

## CA Final: IDT Amendments for May'25

### P1: GST

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3 Issue 3: Distributor – Manufacturer: 4 Situations Possible

Distributor replaces the goods using his own stock or by purchasing from a third party; and charges the manufacturer by issuing Tax Invoice



GST Payable | No ITC Reversal by Distributor

Distributor replaces the goods out of supply already received by him from the Mfr. and Mfr. issues a credit note w.r.t replaced goods subject to sec. 34(2)



GST adjustment by Mfr. if Distributor reverses ITC

Distributor raises a requisition to the Mfr. who then provides the said goods to the Distributor who in turn provides to the customer; no separate consideration



No GST | No ITC Reversal by Mfr. wrt replaced goods

Distributor replaces the goods out of his stock and then raises requisition to the Mfr. Mfr. provides goods through delivery challan, without any separate consideration



No GST on replenishment | No ITC Reversal by Mfr.

**Scenario 3: Extended Warranty**

When is this extended warranty availed by the Customer?

At the time of Original Supply

Any time after Original Supply

- Composite Supply
- Principal Supply = Supply of Goods
- If Supplier of Extended Warranty diff. from the Supplier of Goods = Tax Separately

- Shall be treated as supply of services **distinct** from the original supply; GST shall be applicable

**Amendment 3: GST on Preferential Location Charges payable when Commercial/Residential property sold**

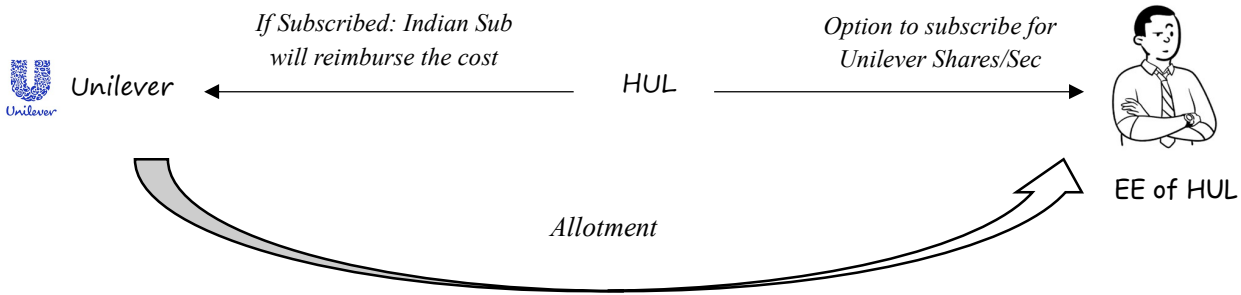
Type of Amendment: **New Concept**

- ✓ Allowing choice of location = integral part of supply of construction services.
- ✓ Therefore, PLC is part of consideration charged for supply of construction services before issuance of completion certificate.
- ✓ Treatment = PLC paid 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**.



Amendment 4: **GST on ESOP/ESPP/RSU by a Company to its EE through Overseas Holding Company**

Type of Amendment: **New Concept**



⇒ **GST on Shares Allotment:** **GST is not leviable** on the compensation paid to the employee by the employer as per the terms of employment contract since as seen earlier, the purchase or sale of securities/shares, in itself, is neither a supply of goods nor a supply of services.

Moreover, the ESOP/ESPP/RSU is a part of remuneration of the employee by the employer as per terms of employment and is covered under Para 1 of Schedule III of the CGST Act.

⇒ **GST on Reimbursement on cost basis by Indian Subsidiary = Import of Services? No! No GST.**

What if some mark up is charged/additional fee is charged from the Domestic Subsidiary? Then it shall be considered as "consideration" for supply of services of arranging the transaction of shares.

↳ **GST shall be payable on RCM basis** by the domestic subsidiary company as its import of services!

Ch 2: Charge

Amendment 1: **New Item in Goods RCM List**

Details: **Metal Scrap** supplied by **Any Unregistered Person** to **any Registered Person**- **RCM Applies!**



Amendment 2: **New Item in Service RCM List**

Details: If any unregistered person rents any **'other than residential'** immovable property to any registered person: **RCM Applies!**

Ch 3: Place of Supply [IGST]

Amendment 1: **A Few Clarifications Inserted**

❑ **Goods Sold to Unregistered Persons:** Billing Address different from Delivery Address [mostly: e-commerce]

☑ **Apply 10(1)(ca)**

☑ **POS = address of delivery as recorded on Invoice**



❑ Custodial (maintaining securities) Services by Banks to FPI- Foreign Portfolio Investors

⇒ Will section 13(8)(a) apply here? **No**, as these are not to 'account holders'. Hence, **default provisions of 13(2) shall apply.**

❑ Advertising Services (one stop solution from planning to content) to Foreign Clients



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)?

Clarification: The advertising agency, in this case, enters into two agreements:

- I. With the client located outside India for providing a one stop solution.
- 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.

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 is providing services on its own account.

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 the CGST Act, 2017?

Clarification: As per section 2(93)(a) of CGST, the "recipient" of the services means the person who is **liable to pay consideration** where a consideration is payable for supply of goods or services or both.

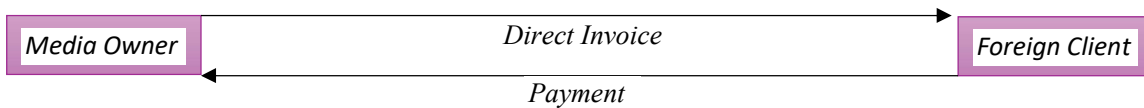
- In this case, the **foreign client is liable to pay the consideration** to advertising company and **not the consumers or the target audience** that watches the advertisement in India.
- Further, even if a representative of the said foreign client based in India, including a subsidiary or related person of the said foreign client, is interacting with the advertising company on behalf of the said foreign client, the said representative based in India can also not 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 is received by the advertising company directly from the said foreign client.

Therefore, 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.



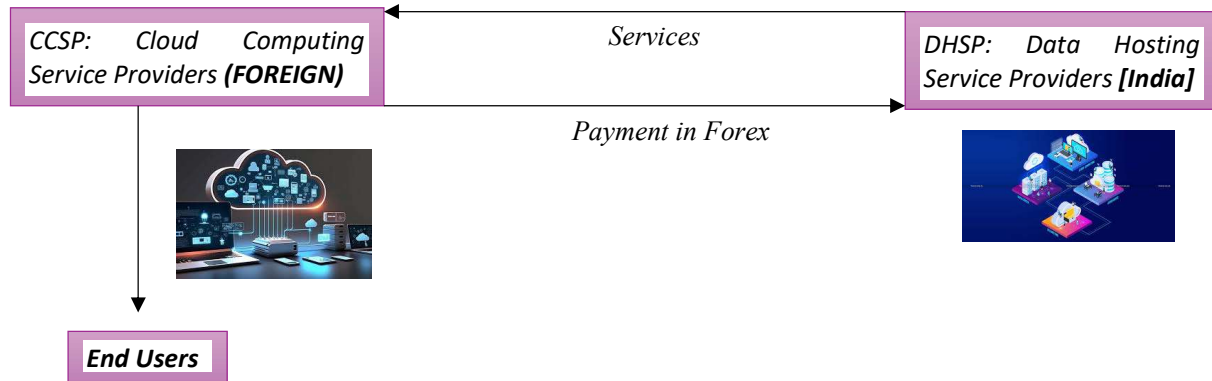
POS of advertising services by the advertising company to the Foreign Client? **13(2)** i.e. **POS = outside India**. Also, subject to compliance of other conditions [2(6)], it can be export of services. **13(3) is NA** here since presence of neither goods nor the recipient is required here for services.

- ❑ Advertising Company in India Acts as Agent of Foreign Client with the Media Owner for Media Space



*Advertising Company = Intermediary as per Section 2(13) of CGST; POS = 13(8)(b) i.e. Location of Supplier i.e. Location of the Advertising Company*

- ❑ Data Hosting Services by Services Providers in India to Cloud Computing Providers Outside India



#### Facts:

- ❑ DHSP either owns premises for data centre or operates data centre on leased premises.
- ❑ There is no contact between DHSP and the end users/consumers/subscribers of the foreign CCSP.
- ❑ The end users/ customers/subscribers access cloud computing services seamlessly over the internet through technology hosted on data centers.

#### Clarifications:

- ❑ DHSP provides services to CCSP on **Principal to Principal Basis**, on his own account.
- ❑ Data hosting services provided by DHSP to the said CCSPs **cannot** be considered in relation to the **goods "made available"** by the said CCSPs to the DHSP in India.
- ❑ Data hosting services **cannot** be considered as the services provided directly in relation to **immovable property or physical premises**.

#### POS as per? 13(2) i.e. Default Provisions

- ⇒ Hence, if CCSP is outside India, POS = Outside India; so it can be "export of services" if other conditions as per section 2(6) are fulfilled.

## Ch 4: Exemptions

## Amendment 1: Entry 66A added in the list w.r.t Affiliation Services

Services of affiliation provided by a Central or State Educational Board or Council or any other similar body, by whatever name called,  $\xrightarrow{\text{TO?}}$  a school established, **owned or controlled** by the CG, SG, UT, LA, Governmental authority or Gov. entity. [Gov Schools]

↓

Other Schools? **Taxable!**

## Amendment 2: Approved Flying Training Courses Conducted by FTO Approved by DGCA- Clarified

Directorate General of Civil Aviation (DGCA) approves Flying Training Organizations (FTOs) as well as also approves flying training courses and mandates the requirement of course completion certificates to be issued to successful candidates



The approved flying training courses conducted by FTOs approved by DGCA = **Exempt!**

## Amendment 3: Affiliation by Universities to Colleges- Clarified



→ What is Affiliation? to monitor and ensure whether the institution possesses the required infrastructure in terms of space, technical prowess, financial liquidity, etc. and is thereby eligible for the privileges to conduct the course of study for the degree/title extended by the University.

The affiliation services provided by the universities are **not related** to the admission of students to such colleges or the conduct of examinations by such colleges.

→ Treatment: Affiliation services provided by universities to their constituent colleges are **not covered within the ambit of exemptions** provided to educational institutions i.e. **taxable!**

## Amendment 4: 3 New Entries Added- 9E; 9F; 9G

9E	Services provided by Ministry of Railways (Indian Railways) <b>to individuals</b> by way of - (a) sale of platform tickets (b) facility of retiring rooms/waiting rooms; (c) cloak room services; (d) battery operated car services
9F	Services provided by <b>one zone/division</b> under Ministry of Railways (Indian Railways) to <b>another zone(s)/division(s)</b> under Ministry of Railways (Indian Railways).

96	<p>Services provided by Special Purpose Vehicles (SPVs) <u>to</u> 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</p> <p>against consideration and services of maintenance supplied by Ministry of Railways (Indian Railways) to SPVs in relation to the said infrastructure built and owned by the SPVs during the concession period against consideration.</p>
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#### Amendment 5: Statutory Collections by RERA (Real Estate Regulatory Authority)- CLARIFICATION

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 12<sup>th</sup> Schedule of the Indian Constitution.

GST Treatment: RERA is a 'governmental authority' and is covered under the scope of entry no. 4.

- ⇒ It is hereby clarified that statutory collections made by RERA are covered under the entry no. 4 and thus, exempt from GST.

#### Amendment 6: Granting of loan by a person to a related person or by an overseas affiliate to its Indian entity, where the consideration being paid is only by way of interest or discount: [Interest/Discount = Exempt]

Situation: In case where loan is granted by a person to a related person or by an overseas affiliate to its Indian entity, it may not require to follow credit assessment processes as are followed by an independent lender; i.e., there may not be the activity of 'processing' the loan, and no consideration in the nature of processing fee/administrative charges/loan granting charges etc. is involved in granting such a loan.

Effect: Therefore, services of processing the loans by banks/independent lenders vis-à-vis the loans provided by a related party cannot be placed on equal footing.

GST Implication:

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/credit, other than by way of interest/discount, it cannot be deemed to be a "Supply of Service" between the said related persons in the form of processing/facilitating/administering the loan in terms of section 7(1)(c) read with paras 2 (b/w related persons) and 4 (Import) of Schedule I.

Amendment 7: Skill Development Services [Substitution]

Entry	Particulars of Services
69	Any services provided by, _ (a) the National Skill Development Corporation (NSDC) set up by the GOI; (b) the National Council for Vocational Education and Training [NCVET]; (c) an Awarding Body recognized by the NCVET; (d) an assessment agency recognized by the NCVET; (e) a training body accredited with an Awarding Body that is recognized by the NCVET, in relation to? the National Skill Development   Vocational Skill Development   approved qual./skill;
70	Services of centrally empanelled ( <i>Directorate General of Training</i> ) Assessing Bodies ⇒ by way of? assessments under the Skill Development Initiative Scheme.
71	Services by Training Providers (Project implementation agencies) under Deen Dayal Upadhyaya Grameen Kaushalya Yojana (DDUGKY) implemented by the Ministry of Rural Development, GOI ⇒ By way of? offering certified skill or vocational training courses

Amendment 8: Exemption of Residential Units renting [Entry 12] is **NA** to accommodation in

⇒ student residences | accommodation by hostels, camps, PG etc.

Amendment 9: New Exemption Entry 12A- Accommodation services: **Value ≤ 20,000 per person per month**

⇒ Condition: **Minimum 90 continuous days accommodation**

Amendment 10: New Exemption Entry- 25A

Supply of services by way of providing metering equipment on rent, testing for meters/transformers/capacitors etc., releasing electricity connection, shifting of meters, duplicate bills etc., which are incidental or ancillary to the supply of transmission and distribution of electricity

provided by electricity transmission and distribution utilities to their consumers.

Amendment 11: New Exemption Entry- 44A

R&D services against consideration received in the form of grants supplied by -

(a) a Government Entity; or

(b) a research association, university, college or other institution, notified u/s 35(1)(ii)/(iii) IT Act,

Condition: The above is so notified at the time of supply of the research and development service

Amendment 12: Entry 36A Reinsurance of the Insurance Schemes under Serial Number 35, 36, 40

"Reinsurance" includes "Retrocession" i.e. a part of assumed reinsured risk is further ceded to another Indian Reinsurer or a CBR (Cross Border Re-insurer). So, it's also exempt if it's w.r.t Entries 35, 36 or 40.

Amendment 13: New Exemption Entry w.r.t IGST

- Import of services by an establishment of a foreign company [2(42) Companies Act] in India,
- which is an airline company,
- from a related person or from any of its other establishments outside India,
  - ⇒ when made without consideration.



Conditions to be Complied:

- i. 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.
- ii. 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.
- iii. 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.

Ch 5: Time of Supply

Amendment 1: Clarification: TOS- Construction of Road and Maintenance of NHAI in HAM Model

Issue: Under the Hybrid Annuity Mode (HAM) model of NHAI, the concessionaire has to construct the new road and provide Operation & Maintenance of the same which is generally over a period of 15-17 years and the payment of the same is spread over the years. What is the time of supply for the purpose of payment of tax on the said service under the HAM model?



Clarification: 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.

HAM Contract: a **single contract** for construction as well as operation and maintenance of highway. The payment terms are so staggered that the concessionaire is held accountable for the repair & maintenance of the highway.

- One or Two Contracts? 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.
- TOS Legal Provision: This appears to be covered under the '**Continuous supply of services**' as defined under section 2(33) of the CGST Act, 2017 - - - Section 13(2) shall be applicable!
- 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.
- Interest Component: 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 as per section 15(2)(d) of the CGST Act.



**Amendment 2: Clarification- TOS w.r.t Services of Spectrum Usage and Other Similar Services**

- Situation:** Under the spectrum allocation model followed by Department of Telecommunications (DoT), bidder (the telecom operator like Airtel) 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**.
- 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**.
- In case where deferred payment is made by the telecom operator in specified installments, same shall be considered as 'continuous supply of services' as defined under section 2(33), 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.
- Further, in the given case, since the date of payment to be made by the telecom operator to DoT is clearly ascertainable from the relevant documents, invoice shall be issued in accordance with the provisions of section 31(5)(a) i.e. 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**.

  - ⇒ Thus, in this case, GST would be payable as and when the payments are **due or made, whichever is earlier**.
- Similar Treatment w.r.t all Natural Resources: It is also clarified that the similar treatment regarding the time of supply, 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, with the option of payments for the said services either through an upfront payment or in deferred periodic installments over the period of time.*

**Ch 6: Valuation**



**Amendment 1: One Issue added w.r.t Rule 28**

Issue 4

Related Person Outside India

Import of Services

Registered Person in India

Valuation?

Self Invoice ✓

RCM ✓

- ⇒ Value of such supply declared in Invoice by Domestic Entity = **Deemed as OMV**
- ⇒ If Invoice not issued: Value may be deemed to be declared as **NIL = deemed OMV**

Amendment 2: Some Specific Situations w.r.t Rule 28(2)- Corporate Guarantee

Takeover of Existing Loans: It involves merely an assignment of an already issued corporate guarantee. So, **no GST again unless** there is a fresh corporate guarantee or renewal of existing guarantee.

Loan partly availed or not availed at all: Valuation based on the **amount guaranteed** and not on the basis of loan actually disbursed.

Intra Group Corporate Guarantee

- Domestic Corporate issues guarantee: **GST under FCM**;
- Overseas Entity issuing guarantee: **GST under RCM**

Export of Service

Above provisions **NA** i.e. when the Recipient is located outside India.

Corporate Guarantee by Multiple Related Entities (Co-Guarantors): First determine which is higher

If Actual Consideration is Higher: Value of Supply = Said Amount

If 1% is Higher: **GST shall be payable by each co-guarantor proportionately on 1% of amt. guaranteed by them**

Corporate Guarantee for Multiple Years or for Less than 1 Year:

Value = 1% of Guarantee x Number of Years of Guarantee or Actual Consideration - - - **HIGHER**

⇒ **GST payable at the time of issuance** of such guarantee

Corporate Guarantee for < 1 Year say 6m:

Valuation on **Proportionate** basis i.e.  $1\% \times 6/12$  or actual consideration - - - **HIGHER**

**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 Rs.1 crore, then A and B shall each pay GST on 0.5% of the amount guaranteed.

However, if A and B providing corporate guarantee jointly for Rs. 1 crore, A provides guarantee for 60% of the amount and B provides for the remaining 40%, then GST shall be payable by A and B proportionately i.e., 0.6% and 0.4%.

**If a corporate guarantee is issued for a period of say 5 years**: value of such corporate guarantee provided would be 5% of the amount guaranteed or the actual consideration, whichever is higher.

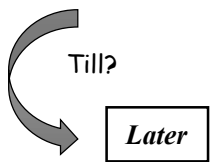
However, if a corporate guarantee is issued, say for a period of 1 year and is renewed 5 times, for a period of 1 year each, then tax would be payable on 1% of the amount of such guarantee offered, or the actual consideration, whichever is higher; on the issue of such corporate guarantee in the first year as well as on every renewal in subsequent years.

**Ch 7: ITC**

✓ **Amendment 1: Sir, what if Registration is cancelled (portal inactive) but later on revoked and by then, the time limit of 16(4) is expired- How to take ITC Credit? - - Sub-section (6) inserted in section 16**

- Where registration of a registered person is **cancelled** under section 29 and subsequently revoked
  - either under section 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 [*i.e. had not already expired*],

the said person shall be **entitled** to take the ITC in a return under section 39,-

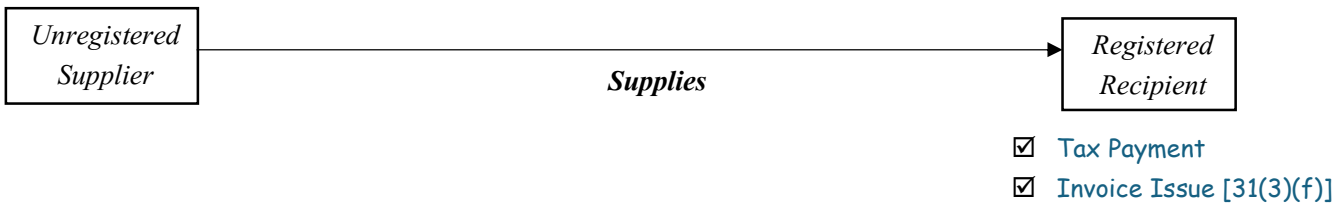


filed up to 30<sup>th</sup> day of November following the FY to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is **earlier**; or for the period from the date of cancellation of registration or the effective date of cancellation of registration, as the 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,

16(6) Benefit Prospectively: **No Refund** shall be made of all the tax paid or the ITC reversed-which would **not** have been paid, or not reversed, **had** section 16(6) been in force at all material times.

✓ **Amendment 2: RCM Supplies Received from Unregistered Persons: Time Limit u/s 16(4) - Clarification!**



- The relevant FY for calculation of time limit for availment of ITC under section 16(4) = FY in which the **invoice has been issued by the recipient** u/s 31(3)(f) of CGST Act, subject to payment of tax on the said supply by the recipient.
- 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, liable to **penal** action under Section 122 of CGST!



✓ **Amendment 3: We covered Rule 32(4) [Valuation w.r.t Life Insurance Business], where we saw that some portion of premium may get excluded from valuation. So, will ITC reversal be required w.r.t such excluded portion?**

Clarified: No. Such premium portion is neither nil rated nor wholly exempt from tax, and also not a non-taxable supply! Also, such portion is not w.r.t any "personal" purpose: Hence, **no reversal of ITC** is required!

## Amendment 4: Demo Vehicles: ITC- Clarification



- Section 17(5)(a)(A) uses the words "such motor vehicles"; not "said motor vehicle".
- Hence, the intention of the lawmakers was not only to allow ITC of the motor vehicle which is itself further supplied, but also to allow the ITC of the motor vehicle which is being used for the purpose of further supply of similar type of motor vehicles.
- Demo vehicles help promote the sale of similar motor vehicles., hence = for making "further supply of such MV".
  - ⇒ Hence, ITC **allowed** i.e. not blocked!
- Few Other Issues Clarified:
  - A) What if demo vehicles used for some other purpose- say transport of its staff? **ITC Blocked!**
  - B) Situation:
    - Authorized Dealer = agent/service provider for the Manufacturer and not directly involved in supply of MV.
    - Dealer purchases MV from the Manufacturer for giving this test drive service.
    - Dealer may sell the demo MV to a customer as per some agreement with the Manufacturer on payment of GST.
- ⇒ Auth. Dealer = providing marketing/facilitation service to the Mfr., **not selling MV** to the consumer.
- ⇒ Hence, the demo MV is not used for making further supply of such MV. So, **ITC not available** to the said dealer.

What if the Demo Vehicles are Capitalized in the Books of Accounts by the Authorized Dealers?

### Legal Provisions

- As per provisions of section 16(1), every registered taxpayer is entitled to take ITC charged on any supply of goods and services made to him, where such goods/services are used in the course or furtherance of business.
- Also, as per section 2(19), "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.

### Analysis

- Where such vehicles are capitalized in the books of accounts by the authorized dealer,
  - ⇒ the said vehicle falls in the definition of "capital goods".
- As per provision of section 16(1), 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**.

### Conclusion

**ITC allowed.** Capitalization does not impact ITC.

- But this is subject to section 16(3) i.e. **either** depreciation under Income Tax Act, **or** ITC under GST.
- What if such capitalized demo vehicle is subsequently sold? The authorized dealer shall have to pay an amount or tax as per provisions of section 18(6) read with rule 44(6).

Amendment 5: 17(5) Blocked Credits: SC Ruling Chief Commissioner of CGST v. Safari Retreats Pvt. Limited.

Issue: In C) we used the words "Plant and Machinery", whereas in D) "Plant or Machinery".

"Plant **and** Machinery" is defined in explanation to section 17 | "Plant **or** Machinery" is not!

This distinction was addressed by the SC in the case of **Chief Commissioner of CGST v. Safari Retreats Pvt. Limited**. Further, the constitutional validity of section 17(5)(c)/(d) and section 16(4) was also challenged.

The expression "plant or machinery" is found only in section 17(5)(d). This implies that legislature did not intend to give the expression "plant or machinery" the same meaning as "plant and machinery" and thus, has made this **distinction** consciously.

"Plant or Machinery": The Court observed that this expression can be **either** a plant **or** machinery. The very fact that the expression "immovable property other than "plant or machinery"" is used shows that there could be a **plant that is an immovable property**.

As the word 'plant' has not been defined under the CGST Act or the rules framed thereunder, its ordinary meaning in commercial terms will have to be attached to it.

**Conclusion:** Thus, the Supreme Court held that the question as to whether a mall, warehouse or any building other than a hotel or a cinema theatre can be classified as a plant within the meaning of the expression "plant or machinery" is a **factual** question which has to be determined keeping in mind the business of the registered person and the role that building plays in the said business.

If the construction of a building was essential for carrying out the activity of supplying services, such as renting or giving on lease or other transactions in respect of the building or a part thereof, which are covered by clauses (2) and (5) of Schedule II of the CGST Act, the building could be held to be a plant. Then, **ITC allowed!**

Issue of Constitutional Validity: SC **upheld** the constitutional validity of section 17(5)(c)/(d) and section 16(4).

Amendment 6: Clarification: ITC on Ducts and Manholes used in network of Optical Fiber Cables (OFCs)



Issue: Whether ITC is barred on these?



These are basic components for OFC network used in providing telecommunication services. They are necessary not only for laying of optical fiber cable but also their upkeep and maintenance.

In view of the Explanation in section 17, 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.

Ducts and manholes have **not been specifically excluded** from the definition of "plant and machinery", as they are not in the nature of land, building, civil structures, telecom towers, pipelines outside factory.

Clarified: **ITC Permitted i.e. not blocked!** ✓



**Amendment 7: Insurance Claim Settlement by Reimbursement- ITC on Expenses Incurred by Ins. Co.**

**Background:** The Insurance Company is responsible for the payment of approved charges, whether it be in cashless mode or reimbursement mode. Under re-imbusement mode, the insured makes the payment first to the non-network garage (where repaired) and then the same is reimbursed by the Ins. Company. The invoice is issued in the name of the Insurance Company.

**Legal Provisions**

Who is "Recipient"? Insurance Company, as its **liable** to pay. [section 2(93)]



Is that amount "consideration"? **Yes.** 'Consideration' includes payment related to supply by the recipient or by any other person in terms of section 2(31).

**ITC Issue:** Availment of ITC on motor vehicle repair services received by the insurance company for outward supply of insurance services for such MV is **not barred** under section 17(5).

Section 17(5) provides that ITC in respect of services of repair of MVs is available where received by a taxable person engaged in the supply of general insurance services in respect of MVs insured by him.

**Conclusion:** Accordingly, it is clarified that **ITC is available** to Insurance Companies.

⇒ 2 Conditions: Invoice in the name of the Ins. Company | ITC claim solely w.r.t amount reimbursed to insured.

3 Further Issues Clarified



What if 2 invoices by the Garage- one to Ins. Co. for approved amount and one to the customer for excess amount?

ITC available to the Ins. Co. **only on the invoice issued to it** subject to reimbursement to the customer.

What if single invoice for both- approved amount and excess (which is to be borne by customer)- and Ins. Co. reimburses the approved claim?

ITC **only** w.r.t the **reimbursement** of the approved cost, not the whole amount.

What if invoice not in the name of the Insurance Company?

**No ITC;** as it does not meet the requirements of section 16(2)(a) and 16(2)(aa).

**Ch 8: Registration**



**Amendment 1: Section 23:** Persons exclusively engaged in the supply of metal scrap will not be exempted from registration, despite the fact that it's covered under RCM!



**Amendment 2: Rule 29** Circumstances where the PO can cancel registration on his own

One new circumstance added

Violates provisions of third or fourth proviso to Rule 23(1) [filing pending returns post revocation of cancellation]

### Ch 11: Payment of Tax

#### Amendment 1: Section 50- Interest on Delayed Payment of Tax

If amount credited in E-Cash **on/before** due date but **debited** for tax payment while filing of return after due date: No interest on such amount **if its in E-Cash from due date till the debit date.**

#### Amendment 2: New Person added in section 51(1)(d) "Notified Persons" for TDS

→ Any **reg. person** receiving supplies from other **reg. person of metal scrap** falling in Ch. 72-81, 1<sup>st</sup> Sch, CTA.

Categories of persons **not liable** to deduct TDS

1. When goods and/or services are supplied from a PSU to another PSU, **whether or not** a distinct person
2. Supply between one person to another person specified u/s 51(1)(a)/(b)/(c)/(d); **except person in clause (d).**

### Ch 12: ECO

Amendment 1: TCS rate reduced to 0.5% from earlier 1%

### Ch 13: Returns

Amendment 1: **GSTR-1 Reporting Requirements Changed**

**Contents of GSTR-1** (now will also include the additional details/amendments in Form **GSTR-1A**)

- ⇒ **B2B Supplies:** All will be shown individually (inter | intra) as the Recipient will be claiming ITC!
- ⇒ **B2C Supplies**
  - *Intra State Supplies for each rate of tax: show consolidated amount*
  - *Inter State Supplies with Invoice Value > 1,00,000: Each to be shown separately*
  - *Inter State Supplies with Invoice Value ≤ 1,00,000: Consolidated for **each rate** of tax separate for **each state***
- ⇒ **POS Details also captured:** Because GST is a destination-based tax: That state will get revenue!

Amendment 2: **GSTR-1A re-introduced:- changes w.r.t GSTR-1 [this was earlier suspended since 2017]**

Amendment of Details of Outward Supply after filing GSTR-1/IFF [Proviso to rule 59(1)]:

Legal Provision: A registered 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.

- ❑ *Illustration (linked with GSTR-2B): A supplier issued two invoices INV-01 and INV-02 in the month of January. Then, he furnished the details of INV-01 on 8<sup>th</sup> Feb in GSTR-1. However, he missed INV-02 and furnishes the same in GSTR-1A on 15<sup>th</sup> Feb.*

*In this case, INV-01 shall reflect in GSTR-2B of the Recipient for the month of January made available on 14<sup>th</sup> Feb. Further, INV-02 shall be made available in GSTR-2B of the Recipient for the month of Feb on 14<sup>th</sup> March.*

- ❑ *Illustration: A supplier issued two invoices INV 3 and INV 4 in the month of January. Then, he furnished the details of the invoice INV 3 on 15<sup>th</sup> Feb in Form GSTR-1.*

*However, he declared INV 4 in Form GSTR-1A on 16<sup>th</sup> Feb. In this case, both INV3 and INV4 will be made available in Form GSTR-2B of the recipient for the month of February made available on 14<sup>th</sup> March.*

*Note: Where change is required to be made in **GSTIN** of a recipient for a supply reported in GSTR-1, the same can be rectified through GSTR-1 for the **subsequent** tax period only.*

#### **Points to Note**

- *It can be filed only **once** for a return period.*
- *It allows to amend the records filed in the Form GSTR-1 of current tax period only.*
- *The **corresponding effect** of the changes made shall be reflected in Form **GSTR-3B** for the same tax period.*
- *At the **recipient's end**, the corresponding impact of ITC in Form **GSTR-2B** generated for the **next** tax period.*
- ***There is no due date for filing of GSTR-1A***

#### **For the taxpayers filing Form GSTR-1 on monthly basis:**

- *Form GSTR-1A will be available on the portal every month from the due date of filing of Form GSTR-1 or the actual date of filing of Form GSTR-1, whichever is **later**, and will be available till the actual filing of corresponding Form GSTR-3B of the same tax period.*
- *From the liability perspective, the net impact of particulars declared or amended through Form GSTR-1A, along with the particulars declared in Form GSTR-1, shall be **auto-populated in Form GSTR-3B** for the same tax period as that of Form GSTR-1.*

#### **For the QRMP taxpayers, who files Form GSTR-1 on Quarterly basis:**

- *Form GSTR-1A shall be available quarterly after actual filing of Form GSTR-1 (Quarterly) or the due date of filing of Form GSTR -1 (Quarterly), whichever is **later**, and will be available till the actual filing of Form GSTR-3B of the same tax period.*
- *The supplies reported in Form GSTR-1 of the current tax period (including those in IFF, for the first month, M1 & second month, M2 of a quarter) can be amended in corresponding quarterly GSTR-1A.*
- *From the liability perspective, the net impact of the particulars declared in GSTR 1A (Quarterly), along with particulars furnished in Form GSTR-1 (Quarterly) (or through IFF of Month M1 and M2, if filed), shall be auto-populated in Form GSTR-3B (Quarterly) of the same tax period.*
- ➔ *IFF Amendment: There will be **no** separate amendment facility available for records furnished through IFF for the months M1 and M2, during the months M1 and M2.*

Amendment 3: Composition Supplier GSTR-4 Due Date Changed

It's now **30<sup>th</sup> June** of succeeding FY, instead of 30<sup>th</sup> April

### Ch 14: Import Export



Amendment 1: Rule 96A - Time Limit w.r.t Export of Services Changed

**15 days after the expiry of 1 year**, or the period as allowed under FEMA including any extension of such period as permitted by the RBI, whichever is **later**, from the date of issue of the invoice for export, or such further period as may be allowed by the commissioner,

If: the payment of such services is not received by the exporter in convertible foreign exchange or in INR, wherever permitted by the Reserve Bank of India

### Ch 15: Refunds



Amendment 1: Section 54- A case of refund included

Refund of additional IGST paid on account of upward revision in price of goods subsequent to exports- Pg 48 ref



Amendment 2: w.r.t Documentary Evidences Table of Refund

Note: Documentary Evidences Table- now only for knowledge purposes! No Need to Learn! 😊



Amendment 3: Clarification w.r.t Rule 96A

Instances wherein exporters have voluntarily paid IGST + Interest if Rule 96A conditions hit

If later goods exported or payment received- along with refund of unutilized ITC: whether refund of IGST and interest which is paid for complying with Rule 96A?

Clarified:

- Refund of unutilized ITC would be **available**, if the refund is otherwise admissible
- Refund of IGST paid shall also be **available**
- However, refund of interest paid in compliance of Rule 96A **NOT available!**



Amendment 4: Rule 95B w.r.t claiming of Refund by CSD (Canteen Stores Department)

Apply for refund- **electronically** - shall be dealt with in same manner as of GST RFD- 01

Refund available if

- Inward supplies from a reg. person, against tax invoice, details in his GSTR-1, his GSTR-3B furnished
- Name and GSTIN of applicant (CSD) mentioned in Tax Invoice

Amendment 5: Rule 89(4A) [Deemed Exports Refund] and Rule 89(4B) deleted

→ Consequent impact in Rule 89(4) and 89(5) as well!

## Ch 22: Appeals and Revision

Amendment 1: GSTAT now also for conducting examination or adjudication of cases referred to in Section 171(2) [Anti Profiteering], if so notified under the said section!

Amendment 2: Section 171(2) matters- shall only be heard by **Principal Bench!**

Amendment 3: Appeal to AT now allowed to be filed manually

An appeal to the AT may be filed manually in Form GST APL-05/07, along with the relevant documents, only if the Registrar allows the same by issuing special/general order to that effect, subject to such conditions and restrictions as specified in the said order,

and in such a case, a provisional acknowledgment shall be issued to the applicant immediately.

Amendment 4: w.r.t Fees for Filing Appeal to AT

Minimum fee for filing appeal to the AT = **5,000**

If the order does not involve any demand of tax, interest, fine, fee or penalty: Fees for appeal = **5,000**

## Amendment 5: Memorandum of Cross Objections

**Memorandum of Cross Objections:** The law also provides for filing of cross-objections by the respondent against such part of the order against which the respondent may initially **not have chosen to file an appeal**.

- ⇒ It is provided that on receipt of notice that an appeal has been filed (by the appellant), the party against whom the appeal has been preferred (i.e. the respondent) may, notwithstanding, that he may not have appealed against such order or any part thereof,
- ⇒ file within **45 days** a memorandum of cross-objections electronically in **GST APL-06** against **any part** of the order appealed against and
- ⇒ such memorandum shall be disposed of by the AT **as if it were an appeal** presented within the time specified for filing the initial appeal.

**Condonation:** The Tribunal can condone the delay of **up to 45 days**, satisfied of sufficient cause for delay.

Common Provisions (whosoever files)

### Memorandum of Cross Objections

**Manual Filing:** 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.

### Date of Filing Appeal

Where the order appealed against is uploaded on the common portal: a final acknowledgement, 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 acknowledgement shall be considered as the date of filing of appeal.

If the order appealed against is not uploaded on the common portal:

the appellant shall submit/ upload, as the case may be, a self- certified copy of the said order within a period of **7 days** from the date of filing of FORM GST APL-05/ FORM GST APL-07 and a final acknowledgement, 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.

Where the said self-certified copy of the order is submitted/uploaded **after a period of 7 days** from the date of filing of FORM GST APL-05/ FORM GST APL-07 a final acknowledgement, 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 = as date of filing of appeal.

Withdrawal of Appeal or Application filed before the Appellate Tribunal

**When? | Form:** The appellant may, **at any time before the issuance of the order**, 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 or the application, by filing an application in Form **GST APL- 05/07W**.

What if final acknowledgment issued? the withdrawal would be subject to the approval of the AT within **15 days** of filing of such application.

Any fresh appeal or application: filed by the appellant pursuant to such withdrawal shall be filed within the above discussed time limits as normal.

### ✓ Amendment 6: A Clarification in light of non-operation of the GSTAT and hardship faced by Tax Payers

**Situation:** If any person files an appeal and deposits the pre-deposit amount, the recovery proceedings for the balance amount is deemed to be stayed till disposal of the appeal as per section 112(9). However, as the taxpayers were not able to file appeal under section 112 in AT against the orders of AA and therefore, were not able to make the pre-deposit, tax officers were taking a view that there is no stay against recovery as per section 112(9)

- For this purpose, it has been clarified that the taxpayer 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 on GST portal.
- 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.

- 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 prescribed timelines.
- On providing the said undertaking and on payment of an amount equal to the amount of pre-deposit, the recovery of the remaining amount of confirmed demand as per the order of the AA will **stand stayed**.
- If any taxpayer has already paid the full amount that was intended to have been paid towards a demand, through a prescribed form, the said person can file an application electronically on the common portal, to adjust the payment made towards the said demand.
- Till the time such functionality is made available on the common portal, the concerned taxpayer may intimate the proper officer about the same, and on such intimation, the PO may **not insist on recovery**.

Amendment 7: Monetary Limits specified w.r.t Section 120 [Non Filing of Departmental Appeal]

Monetary Limits ⇒

GSTAT: 20 Lacs || High Court: 1 Crore || Supreme Court: 2 Crores

Dispute Pertains to Demand of	Amount to be Considered for Applying the Monetary Limit for Appeal
Tax (with or without penalty and/or interest) only	Aggregate of the amount of tax in dispute (including CGST, SGST/UTGST, IGST and Compensation Cess)
Interest only	Amount of interest
penalty only	Amount of penalty
late fee only	Amount of late fee
Interest, penalty and/or late fee (without involving any disputed tax amount)	Aggregate of amount of interest, penalty and late fee
Erroneous refund	Amount of refund in dispute (including CGST, SGST/UTGST, IGST and Compensation Cess)

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.

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- Monetary limits specified above shall **not be applicable** 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 GST law has been held to be **ultra vires** to the Constitution of India; or
- ii. Where any rules or regulations made under GST law 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 GST law or the Rules made there under; or

- iv. Where the matter is related to -
- Valuation of goods/services; or
  - Classification of goods/services; or
  - Refunds; or
  - Place of Supply; or
  - Any other issue, which is **recurring** in nature and/or involves **interpretation** of the provisions of the Act /the Rules/ notification/ circular/order/instruction etc.; or
- v. Where strictures/adverse comments have been passed and/or cost has been imposed **against** the Government/Department or their officers; or
- vi. Any other case or class of cases, where it is necessary to contest in the **interest of justice or revenue**.

Clarification: 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 tax in dispute **exceeds** the monetary limit; or
- case involving the **questions of law**.

### Ch 24: Misc Provisions

#### Amendment 1: Section 158A Consent Based Sharing of Information

- Implementation:** The said provision is implemented by Rule 163 which provides that where a registered person opts to share the information furnished (as mentioned above) 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 registered person for sharing of such information and shall communicate the consent along with the details of the tax periods, where applicable, to the common portal.
- Consent:** The registered person shall give his consent for sharing of information furnished in Form GSTR-1 above **only after** he has obtained the consent of all the recipients, to whom he has issued the invoice, credit notes and debit notes during the said tax periods, for sharing such information with the requesting system and where he provides his consent, the consent of such recipients shall be **deemed to have been obtained**.
- What Info?** The common portal shall communicate the information referred in this rule with the requesting system on receipt from the said system-
  - the consent of the said registered person, and
  - the details of the tax periods or the recipients, as the case may be, in respect of which the information is required.
    - "Systems":** Central Government has notified following as the systems with which information may be shared by the common portal based on consent:-

✓ Account Aggregator

*It's an NBFC which undertakes the business of Account Aggregator as per policy directions of RBI.*

✓ Public Tech Platform for Frictionless Credit

*means an enterprise-grade open architecture information technology platform, conceptualised by the RBI developed by its wholly owned subsidiary, Reserve Bank Innovation Hub, for the operations of a large ecosystem of credit, to ensure access of information from various data sources digitally and where the financial service providers and multiple data service providers converge on platform using standard & protocol driven architecture, open & shared Application Programming Interface (API) framework.*

✓ Amendment 2: Certain Changes w.r.t Anti Profiteering Provisions

☑ Authority = Competition Commission of India | Authority includes Principal Bench of App. Tribunal

☑ Note: **1<sup>st</sup> April 2025 = Sunset Clause** i.e. from which the Authority shall not accept any request for examination i.e. written application for examination of complaints.

## P2: Customs

### Ch 1: Levy and Exemptions from Customs Duty

✓ Amendment 1: Section 20: Re Importation of Goods [Goods Exported - then Imported Back]

Conditions to be satisfied to claim the concessions

A) Time-limit for re-importation: **5 Years** | can be extended further for a period up to **2 years**

Bhutan: Time limit is **7 years**, which can be extended further up to **3 years** for machinery & equip. exported.

Goods exported under DEEC/AA/DFIA/any scheme of Ch 4 FTP: **1 year** (extendable further up to **1 year**).