

**GST AMENDMENTS
FOR CA, CMA, CS
MAY, 2023 & JUNE,
2023 EXAMS**

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SUPPLY UNDER GST

1. TAXABILITY OF VARIOUS TRANSACTIONS [Circular 178/10/2022]:

Circular No. 178/10/2022-GST puts light on various litigative issues in the industry which we will be analysing in further paras.

“Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act” has been specifically declared to be a supply of service in para 5 (e) of Schedule II of CGST Act if the same constitutes a “supply” within the meaning of the Act.

This statement has 3 areas:

Part	Meaning with Example
Agreeing to the obligation to refrain from an act	Example: Non-compete agreements
Agreeing to the obligation to tolerate an act or a situation	Example: Penalty/Liquidated damages
Agreeing to the obligation to do an act	Legally obliged to do certain act due to certain restrictions. Example: Industrial unit agrees to install equipment for zero emission/discharge at the behest of the RWA of a neighbouring residential complex against a consideration paid by such RWA.

Analysis of various transactions:

Transaction	Taxability
Liquidated damages	<p>Liquidated damages are “not a Supply” due to below mentioned reasons:</p> <ul style="list-style-type: none"> ❖ Performance is the essence of a contract ❖ Liquidated damages are stipulated in a contract to ensure performance and to deter non-performance ❖ Liquidated damages or penalty are not the desired outcome of the contract. ❖ Merely flow of money are not a consideration for any supply <p>Example: Penalty stipulated in a contract for delayed construction of houses,</p> <p>Liquidated damages will be a “Supply” when:</p> <ul style="list-style-type: none"> ❖ Liquidated damages are levied to achieve the object of supply. <p>Example: Railway forfeiting amount if ticket is cancelled, Bank charging pre-payment penalty for foreclosing the loan.</p> <ul style="list-style-type: none"> ❖ These charges are to ensure supply is to happen.
Cheque dishonour	<p>Charges for cheque dishonour is “Not a supply,” due to below:</p> <ul style="list-style-type: none"> ❖ No supplier wants a cheque given to him to be dishonoured. ❖ It is not willingness on part of the supplier to earn from cheque dishonour charges as goods have already been sold, his main income lies in sale of goods not in penal charges. <p>However, it is important to note that, late payment charges collected by supplier shall be “supply”.</p>
Penalty imposed for violation of laws	“Not a Supply”

Transaction	Taxability
	❖ Penalties imposed for violation of laws cannot be regarded as consideration charged by Government or a Local Authority for tolerating violation of laws. Laws are not framed for tolerating their violation.
Notice pay recovery i.e., Forfeiture of salary for pre-termination	“Not a Supply” ❖ Such amounts are recovered by the employer not as a consideration for tolerating the act of such premature quitting of employment but as penalties for dissuading the non-serious employees from taking up employment and to discourage and deter such a situation
Cancellation charges	“Supply” ❖ Cancellation fee can be considered as the charges for the costs involved in deciding for the intended supply and the costs involved in cancellation of the supply, such as in cancellation of reserved tickets by the Indian Railways.

2. PERQUISITES PROVIDED BY EMPLOYER TO THE EMPLOYEES AS PER CONTRACTUAL AGREEMENT [Circular 178/10/2022]

Schedule III to the CGST Act provides that “services by employee to the employer in the course of or in relation to his employment” will not be considered as supply of goods or services and hence GST is not applicable on services rendered by employee to employer provided, they are in the course of or in relation to employment. Thus, perquisites provided would **NOT BE TAXABLE, if the same are in terms of employment contract.**

CHARGE OF GST

1. RCM ON RENTING OF MOTOR VEHICLES [Circular 178/10/2022]:

The circular highlights the difference between passenger transport and renting of motor vehicle to tax under reverse charge. The quick recap of the said point is as below:

Nature of billing	Taxability
Motor vehicle is hired for a period of “time,” during which the motor vehicle shall be at the disposal of the body corporate.	Reverse charge mechanism will be applicable as it will be “Renting of motor vehicle.”
Motor vehicle taken as passenger transport service for specific journeys or voyages and does not take vehicle on rent for any particular period of time	Reverse charge mechanism will not be applicable as it is passenger transport service and not renting of motor vehicle service.

2. REPORTING OF SUPPLIES MADE THROUGH ECO 9(5) (Not relevant):

Regd. person supplying goods or services through ECO u/s 9(5) of CGST Act or 5(5) of IGST Act, shall furnish the details of same under separate tab in GSTR 3B. In GSTR – 1 the same shall be reported under exempt supplies.

3. AMENDMENTS & INSERTION OF NEW ENTRIES IN RCM LIST [NN 05/2022 – CTR]

AMENDMENT IN GTA SERVICES

Specified Service	Supplier	Recipient
<p>1) Supply of Services by a goods transport agency (GTA) who has not paid CGST @ 6% & SGST @ 6% or IGST @ 12% in respect of transportation of goods by road (Omitted by NN 05/2022 – CTR) Notes: -</p> <p>(a) This entry will not be applicable to recipient who has taken registration in GST for deducting Tax u/s 51 of CGST Act and not for making any taxable supplies. (NN 29/2018 – CT)</p> <p>(b) <i>This entry shall not be applicable when supplier has obtained registration under GST and exercised option to pay tax under FCM & issues tax invoice charging GST at applicable rates and has made prescribed declaration.</i></p> <p>Notes: Exemption of Rs. 750 & Rs. 1500 in respect GTA shall also be seen while applying RCM provisions (This exemption has been removed discussed later)</p> <p>(GTA is person who issues consignment note)</p> <p>Analysis: Tax Deductor obtains 2 registrations under GST, one for deducting tax and one for supplying services. The concept has been inspired by PAN & TAN, where GSTIN is replica of PAN and Tax deductor No. is replica of TAN</p>	<p>Goods Transport Agency (GTA) (Not opting to pay GST @ 12%)</p> <p>Notes: -</p> <p>GST will be paid by specified recipient @ 2.5% CGST, 2.5% SGST (or IGST @ 5%)</p>	<p>a) Factory registered under Factories Act, 1948; or b) Society registered under the Societies Registration Act, 1860 or under any other law or c) Co-operative society established under any law; or d) Person registered under GST e) Body corporate f) Partnership firm (incl. LLP) whether registered or not under any law including association of persons; or g) Casual taxable person; located in the taxable territory.</p> <p>Analysis:</p> <p>(i) If GTA provides services to other than Specified recipient (including unregistered Casual Taxable person) it is exempt vide NN 32/2017 – CTR.) (As per explanation to NN 13/2017 - CTR, person who is liable to pay freight is recipient)</p> <p>(ii) Tax paid by person under reverse charge would be eligible to avail credit of tax paid under RCM, however, GTA shall not be eligible to avail ITC on his purchases.</p> <p>(iii) Exemption has been specified in Notification 12/2017 - CTR when freight services are availed for agriculture, relief items etc. in case of those services no RCM be payable. Exemption is also for GTA services provided to tax deductors u/s 51</p> <p>(iv) Consignment note is a document which contains few particulars such as consignor and consignee name, weight, distance etc.</p>

AMENDMENT IN GOVERNMENT SERVICES

Specified Service	Supplier	Recipient
1. Services supplied by the CG / SG/ UT/ LA to a business entity excluding, - a) Renting of immovable property, b) Services by the Department of posts by way of speed post, express parcel post, life insurance, and agency services (SALE) provided to a person other than CG/ SG/ UT/ LA. (Omitted by NN 05/2022 CTR) c) Services in relation to an aircraft or a vessel, d) Transport of goods or passengers.	CG / SG / UT / LA	Any business entity located in the taxable territory having aggregate turnover more than such amount in PFY as it becomes ineligible for exemption from registration under GST. (E 7 of NN 12/2017 r/w NN 21/2019 – CTR)

INSERTION OF NEW ENTRY 5AA:

Specified Service	Supplier	Recipient
5AA. Service by way of renting of residential dwelling to a registered person.	Any person	Any registered person.

Analysis with examples:

- (i) Government has amended the exemption notification which provided exemption in relation to residential dwelling. The said entry will now be read as **“Services by way of renting of residential dwelling for use as residence “except where the residential dwelling is rented to a registered person” [NN 04/2022 CTR].**
- (ii) Services by way of renting of residential dwelling for use as residence would be exempted only if the said service is provided to unregistered recipient.
- (iii) GST will be applicable if the residential dwelling is rented out to a registered person whether for residential or otherwise w.e.f. 18th July 2022. Liability to pay GST @ 18% under the reverse charge mechanism (RCM) will arise on the recipient (tenant).

(iv) Tabular presentation for understanding:

Property Nature	Recipient	Taxability
Residential property used for residence	Unregistered	Exempt
Residential property used for residence	Registered	Taxable under reverse charge (E. 5AA) (Earlier exempt)

Property Nature	Recipient	Taxability
Residential property used for commercial purposes	Registered	Taxable under reverse charge (E. 5AA) (Earlier Forward charge)
Residential property used for commercial purposes	Unregistered	Taxable under forward charge
Commercial property used for commercial purpose	Any person	Taxable under forward charge

Thus, if the residential dwelling is rented to a corporate to be used as guest house or used as residence for employees or otherwise, would fall under RCM as per Notification No. 05/2022-Central Tax (Rate) dated the 13th July, 2022.

COMPOSITION SCHEME

1. Amendment in Ineligible manufacturers [Notification No. 16/2022-Central Tax dated 13th July, 2022]:

The persons engaged in manufacturing of ~~**Fly ash bricks or fly ash aggregates with 90 per cent. or more fly ash content; Fly ash blocks**~~ Fly ash bricks; Fly ash aggregates; Fly ash blocks shall be ineligible

EXEMPTIONS UNDER GST

1. STORAGE OR WAREHOUSING OF COTTON:

It is clarified by Circular 177/09/2022 that service by way of storage or warehousing of cotton in ginned and or baled form has been withdrawn w.e.f. 18th July, 2022.

2. CLARIFICATION ON RENTALS OF DUMPER & TIPPER ETC. [CIRCULAR 177/09/2022]

Usually in such cases the vehicles such as tippers, dumpers, loader, trucks etc., are given on hire to the mining lease operator. Expenses for fuel are generally borne by the recipient of service. These services are “rental services of transport vehicles with operator.”

It is clarified that such renting of trucks and other freight vehicles with driver for a period of time is a service of renting of transport vehicles is not eligible for exemption under notification 12/2017 – CTR.

3. ADDITIONAL TOLL COLLECTED FROM NON-FASTAG VEHICLES:

Additional toll / fees collected from non-fastag vehicle would be given same treatment as toll charges. Thus, the same is also not taxable.

4. NON – AC CONTRACT CARRIAGE FOR TRANSPORTATION OF EMPLOYEES

Nature of Transaction	Taxability
Non – AC contract carriage is hired for a period of “time,” during which the such carriage shall be at the disposal of the recipient of service	Taxable

Nature of Transaction	Taxability
Non – AC contract carriage taken as passenger transport service for specific journeys or voyages and does not take vehicle on rent for any particular period of time	Exempt

5. AMENDMENT IN SERVICES BY DEPARTMENT OF POST BY S A L E [NN 04/2022 CTR]

Amendment in Entry 6 of NN 12/2017 – CTR (Exemption Notification) [NN 4/2022 -CTR dated 13th July, 2022]

Services by the Central Government, State Government, Union territory or local authority excluding the following services:

- (i) ~~Services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory;~~
- (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
- (iii) transport of goods or passengers; or
- (iv) Any service, other than services covered under entries (a) to (c) above, provided to business entities.

are exempt

Amendment in Entry 7 of NN 12/2017 – CTR (Exemption Notification) [NN 4/2022 -CTR dated 13th July, 2022]

Services provided by the Central Government, State Government, Union territory or local authority to a business entity having turnover upto specified limit as is eligible for exemption from threshold in preceding financial year:

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

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(a) services, -

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

(b) services by way of renting of immovable property

Amendment in Entry 8 of NN 12/2017 – CTR (Exemption Notification) [NN 4/2022 -CTR dated 13th July, 2022]

Services provided by CG/SG/UT/LA to CG/SG/UT/LA except:

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

are exempt

Amendment in Entry 9 of NN 12/2017 – CTR (Exemption Notification) [NN 4/2022 -CTR dated 13th July, 2022]

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

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

are exempt.

Analysis:

- (a) Earlier only specific services by postal departments were taxable however, now all the postal services are taxable except few (as discussed below)
- (b) W.e.f. 18th July, services by the Department of Posts by way of post card, inland letter, book post and ordinary post (envelopes weighing less than 10 grams) are exempt.

6. REMOVAL OF EXEMPTION FOR HOTELS [NN 4/2022 -CTR dated 13th July, 2022]

~~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 one thousand rupees per day or equivalent are exempt.~~

Thus, now value of supply below 1,000/- will also be taxable

7. NORTH EASTERN STATES ECONOMY CLASS ONLY EXEMPT [NN 4/2022 -CTR dated 13th July, 2022]

Transport of passengers, with or without accompanied belongings, by –

- (a) Air **IN ECONOMY CLASS**, embarking from or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal;
- (b)
- (c)

Thus, now only economy class passengers will enjoy exemption for clause (a) as above.

8. REMOVAL OF EXEMPTION FOR RAILWAY EQUIPMENTS TRANSPORTED BY RAIL OR VESSEL ETC. [NN 4/2022 -CTR dated 13th July, 2022]

Services by way of transportation by **rail or a vessel** from one place in India to another of the following goods –

- (a) relief materials meant for victims of natural or man-made disasters, calamities, accidents, or mishap;
- (b) defence or military equipments;
- (c) newspaper or magazines registered with the Registrar of Newspapers;
- ~~(d) railway equipments or materials;~~
- (e) agricultural produce;
- (f) milk, salt, and food grain including flours, pulses, and rice; and
- (g) organic manure

are exempt.

9. REMOVAL OF EXEMPTION IN CERTAIN CASES WHEN TRANSPORTED BY GTA [NN 4/2022 -CTR dated 13th July, 2022]

Services by way of transportation by **Goods transport agency** from one place in India to another of the following goods –

- (a)
- ~~(b) goods, where consideration charged for the transportation of goods on a consignment transported in a single carriage does not exceed one thousand five hundred rupees;~~
- ~~(c) goods, where consideration charged for transportation of all such goods for a single consignee does not exceed rupees seven hundred and fifty.~~
- (d)
- (e)
- (f)
- (g)
- (h)

are exempt.

10. AMENDED CLAUSE 24B OF NN 12/2017 CTR [NN 4/2022 -CTR dated 13th July, 2022]

Amended clause 24B would read as “Services by way of storage or warehousing of cereals, pulses, fruits and vegetables are exempt”.

11. OMISSION OF CERTAIN EXEMPTIONS [NN 4/2022 -CTR dated 13th July, 2022]

Following services which were earlier exempt will now be taxable w.e.f. 18th July, 2022

- ❖ Services by the Reserve Bank of India
- ❖ Services provided by the Insurance Regulatory and Development Authority of India to insurers under the Insurance Regulatory and Development Authority of India Act, 1999 (41 of 1999).
- ❖ Services provided by the Securities and Exchange Board of India set up under the Securities and Exchange Board of India Act, 1992 (15 of 1992) by way of protecting the interests of investors in securities and to promote the development of, and to regulate, the securities market.

- ❖ Services by way of licensing, registration and analysis or testing of food samples supplied by the Food Safety and Standards Authority of India (FSSAI) to Food Business operators
- ❖ Services provided by the Goods and Services Tax Network to the Central Government or State Governments or Union territories for implementation of Goods and Services Tax
- ❖ Services by way of fumigation in a warehouse of agricultural produce (Consequently, entry no. 54(h) also deleted)
- ❖ Services by way of slaughtering of animals.
- ❖ Services provided by the cord blood banks by way of preservation of stem cells or any other service in relation to such preservation.
- ❖ Services provided by operators of the common bio -medical waste treatment facility to a clinical establishment by way of treatment or disposal of bio-medical waste or the processes incidental thereto

12. INSERTION OF NEW ENTRY [52A] [NN 4/2022 -CTR dated 13th July, 2022]

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

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

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

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

Illustrations:

- (a) A tour operator provides a tour operator service to a foreign tourist as follows: - (a) 3 days in India, 2 days in Nepal; Consideration Charged for the entire tour: Rs.1,00,000/- Exemption: Rs.40,000/- (=Rs.1,00,000 x 2/5) or, Rs.50,000/- (= 50% of Rs.1, 00, 000/-) whichever is less, i.e., Rs.40, 000/-(i.e., Taxable value: Rs.60, 000/-);
- (b) 2 days in India, 3 nights in Nepal; Consideration Charged for the entire tour: Rs.1,00,000/- Exemption: Rs.60,000(=Rs.1, 00, 000/- x 3/5) or, Rs.50, 000/- (= 50% of Rs.1,00,000/-) whichever is less, i.e., Rs.50, 000/- (i.e., Taxable value: Rs.50, 000/-);
- (c) 2.5 days in India, 3 days in Nepal; Consideration charged for the entire tour: Rs.1,00,000/- Exemption: Rs.54,545 (=Rs.1, 00, 000/- x 3/5.5) or, Rs.50, 000/- (= 50% of Rs.1,00,000/-) whichever is less, i.e., Rs.50,000/-(i.e., Taxable value: Rs.50, 000/-).

13. INSERTION OF PROVISIO IN HEALTH CARE SERVICES EXEMPTION [E. 74] [NN 4/2022 - CTR dated 13th July, 2022]

Services by way of health care services by a clinical establishment, an authorised medical practitioner or paramedics are exempt. However, exemption shall not be available to the services provided by a clinical establishment by way of providing room [other than Intensive Care Unit (ICU)/Critical Care Unit (CCU)/Intensive Cardiac Care Unit (ICCU)/Neo natal Intensive Care Unit (NICU)] having room charges exceeding Rs. 5000 per day to a person receiving health care services.

14. WORDINGS CLARIFIED FOR TRAINING OF COACHING SERVICES IN RECREATIONAL ACTIVITIES [NN 4/2022 -CTR dated 13th July, 2022]

Services by way of training or coaching in

- (a) recreational activities relating to arts or culture, by an individual, or
 - (b) sports by charitable entities registered under Section 12AA or 12AB of the Income Tax Act.
- are exempt.

15. FIFA WORLD CUP EXEMPTION EXTENDED [NN 4/2022 -CTR dated 13th July, 2022]

Services by way of right to admission to the events organised under FIFA U-17 Women's World Cup 2020 *whenever rescheduled (Newly inserted words)*

INPUT TAX CREDIT

1. INCREASE IN CONDITIONS TO AVAIL INPUT TAX CREDIT BY INSERTING CLAUSE (ba) [Section 100 of Finance Act, notified vide, NN 18/2022 – CT]

As per section 16(2) (ba) of CGST Act, if in GSTR-2B, if the ITC appears in Restricted category, the same cannot be availed by the registered person.

It is important to note that what will be shown in restricted category [S. 104 of Finance act]:

Details of supplies in respect of which such credit cannot be availed, whether wholly or partly, by the recipient, on account of the details of the said supplies being furnished under sub-section (1) of section 37 (Summarised form)

- (i) Inward supply is received from a supplier having new registration (upto the prescribed time period)
- (ii) Supplier has defaulted in payment of tax and the default has continued for the prescribed time period
- (iii) Tax paid in GSTR-3B Is lower than the output tax shown in GSTR-1 by the prescribed limit
- (iv) Inward supply is received from a supplier who has taken more ITC in GSTR-2B than in GSTR-3B by the prescribed limit
- (v) Supplier has paid higher proportion of taxes from his electronic credit ledger than what is allowed as per law
- (vi) Other Notified persons

In all the above cases, ITC cannot be availed by recipient even if it is shown in GSTR 2B

2. INCREASE IN TIME LIMIT TO AVAIL INPUT TAX CREDIT [S. 104(b) of Finance Act]

The time limit to avail input tax credit w.e.f. FY 2021-22 is,

- (a) 30th November of succeeding financial year or,
- (b) Actual Date of filing annual return;

whichever is earlier.

3. AMENDED RULE 37 OF CGST RULES [NOTIFICATION 19/2022 – CT dtd. 28th September, 2022]

- (1) A registered person, who has availed of input tax credit on any inward supply of goods or services or both, **other than the supplies on which tax is payable on reverse charge basis**, but fails to pay to the supplier thereof, the amount towards the value of such supply along with the tax payable thereon, within the time limit specified in the second proviso to sub-section (2) of section 16, shall pay an amount equal to the input tax credit availed in respect of such supply along with interest payable thereon under section 50, while furnishing the return in FORM GSTR-3B for the tax period immediately following the period of one hundred and eighty days from the date of the issue of the invoice:

However, value of supplies made without consideration as specified in **Schedule I** of the said Act shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.

Further, **additions in value of supplies u/s 15(2)(b)** of CGST Act, shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.

- (2) Where the said registered person subsequently makes the payment of the amount towards the value of such supply along with tax payable thereon to the supplier thereof, he shall be entitled to re-avail the input tax credit referred to in sub-rule (1).

Note: Government has purposely removed “PROPORTIONATELY” word from the earlier rule 37. Thus, now when part consideration is paid before 180 days and part is paid after 180 days, entire ITC has to be reversed w.e.f. 1st October, 2022. Government has been doing injustice with taxpayers by making such draconian provisions.

4. INPUT TAX CREDIT RELATED CLARIFICATIONS:

Obligatory for employer to provide to employee under any law: If employer is liable to provide to employee the below services, ITC will be allowed:

- ❖ Food & beverage, outdoor catering, beauty treatment, health services, cosmetic plastic surgery, **leasing of motor vehicle, renting of motor vehicle & hiring of motor vehicle** where ITC has not been allowed, life insurance
- ❖ Membership of a club, health and fitness centre; and
- ❖ Travel benefits extended to employees on vacation such as leave or home travel concession.

(Circular wants to clarify the obligatory condition is also extended to 2nd and 3rd bullet above)

5. COMPONENTS EXCLUDED IN CALCULATION OF “E” AS PER RULE 42 & 43 [Notification No. 14/2022 – CT dated 5th July, 2022]

In calculation of “E” i.e., exempt turnover for the purpose of reversal, we used to add few items and exclude few. In the said exclusion list the below has been added in turnover of exempt supplies: -

“The value of supply of Duty Credit Scrips”

In simple words, if a regd. person sells the duty scrips, it shall be excluded from exempt turnover for the purpose of reversal of ITC.

REGISTRATION UNDER GST

1. AMENDMENT IN WORDINGS FOR INELIGIBLE SUPPLIERS FOR 40 LAKH SCHEME: [Notification No. 15/2022-Central Tax dated 13th July, 2022]

By virtue of notification 10/2019, the supplier can avail 40 lakhs threshold benefit subject to certain exception. One such exception is supplier engaged in certain supplies. The below supplies are ineligible to enjoy threshold of Rs. 40 lakhs.

Sr. No.	Tariff item, sub heading, heading or Chapter	Description
1	21050000	Ice cream and other edible ice, whether or not containing cocoa
2	21069020	Pan masala
3	24	All goods, i.e., Tobacco and manufactured tobacco substitutes
4	6815	Fly ash bricks or fly ash aggregate with 90 per cent. or more fly ash content; Fly ash blocks Fly ash bricks; Fly ash aggregates; Fly ash blocks
5	6901 00 10	Bricks of fossil meals or similar siliceous earths
6	6904 10 00	Building bricks
7	6905 10 00	Earthen or roofing tiles

(Same amendment has been carried out in case of ineligible manufacturers in composition scheme vide Notification No. 16/2022-Central Tax dated 13th July, 2022)

2. INSERTION OF PROVISO IN RULE 21A (4) [Notification No. 14/2022 – CT dated 5th July, 2022]

As per rule 21 A (4) of CGST Rules, 2017, the suspension of registration under sub-rule (1) or sub-rule (2) or sub-rule (2A) shall be deemed to be revoked upon completion of the proceedings by the proper officer under rule 22 and such revocation shall be effective from the date on which the suspension had come into effect.

As per proviso 1, suspension of registration under this rule may be revoked by the proper officer, anytime during the pendency of the proceedings.

As per proviso 2 which is newly inserted, if registration has been suspended for non-filing of returns, the suspension shall be deemed to be revoked upon furnishing of all pending returns.

3. AMENDMENT IN SECTION 29 (CANCELLATION OF REGISTRATION)

As per section 29, proper officer can cancel the registration of a registered person in case of section 29(2). Amendments have been carried out in section 29(2)(b) & 29(2)(c)

- (b) A person paying tax under section 10 has not furnished ~~returns for 3 consecutive tax periods; or the return for a financial year beyond three months from the due date of furnishing the said return~~
- (c) Any registered person, other than a person specified in clause (b), has not furnished returns for a ~~continuous period of six months such continuous tax period as may be prescribed~~; or
- (d)
- (e)

4. PRESCRIBED CONTRAVENTIONS FOR CANCELLATION OF REGISTRATION [RULE 21]

GST registration of a regd. person shall be cancelled if it contravenes rule 21

- (a)
- (b)
- (c)
- (d)
- (e)
- (f)
- (g)
- (h) **being a registered person required to file GSTR 3B return for a continuous period of six months;**
- (i) **being a registered person required to file GSTR 3B under QRMP scheme has not furnished returns for a continuous period of two tax periods**

DOCUMENTATION, E – WAY BILL & E – INVOICING

1. TAX INVOICE TO CONTAIN DECLARATION FOR NON-ISSUANCE OF E – INVOICING [Notification No. 14/2022 – CT dated 5th July, 2022]

The person who are exempted from provisions of e – invoicing inspite of their aggregate turnover being more than Rs. 10 crores, shall put the declaration as below:

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

2. INCREASE IN COVERAGE OF E – INVOICING BY REDUCING LIMIT TO RS. 10 CRORES [Notification No. 17/2022 – Central Tax dated 1st August, 2022 w.e.f. 1st October, 2022]

A registered person (except specified class of persons), whose aggregate turnover in **any preceding financial year from 2017-18 onwards exceeds Rs. 10 crores (Amended vide Notification No. 17/2022 – Central Tax dated 1st August, 2022 w.e.f. 1st October, 2022)** has been notified as class of persons who shall prepare e-invoice in respect of:

- ❖ B2B supplies (supply of goods or services or both to a registered person) or,
- ❖ Exports of goods or services or both

3. TIME LIMIT TO ISSUE CREDIT NOTE [SECTION 102 of Finance Act]

Earlier the time limit to issue credit note was till September of succeeding financial year or till date of filing actual annual return whichever is earlier, however, instead of September, the same has been substituted till 30th November from FY 2022-23 onwards.

RETURNS UNDER GST

1. NOTIFIES TURNOVER LIMIT FOR GSTR – 9 (ANNUAL RETURN) FOR FY 2021-22 [Notification No. 10/2022 – CT dated 5th July, 2022]

The registered person whose aggregate turnover in the financial year 2021-22 is up to Rs. 2 crores rupees, is exempted from filing annual return for FY 2021-22.

2. TIME LIMIT TO RECTIFY INVOICES IN GSTR 1 OR GSTR 3B [SECTION 103 & SECTION 105 of Finance Act, 2022 respectively]

Time limit to rectify invoices was in the return for the month of September of succeeding financial year or date of actual annual return whichever is earlier. The time limit now would be:

- ❖ **30th November of succeeding financial year or,**
- ❖ Date of actual annual return

Whichever is earlier

3. GSTR – 1 of Succeeding month not allowed if previous month's GSTR – 1 is pending [SECTION 103 of Finance Act, 2022]

4. AMENDMENT IN DUE DATE TO FILE GSTR – 5 [SECTION 39(5) OF CGST ACT]

The due date to furnish GSTR 5 would be

- ❖ Within **20 13 days** from the end of the calendar month or
- ❖ within 7 days after the last day of the period of registration, whichever is earlier.

5. PRESCRIBING FIXED INSTALMENT METHOD & SELF ASSESSMENT METHOD OF PAYMENT OF TAX UNDER QRMP SCHEME IN SECTION 39

Section 105 of Finance Act prescribes the manner of payment of tax [not to be discussed]

6. RESTRICTION OF FILING GSTR 3B [SECTION 105 of FA, 2022]

A registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous tax periods or ***the details of outward supplies under sub-section (1) of section 37 for the said tax period has not been furnished by him.*** (Thus, if previous GSTR – 1 or GSTR 3B is not filed, you cannot file subsequent GSTR 3B)

7. RECTIFICATION OF DETAILS FURNISHED BY TAX COLLECTOR [S. 112 of Finance Act]

Time limit to rectify incorrect particulars furnished would be,

- ❖ **30th November of succeeding financial year or,**
- ❖ Date of actual annual statement

Whichever is earlier

8. OMISSION OF SECTION 42, 43, 43A

PAYMENT OF TAX

1. PAYMENT OF TAX RELATED CLARIFICATIONS [CIRCULAR NO. 172/04/2022-GST]

- ❖ Electronic credit ledger shall be utilised in manner as provided in section 49A read with rule 88A & 88B other than RCM restricted to rule 86B if applicable.
- ❖ Electronic credit ledger cannot be used for payment of erroneous refund sanctioned to the taxpayer, where such refund was sanctioned in cash.
- ❖ Electronic credit ledger cannot be used to make payment of interest, late fees, penalty
- ❖ Electronic cash ledger can be used to make payment of tax interest, late fees, penalty

2. TRANSFER OF ELECTRONIC CASH LEDGER BALANCES BETWEEN DISTINCT PERSONS [AMENDED S. 49(10)] [Section 110(c) of Finance Act, 2022 notified vide Notification No. 09/2022–Central Tax dated 5th July, 2022]

A registered person may transfer any amount of tax, interest, penalty, fee or any other amount available in the **ELECTRONIC CASH LEDGER** under this Act, to the electronic cash ledger for, -

- (a) IGST, CGST, SGST, UTGST or Cess, central tax, State tax, Union territory tax or cess; or *[Note: Earlier rule 87(13) has been introduced for transfer of cash ledger balances to any minor head of major head. The said rule has been now given backup by section 49(10) of CGST Act]*
- (b) Integrated tax or central tax of a distinct person, and such transfer shall be deemed to be a refund from the electronic cash ledger under this Act. *(Newly inserted Rule 87(14) vide NN 14/2022 – Central Tax)*

However, no such transfer under clause (b) shall be allowed if the said registered person has any unpaid liability in his electronic liability register.

3. NEW MODES OF PAYMENT INTRODUCED FOR PAYMENT OF TAX

In continuation to NEFT, RTGS & Net banking modes of payment, now Unified Payment Interface (UPI) from any bank; Immediate Payment Services (IMPS) from any bank have been introduced.

4. INTEREST @ 24% NOTIFIED IN CASE OF ITC WRONGLY AVAILED & UTILISED [Section 111 of Finance Act, 2022 notified vide Notification No. 09/2022–Central Tax dated 1st July, 2017 read with Rule 88B inserted vide NN 14/2022 – CT].

In section 50 of the CGST Act, for section 50(3), the following shall be substituted and shall be deemed to have been substituted with effect from the 1st day of July, 2017, namely:

Where the **INPUT TAX CREDIT HAS BEEN WRONGLY AVAILED AND UTILISED**, the registered person shall pay interest on such input tax credit wrongly availed and utilised, at rate not exceeding 24%.

(Please note that only incorrect availment of ITC does not attract interest, incorrect availment AND UTILISATION shall attract interest)

Case	Base Amount, Period & Rate of interest
Delayed furnishing of GSTR 3B, consequently late payment of tax	On the portion of tax which is paid by debiting the electronic cash ledger, for the period of delay in filing the said return beyond the due date @ 18% p.a.
Other cases	On the amount of tax which remains unpaid, for the period starting from the date on which such tax was due to be paid till the date such tax is paid @ 18% p.a.
Incorrect availment & utilisation of input tax credit	On the amount of input tax credit wrongly availed and utilised, for the period starting from the date of utilisation of such wrongly availed input tax credit till the date of reversal of such credit or payment of tax @ 24% p.a.

Notes:

- ❖ **Input tax credit wrongly availed shall be construed to have been utilised**, when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, and the extent of such utilisation of input tax credit shall be the amount by which the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed.

❖ **For example:**

Month	Opening Balance	Eligible ITC	Incorrect ITC	Total ITC	O/P Tax liability	Closing Balance	Amount on which Interest is applicable
April	-	3,60,000	40,000	4,00,000	3,50,000	50,000	0 [As closing balance is more than incorrect availment]
May	50,000	2,50,000	-	3,00,000	2,80,000	20,000	20,000 [Electronic credit ledger balance i.e., 20,000 falls below Incorrect ITC 40,000 by Rs. 20,000. Thus, 20,000 is deemed to be utilised]
June	20,000	1,80,000	-	2,00,000	1,95,000	5,000	15,000 [Balance incorrect ITC was Rs. 20,000; however, electronic credit ledger balance was Rs. 5,000, Thus, interest would be levied on 15,000]
July	5,000	1,90,000	-	195,000	2,10,000	-	5,000 [Since credit ledger balance is 0, entire ITC has been utilised for payment of tax, thus, balance incorrect ITC would be liable to interest]

Interest would be levied from the date of utilisation of such wrongly availed input tax credit till the date of reversal of such credit or payment of tax @ 24% p.a.

Date of utilisation of ITC would be as below:

- ❖ **If Tax is paid through return (3B):** Due date to file 3B or actual filing date whichever is earlier
- ❖ **If Tax is paid through other means (DRC 03):** the date of debit in the electronic credit ledger when the balance in the electronic credit ledger.

5. SUBSTITUTION OF SECTION 41 WITH NEW SECTION 41:

- (i) **Person can avail ITC on self-assessment basis:** Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to avail the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger.
- (ii) **Reversal of ITC on non-payment by supplier:** ITC availed by a registered person in respect of such supplies of goods or services or both, the tax payable whereon has not been paid by the supplier, shall be reversed along with applicable interest, by the said person in such manner as may be prescribed:

However, where the said supplier makes payment of the tax, the said registered person may re-avail the amount of credit reversed.

REFUND UNDER GST

1. REFUND RELATED AMENDMENTS [DEEMED EXPORTS]

Particulars	Description
ITC to recipient of deemed export supplies is subjected to provisions of section 17?	While claiming refund, ITC has to be debited through electronic credit ledger, thus, recipients of deemed exports have been allowed to take ITC only for enabling them to claim such refunds on the portal. Therefore, the ITC so availed by the recipient of deemed export supplies would not be subjected to provisions of Section 17 of the CGST Act, 2017.
Whether ITC availed by recipient of deemed export has to be added in Net ITC?	The ITC of tax paid on deemed export supplies, allowed to the recipients for claiming refund of such tax paid, is not ITC in terms of the provisions of Chapter V of the CGST Act, 2017. Thus, it is not to be added in Net ITC.

2. INVERTED DUTY STRUCTURE – REFUND [CIRCULAR NO. 173/05/2022-GST]

In cases where goods are purchased under normal rate, but sold under concessional rate under any notification, in such cases, refund of unutilised ITC can be claimed under inverted duty structure. Accordingly, para 3.2 of the Circular No. 135/05/2020-GST has been modified to that extent.

3. RECREDIT OF ERRONEOUS REFUND CLAIMED INTO E – CREDIT LEDGER ON DEPOSIT OF CASH BY REGD. PERSON BY DRC 03 [Circular No. 174/06/2022 – GST, Newly Inserted Rule No. 86(4B) of CGST Rules, 2017 notified vide Notification 14/2022 – CT]

On claiming of refund, we debit electronic credit ledger and the refund is received in the bank account of the regd. person. However, if it is found that erroneous refund has been granted to the regd. person. He

shall deposit the amount of erroneous refund along with applicable interest and penalty, wherever applicable, through FORM GST DRC-03 by debit of amount from electronic cash ledger.

Proper officer shall re-credit an amount in electronic 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 of erroneous refund amount so deposited or
- ❖ The date of payment of full amount of erroneous refund along with applicable interest, and penalty, wherever applicable,

whichever is later.

4. OMISSION OF RULE 95A & CIRCULARS THEREON [CIRCULAR NO. 176/08/2022-GST]

Certain clarifications were given in relation to rule 95A, inserted in the Central Goods and Services Tax Rules, 2017 w.e.f. 01.07.2019, for refund of taxes paid on inward supply of indigenous goods by retail outlets established at departure area of the international airport beyond immigration counters when supplied to outgoing international tourist against foreign exchange.

The said rule 95A has been omitted, retrospectively w.e.f. 01.07.2019, vide notification No. 14/2022-Central Tax, dated 05.07.2022. Accordingly, Circular No 106/25/2019-GST dated 29th June, 2019 has been withdrawn retrospectively.

5. MEANING OF ZERO-RATED TURNOVER OF GOODS [NN 14/2022]

For the purpose of Rule 89(4), zero rated turnover of goods i.e., the value of goods exported out of India shall be taken as –

- (i) the Free on Board (FOB) value declared in the Shipping Bill or Bill of Export form or
- (ii) the value declared in tax invoice or bill of supply,

whichever is less.

The answer derived above shall be compared with 1.5 times of price of domestic supply and then lower shall be taken for the purpose of refund.

6. VARIOUS AMENDMENTS IN RULE 96 [REFUND OF IGST WITH PAYMENT OF TAX]

Rule 96(b): Filing of 3B must for refund claim:

Old R. 96 (b): ~~the applicant has furnished a valid return in FORM GSTR-3or FORM GSTR-3B, as the case may be~~

Newly Inserted R. 96(b) (Summarised):

The applicant has furnished a valid return in FORM GSTR-3B. However, if there is any mismatch between Shipping Bill and FORM GSTR-1, such application for refund shall be deemed to be filed on such date when such mismatch in respect of the said shipping bill is rectified by the exporter.

With-holding of refund claim [R. 96(4) insertion of clause (c)]:

The claim for refund shall be withheld when, -

1. a request has been received from the jurisdictional Commissioner of central tax, State tax or Union territory tax to withhold the payment of refund due to the person claiming refund in accordance with the provisions of sub-section (10) or sub-section (11) of section 54; or
2. the proper officer of Customs determines that the goods were exported in violation of the provisions of the Customs Act, 1962 **or,**
3. ***the Commissioner in the Board or an officer authorised by the Board, on the basis of data analysis and risk parameters, is of the opinion that verification of credentials of the exporter, including the availment of ITC by the exporter, is considered essential before grant of refund, in order to safeguard the interest of revenue.***

Omission of Rule 96(5):

~~Where refund is withheld in accordance with the provisions of clause (a) of sub-rule (4), the proper officer of integrated tax at the Customs station shall intimate the applicant and the jurisdictional Commissioner of central tax, State tax or Union territory tax, as the case may be, and a copy of such intimation shall be transmitted to the common portal~~

Insertion of Rule 96(5A) & (5B)

When refund is withheld under rule 96(4)(a) & (c) or, when refund is withheld under rule 96(4)(b) and customs officer passes order that goods have been exported in violation of law then, such claim shall be transmitted to the proper officer of Central tax, State tax or Union territory tax, as in system generated FORM GST RFD-01 and the intimation of such transmission shall also be sent to the exporter electronically through the common portal.

The said system generated form shall be deemed to be the application for refund in such cases and shall be deemed to have been filed on the date of such transmission.

The application for refund in FORM GST RFD-01 transmitted electronically through the common portal in terms of sub-rules (5A) and (5B) shall be dealt in accordance with the provisions of rule 89 [Rule 96(5C)]

7. TIME LIMIT TO APPLY FOR REFUND BY SPECIALISED AGENCY OF UN ORGANISATION [S. 113 of Finance Act]:

Such persons may make an application for such refund, in such form and manner as may be prescribed, before the expiry of ~~six months~~ **2 years** from the last day of the quarter in which such supply was received.

8. EXTENDING SCOPE OF WITH-HOLDING OF REFUND [S. 113 of Finance Act]:

In section 54(10) which states refund can be with-held in case of refund of unutilised ITC u/s 54(3)., however, now, words 54(3) have been deleted, which will have effect that, refund can be withheld in all circumstances if required.

9. NOTIFYING RELEVANT DATE IN CASE OF REFUND BY SUPPLIER IN CASE OF SUPPLIES TO SEZ [S. 113 of Finance Act]:

In case of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit where a refund of tax paid is available in respect of such supplies themselves, or as the case may be, the inputs or input services used in such supplies, **the due date for furnishing of return under section 39 in respect of such supplies.**

DEMAND & RECOVERY

1. DEMAND AND RECOVERY [CIRCULAR NO. 171/03/2022-GST]

Transaction	Penal consequences
“A” issued invoice on “B” without supply of goods	<p>Since “A” has issued invoice without supply of goods/services, the same shall not be treated as “supply.” Thus, no tax liability is arising for “A”.</p> <p>Accordingly,</p> <ul style="list-style-type: none"> ❖ No demand and recovery against ‘A’ under the provisions of S. 73 or S. 74 of CGST Act in respect of the same. ❖ No penal action under the provisions of section 73 or section 74 is required to be taken against ‘A’ in respect of the said transaction. <p>However, be liable for penal action under section 122 (1)(ii) of the CGST Act for issuing tax invoices without actual supply of goods or services or both.</p>
“B” avails and utilises ITC passed on by “A”	<ul style="list-style-type: none"> ❖ Since the registered person ‘B’ has availed and utilized fraudulent ITC on the basis of the said tax invoice, without receiving the goods or services or both, in contravention of the provisions of section 16(2)(b) of CGST Act, he shall be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 74 of the CGST Act with interest u/s 50. ❖ No penalty u/s 122 (as penalty can be levied in any one of the sections)
“B” avails and utilised ITC passed on by “A” and issues invoice on “C” without supply of goods.	<ul style="list-style-type: none"> ❖ Since “B” availed incorrect ITC and has paid tax liability on a transaction which was not a “supply.” ❖ No demand and recovery of either input tax credit wrongly/ fraudulently availed by ‘B’ in such case or tax liability in respect of the said outward transaction. ❖ “B” shall be liable for penal action both under section 122 (1) (ii) and section 122(1) (vii)

Any person who has retained the benefit of transactions specified under sub-section (1A) of section 122 of CGST Act, and at whose instance such transactions are conducted, shall also be liable for penal action under the provisions of the said sub-section. It may also be noted that in such cases of wrongful/ fraudulent availment or utilization of input tax credit, or in cases of issuance of invoices without supply of goods or services or both, leading to wrongful availment or utilization of input tax credit or refund of tax, provisions of section 132 of the CGST Act may also be invocable, subject to conditions specified therein, based on facts and circumstances of each case.
