

# GST Amendments for Nov'22

## ◆ Ch 2:- Supply under GST

### 1) Supply between any person, other than an individual, and its members/constituents for consideration included in scope of supply:- [Section 7 and Schedule II]

A) The following Para 7 of Schedule II of CGST Act, 2017 has been **DELETED** retrospectively with effect from 01.07.2017, through Finance Act'21:-

~~Supply of goods BY an “unincorporated association or body of persons” TO a member thereof FOR cash, deferred payment or other valuable consideration is considered to be a **Supply of GOODS**.~~

B) A new clause (aa) has been inserted in sub-section (1) of section 7 to include the following activity/transaction within the scope of “Supply” RETROSPECTIVELY with effect from 01.07.2017:-

Activities or transactions, **BY** a “person, OTHER THAN an individual”, **TO** its members or constituents **OR** vice-versa, for cash, deferred payment or other valuable consideration.

Further, an EXPLANATION is also being inserted to section 7(1)(aa), to clarify that the “person/ its members/ constituents” shall be **DEEMED** to be two SEPARATE persons and the supply of activities/ transactions INTER SE shall be DEEMED to take place from one person to another. This explanation prevents the use of doctrine of mutuality by such person(s) to avoid GST liability.

C) The above amendment puts an end to the ambiguity whether activities or transactions involving supply of goods OR SERVICES, by any person, other than an individual, to its members or vice-versa fall within the purview of “Supply” or not. The amendment brings the certainty that said activities or transactions are covered within the scope of supply under GST and ensures the leviability of GST on such activities or transactions.

The above amendment, in effect, overrules the judgment of the Hon'ble Supreme Court in State of West Bengal v. Calcutta Club Limited wherein it was held that between a Club and its members CANNOT be taxed owing to the Doctrine of Mutuality, i.e., a person cannot make a profit from himself.

## ◆ Ch 3:- Charge of GST

### 1) Amendments in the Goods, supply of which makes you ineligible for certain benefits:-

A) As per Section 10, **MANUFACTURE**<sup>(not Trading)</sup> of any of the below-mentioned items makes you INELIGIBLE to avail the benefit of Composition Scheme. The newly added items with effect from 01/04/2022, vide Notification No. 04/2022 CT dated 31.03.2022, have been mentioned below in Red :-

- i) Ice cream and other edible ice, whether or not containing cocoa;
- ii) Pan Masala;
- iii) All goods i.e. Tobacco and manufactured tobacco substitutes;
- iv) Aerated water;
- v) **Fly ash bricks or fly ash aggregate with 90% or more fly ash content; Fly ash blocks;**
- vi) **Bricks of fossil meals or similar siliceous earths;**
- vii) **Building bricks;**

viii) **Earthen or roofing tiles**

B) As per Section 22, the 40 Lacs threshold exemption from Registration is **NOT** available to a **SUPPLIER** (including Traders) of ANY of the below-mentioned items. The newly added items with effect from 01/04/2022, vide Notification No. 03/2022 CT dated 31.03.2022, have been mentioned below in Red:-

- i) Ice cream and other edible ice, whether or not containing cocoa;
- ii) Pan Masala;
- iii) All goods i.e. Tobacco and manufactured tobacco substitutes;
- iv) ~~Aerated water;~~
- v) **Fly ash bricks or fly ash aggregate with 90% or more fly ash content; Fly ash blocks;**
- vi) **Bricks of fossil meals or similar siliceous earths;**
- vii) **Building bricks;**
- viii) **Earthen or roofing tiles**

## ◆ Ch 4:- Exemptions from GST

### 1) Amendments in the Goods, supply of which makes you ineligible for certain benefits:-

Notification no. 12/2017 CT(R) dated 28.06.2017 provides list of SERVICES exempted from CGST. With effect from 01.10.2021, through multiple notifications, the said list of exempted services has been AMENDED as follows:-

#### A) Amendment in the EXISTING exemptions:-

i) Entry 3:- (Amendment is highlighted in Red)

**PURE** services (EXCLUDING “works contract service OR other composite supplies involving supply of any GOODS”) provided **TO** the “CG/SG/UT/LA ~~OR Governmental authority OR Government Entity~~” BY WAY OF:-

- a) **Any** activity IN RELATION TO any function entrusted to a PANCHAYAT under article 243G of the Constitution; OR
- b) **Any** activity IN RELATION TO any function entrusted to a MUNICIPALITY under article 243W of the Constitution.

Note:- A “Pure Service” MEANS supply of services WITHOUT involving any supply of GOODS.

ii) Entry 3A:- (Amendment is highlighted in Red)

**COMPOSITE** supply of goods and services in which the “Value of supply of GOODS” constitutes NOT MORE THAN 25% of the value of the said COMPOSITE Supply provided **TO** the CG/SG/UT/LA ~~OR Governmental authority OR Government Entity~~ BY WAY OF:-

- a) **Any** activity IN RELATION TO any function entrusted to a PANCHAYAT under article 243G of the Constitution; OR
- b) **Any** activity IN RELATION TO any function entrusted to a MUNICIPALITY under article 243W of the Constitution.

iii) Entry 15:- (Amendment is highlighted in Red)

Transport of passengers, with/ without accompanied belongings, by:-

- a) Air, embarking from or terminating in an Airport LOCATED IN the “State of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura<sup>(i.e. North-East States)</sup>” or at “Bagdogra located in West Bengal”;
- b) “Non-AC contract carriage OTHER THAN radio taxi”, FOR transportation of passengers, EXCLUDING “tourism, conducted tour<sup>(As per dictionary, conducted tour is a SHORT visit to a place in which someone shows you around and tells you information about it)</sup>, charter or hire”; OR
- c) Stage carriage OTHER THAN Air-conditioned stage carriage.

Note:-

- > However, nothing contained in items (b) and (c) above shall apply to services supplied **THROUGH** an Electronic Commerce Operator (ECO), AND **NOTIFIED** under section 9(5) of the CGST, 2017.
- > The term “Contract Carriage” MEANS a motor vehicle which carries a passenger or passengers for hire or reward AND is engaged under a Contract, whether expressed or implied, FOR the use of such vehicle AS A WHOLE for the carriage of passengers mentioned therein and ENTERED INTO BY a “person with a holder of a permit in relation to such vehicle OR any person authorised by him in this behalf” ON a fixed or an agreed rate or sum:-
  - on a TIME basis, whether or not with reference to any route or distance; or
  - FROM one point TO another, and in either case, **WITHOUT** stopping to pick up or set down “passengers NOT INCLUDED in the contract” ANYWHERE during the journey.

“Contract Carriage” INCLUDES:-

- ⊃ a maxicab; AND
- ⊃ a motor cab NOTWITHSTANDING that SEPARATE fares are charged for its passengers [Section 2(7) of Motor Vehicles Act, 1988].
- > Further, “Radio Taxi” MEANS a taxi including a radio cab, by whatever name called, which “is in two-way radio communication with a central control office” AND “is enabled for tracking using the Global Positioning System or General Packet Radio Service(GPRS)”.
- > The term “Stage Carriage” MEANS a motor vehicle constructed or adapted to carry “**MORE THAN 6** passengers EXCLUDING the driver” FOR hire or reward at **SEPARATE FARES** paid by or for individual passengers, EITHER for the whole journey OR for stages of the journey [Section 2(40) of the Motor Vehicles Act, 1988].

iv) Entry 17:- (Amendment is highlighted in Red)

Service of transportation of PASSENGERS, with or without accompanied belongings, BY:-

- a) Railways in a class OTHER THAN—
- > First class; or
  - > an Air-conditioned coach;
- b) Metro, monorail or tramway;
- c) Inland waterways;
- d) Public transport, OTHER THAN predominantly for tourism purpose, in a VESSEL between places located IN INDIA; and

e) Metered cabs or auto rickshaws (INCLUDING e-rickshaws).

Note:-

- > However, nothing contained in item (e) above shall apply to services supplied **THROUGH** an Electronic Commerce Operator (ECO), AND **NOTIFIED** under section 9(5) of the CGST, 2017.
- > The term “Metered Cab” MEANS any Contract Carriage on which an “AUTOMATIC device, of the type and make approved under the relevant rules by the State Transport Authority”, is fitted which indicates reading of the FARE CHARGEABLE at any moment and that is charged accordingly under the conditions of its permit issued under the Motor Vehicles Act, 1988 and the rules made thereunder. However, “Metered Cab” does NOT include “Radio Taxi.
- > The term “E-rickshaw” MEANS a “special purpose battery powered vehicle” of power NOT EXCEEDING 4000 watts, having **THREE WHEELS** for carrying goods or passengers, as the case may be, for hire or reward, which is manufactured, constructed or adapted, equipped and maintained in accordance with such specifications, as may be prescribed in this behalf.
- > To qualify for exemption under THIS entry, the “Public Transport” BY a vessel between places located in India should NOT be predominantly for tourism purposes.

Normal “public ships or other vessels that sail between places located IN INDIA would be covered in THIS entry even if **SOME** of the passengers on board are using the service FOR TOURISM because PREDOMINANTLY, such service is NOT for tourism purpose.

However, services provided BY leisure/charter vessels/a cruise ship, PREDOMINANT purpose of which is tourism, would NOT be covered in here even if **SOME** of the passengers in such vessels are NOT tourists.

- > Entry 6<sup>(discussed above)</sup> specifically EXCLUDES the transport of passengers’ services provided BY the Government or local authority from its purview, which implies that said services are liable to GST.

However, services of transportation of passengers specified in Entries 15, 16 and 17 mentioned above are EXEMPT from GST (whether provided BY Government or otherwise).

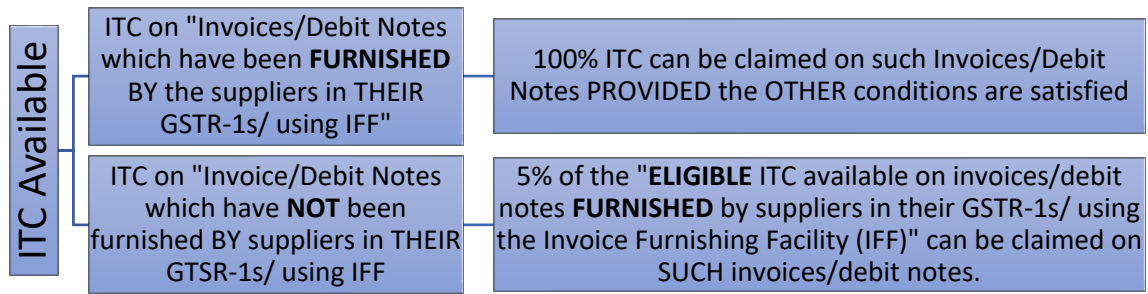
## ◆ **Ch 6:- Input Tax Credit**

### 1) **Availment of ITC u/s 16(2) read with Rule 36(4):-**

A) **OLD Provisions** which were effective **TILL 01/01/2022** are stated below:-

Restricted ITC on invoices/debit notes not furnished by supplier in his GSTR-1:- [Rule 36(4) read with Circular No. 123/42/2019 GST]

It is observed that **SOME** taxpayers take inflated or bogus ITC, **EVEN IF** proper tax invoices or debit notes i.r.o. inputs or input services are NOT available. To exercise control over the malpractice of availing bogus ITC by the taxpayers, certain restrictions have been placed on **AVAILMENT** of ITC. ITC can be availed as follows:-



**Note:-**

- i) In other words, the "ITC claimed" should NOT EXCEED "105% of ITC reflecting in **GSTR-2B**<sup>(not GSTR 2A)</sup>" ON the "DUE DATE of filing of GSTR-1 of the SUPPLIERS" FOR the said tax period.
  - ii) The taxpayer has to avail the ITC on SELF-Assessment basis as the restriction is NOT imposed through the common portal.
  - iii) The **BALANCE** ITC may be claimed by the taxpayer in "ANY of the SUCCEEDING months" PROVIDED "details of requisite invoices are furnished by the SUPPLIERS<sup>(in their GSTR 1/ IFF)</sup>". He can claim PROPORTIONATE ITC **as and when** details of SOME invoices are furnished by the suppliers.
  - iv) "**RESTRICTED** amount of ITC<sup>(i.e. 5% of Eligible ITC)</sup>" claimed on invoices/debit notes **NOT** furnished by suppliers in their GSTR-1s" should **NOT EXCEED** the "**ACTUAL ELIGIBLE** ITC available i.r.o. the invoices **NOT** furnished.
  - v) "Invoices on which ITC is NOT AVAILABLE under any of the provisions <sup>[like under section 17(5)]</sup>" are NOT to be considered **FOR** calculation of "5% of the ELIGIBLE credit available".
  - vi) **FULL** ITC can be availed in respect of "IGST paid on **IMPORTS**" OR "Documents issued under **REVERSE** Charge" OR "Credit received from **ISD**" etc., which are OUTSIDE the ambit of Section 37(1).
  - vii) "**RESTRICTED** ITC <sup>(i.e.5%)</sup>" is calculated on a CONSOLIDATED basis on "TOTAL eligible ITC from **ALL** Suppliers" AGAINST "ALL supplies whose details have been FURNISHED by the suppliers".
- B) NEW Provisions** which have become effective FROM 01/01/2022, vide Notification No. 40/2021 CT dated 29.12.2021, are stated below:-
- i) With effect from 01.01.2022, a new clause (aa) has been added to section 16(2) by the Finance Act, 2021 to stipulate following NEW condition for availment of ITC that Input Tax Credit in respect of ANY supply of goods or services or both is available to a registered person ONLY IF:-
    - a) the "details of the invoice/debit note in respect of SAID supply" has been furnished by the supplier IN the "statement of outward supplies (GSTR-1)"; AND
    - b) such details have been COMMUNICATED to the "RECIPIENT of such invoice/debit note" IN the manner specified under section 37.
  - ii) Consequently, rule 36(4) has been substituted to give effect to aforesaid amendment. Substituted rule 36(4) reads as follows:-
 

No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are REQUIRED to be furnished under section 37(1) **unless**:-

    - a) the details of SUCH invoices or debit notes have been furnished by the supplier in the "statement of outward supplies in Form GSTR-1" **OR** using the "invoice furnishing facility (IFF)"; AND

- b) the details of SUCH invoices or debit notes have been COMMUNICATED to the registered person in **Form GSTR-2B** under rule 60(7).
- iii) Thus, ITC can now be taken ONLY FOR those invoices whose details are REFLECTED in GSTR-2B i.e the respective suppliers (vendors) have filed the details of such invoices their GSTR-1.

## ◆ **Ch 7:- Registration**

### 1) **Aadhaar authentication mandatory for registered person:-** [New rule 10B effective from 01.01.2022]

- A) Lately Aadhaar Authentication has been made **MANDATORY** for the “new registrants” as well as for the “existing registrants”. Section 25(6A) stipulates that EVERY registered person shall “undergo authentication”, OR “furnish proof of possession of Aadhaar number, in the **PRESCRIBED** manner, form and time”.

Rule 10B prescribes the manner in which Aadhaar Authentication needs to be done by a registered person.

- B) The registered person, who has been ISSUED a “certificate of registration under GST”, shall undergo authentication of the Aadhaar number OF:-
  - i) EITHER of the following, as the case maybe:-
    - a) Proprietor, in the case of proprietorship firm;
    - b) ANY partner, in the case of a partnership firm;
    - c) Karta, in the case of a Hindu undivided family;
    - d) “Managing director” or “ANY whole-time director”, in the case of a company;
    - e) ANY of the Members of the Managing Committee of an “Association of persons or body of individuals or a Society”;
    - f) Trustee in the Board of Trustees, in the case of a Trust; AND
  - ii) the Authorized Signatory,
- C) Only AFTER Aadhaar Authentication of above-mentioned persons, the taxpayer becomes ELIGIBLE for the following purposes:-
  - a) for filing of Application for REVOCATION of “cancellation of registration”;
  - b) for filing of REFUND application in Form RFD-01 (form for claiming a refund of GST for several types of refunds like inverted duty structure, zero rated supplies etc.),
  - c) for REFUND of the IGST paid on goods EXPORTED out of India.

**Note:-** CONSEQUENTIAL amendments by virtue of insertion of rule 10B have been made in rule 23(1) (revocation of cancellation of registration), in rule 89(1) (application for refund of tax, interest, penalty, fees or any other amount), and in rule 96(1) (refund of integrated tax paid on goods or services exported out of India).

- D) First proviso to section 25(6A) provides that **IF** an Aadhaar number is NOT ASSIGNED to an “EXISTING registered person”, SUCH person shall be offered Alternate and Viable means of identification in the PRESCRIBED manner. Such manner has been prescribed by Rule 10B as follows:-

If Aadhaar number has NOT been assigned to the person required to undergo authentication of the Aadhaar number, such person SHALL furnish the following identification documents, **NAMELY:-**

- i) her/his Aadhaar Enrolment ID slip; AND
- ii) EITHER of the following:-
  - a) Bank passbook with photograph;
  - b) Voter identity card issued by the Election Commission of India;
  - c) Passport; OR
  - d) Driving license issued by the Licensing Authority.

Also, SUCH person shall undergo the AUTHENTICATION of Aadhaar number **WITHIN** a period of 30 days of the **ALLOTMENT** of the Aadhaar number.

E) The afore-said rule 10B shall NOT be applicable to persons NOTIFIED under section 25(6D) of the CGST Act i.e. to persons EXEMPT from Aadhaar Authentication.

## ◆ Ch 8:- Documents issued under GST

### 1) **E-invoicing Limit:-** [Notification No. 01/2022 CT dated 24.02.2022]

All registered businesses with an “Aggregate Turnover<sup>(based on PAN)</sup>” in **ANY** preceding FY **from** 2017-18 onwards GREATER THAN Rs. 500 crore were required to MANDATORILY issue e-invoices for all B2B invoices with effect from 1st October, 2020. Since then, the threshold limit for issuing the e-invoices has been progressively REDUCED.

With effect from 01.04.2022, such limit has been FURTHER REDUCED to Rs. 20 crore. Thus, e-invoicing has been made MANDATORY for all registered businesses with an “Aggregate Turnover” in **ANY** PRECEDING FY **from** 2017-18 onwards GREATER THAN Rs. 20 crore.

### 2) **Clarification in respect of applicability of Dynamic Quick Response (QR) code:-**

**All** B2C<sup>(not B2B)</sup> invoices issued BY a registered person whose “Aggregate Turnover” in **ANY** preceding FY **from** 2017-18 onwards EXCEEDS Rs. 500 crores are MANDATORILY required to have a Dynamic QR code from December 1, 2020 vide Notification No. 14/2020 CT dated 21.03.2020.

Also, it shall be noted that Dynamic QR Code requirement is NOT there in case of Exports or B2B Supplies.

In this regard, Circular no. 156/12/2021 GST dated 21.06.2021 and Circular No. 165/21/2021 GST dated 17.11.2021 have CLARIFIED that:-

#### A) Whether Dynamic QR Code is required to be provided **ON** an invoice, issued **TO** a “person, who has obtained a UIN”?

Any person, who has obtained a Unique Identity Number (UIN), is NOT a “registered person” as per the definition of “registered person” provided in section 2(94). Therefore, any invoice, issued to such person having a UIN, shall be CONSIDERED AS invoice issued for a B2C<sup>(not B2B)</sup> supply and shall be REQUIRED TO COMPLY with the requirement of Dynamic QR Code.

B) In cases, where an invoice is issued **TO** a “recipient located OUTSIDE India”, **FOR** supply of services, for which the “Place of Supply” is **IN** India, as per the provisions of the IGST Act, AND the payment is received by the supplier, IN convertible FOREX or in Indian Rupees wherever permitted by the RBI (SUCH supply of services is NOT considered as EXPORT of services as per the IGST Act), such invoice MAY BE issued **WITHOUT** having a Dynamic QR Code, AS such dynamic QR code cannot be used by the recipient located outside India for making payment to the supplier.



## ◆ Ch 9:- Payment of Tax

### 1) Guidelines for disallowing debit of electronic credit ledger under rule 86A:-

- A) CBIC has issued **GUIDELINES** for disallowing “DEBIT of an amount from Electronic CREDIT Ledger under rule 86A (i.e. Blocking UTILIZATION of ITC)”.
- B) Rule 86A provides that in certain specified circumstances, “Commissioner” or an “officer authorised by him”, on the basis of REASONABLE BELIEF that ITC available in the electronic credit ledger has been “fraudulently availed **OR** is ineligible”, may NOT allow DEBIT of an amount equivalent to SUCH credit in “Electronic CREDIT Ledger”.
- C) On perusal of Rule 86A, it is EVIDENT that “Commissioner”, or an “officer authorised by him, NOT BELOW the rank of Assistant Commissioner”, **MUST** have "reasons to believe" that ITC available in the electronic credit ledger is either “ineligible **OR** has been fraudulently availed by the registered person”, BEFORE disallowing the DEBIT of amount from electronic credit ledger of the said registered person under rule 86A.
- D) **GROUND**S for disallowing debit of an amount from electronic credit ledger:-  
The reasons for such belief **MUST BE** based on one or more FOLLOWING grounds:-
- i) The “registered person claiming the credit<sup>(i.e. Recipient)</sup>” is found to be non-existent OR is found not to be conducting any business from the place declared in registration;
  - ii) The credit is availed by the registered person WITHOUT having any “invoice or debit note or any other valid document” for it.
  - iii) The credit is availed by the registered person ON the invoices or debit notes issued BY a “supplier, who is found to be non-existent OR is found not to be conducting any business from the place declared in registration”;
  - iv) The credit is availed by the registered person ON invoices or debit notes, WITHOUT actually receiving any goods or services or both; OR
  - v) The credit is availed by the registered person ON invoices or debit notes, the tax in respect of which has NOT been paid TO the government<sup>(not Supplier)</sup>;