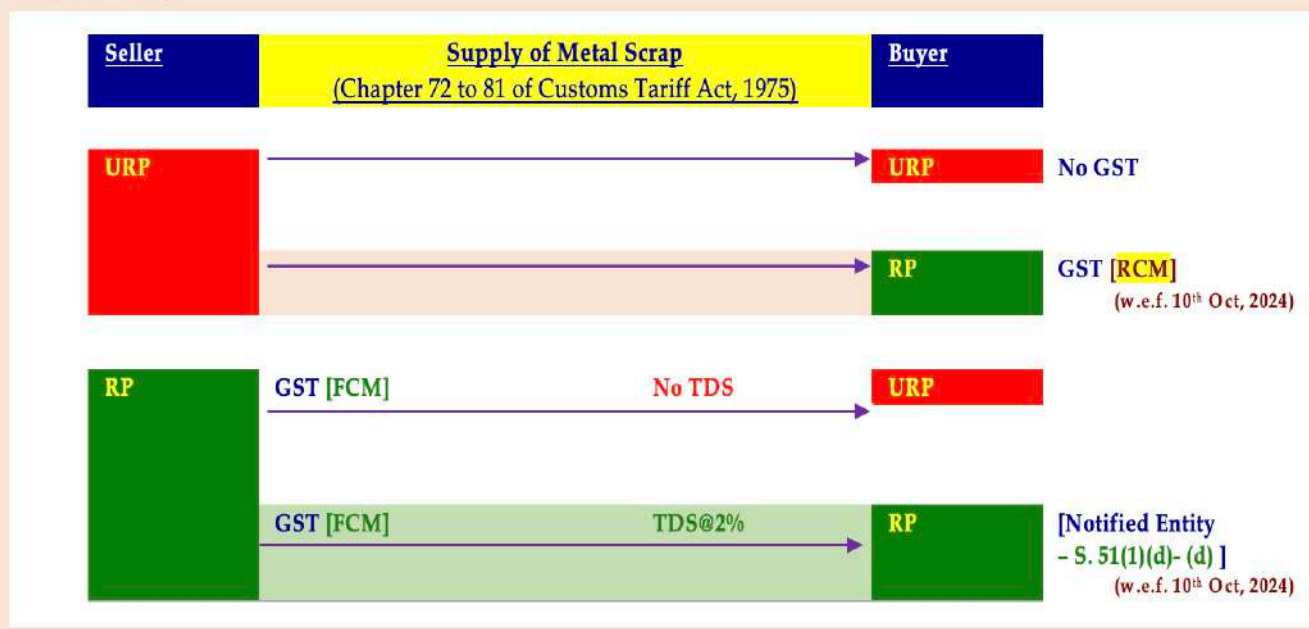
- RCM on Goods: N/N 4/2017-CT (R):** New Entry 8 has been inserted in RCM N/N 4/2017-CT (Rate) introducing RCM on supply of 'METAL SCRAP falling under Chapter 72 to 81 of Customs Tariff Act, 1975' when made by an URP to a RP. This entry has been made effective from 10th Oct, 2024. [amended vide N/N 06/2024-CT (Rate), dated 08th October 2024 - w.e.f. 10th Oct, 2024]

Entry No. 8 : Supply of METAL SCRAP by URP. (w.e.f. 10th Oct, 2024)

Category of Supply of Goods	Supplier of Goods	Recipient of Goods
<u>Metal Scrap</u> [falling under Chapter 72, 73, 74, 75, 76, 77, 78, 79, 80 or 81] ¹	Any URP	Any RP



SCRAP Industry



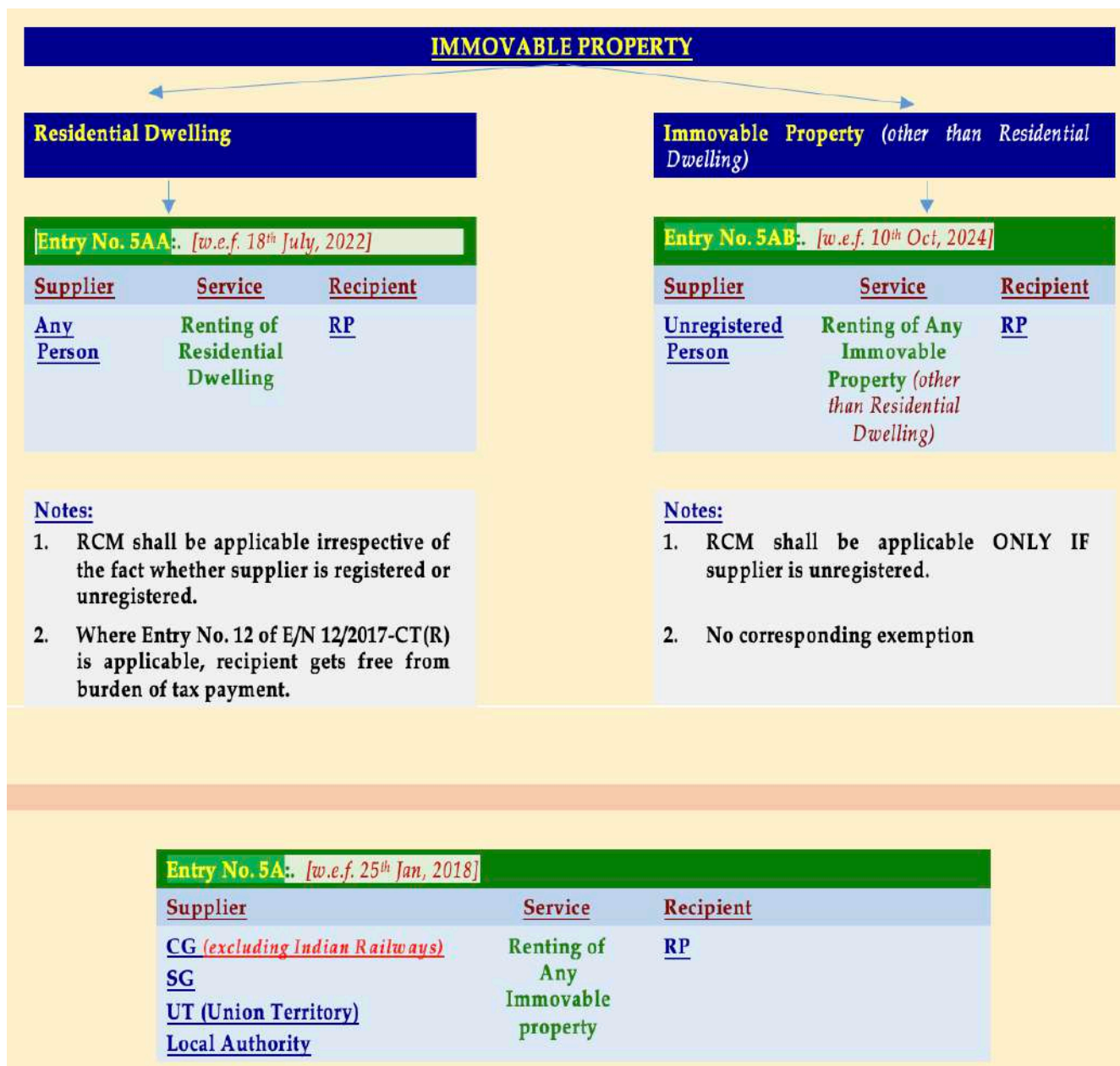
¹ Note:

[Chapter 72 – Iron and Steel] [Chapter 73 – Articles of Iron and Steel] [Chapter 74 – Copper and Articles thereof]
[Chapter 75 – Nickel and Articles thereof]. [Chapter 76 – Aluminum and Articles thereof]. [Chapter 78 – Lead and Articles thereof]
[Chapter 79 – Zinc and Articles thereof] [Chapter 80 – Tin and Articles thereof]. [Chapter 81 – Other Base Metals and Articles thereof]





2. **RCM on Services: N/N 13/2017-CT (R):** New Entry 5-AB has been inserted (w.e.f. 10th Oct, 2024) introducing RCM on supply of service of 'Renting of COMMERCIAL PROPERTY (= Immovable Property other than residential dwelling) by an URP to a RP. [amended vide N/N 09/2024-CT (Rate), dated 08th October 2024 - w.e.f. 10th Oct, 2024]




Entry No. 5AB: Renting of Any Immovable Property (other than Residential Dwelling) (w.e.f. 10th Oct, 2024)

Category of Supply of Goods	Supplier of Goods	Recipient of Goods
Service by way of <u>renting of</u> <u>any immovable property</u> ¹ <u>other than residential dwelling</u> to a RP	Any URP	Any RP

RCM Entry No. 5-AA & 5-AB read with Exemption Entry

Supplier	Nature of rented property	Purpose of renting	Applicability of RCM entry Entry 5-AA (w.e.f. 18 th July, 2022) Entry 5-AB (w.e.f. 10 th Oct, 2024)	Applicability of Exemption Entry 12 of E/N 12/2017-CT
<u>Any Person</u> (registered or unregistered)	Residential property	For residential use	B2B Supply: <u>RCM</u> B2C supply: <u>FCM</u>	B2B Supply: <u>Not Exempt</u> B2C supply: <u>Exempt</u>
		For commercial use	B2B Supply: <u>RCM</u> B2C supply: <u>FCM</u>	<u>Not Exempt</u>
<u>URP</u>	Commercial property	For commercial use	B2B Supply: <u>RCM</u> B2C supply: <u>FCM</u>	<u>Not Exempt</u>
<u>RP</u>			B2B Supply: <u>FCM</u> B2C supply: <u>FCM</u>	<u>Not Exempt</u>

“

Never Stop Being You

Never stop caring about the little things in life.
Never stop dreaming, and don't give into strife.
Never stop wondering are we on our own.
Never stop thinking has your spirituality grown.

Never stop building bridges that lead to better tomorrows.
Never stop trying, and don't give into sorrow.
Never stop feeling amazed at the beauty that surrounds you.
Never stop hearing the music, and don't give into the blues.

Never stop pushing away negative thoughts
that make you feel sad.
Never stop looking at all the miracles we have had.
Never stop loving the ones you hold dear.
Never stop giving, and don't give into the fear.

Never stop smiling, but look forward to each new day.
Never stop shining in your own special way.
Never forget that all storms will clear.
Remember brighter tomorrows are always near.

”

¹ As Corrected by Corrigendum No. G.S.R. 652(E) [F. No. 190354/149/2024-To (TRU-II)-Part-I CBEC] dated 22-10-2024, w.e.f. 22-10-2024.



**2 : PLACE OF SUPPLY**

1. **CBC issued Circulars clarifying determination of PoS in various situations: (1) PoS of Goods [Sec 10(1)(ca) of IGST Act]- Determination of PoS in case of supply of goods to URP. &. (2) PoS of Services [Sec 13 of IGST Act]- determination of PoS in case of (a) Supply of Advertisement Services (b) Supply of Data Hosting Services (c) Supply of custodial services by Bank to the Foreign Portfolio Investors. [Circular No. 209/3/2024-GST, Circular No. 232/26/2024-GST, Circular No. 230/24/2024-GST, Circular No. 220/14/2024-GST]**

PoS of GOODS**Circular No. 209/3/2024-GST****Dated: 26th June, 2024****Subject: Clarification on the provisions of Sec 10(1) (ca) of the IGST Act, 2017 relating to place of supply of goods to URP.****Subject: Clarification on the provisions of Sec 10(1) (ca) of the IGST Act, 2017 relating to PoS of goods to URP****Facts**

Mr. A (URP) located in X State places an order on an e-commerce platform for supply of a mobile phone, which is to be delivered at an address located in Y State.

Mr. A, while placing the order on the e-commerce platform, provides the billing address located in X state.

In such a scenario, what would be the PoS of the said supply of mobile phone,

whether the State pertaining to the billing address i.e. State X

or the State pertaining to the delivery address i.e. State Y?

ECO

[say, Flipkart]

Supplier (Mobile)
(India)Recipient
(India) State XDelivery requested
in State Y**Clarifications**

1. **Supply of goods to URP = POS as per Sec 10(1)(ca)**

Sec 10(1)(ca) - w.e.f. 1st Oct, 2023**Supply of goods to URP:**

PoS = Location as per address of recipient as recorded on invoice (if not so recorded, then PoS = Location of supplier)

Explanation:

Recording State Name of recipient = Recording address of the recipient

2. **'STATE' of Recipient for purpose of Sec 10(1)(ca)**

= 'State pertaining to the billing address' or

'State pertaining to the delivery address'

It shall be **'State pertaining to the DELIVERY address'**

in such cases involving supply of goods to an URP, where the billing address and delivery address are different, **the supplier may record the delivery address as the address of the recipient on the invoice for the purpose of determination of place of supply of the said supply of goods.**

1. Vide Notification 2/2023-IT, dated 29th September, 2023, the provisions of the IGST (Amendment) Act, 2023 came into force with effect from 1-10-2023.

2. **Clause (ca) has been inserted in Section 10(1) of the IGST Act with effect from 1-10-2023.** The same is reproduced as under:—

"(ca) **where the supply of goods is made to a person other than a RP, the place of supply shall, notwithstanding anything contrary contained in clause (a) or clause (c), be the location as per the address of the said person recorded in the invoice issued in respect of the said supply and the location of the supplier where the address of the said person is not recorded in the invoice.**

Explanation.— For the purposes of this clause, **recording of the name of the State of the said person in the invoice shall be deemed to be the recording of the address of the said person,"**

- 2.1 The said provision has been inserted as a *non-obstante* provision overriding the provisions under Section 10(1)(a) or 10(1)(c) of IGST Act. IT provides that where the supply of goods is made to an URP, the place of supply would be the location as per the address of the said person recorded in the invoice and the location of the supplier where the address of the said person is not recorded in the invoice. An explanation has also been added to the said clause to clarify that recording the name of the State of the said person shall be deemed to be the recording of the address of the said person.

3. Reference has been received from trade and industry seeking clarification regarding **the place of supply** in terms of newly added clause (ca) of section 10(1) of the IGST Act, in case of **supply of goods made to an URP where billing address is different from the address of delivery of goods**, especially in the context of supply being made through e-commerce platforms.





4. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168(1) of the CGST Act, 2017 hereby clarifies the issues as under:—

Issue	<p>Mr. A (URP) located in X State places an order on an e-commerce platform for supply of a mobile phone, which is to be delivered at an address located in Y State.</p> <p>Mr. A, while placing the order on the e-commerce platform, provides the billing address located in X state.</p> <p>In such a scenario, what would be the PoS of the said supply of mobile phone, whether the State pertaining to the billing address i.e. State X or the State pertaining to the delivery address i.e. State Y?</p>
Clarification	<p>As per the provisions of Sec 10(1)(ca), where the supply of goods is made to an URP, the place of supply would be the location as per the address of the said person recorded in the invoice and the location of the supplier where the address of the said person is not recorded in the invoice. Further, as per <i>Explanation</i> to the said clause, recording the name of the State of the said URP on the invoice shall be deemed to be the recording of the address of the said person.</p> <p>Accordingly, it is clarified that in such cases involving supply of goods to an URP, where the address of delivery of goods recorded on the invoice is different from the billing address of the said URP on the invoice, the place of supply of goods in accordance with the provisions of Sec 10(1)(ca) of IGST Act, shall be the address of delivery of goods recorded on the invoice i.e. State Y in the present case where the delivery address is located.</p> <p>Also, in such cases involving supply of goods to an URP, where the billing address and delivery address are different, the supplier may record the delivery address as the address of the recipient on the invoice for the purpose of determination of place of supply of the said supply of goods.</p>

PoS of SERVICE

Circular No. 232/26/2024-GST
Dated: 10th Sep, 2024

Subject: Clarification on place of supply of data hosting services provided by service providers located in India to cloud computing service providers located outside India.

Subject: Clarification on PoS of data hosting services provided by service providers located in India to cloud computing service providers located outside India

Facts	Clarifications
<p>Supply of Sr by Data Hosting Centre (DHC) to Supplier of Cloud Computing Sr (CCS): The cloud computing service providers generally enter into contract with data hosting service providers to use their data centres for hosting cloud computing services. Data hosting service provider either owns premises for data centre or operates data centre on leased premises, procures infrastructure and human resource, handles operations like infrastructure monitoring, IT management and equipment maintenance, etc. to provide the said supply of data hosting services to the cloud computing service providers. .</p> <p>Importantly, the data hosting service providers do not deal with end users/consumers of cloud computing services and may not even know about the end users.</p> <div style="display: flex; align-items: center; margin-top: 10px;"> <div style="border: 1px solid black; padding: 5px; margin-right: 10px;"> Supplier (Cloud Computing Sr) (Outside India) </div> <div style="font-size: 2em; margin-right: 10px;">→</div> <div style="border: 1px solid black; padding: 5px; margin-right: 10px;"> Recipient (End Users) </div> </div> <div style="display: flex; align-items: center; margin-top: 10px;"> <div style="border: 1px solid black; padding: 5px; margin-right: 10px;"> Supplier (Data Hosting Sr) (India) </div> <div style="font-size: 2em; margin-right: 10px;">↑</div> <div style="border: 1px solid black; padding: 5px; margin-right: 10px;"> Supplier (Cloud Computing Sr) (Outside India) </div> </div>	<ol style="list-style-type: none"> Supplier of Data Hosting Sr = NOT 'intermediary' Recipient of Sr = Supplier of Cloud Computing Sr POS Sr = as per Sec 13 of IGST Act <ol style="list-style-type: none"> Not as per Sec 13(3) (as it is not performance based service) The data hosting service provider owns premises for data center or operates data center on leased premises, independently handles, monitors and maintains the premises, hardware and software infrastructure, personnel and in such scenario, the overseas cloud computing service providers cannot be considered to own the said infrastructure and make the same physically available to the data hosting service provider for supply of the said services What if some hardware is made available the recipient (Supplier of CCS)?-Still it cannot be said that data hosting service are being provided in relation to the said goods made available by the cloud computing service provider to them.= thus, no POS as per Sec 13(3)(a) Not as per Sec 13(4) (as it is not directly in relation to 'immovable property') Data hosting services are not passive supply of a service directly in respect of immovable property but are regarding supply of a comprehensive service related to data hosting which involves the supply of various services by the data hosting service provider like operating data centre, ensuring uninterrupted power supplies, backup generators, network connectivity, backup facility, firewall services, and monitoring and surveillance service for ensuring





continuous operations of the servers and related hardware, etc. which are essential for cloud computing service provider to provide cloud computing services to the end users/customer/subscribers.

(c) **As per Sec 13(2)** (residuary category)
Thus, PoS = LoR = Foreign (outside India)

4. **Zero-rating** = This service can be considered to be export of services, subject to the fulfilment of conditions mentioned in Sec 2(6) of IGST Act.

1. Representations have been received from the trade and industry seeking clarification on the place of supply in case of data hosting services provided by service providers located in India to cloud computing service providers located outside India.

2. Issue

- 2.1 It has been represented that some field formations are of the view that the place of supply of data hosting services provided by the service providers located in India to cloud computing service providers located outside India is the location of data hosting service provider in India and therefore, the benefit of export of services is not available on such supply of data hosting services.

- 2.2 Thus, clarification has been sought in respect of the following issues-

(i)	Whether data hosting service provider qualifies as 'Intermediary' between the cloud computing service provider and their end customers/users/subscribers as per Section 2(13) of the IGST Act and whether the services provided by data hosting service provider to cloud computing service providers are covered as intermediary services and whether the place of supply of the same is to be determined as per section 13(8)(b) of IGST Act.
(ii)	Whether the data hosting services are provided in relation to goods "made available" by recipient of services to service provider for supply of such services and whether the place of supply of the same is to be determined as per section 13(3)(a) of the IGST Act.
(iii)	Whether the data hosting services are provided directly in relation to "immovable property" and whether the place of supply of the same is to be determined as per section 13(4) of the IGST Act.

3. Clarification

- 3.1 Whether data hosting service provider qualifies as 'Intermediary' between the cloud computing service provider and their end customers/users/subscribers as per Section 2(13) of the IGST Act and whether the services provided by data hosting service provider to cloud computing service providers are covered as intermediary services and whether the place of supply of the same is to be determined as per section 13(8)(b) of IGST Act.

- 3.1.1 As per **section 2(13) of the IGST Act**, read with Circular no. 159/15/2021-GST, dated 20-09-2021, **a broker, agent or any other person who arranges or facilitates the main supply of goods or services or both or securities and has not involved himself in the main supply on his own account is considered as 'intermediary'**. Persons who supply goods or services, or both on their own account are not covered in the definition of "intermediary".

- 3.1.2 **The cloud computing service providers generally enter into contract with data hosting service providers to use their data centres for hosting cloud computing services.** Data hosting service provider either owns premises for data centre or operates data centre on leased premises, procures infrastructure and human resource, handles operations like infrastructure monitoring, IT management and equipment maintenance, etc. to provide the said supply of data hosting services to the cloud computing service providers. The data hosting service provider generally handles all aspects of data centre like rent, software and hardware infrastructure, power, net connectivity, security, human resource, etc. **Importantly, the data hosting service providers do not deal with end users/consumers of cloud computing services and may not even know about the end users.**

- 3.1.3 It is observed that data hosting service provider provides data hosting services to the cloud computing service provider on a web platform through computing and networking equipment for the purpose of collecting, storing, processing, distributing, or allowing access to large amounts of data. The cloud computing service provider provides cloud-based applications and software services to various end users/customers/subscribers for data storage, analytics, artificial intelligence, machine learning, processing, database analysis and deployment services, etc.. The end users/customers/subscribers access cloud computing services seamlessly over the internet through technology hosted on data centers. **There appears to be no contact between data hosting service provider and the end users/consumers/subscribers of the overseas cloud computing service provider. Thus, it is observed that the data hosting service provider provides data hosting services to the cloud computing service provider on principal-to-principal basis on his own account and is not acting as a broker or agent for facilitating supply of service between cloud computing service providers and their end users/consumers.**





3.1.4 Accordingly, **it is clarified that in such a scenario, the services provided by data hosting service provider to its overseas cloud computing service providers cannot be considered as intermediary services and hence, the place of supply of the same cannot be determined as per section 13(8)(b) of IGST Act.**

3.2 Whether the data hosting services are provided in relation to goods "made available" by recipient of services to service provider for supply of such services and whether the place of supply of the same is to be determined as per section 13(3)(a) of the IGST Act, 2017.

3.2.1 **Section 13(3)(a) of the IGST Act** provides that in cases where the services are supplied in respect of goods which are made physically available by the recipient of services to service provider, the place of supply will be location of service provider.

3.2.2 In the instant scenario, it is observed that the data hosting service provider, as an independent entity, is providing seamless data hosting services to the overseas cloud computing service providers, through the premises, hardware and personnel at the data centre which not only comprises of hardware but also other essential infrastructure (without which the hardware infrastructure cannot be utilized) like ventilation and cooling system, uninterrupted power supply, software, network connectivity, security protocols, etc. which are owned by the data hosting service providers and are independently handled, operated, monitored and maintained by them. These data hosting service providers are charging their clients (cloud computing service providers), the charges for the services being provided by them to these clients as consideration depending on the specific terms and conditions as per agreements between them. From the above, it is observed that throughout the provision of the said services, the data hosting service provider owns premises for data center or operates data center on leased premises, independently handles, monitors and maintains the premises, hardware and software infrastructure, personnel and in such scenario, the overseas cloud computing service providers cannot be considered to own the said infrastructure and make the same physically available to the data hosting service provider for supply of the said services

3.2.3 In view of above, **it is clarified that data hosting services provided by data hosting service provider to the said cloud computing service providers cannot be considered in relation to the goods "made available" by the said cloud computing service providers to the data hosting service provider in India and hence, the place of supply of the same cannot be determined under section 13(3)(a) of the IGST Act.**

3.2.4 **There may be some cases where some of the hardware required for data hosting service is provided by the recipient of the service, i.e., the cloud computing service provider to the data hosting service provider.** Even in these cases, data hosting service provider handles all aspects of data centre, like arranging for the premises, making available software and other hardware infrastructure, power, net connectivity, security, human resource, maintenance etc., for providing data hosting services to the cloud computing service provider. Accordingly, **in such cases, though the data hosting services is being provided by the data hosting service provider inter-alia using the hardware made available by the cloud computing service provider, it cannot be said that data hosting service are being provided in relation to the said goods made available by the cloud computing service provider to them. Accordingly, even in these cases, place of supply cannot be determined under section 13(3)(a) of the IGST Act.**

3.3 Whether the data hosting services are provided directly in relation to "immovable property" and whether the place of supply of the same is to be determined as per section 13(4) of the IGST Act.

3.3.1 **Section 13(4) of the IGST Act** provides for the place of supply where services supplied are directly in relation to immovable property.

3.3.2 In the present scenario, it is observed that the data hosting service providers either use owned or leased premises for keeping IT infrastructure and other hardware required for providing data hosting services. They also procure hardware, uninterrupted power supplies, backup generators, ventilation and cooling equipment, network connectivity, fire suppression systems, security, human resource, etc.; handle operations like server monitoring, IT management and equipment maintenance, including repairs and replacements of the same, for providing data hosting services to their clients.

3.3.3 Thus, it is observed that **data hosting services are not passive supply of a service directly in respect of immovable property but are regarding supply of a comprehensive service related to data hosting** which involves the supply of various services by the data hosting service provider like operating data centre, ensuring uninterrupted power supplies, backup generators, network connectivity, backup facility, firewall services, and monitoring and surveillance service for ensuring continuous operations of the servers and related hardware, etc. which are essential for cloud computing service provider to provide cloud computing services to the end users/customer/subscribers.





3.3.4 Accordingly, it is clarified that in such a scenario, the data hosting services cannot be considered as the services provided directly in relation to immovable property or physical premises and hence, the place of supply of such services cannot be determined under section 13(4) of IGST Act.

4. Further, the place of supply for the data hosting services provided by data hosting service provider located in India to overseas cloud computing service providers does not appear to fit into any of the specific provisions outlined in sections 13(3) to 13(13) of the IGST Act. Therefore, the place of supply in such cases needs to be determined according to the default provision under section 13(2) of the IGST Act, i.e. the location of the recipient of the services. Where the cloud computing service provider receiving the data hosting services are located outside India, the place of supply will be considered to be outside India according to section 13(2) of the IGST Act.
5. Accordingly, supply of data hosting services being provided by a data hosting service provider located in India to an overseas cloud computing entity can be considered as export of services, subject to the fulfilment of the other conditions mentioned in section 2(6) of IGST Act.

Circular No. 230/24/2024-GST

Dated: 10th Sep, 2024

Subject: Clarification in respect of advertising services provided to foreign clients

Subject: Clarification in respect of Advertising Services Provided To Foreign Clients

Facts	Clarifications
<p>A foreign clients enter into <u>a comprehensive agreement with advertising companies/agencies</u> in India and outsource the entire activity of advertising services to the advertising companies/agencies.</p> <p>Further, <u>these advertising companies/agencies enter into an agreement with the media owners in India</u> for implementing the said media plan and procurement of media space for airing or releasing or printing advertisement.</p>	<ol style="list-style-type: none"> 1. Supplier of Adv Sr = NOT 'intermediary' in the present scenario, the advertising company is involved in the main supply of advertising services, including resale of media space, to the foreign client on <u>principal-to-principal</u> and does not fulfil the criteria of "intermediary" under section 2(13) of the IGST Act. 2. Recipient of Adv Sr = Foreign Company (in whose name the invoice is being raised by supplier of Adv Services) Any representative of such company or target audience are not recipient. 3. POS of Adv Sr = as per Sec 13 of IGST Act (a) Not as per Sec 13(3) (as it is not performance based service) (b) As per Sec 13(2) (residuary category) Thus, PoS = LoR = Foreign (outside India) 4. Zero-rating = This service can be considered to be export of services, subject to the fulfilment of conditions mentioned in Sec 2(6) of IGST Act.

However, there may be cases where the advertising company located in India merely acts as an agent of the foreign client in engaging with the media owner for providing media space to the foreign client. In such cases, the agreement/ contract for providing the media space and broadcast of the advertisement is directly between media owner and the foreign client. The media owner directly invoices the foreign client for providing the media space and broadcast of the advertisement and the foreign client remits the payment for the said services directly to the media owner. In such instances, the services of providing media space and broadcasting the advertisement are directly provided by the media owner to the foreign client. In such cases, the advertising company is merely facilitating the provision of the said services of providing media space and broadcasting the advertisement between the foreign client and the media owner and does not provide the said services on its own account. **The advertising company invoices the foreign client for the facilitation services provided by it.**

Consequently, in such cases, the advertising company is an "intermediary" in accordance with Sec 2(13) of the IGST Act, 2017, as elucidated in Circular No. 159/15/2021-GST, in respect of the said services of facilitating the foreign client and accordingly, the POS in respect of the said services provided by the advertising company to the foreign client is determinable as per section 13(8)(b) of IGST Act, i.e. the location of the supplier, i.e. the location of the advertising company.

1. References have been received from the trade and industry requesting for **clarification regarding advertising services being provided by Indian advertising companies/agencies to foreign entities**, as some of the field formations are considering the place of supply of the said services as within India, thereby denying the export benefits to such advertising companies.
- 1.2 In view of the difficulties being faced by the trade and industry and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by Section 168 (1) of CGST Act, hereby clarifies the issues in succeeding paragraphs.





2. Issue in Brief

- 2.1 A foreign company or firm hires an advertising company/agency in India for advertisement of its goods or services and may **enter into a comprehensive agreement** with the advertising company/agency encompassing all the issues related to advertising services ranging from media planning, investment planning for the same, creating and designing content, strategizing for maximum customer reach, **the identification of media owners, dealing with media owners, procuring media space, etc. for displaying/broadcasting/printing of advertisement including monitoring of the progress of the same.** In such a case, the advertising agency provides a one stop solution to the client who outsources the entire activity to the agency.
- 2.2 In this scenario, **media owners raise invoice to the advertising agency for inventory costs, which are then paid by the advertising agency.** Subsequently, the advertising agency raises invoice to the foreign client for the rendered advertising services and receives the payments in foreign exchange from the foreign client. In this regard, clarification has been sought as to:

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|----|--|
| a. | Whether the advertising company can be considered as an "intermediary" between the foreign client and the media owners in terms of section 2(13) of IGST Act, thereby resulting in determination of place of supply under section 13(8)(b) of the IGST Act? |
| b. | Whether the representative of foreign client in India or the target audience of the advertisement in India can be considered as the recipient of the services being supplied by the advertising company under section 2(93) of CGST Act? |
| c. | Whether the advertising services provided by the advertising companies to foreign clients can be considered as performance-based services as per section 13(3) of the IGST Act? |

3. CLARIFICATION:

- 3.1 **Issue 1** -Whether the advertising company can be considered as an "intermediary" between the foreign client and the media owners as per section 2(13) of IGST Act?

3.1.1 **As per section 2(13) of IGST Act**, read with Circular no. 159/15/2021-GST, dated 20-09-2021, **a broker, agent or any other person who arranges or facilitates the main supply of goods or services or both or securities and has not involved himself in the main supply on his own account is considered as intermediary.**

3.1.2 In the instant scenario, it is observed that **the foreign clients enter into a comprehensive agreement with advertising companies/agencies in India and outsource the entire activity of advertising services to the advertising companies/agencies.** Further, these advertising companies/agencies enter into an agreement with the media owners in India for implementing the said media plan and procurement of media space for airing or releasing or printing advertisement.

3.1.3 **The advertising agency, in this case, enters into two agreements:**

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|-----|--|
| i. | With the client located outside India for providing a one stop solution starting from designing the advertisement to its display in the media as agreed to with the client. The advertising company raises invoice to its foreign client for the above advertising services and the payments of the same is received from the foreign client in foreign exchange. |
| ii. | With the media company to procure media space for display of the advertisement and to monitor campaign progress based on data shared by the media company. The media company bills the advertising agency and the payment for same is made by the advertising agency to the media company. |

3.1.4 Thus, **the agreement, in the instant case, is in the nature of two distinct principal-to-principal supplies and no agreement of supply of services exists between the Media company and the foreign client.** The advertising company is not acting as an agent but has been contracted by the client to procure and provide certain services. The advertising agency is providing the services to the client on its own account.

3.1.5 In view of above, **it is clarified that in the present scenario, the advertising company is involved in the main supply of advertising services, including resale of media space, to the foreign client on principal-to-principal basis as detailed above and does not fulfil the criteria of "intermediary" under section 2(13) of the IGST Act. Thus, the same cannot be considered as "intermediary" in such a scenario and accordingly, the place of supply in the instant matter cannot be linked with the location of supplier of services in terms of section 13(8)(b) of the IGST Act.**

3.2 **Issue-2** Whether the representative of foreign client in India or the target audience of the advertisement in India can be considered as the "recipient" of the services being supplied by the advertising company under section 2(93) of CGST Act?

3.2.1 **As per Section 2(93)(a) of the CGST Act**, the "recipient" of the services means the person who is liable to pay consideration where a consideration is payable for the supply of goods or services or both.





3.2.2 In the instant scenario, **the foreign client is liable to pay the consideration to advertising company for the supply of advertising and not the consumers or the target audience** that watches the advertisement in India.

Further, in this case, **even if a representative of the said foreign client based in India, including a subsidiary or related person of the said foreign client, is interacting with the advertising company on behalf of the said foreign client, the said representative based in India cannot be considered as a recipient of the service, if the agreement is between the foreign client and the advertising company, the invoice is being issued for the said service by the advertising company to the foreign client and the payment for the said service is received by the advertising company directly from the said foreign client.** Further, the target audience of the advertisements may be based in India but such target audience cannot be considered as recipient of the said advertising services being supplied by the advertising company as per the definition of the recipient under section 2(93) of CGST Act.

3.2.3 Therefore, in view of above, **it is clarified that the recipient of the advertising services provided by the advertising company in such cases is the foreign client and not the Indian representative of the foreign client based in India or the target audience of the advertisements, as per section 2(93) of the CGST Act, 2017.**

3.3 Issue-3 Whether the advertising services provided by the advertising companies to foreign clients can be considered as performance-based services as per section 13(3) of the IGST Act?

3.3.1 The place of supply of performance based services is provided in section 13(3) of IGST Act. The provisions of **Sec 13(3)(a) pertain to the services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services.** However, **in the instant matter, there does not appear to be any such involvement of goods which are required to be physically available with supplier of advertising services.** Therefore, **the said provisions of Sec 13(3)(a) cannot be made applicable for determination of place of supply of advertising services.**

3.3.2 Further, **section 13(3)(b) of IGST Act** provides that the place of supply shall be the location where the services are actually performed in case, where,

a.	services are supplied to an individual,
b.	represented either as the recipient of services or a person acting on behalf of the recipient, and
c.	which requires the physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of services

3.2.3 **In the present scenario, the supply of advertising services does not require physical presence of the recipient (foreign client or representative or a person acting on his behalf) with the advertising company for availing the said advertising services.** Thus, the said supply of advertising services cannot be considered as being covered under section 13(3)(b) of the IGST Act for being considered as the services actually performed in India in terms of the said section.

3.3.3 **Accordingly, it is clarified that the place of supply of advertising services in such cases can neither be determined as per the provision of section 13(3)(a) nor as per the provisions of section 13(3)(b) of IGST Act.**

5. Further, it is observed that in the present scenario, **the place of supply of the above-mentioned advertising services does not appear to be covered under any other provisions of sub-sections (3) to (13) of Section 13 of the IGST Act.** Therefore, in view of foregoing discussion, it appears that **the place of supply of the said advertising service being supplied by the advertising company to the foreign clients can only be determined as per the default provision, i.e. section 13(2) of IGST Act, i.e. the place of location of the recipient of the services.** Since the recipient of the advertising services in such scenario is the foreign client, who is located outside India, **the place of supply of the said services appears to be the location of the said foreign client i.e. outside India as per Section 13(2) of IGST Act, and the said service can be considered to be export of services, subject to the fulfilment of conditions mentioned in section 2(6) of IGST Act.**

5. **However, there may be cases where the advertising company located in India merely acts as an agent of the foreign client in engaging with the media owner for providing media space to the foreign client.** In such cases, the agreement/ contract for providing the media space and broadcast of the advertisement is directly between media owner and the foreign client. *The media owner directly invoices the foreign client for providing the media space and broadcast of the advertisement and the foreign client remits the payment for the said services directly to the media owner.* In such instances, the services of providing media space and broadcasting the advertisement are directly provided by the media owner to the foreign client. **In such cases, the advertising company is merely facilitating the provision of the said services of providing media space and broadcasting the advertisement between the foreign client and the**





media owner and does not provide the said services on its own account. The advertising company invoices the foreign client for the facilitation services provided by it.

- 5.1 **Consequently, in such cases, the advertising company is an "intermediary" in accordance with Section 2(13) of the CGST Act, 2017, as elucidated in Circular No. 159/15/2021-GST, in respect of the said services of facilitating the foreign client and accordingly, the place of supply in respect of the said services provided by the advertising company to the foreign client is determinable as per section 13(8)(b) of IGST Act, i.e. the location of the supplier, i.e. the location of the advertising company.**

Circular No. 220/14/2024-GST

Dated: 26th June, 2024

Subject: Clarification On Place Of Supply Applicable For Custodial Services Provided By Banks To Foreign Portfolio Investors.

Subject: Clarification On Place Of Supply Applicable For Custodial Services Provided By Banks To Foreign Portfolio Investors

Facts	Clarifications
<p>Banks / FI (India) → Custodial Services (of securities) → Recipient (Foreign Portfolio Investors- FPI)</p> <p>Whether this can be treated as service to 'ACCOUNT HOLDER' and accordingly, POS can be determined as per Sec 13(8)(a) of the IGST Act?</p> <p>Sec 13(8) of IGST Act 'Account' means <u>an account bearing interest to the depositor</u>, including non-resident external and ordinary accounts.</p>	<ol style="list-style-type: none"> Nature/scope of Service = SEBI (Custodian of Securities) Regulations 1996 - referred <i>The main activity carried out by banks as a custodian in relation to custodial services is maintaining account of the securities held by the FPIs</i> Scope of 'Services to Account Holder' = The Education Guide under the Service Tax Law - referred <i>The Education Guide (under Service Tax Law) clarified that services that are provided by a banking company to an account holder in the ordinary course of business shall ONLY be considered.</i> Custodial services are not considered as services to 'account holder' POS - as per Sec 13 of IGST Act (a) Not as per Sec 13(8)(a) (as it covers only services to 'account holders') (b) As per Sec 13(2) (residuary category) Thus, PoS = LoR = Foreign (outside India) <p>Author: Zero-rating = This service can be considered to be export of services, subject to the fulfilment of conditions mentioned in Sec 2(6) of IGST Act.</p>

- Representations have been received seeking clarification on the Place of Supply in cases of **Custodial Services provided by Banks to Foreign Portfolio Investors** (hereinafter referred to as "FPIs"), as a view is being taken by some field formations that the Place of Supply in case of 'custodial service' would be determined as per Section 13(8)(a) of the IGST Act, i.e. the location of the service provider (banks or financial institutions).
- In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168(1) of the CGST Act, hereby clarifies the issue as under:—

Issue: Whether the activity of providing Custodial Services by banks or financial institutions to FPIs will be treated as services provided to 'account holder' under section 13(8)(a) of the IGST Act, 2017?

Further, how the place of supply of the said services shall be determined?

Clarification:

According to the **SEBI (Custodian of Securities) Regulations 1996**, 'Custodial Services' in relation to securities **means** safekeeping of securities of a client and providing services incidental thereto, and **includes**—

•	maintaining accounts of securities of a client;
•	collecting the benefits or rights accruing to the client in respect of securities;
•	keeping the client informed of the actions taken or to be taken by the issuer of securities, having a bearing on the benefits or rights accruing to the client; and
•	maintaining and reconciling records of the services referred above.





As per **Regulation 20(1) of the SEBI (Foreign Portfolio Investors) Regulations, 2019**, *an FPI is allowed to invest only in the following securities, namely-*

(a)	shares, debentures and warrants issued by a body corporate; listed or to be listed on a recognized stock exchange in India;
(b)	units of schemes launched by mutual funds under Chapters V, VI-A and VI-B of the Securities and Exchange Board of India (Mutual Fund) Regulations, 1996;
(c)	units of schemes floated by a Collective Investment Scheme in accordance with the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999;
(d)	derivatives traded on a recognized stock exchange;
(e)	units of real estate investment trusts, infrastructure investment trusts and units of Category III Alternative Investment Funds registered with the Board;
(f)	Indian Depository Receipts;
(g)	any debt securities or other instruments as permitted by the Reserve Bank of India for foreign portfolio investors to invest in from time to time; and
(h)	such other instruments as specified by the Board from time to time.

Various banks enter into custodial agreements with the Foreign Portfolio Investors (FPIs) for the provision of such custodial services. The main activity carried out by banks as a custodian in relation to custodial services is maintaining account of the securities held by the FPIs.

As per Sec 13(8)(a) of IGST Act, Place of Supply of services supplied by banking company or a financial institution or a non-banking company **to account holders** shall be the location of the supplier of services.

As per Explanation (a) of Section 13(8) of IGST Act, **'ACCOUNT'** means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account.

It is mentioned that the **provisions similar to above provisions under IGST Act existed during the Service Tax regime**. The place of provision of service under Service Tax was governed by the Service Tax Place of Provision of Supply Rules, 2012. Provisions of Rule 9(a) of the Service Tax Place of Provision of Supply Rules, 2012 were identical to that of section 13(8)(a) of the IGST Act.

The Education Guide under the Service Tax Law clarified the scope of the term "account holder" and the services provided by banks to account holders as well as the services which are not provided to account holders, as below:

"Question: 5.9.2 What is the meaning of "account holder"? Which accounts are not covered by this rule?

Answer: "Account" has been defined in the rules to mean an account which bears an interest to the depositor. Services provided to holders of demand deposits, term deposits, NRE (non-resident external) accounts and NRO (non-resident ordinary) accounts will be covered under this rule.

Question: 5.9.3 What are the services that are provided by a banking company to an account holder (holder of an account bearing interest to the depositor)?

Answer: Following are examples of services that are provided by a banking company or financial institution to an "account holder", **in the ordinary course of business:-**

(i)	services linked to or requiring opening and operation of bank accounts such as lending, deposits, safe deposit locker etc;
(ii)	transfer of money including telegraphic transfer, mail transfer, electronic transfer etc.

Question: 5.9.4 What are the services that are not provided by a banking company or financial institution to an account holder, in the ordinary course of business, and will consequently be covered under another Rule?

Answer: Following are examples of services that are generally NOT provided by a banking company or financial institution to an account holder (holder of a deposit account bearing interest), **in the ordinary course of business:-**

(i)	financial leasing services including equipment leasing and hire purchase;
(ii)	merchant banking services;
(iii)	Securities and foreign exchange (forex) broking, and purchase or sale of foreign currency, including money changing;
(iv)	asset management including portfolio management, all forms of fund management, pension fund management, custodial, depository and trust services

In the case of any service which does not qualify as a service provided to an account holder, the place of provision will be determined under the default rule i.e. the Main Rule 3. Thus, it will be the location of the service receiver where it is known (ascertainable in the ordinary course of business), and the location of the service provider otherwise."





Accordingly, as per clarification given in Education Guide under Service Tax Regime, the custodial services are not considered to be covered under the services provided by bank to account holders, but have been considered to be covered under the services which are not provided to account holder.

As the provisions of Sec 13(8)(a) of the IGST Act are similar to the provisions of Rule 9(a) of the Service Tax Place of Provision of Supply Rules, 2012, the clarification given in the Education Guide under Service Tax Regime is equally applicable under GST Regime.

- Accordingly, it is clarified that the custodial services provided by banks or financial institutions to FPIs are not to be treated as services provided to 'account holder' and therefore, the said services are not covered under section 13(8)(a) of the IGST Act. Therefore, the place of supply of such services is not to be determined under section 13(8)(a) of the IGST Act but has to be determined under the default provision i.e., section 13(2) of the IGST Act.

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Don't Quit

When things go wrong, as they sometimes will,
When the road you're trudging seems all uphill,
When the funds are low and the debts are high,
And you want to smile, but you have to sigh,
When care is pressing you down a bit,
Rest, if you must, but don't you quit.

Life is queer with its twists and turns,
As every one of us sometimes learns,
And many a failure turns about,
When he might have won had he stuck it out;
Don't give up though the pace seems slow —
You may succeed with another blow.

Often the goal is nearer than,
It seems to a faint and faltering man,
Often the struggler has given up,
When he might have captured the victor's cup,
And he learned too late when the night slipped down,
How close he was to the golden crown.

Success is failure turned inside out —
The silver tint of the clouds of doubt,
And you never can tell how close you are,
It may be near when it seems so far,
So stick to the fight when you're hardest hit —
It's when things seem worst that you must not quit.

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**GST - Volume IV Amendments****1. EXEMPTIONS UNDER GST**

1. Renting of Immovable property		
Entry 12	Renting of RESIDENTIAL DWELLING for use as residence to URP	<p><u>Applicability of exemption to 'Renting of Hostel Rooms' was under litigation. Resolving that following amendments have been taken:</u></p> <p>(1) W.e.f. 15th July 2024, exemption entry 12 has been amended to specifically exclude 'accommodation services falling under Heading 9963'. For them, special exemption entry 12-A has been issued.</p> <p>(2) W.e.f. 15th July, 2024, Explanation 2 has been inserted in the Entry to specifically exclude following</p> <p>(a) <u>accommodation services for STUDENTS in student residences;</u></p> <p>(b) <u>accommodation services provided by Hostels, Camps, Paying Guest accommodations and the like.</u></p>
	(w.e.f. 15 th July, 2024)	
Entry 12-A	Accommodation Services for longer duration (i.e. minimum continuous 90 days) - Value upto ₹ 20,000 p.m. (per person)	<p><u>Scope Restricted</u></p> <ul style="list-style-type: none"> Hostels, Service Apartments, Hotels etc - all can claim this exemption i.r.o. renting for longer duration and on reasonable rents. <p><u>Past liability of period (1st July, 2017 till 14th July, 2024):</u> Regularised on 'as is where is basis'. vide Circular No 228/22/2024-GST ¹</p>
2. Insurance Sector		
Entry 36-A	Re-insurance Services Re-INSURANCE of the insurance schemes specified in serial number 35 or 36 or 40 exempt.	<p><u>Scope Clarified by Circular</u></p> <p><u>Re-insurance Services to include 'Retrocession Services': Covered by Exemption Entry 36-A</u></p> <p>'Retrocession' means a re-insurance transaction whereby a part of assumed reinsured risk is further ceded to another Insurer</p>
3. Power Sector		
	(w.e.f. 10 th Oct, 2024)	
Entry 25-A	Services by way of providing metering equipment on rent, testing for meters/transformers/capacitors etc., releasing electricity connection, shifting of meters/service lines, issuing duplicate bills etc., which are incidental or ancillary to the supply of transmission and distribution of electricity provided by Electricity Transmission and Distribution Utilities [ETDU] to their consumers.	<p><u>Earlier, judiciary held that these are exempted. Torrent Power Ltd. - 2018- Guj HC : "These ancillary services should be considered part of a composite supply, where the principal supply is the transmission and distribution of electricity, which is exempt from GST. Thus, these services also exempt.</u></p>
5. Education Sector		
	(w.e.f. 10 th Oct, 2024)	
Entry 66-A	Affiliation Services by Central/State Education Board / Council or other similar body to School (of CG/SG/UT/ LA or Govt Entity or Govt Authority	<p><u>Past liability of period (1st July, 2017 till 14th June, 2021):</u> Regularised for all schools on 'as is where is basis'.</p>

¹ 'As is where is' basis. = [(suppliers who have not paid shall not be required to pay) AND (suppliers who have paid GST shall not be eligible for refund)].





Entry 66	Services by 'Educational Institution' <u>[Education must be part of a curriculum for obtaining a qualification or degree recognized by law.]</u>	Scope Clarified by Circular <u>[Education must be part of a curriculum for obtaining a qualification or degree recognized by law.]</u> Directorate General of Civil Aviation (DGCA).- approved Flying Training Organizations (FTOs) qualify as educational institutions under GST law. <i>[The training courses are part of a curriculum for obtaining qualifications recognized by law (e.g., pilot licenses issued under Aircraft Rules, 1937).]</i>
Para 2(h)	Definition of Approved Vocational Education Course - NCVT (National Council for Vocational Training) Substituted with - NCVET (National Council for Vocational Education and Training)	In 2018, the government merged NCVT with the National Skill Development Agency (NSDA) to form the NCVET. This new entity became the apex body for regulating and standardizing all vocational education and training in India. Accordingly, GST exemption re-casted.
Entry 71	Skill or vocational Training Services - by Training Providers under DDUGKY) - NCVT (National Council for Vocational Training) Substituted with - NCVET (National Council for Vocational Education and Training)	Same as above
Entry 69	Services by NSDC/ NCVET + Services by NCVET recognized Awarding Body/ Assessment Agency & Training Body) - in relation to [SPECIFIED SCHEMES] (w.e.f. 10 th Oct, 2024)	Expanded Scope of Qualification Framework Schemes and courses implemented under NSDC (such as PMKVY) and the National Skill Certification and Monetary Reward Scheme. + Includes qualifications aligned with the National Skill Qualification Framework (NSQF), as approved by NCVET.
Entry 44-A	R&D Services by Govt Entity / Institutions as notified u/Sec 35(1) (ii)/ (iii) of Income tax Act, 1961 - where consideration received in the forms of GRANTS	Such service is exempt irrespective of whether grant received from Govt or Private Entity.
5. Services to Govt/ Local Authority		
	(w.e.f. 15 th July, 2024)	
Entry 9-G	Services by SPV by way of allowing use of the infrastructure built and owned by them during the concession period to Ministry of Railways (Indian Railways)	Past liability of period (1st July, 2017 till 14th July, 2024): Regularised on 'as is where is basis'.
Services by Govt/ Local Authority		
	(w.e.f. 15 th July, 2024)	
Entry 9-G	Maintenance Services by Ministry of Railways (Indian Railways) to SPV)	Past liability of period (1st July, 2017 till 14th July, 2024): Regularised on 'as is where is basis'.
Entry 9-E	4 Services by Ministry of Railways (Indian Railways) to INDIVIDUALS 1. <u>Sale of platform tickets;</u> 2. <u>Facility of retiring rooms/waiting rooms;</u> 3. <u>Cloak room services;</u> 4. <u>Battery operated car services.</u>	Recently (w.e.f. 20th Oct, 2023), based on request of Indian Railways, all supplies of goods/services were brought under FCM. Also, all exemptions that were available to railways (like entry 6 7, 8 & 9 etc) were withdrawn and thereby making almost all services provided by IR taxable. Now (w.e.f. 15th July, 2024), on representations of I^r certain services to general public have been exempted vide Entry No. 9-E. Past liability of period (20th Oct, 2023 till 14th July, 2024): Regularised on 'as is where is basis'. vide Circular No 228/22/2024-GST





	Entry 9-F	Supply of any services between one zone/division to another zone/division of Ministry of Railways (Indian Railways) <u>i.e. supply of any service between DDP]</u>	<i>Now (w.e.f. 15th July, 2024), on representations of I⁷, intra-railway activities have been exempted vide Entry No. 9-F.</i> Past liability of period (20th Oct, 2023 till 14th July, 2024): Regularised on 'as is where is basis'. <i>vide Circular No 228/22/2024-GST</i>
6.	Services to/by Governmental Authority		
	Entry 4	Services by a governmental authority by way of any activity in relation to any function entrusted to a MUNICIPALITY under Article 243W of the Constitution is exempt	Circular No. 228/22/2024-GST - dated 15/ 2024 Clarification (1) RERA performs statutory function of regulating the real estate development and construction of the building entrusted to them which fall under Entry No.1 and 2 of the 12 th Schedule of Constitution [Article 243-W: Municipality Functions] (2) RERA = Governmental Authority Covered by Entry No. 4
7.	Special Inter-State Exemption - N/N 9/2017 - IT (Rate)		
		(w.e.f. 10th Oct, 2024)	
	Entry 10-L	Import of Service without consideration (between DDP / RP) in case of Foreign Airline Company Conditions for GST Exemption: <ul style="list-style-type: none"> Indian Establishment must pay GST on the transport of goods and passengers as applicable. The Ministry of Civil Aviation must certify: <ul style="list-style-type: none"> The Indian establishment is part of a foreign airline company designated under a bilateral air services agreement. Indian airlines are exempt from similar taxes in the foreign airline's country under reciprocal arrangements. 	Past liability of period (1st July, -7-2017 to 9th Oct, 2024): Regularised on 'as is where is basis'. <i>vide Circular No 228/22/2024-GST</i>

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Service of Renting of Immovable Property

Entry No. 14 (Room renting by Hotel etc. where value of supply is **upto ₹1,000 per day**)

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

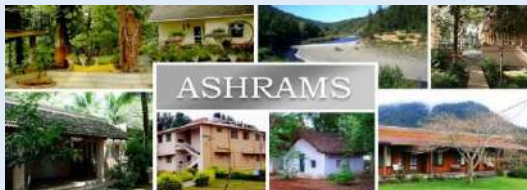
below or
equal to

₹1,000 per day or
equivalent

[Omitted w.e.f. 8th July, 2022]

Author

- Room renting by Hotel, Inn, Guest House – **not exempt** presently
- Room renting by CLUB (whether to outsiders or to own members) – **not exempt** presently
- Room renting by DHARAMASHALAS, ASHRAM or any such like entity



Whether renting by 'RELIGIOUS BODIES' is exempt under any entry?

Yes – Entry No 13 available to them

In that entry rooms renting by temples is **exempt** only when charges are **less than ₹1,000**.

**** w.e.f. 15th July 2024**, 'Accommodation services for **LONG DURATION** (=Min 90 days continuous period) shall be eligible for exemption vide Entry No. 12-A [if the value of supply is **upto 20,000 p.m. (per person)**]. – detailed discussion later

Entry No. 12 (RRR - Renting of RESIDENTIAL DWELLING for use as residence **to URP**)

(amended)

¹ Services **by way of renting of RESIDENTIAL DWELLING for use as residence**

except where the residential dwelling is rented to a RP.

(w.e.f. 18th July, 2022)

Explanation 1

inserted [dated 1st Jan, 2023]²

For the purpose of exemption under this entry, **this entry shall cover services by way of renting of residential dwelling to a RP (i.e. exemption shall be available) where, –**

- the RP is proprietor of a proprietorship concern AND rents the residential dwelling in his personal capacity for use as his own residence; and**
- such renting is on his own account and not that of the proprietorship concern.**

Explanation 2

inserted [w.e.f. 15th July, 2024]

Nothing contained in this entry shall apply to, –

- accommodation services for STUDENTS in student residences;**
- accommodation services provided by Hostels, Camps, Paying Guest accommodations and the like.**

(*Refer discussion ahead)

¹ **This exemption entry was covering services falling into 'Heading 9963 or Heading 9972'.**

• **W.e.f. 15th July, 2024**, exemption has been amended to **specifically exclude 'accommodation services falling under Heading 9963'**. For them, special exemption Entry 12-A has been issued (which is exempting renting upto a reasonable limit).

² **Author:** Ideally, this explanation **should be effective from 18th July, 2022** (as this is clarificatory by nature)





Related Definitions

Para	Word	Definitions				
-----	<u>Residential Dwelling</u>	Not defined				
	Analysis : Blacks Law Dictionary: <table><tr><td>Residence:</td><td>Place where one actually lives or has his home;</td></tr><tr><td>Dwelling</td><td>The house or other structure in which a person or persons live; a residence;</td></tr></table> <p>Further in common parlance, 'RESIDENTIAL DWELLING' means any building, structure, or part of the building or structure other than offices or factories, that is used or intended to be used as a home, residence, or sleeping place by one person or by two or more persons maintaining a common household, to the exclusion of all others.</p> <p>The phrase 'residential dwelling' has not been defined either under CGST Act or under E/N 12/2017.</p> <p>However, under the erstwhile SERVICE TAX LAW, in Paragraph 4.13.1 of the 'Taxation of Services: An Education Guide dated 20.06.2012 (CBIC)', the expression 'RESIDENTIAL DWELLING' has been interpreted in terms of the normal trade parlance as per which, it is 'any residential accommodation', but does not include hotel, motel, inn, guest house, camp site, lodge, house boat, or like places meant for temporary stay.</p>		Residence:	Place where one actually lives or has his home;	Dwelling	The house or other structure in which a person or persons live; a residence;
Residence:	Place where one actually lives or has his home;					
Dwelling	The house or other structure in which a person or persons live; a residence;					
----	<u>Residence</u>	Not defined				
	Analysis : General understanding shall be considered. <ul style="list-style-type: none">RESIDES denotes some type of permanency (e.g., a tenant resides in the rented house)'STAY' means a period of staying somewhere, in particular of living somewhere temporarily as a visitor or guest (e.g., a visitor stays in hotel)					

Author:

Eligibility for exemption: The following questions need to be answered in order to ascertain whether the renting service is covered u/Entry 12:

	Exemption u/Entry 12 available if	
1. What is being rented?	<u>Rented property is 'residential dwelling'</u>	Renting of commercial property (like offices, factories, shops etc.) not covered
2. The purpose for which the residence is used for.	<u>Residential dwelling is rented for use as residence.</u>	Renting of residential property for commercial use (like house rented for running Bank Branch / Showroom etc.) not covered. [Deepak Jain- 2024- AAR (Rajasthan)]
3. What is the status of tenant under GST?	<u>The tenant is not GST registered.</u>	Renting to RP is not exempt.

Discuss the applicability of Exemption Entry 12 on following renting activities:

Activity	Covered by Entry 12 or not	Remarks		
Room renting by Hotel, Motels/ Inn	Not covered by Exemption	Rented property	<u>Not residential dwelling</u> <ul style="list-style-type: none">Hotel is a commercial property	
		Purpose	<u>Stay (not residence)</u> <ul style="list-style-type: none">Room rented are for temporary stay	
		Tenant Status	<u>Immaterial</u>	
Room renting by CLUB (whether to outsiders or to own members)	Not covered by Exemption	Rented property	<u>Not residential dwelling</u> <ul style="list-style-type: none">Club is a commercial property	
		Purpose	<u>Stay (not residence)</u> <ul style="list-style-type: none">Room rented are for temporary stay	
		Tenant Status	<u>Immaterial</u>	
Room renting by HOSTEL to students	Upto 14 th July, 2024 <u>Disputed</u> Subject to litigation		<u>View-1</u>	<u>View-2</u>
		Rented property	<u>Not residential dwelling</u> <ul style="list-style-type: none">Hostel is a commercial property like hotel	<u>Residential dwelling</u> <ul style="list-style-type: none">(* the accommodation which is used for the purposes of the hostel of students and working





[Room renting by HOSTEL to persons other than students]			women is classified in residential category in the Revised Master Plan 2015 of Bangalore City.)
	Purpose	<u>Stay (not residence)</u> <ul style="list-style-type: none"> Room rented are for temporary stay like hotel. (Proof: There is no individual kitchen facility provided to each inhabitant and cooking of food by inhabitants is not allowed, which are essential characteristics for any permanent stay) 	<u>Residence (not stay)</u> <ul style="list-style-type: none"> Room rented are for longer duration (not like hotel) (Proof: Tariff charged is on monthly basis)
	Tenant Status	<u>URP</u>	<u>URP</u>
	Exemption	Exemption not available ¹	Exemption available
	Supporting cases/ rulings	Srisai Luxurious Stay LLP - 2023- AAR (Karnataka) Ms. Deeksha Sanjay- 2024- AAR (Karnataka) Bharath Jothi Ladies Hostel - 2024- AAR (Tamilnadu)	Thai Mookambikaa Ladies Hostel - 2024- Madras HC Maharashtra Jain Education Society- 2024- AAR(Maharashtra) ² Taghar Vasudeva Ambrish- 2022- Karnataka HC
<u>On/from 15th July, 2024</u> <u>Not covered by Exemption Entry 12</u>		Explanation 2 (inserted w.e.f. 15 th July, 2024) specifically excludes such renting from exemption under Entry. 12. However, Hostel shall check eligibility under newly inserted exemption entry 12-A . New exemption available if 2 conditions fulfilled: <ol style="list-style-type: none"> Value of Supply <= 20,000 p.m. (per person) Renting period >= 90 days (continuous) 	

¹ Note: **In fact, CBIC in its Circular 32/06/2018-GST equated 'Hostel' with 'Hotel' and clarified that** 'accommodation service in hostels having value of supply upto ₹ 1,000 per day is exempt vide Entry no. 14'. But with subsequent deletion of Entry No. 14, Hostel services are chargeable to tax just like hotel services. [*Author: Circulars are not binding upon assessee]

² Note: **Short vs Long Stay:** Authority laid down a test – it held that '**if tenure/renting period is 3 months or more- then exempt**' and '**if tenure/renting period is less than 3 months - then not exempt**'. Based on this test, it ruled that

- Supply of hostel accommodation services to students with mandatory supply of meals and other necessary amenities, **for duration of 10 months:** Eligible for benefits of exemption as per Entry 12. [* The Hostel accommodation with compulsory supply of meals with hostel amenities is composite supply and is in fact it is renting of residential dwelling for residential purpose]
- Supply of hostel accommodation services to students with mandatory supply of meals and other necessary amenities, **for duration of stay of 1 to 2 months during vacation period to new students:** Not eligible for exemption under Entry 12.





Entry No. 12-A (Accommodation Services - Value upto Rs 20,000 per person per month) - condition that supply period shall be for a minimum continuous day of 90 days)

Supply of accommodation services having **value of supply less than or equal to Rs 20,000 per person per month** **provided that the accommodation service is supplied for a minimum continuous period of 90 days.**

[Exemption is to service falling under Heading 99 63] (w.e.f. 15th July, 2024)

Author: 'Affordable + Long-Term Accommodation' - Exempted

Conditions for Exemption w/ Entry 12-A

Value (supply) ≤ Rs. 20,000 per person per month

(High-end or luxury accommodations remain excluded and remain taxable.)

Duration (supply) ≥ 90 Days (continuous)

(Only genuine long-term residential arrangements are exempted)

**** Note:** If the charge exceeds Rs. 20,000 per month or the stay is shorter than 90 days, exemption not applicable (GST payable)

Illustration

Rented Property	Purpose of Renting	Rent p.m. (Rs)	Duration	Exemption Applicability	Remarks
Hostel Room	Accommodation for students	12,000	10 months	Exempt	Rent not exceeding Rs. 20,000/p.m. and the duration not less than 90 days.
PG Accommodation	Accommodation for professionals	18,000	4 months	Exempt	Rent not exceeding Rs. 20,000/p.m. and the duration not less than 90 days.
Dormitory Room	Accommodation for worker	8,000	2 months	Not Exempt	Duration is less than 90 days
Serviced Apartment	Residential use by a family	19,000	5 months	Exempt	Rent not exceeding Rs. 20,000/p.m. and the duration not less than 90 days.
Budget Hotel	Accommodation for worker	400/ day [= 12,000 p.m.]	5 months	Exempt	Rent not exceeding Rs. 20,000/p.m. and the duration not less than 90 days.
Luxury Apartment	Corporate guest house	75,000	6 months	Not Exempt	Rent exceeding Rs. 20,000
Shared Apartment	Residential use by two friends	10,500 (each)	4 months	Exempt	Rent (per person) not exceeding Rs. 20,000/p.m. and the duration not less than 90 days.

Circular No. 228/22/2024-GST Dated: 15th July, 2024

	Service Description	GST Applicability	Regularization Period
1	Service by way of hostel accommodation, service apartments/hotels booked for LONGER PERIOD		
1.1.	Following conditions satisfied 1. Value ≤ ₹20,000 per person per month. 2. Duration of supply ≥ 90 days (continuous)	Exempt vide Entry No. 12-A - w.e.f. 15-7-2024	1-7-2017 to 14-7-2024
1.2	Other cases	Not Exempt	Not applicable





Circular No. 228/22/2024-GST Dated: 15th July, 2024

GST liability on certain accommodation services.

Nature of Services: Service by way of hostel accommodation, service apartments/hotels booked for **LONGER PERIOD**

Issue Whether it can be termed as 'Renting of RESIDENTIAL DWELLING for use as residence' and accordingly, exempt vide Entry No 12 of E/N 12/2017-CT(R)?

Clarification The matter was placed before the GST Council in its 53rd meeting held on 22nd June, 2024 and the GST Council recommended to exempt the supply of accommodation services having value of supply less than or equal to Rs 20,000/- per person per month provided that the accommodation service is supplied for a minimum continuous period of 90 days. The same has been exempted w.e.f. 15-7-2024 vide N/N 4/2024-CT(R), dated 12-7-2024.

- In its 53rd meeting, the GST Council further recommended extending the benefit for past cases provided that value of supply of accommodation services supplied was less than or equal to Rs 20,000/- per person per month and the accommodation service is supplied for a minimum continuous period of 90 days.

Thus, as recommended by the GST Council, GST liability on the supply of accommodation services is regularized on 'as is where is' basis for the period from 1-7-2017 to 14-7-2024 value of supply of accommodation services supplied was less than or equal to Rs 20,000/- per person per month and the accommodation service is supplied for a minimum continuous period of 90 days.

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**Insurance Services (General Insurance + Life Insurance)****Entry No. 36-A** (Re-insurance of insurance schemes exempted under Entry No. 35, 36 or 40)**Services by way of Re-INSURANCE of the insurance schemes specified in serial number 35 or 36 or 40.**¹**Author****Circular No. 228/22/2024-GST** Dated: 15th July, 2024*Re-insurance Services to include 'Retrocession Services': Covered by Exemption Entry 36-A*

Clarification 'Retrocession' means a re-insurance transaction whereby a part of assumed reinsured risk is further ceded to another Indian Insurer or a CBR (Cross Border Re-insurer).
Accordingly, clarified that reinsurance includes retrocession services.

Aspect	Reinsurance	Retrocession
Definition	A process where <u>an insurance company (ceding company)</u> transfers part of its risk to <u>another insurer (reinsurer)</u> .	A process where a <u>reinsurer</u> transfers part of its assumed risk to <u>another reinsurer (retrocessionaire)</u> .
Parties Involved	Ceding Company: The original insurance company. Reinsurer: The company accepting the transferred risk.	Reinsurer: The company transferring part of its assumed risk. Retrocessionaire: The company accepting the transferred risk.
Purpose	To spread the risk of large claims and improve the financial stability of the ceding insurer.	To manage the reinsurer's own risk exposure by spreading it further.
Risk Transfer	Risk is transferred from the primary insurer to the reinsurer.	Risk is transferred from a reinsurer to another reinsurer (retrocessionaire).
Examples	A property insurer reinsures catastrophic risk (e.g., earthquake damage) with a global reinsurer.	A reinsurer handling large-scale catastrophic risks (e.g., hurricanes) retrocedes part of this risk to another reinsurer.
GST Exemption	<u>Exempt (if covered by Entry No. 36-A)</u>	<u>Exempt (Entry No. 36-A equally applicable)</u>

¹ **Exemption and Regularization:****Circular No. 228/22/2024-GST** Dated: 15th July, 2024

	Service Description	GST Applicability	Regularization Period
1	Certain specified general insurance and life insurance schemes	Exempt <u>vide Entry No. 35 and 36</u>	Not Applicable
2	<i>Re-insurance of the aforesaid exempted insurance schemes</i>	Exempt <u>vide Entry No. 36-A</u> - w.e.f. 25-1-2018	1-7-2017 to 24-1-2018
3	Exemption to 'government sponsored insurance schemes'	Exempt <u>vide Entry No. 40</u> - w.e.f. 27-7-2018	Not Applicable
4	<i>Re-insurance of the aforesaid exempted 'government sponsored insurance schemes'</i>	Exempt <u>vide Entry No. 36-A</u> - w.e.f. 25-1-2018	1-7-2017 to 26-7-2018



Services relating to POWER Sector (Electricity)



Entry No. 25-A (Meter testing etc services which are incidental/ancillary to supply of T&D of Electricity)

Services *by way of* providing metering equipment on rent, testing for meters/transformers/capacitors etc., releasing electricity connection, shifting of meters/service lines, issuing duplicate bills etc., **which are incidental or ancillary to the supply of transmission and distribution of electricity**

provided *by* Electricity Transmission and Distribution Utilities [ETDU] to their consumers.

[inserted w.e.f. 10th Oct, 2024]

Author:

Services by ETDUs [Electricity Transmission and Distribution Utilities]	Earlier	w.e.f. 10 th Oct, 2024
Transmission and distribution of electricity	Exempt vide Entry No 25	Exempt vide Entry No 25
Services such as application fees for releasing connections, meter rentals, testing fees, and labor charges for shifting meters etc.	<u>Torrent Power Ltd. - 2018- Guj HC</u> : "These ancillary services should be considered part of a composite supply, where the principal supply is the transmission and distribution of electricity, which is exempt from GST. Thus, these services also exempt."	Exempt vide Entry No 25-A

Author:

Circular No. 228/22/2024-GST Dated: 15th July, 2024

	Service Description	GST Applicability	Regularization Period
1.	Ancillary services by Electricity Transmission Or Distribution Utilities	Exempt from 10-10-2024	1-7-2017 to 9-10-2024



**Education & Related Services (Education, Vocation, training, assessment etc.)****Circular No. 234/28/2024-GST: Dated: 11th Oct, 2024****Courses conducted by DGCA-approved Flying Training Organizations (FTOs): Exempt vide Entry No. 66**

GST Exemption Criteria	<i>Education must be part of a curriculum for obtaining a qualification or degree <u>recognized by law</u>.</i>
Relevant Legal Framework	<p><u>Aircraft Act, 1934</u>: Section 5 empowers the Central Government to regulate aviation training.</p> <p><u>Aircraft Rules, 1937</u>: Provides for DGCA-approved training curriculum (Rule 41) and approved training organizations (Rule 118). .</p> <p><u>Civil Aviation Requirements (CAR)</u>: Issued under the Aircraft Rules, mandates completion certificates for approved training.</p>
Approval Authority	<p><u>Directorate General of Civil Aviation (DGCA)</u>.</p> <p>DGCA approves Flying Training Organizations (FTOs) and their training courses.</p> <p><i>Course completion certificates are mandatory for pilot licensing.</i></p>
GST Exemption Status	<p>DGCA-approved FTOs qualify as educational institutions under GST law.</p> <p><i>[The training courses are part of a curriculum for obtaining qualifications recognized by law (e.g., pilot licenses issued under Aircraft Rules, 1937).]</i></p> <p>Approved flying training courses conducted by FTOs are exempt under Entry No. 66</p>

4. **Applicability of GST on the Directorate General of Civil Aviation (DGCA) approved flying training courses conducted by Flying Training Organizations approved by the DGCA:**
 - 4.1 Representations have been received regarding the applicability of GST on the DGCA-approved flying training courses conducted by Flying Training Organizations (FTOs) which are approved by the Directorate General of Civil Aviation (DGCA). The same has been examined.
 - 4.2 Under GST Law, vide Sl. No. 66 of the notification No. 12/2017- CGST(Rate), dated 28-6-2017, services provided by educational institutions to its students, faculty and staff are exempt from levy of GST. In the above notification, **"educational institution" has been defined to mean an institution providing services by way of education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force.**
 - 4.3 In exercise of the power vested by **Section 5 of the Aircraft Act, 1934**, the Central Government has made the **Aircraft Rules, 1937**, which, *inter alia*, provide for 'approved training', i.e. training the curriculum of which has been approved by the DGCA, and 'approved training organization', i.e. a flying training organization which shall obtain the approval of DGCA before the students are enrolled to acquire flying experience. The said rules further state that flying experience required for the issue of private pilot and commercial pilot licenses shall be acquired at the Flying Training Organization (FTO) approved/recognized by the DGCA. **The Civil Aviation Requirements (CAR) issued under the said rules also provide for a completion certificate to be issued by an approved FTO to each student who completes its approved course of training.**
 - 4.4 It is evident from the above that **the DGCA not only approves FTOs but also flying training courses and mandates the requirement of course completion certificates to be issued to successful candidates in terms of the Aircraft Act, 1934 and the rules prescribed thereunder.** Therefore, **the approved flying training courses conducted by FTOs approved by DGCA, wherein the DGCA mandates the requirement of a completion certificate, are covered under Sl. No. 66 of Notification No. 12/2017-CGST(Rate), dated 28-6-2017 and are hence, exempt.**





Entry No. 66

"Approved Vocational Education Course". [Para (h) of E/N]

Criteria	ITI/ITC Course	MESC (Modular Employable Skill Course)
Institute Registration Requirement	Industrial Training Institute (ITI) or Industrial Training Centre (ITC) must be affiliated with NCVET/SCVT. NCVET = Merger of (NCVT and NSDA) ¹	Person or entity running the course must be registered with the DGT, [MSDE].
Course Type	Courses in designated trades notified under the Apprentices Act, 1961.	Modular skill-based short-term courses designed for specific employable skills.
Primary Objective	Provide vocational training in skilled trades (e.g., electrician, fitter, welder).	Develop modular, employable skills in areas requiring short-term training and certification (e.g., data entry, tailoring).
Examples of Courses	Electrician, Fitter, Welder, Mechanic, etc.	Data Entry, Tailoring, Computer Hardware Repair, Retail Skills

Para (h): "Approved vocational education course"

Approved VEC [Vocational Education Course]	means	<p>(i) Courses in designated trades notified under the Apprentices Act, 1961 Course</p> <p>run by an ITI / ITC (Industrial Training Institute / Industrial Training Centre) affiliated to the</p> <ul style="list-style-type: none"> NCVT (National Council for Vocational Training) NCVET (National Council for Vocational Education and Training) SCVT (State Council for Vocational Training)
		<p>(ii) A MESC (Modular Employable Skill Course) approved by the NCVET</p> <p>run by a person registered with DGT (Director General of Training), Ministry of Skill Development and Entrepreneurship</p>

[amended w.e.f. 10th Oct, 2024]

¹ **Replacement of NCVT** (National Council for Vocational Training) with **NCVET** (National Council for Vocational Education & Training)
NCVT was established in 1956 and focused primarily on the regulation of Industrial Training Institutes (ITIs) and vocational training in designated trades under the Apprentices Act, 1961.

In 2018, the government merged NCVT with the National Skill Development Agency (NSDA) to form the **NCVET**. This new entity became the *apex body* for regulating and standardizing all vocational education and training in India.

Amendment made in GST Exemption entry for ensuring Uniformity and Clarity

- Using NCVET in GST notifications standardizes the reference to the regulatory body, reducing ambiguity.
- As NCVT functions were subsumed by NCVET, retaining NCVT in GST entries would have created inconsistencies.

The relevant entries of E/N 12/2017-CT (R) have been recasted, vide N/N 08/2024- CT(R) dated 08.10.2024, to synchronize the GST exemption structure on skill development and training with the new regulatory architecture under NCVET.



**Entry No. 66-A (Affiliation Services to Govt School)****Services of affiliation** provided

by a Central or State Educational Board or Council or any other similar body, by whatever name called,

to a school established, owned or controlled by the CG, SG, UT, local authority, Governmental authority or Government entity.

[inserted w.e.f. 10th Oct, 2024]Author:**GST Exemption Criteria**

Entry No. 66(b)(iv)- It exempts following Services provided to an Educational Institution by way of services relating to admission to, or conduct of examination by, such institution

Issue : Whether grant of AFFILIATION will be covered by Entry No. 66(b)(iv)?

Affiliation of Colleges: The activity of affiliation is to monitor and ensure whether the institution possesses the required infrastructure in terms of space, technical prowess, financial liquidity, faculty strength, etc. and is thereby eligible for the privileges to conduct the course/program of study for the degree/title extended by the University to the students enrolled in such institutions.

Affiliation of School: The activity of affiliation carried out by educational boards or councils, or other similar bodies, is to monitor and ensure whether the schools possess the required infrastructure, finances, faculty strength etc. and are thereby eligible for the privileges to operate under the aegis of said boards or councils.

University of Kota- 2023- AAR (Rajasthan)

The affiliation services provided by the University enables the said institution to conduct the course/programme and do not relate to admission of students to such course/programme in the said institutions or conduct of examination for such admission in the said institution. Thus, **are not covered within the ambit of exemption**

Circular No. 234/28 /2024-GST:

The affiliation services provided by the universities to colleges are not by way of services related to the admission of students to such colleges or the conduct of examinations by such colleges.

Thus, **are not covered within the ambit of exemption**

Circular no. 151/07/2021. & Circular No. 234/28 /2024-GST:

The affiliation services provided by educational boards or councils to schools are not by way of services related to the admission of students to such schools or the conduct of examinations by such schools.

- Thus, **are not covered within the ambit of exemption**

Taxable @18%,

Taxable @18%,

Exempt for government schools from 10-10-2024¹

¹ **Regularization Period:** 1-7-2017 to 17-6-2021. [Regularized for all Schools. (Govt/ Private)]

[*17.06.2021 = the date of issuance of Circular no. 151/07/2021 clarifying that accreditation services of boards are taxable at the rate of 18%]





Illustration

Scenario	Supplier	Recipient	Details	Exemption ?
1. <i>Affiliation of a State Government School by State Educational Board</i>	State Educational Board (e.g., RSEB)	State Government School	The board provides affiliation to a school established and controlled by the state government.	Yes
2. <i>Affiliation of a Municipal School by the Central Board of Secondary Education (CBSE)</i>	Central Educational Board (e.g., CBSE)	Municipal School <u>established by a local authority</u>	The CBSE provides affiliation to a municipal school to adopt its syllabus and standards.	Yes
3. <i>Affiliation of a Private School by a State Educational Board</i>	State Educational Board	Privately Owned School	A privately owned school seeks affiliation for curriculum regulation.	No (School is privately owned)
4. <i>Affiliation of a School Established by a Trust (Not Government-Controlled) by a State Board</i>	State Educational Board	School established by a Private Trust	The school is not owned or controlled by the government, UT, or local authority.	No (School is privately managed)

CIRCULAR NO: 151/07/2021-GST

Issue: Applicability of GST on on supply of various services by Central and State Board (such as National Board of Examination)



SUPPLY OF S

Services relating to admission to, or conduct of examination, such as online testing service, result publication, printing of notification for examination, admit card and questions papers etc,



Exempt [66 (b)(iv)]

Supplier of Service

National Board of Examination

NBE is an autonomous organization established by Ministry of Health & Family Welfare (MoH&FW). The Board is entrusted with the task of conducting uniform and high standard post graduate level examination for admission to DNB and FNB medical courses.

SUPPLY OF S

Conducting entrance examinations for admission to courses including Diplomate National Board (DNB) and Fellow of National Board (FNB). [fee collected from candidates]

Accreditation of educational institutions or professional so as to authorise them to provide their respective services

Recipient of Service



Any Person



Exempt [66 (aa)]



Not Exempt

“

ना संघर्ष, ना तकलीफ ...
तो क्या मजा है जीने में
बड़े-बड़े तूफान थम जाते हैं
जब आग लगी हो सीने में ...!!

”

“

खोल दे पंख मेरे, कहता है परिदा, अभी और उड़ान बाकी है।
जमीं नहीं है मंजिल मेरी, अभी पूरा आसमान बाकी है,
लहरों की खामोशी को समंदर की बेबसी मत समझ ऐ नादाँ,
जितनी गहराई अन्दर है, बाहर उतना तूफान बाकी है...

”





Entry No. 69 (Services by NSDC/ NCVET + Services by NCVET recognized Awarding Body/ Assessment Agency & Training Body) - in relation to [SPECIFIED SCHEMES]

- Any services provided ~~by~~—
- (a) ~~the National Skill Development Corporation (NSDC) set up by the Government of India;~~
 - (b) ~~a Sector Skill Council (SSC) approved by the National Skill Development Corporation (NSDC);~~
 - (c) ~~an assessment agency approved by the Sector Skill Council or the National Skill Development Corporation;~~
 - (d) ~~a training partner approved by the National Skill Development Corporation or the Sector Skill Council;~~

~~in relation to—~~

- (i) ~~the National Skill Development Programme implemented by the National Skill Development Corporation; or~~
- (ii) ~~a vocational skill development course under the National Skill Certification and Monetary Reward Scheme; or~~
- (iii) ~~any other Scheme implemented by the National Skill Development Corporation.~~

- Any services provided ~~by~~—
- (a) ~~the National Skill Development Corporation (NSDC) set up by the Government of India;~~
 - (b) ~~the National Council for Vocational Education and Training [NCVET];~~
 - (c) ~~an Awarding Body recognized by the National Council for Vocational Education and Training [NCVET];~~
[Author. Awarding Body: Develops and certifies training and assessment standards for the sector.]
 - (d) ~~an Assessment Agency recognized by the National Council for Vocational Education and Training [NCVET];~~
[Author. Assessment Agency: Conducts assessments for trainees from various training bodies to validate their skills.]
 - (e) ~~a Training Body accredited with an Awarding Body that is recognized by the National Council for Vocational Education and Training [NCVET].~~
[Author. Training Body (XYZ Training Institute): Provides on-ground training to individuals, preparing them for certification aligned with NCVET-approved qualifications.]

~~in relation to—~~

- (i) ~~the National Skill Development Programme or any other scheme implemented by the National Skill Development Corporation (NSDC);~~
[e.g. Pradhan Mantri Kaushal Vikas Yojana (PMKVY)]
- or
- (ii) ~~a vocational skill development course under the National Skill Certification and Monetary Reward Scheme;~~
[e.g. Skill India Initiative (Training in Digital Marketing)]
- or
- (iii) ~~any National Skill Qualification Framework aligned qualification or skill in respect of which the National Council for Vocational Education and Training [NCVET] has approved a qualification package.~~
[e.g. NSQF Level 4 - Automotive Service Technician Qualification: (like diagnose and repair vehicle)]

[substituted w.e.f. 10th Oct, 2024]

Author:

2. NCVET vs NSDC

Aspect	NCVET (National Council for Vocational Education and Training)	NSDC (National Skill Development Corporation)
Establishment	Formed in 2018.	Established in 2008
Nature of Organization	Regulatory Body. [Functions directly under the MSDE (Ministry of Skill Development and Entrepreneurship) as a regulator]	Operational and Implementation Body. [Operates as a PPP (Public-Private Partnership) under the MSDE]
Primary Role	Regulates vocational education and training (VET) ecosystem in India. NCVEV is entrusted with the development, qualitative improvement and regulation of vocational education and training, for granting recognition to and monitoring the functioning of awarding bodies, assessment agencies, and training bodies	Focuses on funding, supporting, and promoting skill development initiatives.



Focus Areas	Standardization, accreditation, and assessment in vocational training.	Implementation of skill programs and public-private collaboration.
Examples of Impact	Establishment of frameworks like National Skill Qualification Framework (NSQF) for consistency in vocational education.	Skill training for millions of youth, enabling better employability.

3. Impact of Amendment

	Earlier Exemption:	Now:
<u>Schemes Covered</u>	<i>Schemes and courses implemented under NSDC (such as PMKVY) and the National Skill Certification and Monetary Reward Scheme.</i>	<i>Schemes and courses implemented under NSDC (such as PMKVY) and the National Skill Certification and Monetary Reward Scheme. + Includes qualifications aligned with the National Skill Qualification Framework (NSQF), as approved by NCVET.</i>
<u>Expanded Scope of Qualification Framework</u>		
<u>Suppliers Covered -</u>		
(a) <u>Primary Entities</u>	<u>NSDC</u>	<u>NSDC + NCVET</u>
(b) <u>Sector Approval Bodies</u>	<u>Sector Skill Council (SSC)</u>	<u>Awarding Body recognized by NCVET</u>
(c) <u>Assessing Agencies</u>	<u>Assessment agency approved by SSC or NSDC</u>	<u>Assessment agency recognized by NCVET</u>
(d) <u>Training Bodies</u>	<u>Training partner approved by SSC or NSDC</u>	<u>Training body accredited with an awarding body recognized by NCVET</u>

Entry No. 71 (Skill or vocational Training Services – by Training Providers under DDUGKY)

<p>Services provided</p> <p>by training providers (Project implementation agencies) under Deen Dayal Upadhyaya Grameen Kaushalya Yojana implemented by the Ministry of Rural Development, Government of India</p>	<p>by way of</p> <p>offering skill or vocational training courses certified by the NCVT (National Council for Vocational Training) NCVET (National Council for Vocational Education and Training)</p>
---	--

[amended w.e.f. 10th Oct, 2024]

Illustration:

Bright Skills Training Center, affiliated with the NCVET, is engaged as a project implementation agency (PIA) under the DDU-GKY program. It offers a skill training course in electrical maintenance, certified by the NCVET. The training is aimed at rural youth, providing them with employable skills in the electrical trade.- Such training services are exempt from GST.



**Entry No. 44-A (R&D Services by Govt Entity / Institutions as notified u/Sec 35 of Income tax Act)**

Research and development services **against consideration received in the form of GRANTS** [*by Govt / Private entities]
supplied by -

- (a) **a Government Entity**; or
- (b) **a research association, university, college or other institution, notified u/Sec 35(1) (ii)/ (iii) of the Income-Tax Act, 1961.**

Provided that the research association, university, college or other institution, notified u/Sec 35(1) (ii)/ (iii) of the Income-tax Act, 1961 is so notified at the time of supply of the research and development service.

[inserted w.e.f. 10th Oct, 2024]

Author:1. **'Research Grant' may or may not constitute consideration: Activity taxable only if grant constitutes 'consideration'**

- When there is a quid pro quo i.e. where research is conducted on behalf of the government with something given in return, such as IPR or new technology** the grants would be exempt.
(e.g. many institutions, both in the private and public sectors, might conduct research for companies that could lead to improvements in technology, for e.g. company enhancing the functionality or capacity of its car engine. In such cases, the company may provide a grant or fee in return for the intellectual property rights (IPR) or copyrights to use the technology for commercial purposes.)
- If a research grant is given for purely philanthropic purposes**, such as developing a medicine with no intention of commercial exploitation, it should not be taxed. *(In such pure research, there is nothing in return as such any rights or IPR etc and the research conducted is purely for public good).*

Illustrations:

Scenario	Description	Service Provider	Funding Source	GST Applicability
<u>Agricultural Research Grant</u>	A university conducts research on drought-resistant crops funded by a grant from the CG under an agricultural welfare scheme.	University notified under Section 35(1)(ii) of the Income-tax Act, 1961.	Grant from the Central Government	Exempt: Service is provided by a notified university and funded through a government grant.
<u>Medical Innovation Project</u>	A research association develops a low-cost vaccine for tropical diseases funded by a private foundation's research grant .	Research association notified under Section 35(1)(iii) of the Income-tax Act, 1961.	Grant from a private entity	Exempt: Research association is notified, and the consideration is in the form of a grant for R&D services.
<u>Environmental Conservation Study</u>	A government research entity conducts a study on reducing industrial pollution, funded by a SG under an environment conservation program.	Government Entity	Grant from the State Government	Exempt: Service is provided by a government entity and funded through a state government grant for R&D activities.
<u>Non-Notified Research Entity</u>	A private research firm (not notified under Sec 35(1)(ii)/(iii)) develops a proprietary drug funded by a private healthcare foundation grant.	Private Research Firm (not notified).	Grant from a private foundation	Taxable: The research firm is not notified under Section 35(1)(ii)/(iii), so the service is not eligible for exemption.



Services to / by Government / Local Authority (& related Entities)

Services Supplied by Govt. / Local Authority (Outward Supplies)

Entry No. 9-E (4 Services by Ministry of Railways (Indian Railways) to INDIVIDUALS)

Services provided

by Ministry of Railways (Indian Railways) to individuals by way of

- (a) **Sale of platform tickets;**
- (b) **Facility of retiring rooms/waiting rooms;**
- (c) **Cloak room services;**
- (d) **Battery operated car services.**



(Inserted w.e.f. 15th July, 2024)

Author:

Recently (w.e.f. 20th Oct, 2023), based on request of Indian Railways, all supplies of goods/services were brought under FCM. Also, all exemptions that were available to railways (like entry 6 7, 8 & 9 etc) were withdrawn and thereby making almost all services provided by IR taxable.

Now (w.e.f. 15th July, 2024), on representations of IR certain services to general public have been exempted vide Entry 9-E.

Circular No. 228/22/2024-GST- Dated 15-7-2024

GST liability for the intervening period i.e. from 20-10-2023 to 14-7-2024: Has been regularized on 'as is where is' basis. [* (suppliers who have not paid shall not be required to pay) AND (suppliers who have paid GST shall not be eligible for refund)]

Entry No. 9-F (Supply of any services between one zone / division to another zone / division (i.e. DDP) of Ministry of Railways (Indian Railways))

Services provided

by one zone/division under Ministry of Railways (Indian Railways) to another zone/division under Ministry of Railways (Indian Railways)

(Inserted w.e.f. 15th July, 2024)

Author:

Intra-railway services include services such as train operations, repair and maintenance services etc.

Representation by IR: IR has not been charging for intra-railway activity and no invoices being issued for these transactions. Taxing such transactions will hamper the operational efficiency.

Considering that, exemption Entry 9-F has been issued. (w.e.f. 15th July, 2024)

Illustration:

Services	Example
Maintenance of Locomotives or Coaches	Northern Railway Zone sends locomotives to South Eastern Railway Zone for periodic overhauling or maintenance.
Repair or Calibration Services	Integral Coach Factory (ICF) under Southern Railway Zone provides repair services for Western Railway Zone.
Training and Skill Development	IRISET (The Indian Railway Institute of Signal Engineering and Telecommunications) under South Central Railway Zone conducts advanced signalling training for staff from other zones.
Operational Assistance	South Western Railway Zone offers technical support to Southern Railway Zone during high passenger traffic.
Consultancy Services	RDSO under Northern Railway Zone provides consultancy on track design or rolling stock design to other zones.

Circular No. 228/22/2024-GST- Dated 15-7-2024

GST liability for the intervening period i.e. from 20-10-2023 to 14-7-2024: Has been regularized on 'as is where is' basis. [* (suppliers who have not paid shall not be required to pay) AND (suppliers who have paid GST shall not be eligible for refund)]





Entry No. 9-G (Certain Services by SPV to Ministry of Railways (Indian Railways) & (Maintenance Services by Ministry of Railways (Indian Railways) to SPV)

Services provided

by Special Purpose Vehicles (SPVs)

to Ministry of Railways (Indian Railways)

by way of **allowing Ministry of Railways (Indian Railways) to use the infrastructure built and owned by them during the concession period against consideration**

and

services of maintenance supplied

by Ministry of Railways (Indian Railways)

to Special Purpose Vehicles (SPVs)

in relation to the said infrastructure built and owned by the SPVs during the concession period against consideration.

(Inserted w.e.f. 15th July, 2024)

Author:

1. **Indian Railways (IR) gets railway projects constructed through SPVs, which are incorporated as joint ventures between IR and public/private investors.**

The arrangement reflects a Public-Private Partnership (PPP) model where **SPVs invest in infrastructure** and **Indian Railways ensures its efficient operation and upkeep.**

SPV to receive share of earning from IR.

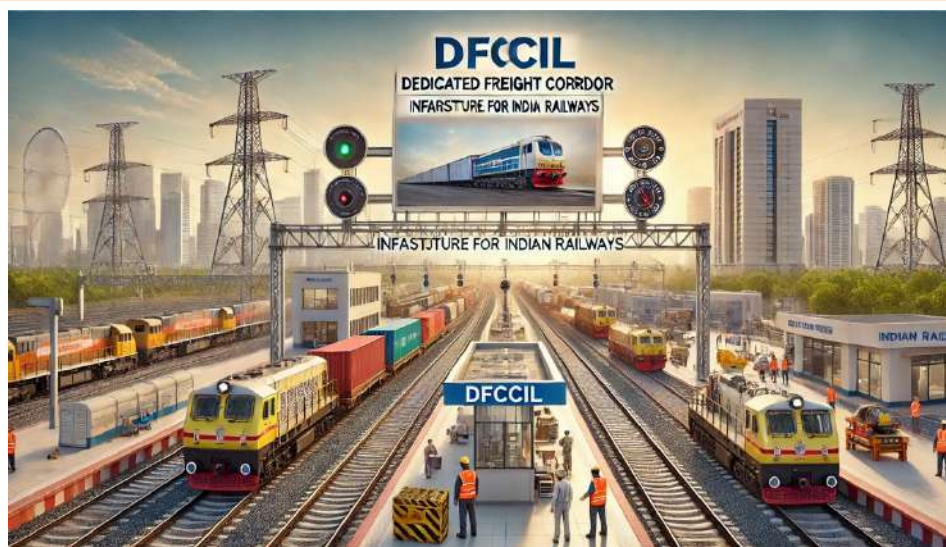
(in accordance with rules of apportionment of earnings/freight tariff collected)

O&M by Railway for which it will

charge SPV

Example: Dedicated Freight Corridor (DFC) Project – Eastern & Western Corridors

The Dedicated Freight Corridor Corporation of India Limited (DFCCIL) is a Special Purpose Vehicle (SPV) created by the Ministry of Railways to implement the Dedicated Freight Corridor (DFC) project in India.



2. **Services between Special Purpose Vehicles (SPVs) and Ministry of Railways (Indian Railways)**

The arrangement involves two sets of services:

(1) Services provided by SPVs to the Ministry of Railways

Nature of Service:

- The SPVs develop, construct, and own railway infrastructure such as railway tracks, terminals, stations, and signaling systems under a concession agreement.

SPVs are the owner of the assets created by them during the concession period. They hand over the assets to IR after concession period is over.

- The Ministry of Railways (Indian Railways) is granted the right to use this infrastructure during the concession period.



- In return, Indian Railways provides consideration to the SPVs for such usage.

During the concession period, the assets are operated by IR. In other words, freight and passenger services using the assets created by SPVs are supplied by IR. SPV has no role in it. The IR collects the entire revenue from the freight and passenger operations. SPVs are paid on pro rata basis for the stretch of length of the line owned by them

Taxability	Remarks
<u>IR and the SPV are distinct persons.</u> There is thus 'supply of services by SPV to IR' by way of <u>allowing IR to use infrastructure built and owned by them during the concession period</u> (against consideration in the form of pro rata share of revenue). It is a taxable supply.	This service now exempted.

(2) Services provided by the Ministry of Railways to SPVs

Nature of Service:

- Indian Railways provides maintenance services for the railway infrastructure developed by the SPVs.
 These maintenance services include: *Track maintenance* (ballast replacement, welding, and rail track safety checks), *Signaling and telecommunication maintenance*, *Station and terminal upkeep*, *Electrical infrastructure maintenance* etc.
- Indian Railways charge maintenance fees to SPV (charge on a per-kilometer basis, lump-sum basis, or per specific service provided)

Taxability	Remarks
There is 'services of maintenance supplied by IR to SPV against consideration'. It is a taxable supply.	This service now exempted.

Circular No. 228/22/2024-GST- Dated 15-7-2024

GST liability for the intervening period i.e. from 20-10-2023 to 14-7-2024: Has been regularized on 'as is where is' basis. [* (suppliers who have not paid shall not be required to pay) AND (suppliers who have paid GST shall not be eligible for refund)]

Clarification

Circular No. 228/22/2024-GST Dated: 15th July, 2024

Real Estate Regulatory Authority [RERA] is 'Governmental Authority' as defined in GST Exemption Notification

- RERA is constituted under the Real Estate (Regulation and Development) Act, 2016.
- RERA performs function of regulating the real estate development and construction of the building entrusted to them which fall under Entry No.1 and 2 of the Twelfth Schedule of the Indian Constitution.



Author:

Constitution of India

12th Schedule (Article 243-W)

[List of the powers, authority, and responsibilities of Municipalities]

Entry 1 Urban planning and town planning;

Entry 1 Regulation of land use and construction of building

The functions and powers of RERA indicates that RERA ensures, actual implementation of Urban Planning and Town Planning in the Real Estate Projects.

RERA is a 'governmental authority' as per the definition in the E/N No. 12/2017- CT(R) and is covered under the scope of Entry No. 4

Author:

- Real Estate Regulatory Authority (RERA) being an authority set up by an Act of Parliament or the State Legislature .. to carry out any function entrusted to a municipality under Article 243-W of the Constitution.

- Thus, it is 'Governmental Authority'

- Accordingly, it is clarified that **statutory collections made by RERA are covered u/Entry No. 4 of E/N 12/2017-CT(R).** (i.e. fees collected by RERA towards registration of project/ RE agent shall be exempt)

Author: RERA being 'governmental authority' eligible for all the exemptions from GST as available to any other Governmental Authority.



**Part II: Special Exemptions for INTER-STATE SUPPLIES (International transactions)**

N/N 9/2017 - IT (Rate) Some entries are different from those which are in E/N 12/2017-CT (Rate).

Foreign Airline
[Establishment
OUTSIDE India]



Foreign Airline
[Establishment
IN India]



नागर विमानन मंत्रालय
MINISTRY OF
CIVIL AVIATION

Entry No. 10-L (Import of Service without consideration (between DDP / RP) in case of Foreign Airline Company)**Import of services**

by an establishment of a foreign company in India, which is AN AIRLINE COMPANY, from a related person or from any of its other establishments outside India,

when made without consideration.

Explanation: Foreign company shall have the same meaning as assigned to it in Section 2(42) of Companies Act, 2013

Conditions:

Provided that **GST** at applicable rates is **paid by the establishment of the foreign airline company in India** on transport of goods and passengers as may be applicable.

Provided that **Ministry of Civil Aviation certifies that the establishment of the foreign company in India is that of an airline company which has been designated by the foreign government under the applicable bilateral air services agreement with India.**

Provided further that **Ministry of Civil Aviation certifies that on a reciprocal basis, designated Indian airlines are not subject to levy of similar taxes** by whatever name called for the same services appearing under the entry, **by the Government of the country designating the foreign airline company.**

[inserted w.e.f. 10th Oct, 2024]

Logic of Exemption:

Running an airline includes inter-alia the expenditures such as lease rent of aircraft, maintenance charges for aircraft which includes maintenance contract, procurement of space etc, cost of crew and pilots and other expenditures including fuel). In case of Foreign Airlines operating flights from India, majority of the aforesaid expenses is incurred by the HO of such foreign airlines located outside India.

The HO of such foreign airlines don't charge any consideration against these expenses from the branch offices located in India. The branch offices of the foreign airlines are paying taxed at the applicable rate on the transport of goods and passengers by air.

However, in terms of **Schedule I (para 4) of the CGST Act**, any import of service, even if undertaken without consideration, by an establishment of one person located in India from an establishment of same person located outside India would be considered as a supply. Thus, in terms of existing legal provisions, there is import of service by BO from foreign HO of foreign airline and it is taxable (RCM applicable and Indian BO liable to pay GST).

**** Ministry of Civil Aviation (MoCA) consulted, and it suggested that exemption shall be granted on the basis of reciprocity and bilateral air service agreement. (Exemption shall be granted based on reciprocal bilateral air service agreement certified by MoCA).**

Author:

Circular No. 228/22/2024-GST Dated: 15th July, 2024

	Service Description	GST Applicability	Regularization Period
1.	Import of services by foreign airline establishment in India	Exempt from 10-10-2024	1-7-2017 to 9-10-2024





CUSTOMS Amendments

1: Types of Customs Duties

1. **Section 6 of CTA, 1975 [Levy of PROTECTIVE DUTY]:** Sec 6 enabling levy of protective duties on recommendations of Tariff Commission, has been omitted as the Commission was wound up in June 2022. [omitted by FA (No. 2), 2024 (16th Aug, 2024)]

Simplified Discussion

Section 6 of the Customs Tariff Act, 1975, which enabled the levy of protective duties based on the recommendations of the Tariff Commission, has been omitted due to the dissolution of the Commission. The Tariff Commission was officially wound up on May 31, 2022.

Consequently, Section 6 is being omitted, as the mechanism for recommending protective duties no longer exists.

Section 6 : Power of CG to levy protective duties in CERTAIN CASES

[Omitted by FA, 2024 (16th Aug, 2024)]

- (1) **Protection of interest of domestic industry: CG may impose PROTECTIVE duty if such recommendation is received from Tariff Commission** [Duty Amount = Max as recommended by Tariff Commission]

~~Where the CG, upon a recommendation made to it in this behalf by the Tariff Commission established under the Tariff Commission Act, 1951, is satisfied that circumstances exist which render it necessary to take immediate action to provide for the protection of the interests of any industry established in India,~~

~~CG may, by notification in the Official Gazette, impose on any goods imported into India i.r.o. which the said recommendation is made, a duty of customs of such amount, not exceeding the amount proposed in the said recommendation, as it thinks fit.~~

- (2) **Protective Duty (if imposed) – BCD (specified in Import Tariff / First Schedule)**

~~Every duty imposed on any goods under section 6(1) shall,~~

~~for the purposes of this Act, be deemed to have been specified in the First Schedule as the duty leviable i.r.o. such goods.~~

- (3) **Imposition of Protective Duty by CG: Subsequently, Bill to be introduced in Parliament**

[Notification imposing protective duty will lapse (a) once bill becomes Act; or (b) when Bill fails to become Act within 6 months of its introduction in the Parliament]

~~Where a notification has been issued under section 6(1),~~

~~the CG shall, unless the notification is in the meantime rescinded, have a Bill introduced in Parliament, as soon as may be, to give effect to the proposals in regard to the continuance of a protective duty of customs on the goods to which the notification relates, and the notification shall cease to have effect when such Bill becomes law, whether with or without modifications, but without prejudice to the validity of anything previously done thereunder.~~

Provided that

~~if the notification under section 6(1) is issued when Parliament is in session,~~

~~such a Bill shall be introduced in Parliament during that session :~~

Provided further that

~~where, for any reason, a Bill as aforesaid does not become law within six months [6 M] from the date of its introduction in Parliament,~~

~~the notification shall cease to have effect on the expiration of the said period of six months [6 M], but without prejudice to the validity of anything previously done thereunder.~~





2. **Section 3, 8-B, 9 & 9A of CTA, 1975 [Levy of IGST, Safeguard Duty, CVD, Anti-dumping duty on imported articles]:** The amendments ensure uniform application of customs law provisions to various special duties (ADD, CVD, Safeguard Duties, etc.). The amendment explicitly extends all provisions of the Customs Act, 1962 (as well as rules and regulations made thereunder) to duties/taxes/cess imposed under Section 3, Safeguard duty imposed u/Sec 8-B, CVD imposed u/Sec 9 and Anti-dumping duty imposed u/Sec 9-A. [Amendments by FA (No. 2), 2024 (16th Aug, 2024)]

Simplified Discussion

Summary of Amendments to the Customs Tariff Act, 1975

Section	Subject-Matter	Amendment	Remarks
Section 3(12)	IGST / GST Cess (on imported goods)	Substituted with a provision ensuring that all relevant provisions of the Customs Act, 1962 (<u>including but not limiting to</u> duty determination, assessment, short-levy / non-levy, refunds, exemptions, <u>interest</u> , recovery, appeals, offences and <u>penalties</u> , etc.) apply to duties/taxes/cess chargeable under this section.	Aligns customs duties, taxes, and cess with general customs law provisions, ensuring uniformity in procedures.
Section 8B(9)	Safeguard Duty	Substituted with a provision applying all relevant provisions of the Customs Act, 1962 (similar to Section 3(12)) to safeguard duties.	Ensures uniform enforcement and administration of safeguard duties in line with other customs duties.
Section 9(7A)	Countervailing Duty (CVD)	Substituted with a provision applying all relevant provisions of the Customs Act, 1962 (similar to Section 3(12)) to safeguard duties.to countervailing duty.	Strengthens the applicability of customs law for countervailing duties, reducing legal ambiguities.
Section 9A(8)	Anti-Dumping Duty (ADD)	Substituted with a provision applying all relevant provisions of the Customs Act, 1962 (similar to Section 3(12)) to safeguard duties.to Anti-Dumping Duty.	Ensures smooth implementation and legal clarity in handling anti-dumping duties.

Author:

In the **Mahindra & Mahindra v. Union of India** case (2022), the Bombay High Court ruled that interest and penalties could not be imposed on CVD/SAD since **Section 3(12)** of the CTA lacked a specific provision for these charges. The court held that without such a provision, the levies were not recoverable. The Customs Department filed a **Special Leave Petition (SLP)**, which was dismissed by the **Supreme Court** in January 2024, making the **High Court** ruling final.

To address this gap, the **Finance (No. 2) Act, 2024** amended **Section 3(12)** of the CTA, ensuring that the **provisions of the Customs Act, 1962**, including those related to **interest, penalties, assessments, and appeals**, apply to duties and taxes (such as GST and IGST) under the CTA, similar to how they apply to BCD. The amendment came into effect on **16 August 2024**.

**** Consequent amendments have also been made in Section 8-B, Sec 9 and Sec 9-A.**

Section 3 : Levy of additional duty equal to excise duty, sales tax, local taxes and other charges

(12) **Provisions of CA, 1962 shall be applicable mutatis mutandis::**

The provisions of the **CA, 1962** and the rules and regulations made thereunder, including those relating to drawbacks, refunds and exemption from duties

shall, as far as may be, apply to the duty or tax or cess chargeable under this section (IGST, GST Cess etc.)
as they apply in relation to the duties leviable under that Act (BCD):

Provisions of CA, 1962 shall be applicable mutatis mutandis:

[substituted by FA (No. 2) 2024- 16th Aug, 2024]

The provisions of the **CA, 1962** and the rules and regulations made thereunder, including but not limited to those relating to the date for determination of rate of duty, assessment, non-levy, short-levy, refunds, exemptions, interest, recovery, appeals, offences and penalties

shall, as far as may be, apply to the duty chargeable under this section (IGST, GST Cess etc.)
as they apply in relation to the duties leviable under that Act (BCD) or all rules or regulations made thereunder, as the case may be.





Section 8-B : Power of CG to apply SAFEGUARD MEASURES

(9)

Provisions of CA, 1962 shall be applicable mutatis mutandis:

The provisions of the CA, 1962 and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties

shall, as far as may be, apply to the duty chargeable under this section (Safeguard Duty) as they apply in relation to the duties leviable under that Act (BCD);

Provisions of CA, 1962 shall be applicable mutatis mutandis:

[substituted by FA (No. 2) 2024- 16th Aug, 2024]

The provisions of the CA, 1962 and the rules and regulations made thereunder, including but not limited to those relating to the date for determination of rate of duty, assessment, non-levy, short-levy, refunds, exemptions, interest, recovery, appeals, offences and penalties

shall, as far as may be, apply to the duty chargeable under this section (Safeguard Duty) as they apply in relation to the duties leviable under that Act (BCD) or all rules or regulations made thereunder, as the case may be.

Section 9 : Countervailing duty on SUBSIDIZED ARTICLES

(7A)

Provisions of CA, 1962 shall be applicable mutatis mutandis:

The provisions of the CA, 1962 and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties

shall, as far as may be, apply to the duty chargeable under this section (CVD) as they apply in relation to the duties leviable under that Act (BCD);

Provisions of CA, 1962 shall be applicable mutatis mutandis:

[substituted by FA (No. 2) 2024- 16th Aug, 2024]

The provisions of the CA, 1962 and the rules and regulations made thereunder, including but not limited to those relating to the date for determination of rate of duty, assessment, non-levy, short-levy, refunds, exemptions, interest, recovery, appeals, offences and penalties

shall, as far as may be, apply to the duty chargeable under this section (CVD) as they apply in relation to the duties leviable under that Act (BCD) or all rules or regulations made thereunder, as the case may be.

Section 9-A : Anti- dumping duty on DUMPED ARTICLES

(8)

Provisions of CA, 1962 shall be applicable mutatis mutandis:

The provisions of the CA, 1962 and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties

shall, as far as may be, apply to the duty chargeable under this section (ADD) as they apply in relation to the duties leviable under that Act (BCD);

Provisions of CA, 1962 shall be applicable mutatis mutandis:

[substituted by FA (No. 2) 2024- 16th Aug, 2024]





The provisions of the CA, 1962 and the rules and regulations made thereunder, including but not limited to those relating to the date for determination of rate of duty, assessment, non-levy, short-levy, refunds, exemptions, interest, recovery, appeals, offences and penalties

shall, as far as may be, apply to the duty chargeable under this section (ADD) as they apply in relation to the duties leviable under that Act (BCD) or all rules or regulations made thereunder, as the case may be.

2: Warehousing

- Sec 65 [Manufacturing and Other Operations in relation to goods in warehouse]:** Proviso inserted in Sec 65(1) empowering CG to notify manufacturing processes/ other operations in relation to a CLASS OF GOODS that shall not be permitted in a warehouse.: [Amendments by FA (No. 2), 2024 (16th Aug, 2024)]

Section 65 : Manufacture and other operations in relation to goods in a warehouse

- Manufacture/ Processing in warehouse** – on permission from Principal CC/CC + Compliance with regulations

With the permission of Principal CC or CC and subject to the provisions of section 65A¹ and conditions as may be prescribed,

the owner of any warehoused goods may carry on any Manufacturing Process or other operations in the warehouse in relation to such goods.

[Inserted by FA, 2024 (16th Aug, 2024)]

Govt empowered to notify manufacturing processes/ other operations in relation to a CLASS OF GOODS that shall not be permitted in a warehouse

Provided that

the CG may, if satisfied that it is necessary in the public interest so to do, by notification in the Official Gazette,

specify the manufacturing processes and other operations in relation to a class of goods that shall not be permitted in a warehouse.

Author:

The proviso has been inserted to ensure that the government has the flexibility and authority to regulate potentially sensitive or high-risk manufacturing processes in warehouses, particularly where these processes could affect national security, trade policy, environmental regulations, customs revenue, or international trade compliance. It ensures that the warehouse system isn't misused for activities that could harm the public interest or create trade imbalances.

¹ **Author:** The provisions of section 65 are subject to the provisions of section 65A. But, sec 65-A is not operational at present.



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