PAPER 5: INDIRECT TAX LAWS

STATUTORY UPDATE FOR MAY 2024 EXAMINATION

For the sake of brevity, Central Goods and Services Tax, Integrated Goods and Services Tax, Central Goods and Services Tax Act, 2017, Integrated Goods and Services Tax Act, 2017, Central Goods and Services Tax Rules, 2017 and Integrated Goods and Services Tax Rules, 2017 have been referred to as CGST, IGST, CGST Act, IGST Act, CGST Rules and IGST Rules respectively.

The following are applicable for May 2024 examination:

(i) The provisions of the CGST Act, 2017 and IGST Act, 2017 as amended by the Finance Act, 2023 including significant notifications and circulars issued and other legislative amendments made, which have become effective up to 31.10.2023.

(ii) The provisions of the Customs Act, 1962 and the Customs Tariff Act, 1975, as amended by the Finance Act, 2023, including significant notifications and circulars issued and other legislative amendments made, which have become effective up to 31.10.2023.

Note - *The amendments made by the Annual Union Finance Acts in the CGST Act, 2017, the IGST Act, 2017, the Customs Act, 1962 and the Customs Tariff Act, 1975 are made effective from the date notified subsequently. Only those amendments made by the relevant Finance Acts which have become effective till 31.10.2023 are applicable for May 2024 examination. Accordingly, those amendments made by the Finance Act, 2023 which have become effective till 31.10.2023 are applicable for May 2024 examination.*

However, it may be noted that amendments made by the Finance Act, 2023 in sections 9, 9A and 9C of the Customs Tariff Act, 1975 and in section 65 of the Customs Act, 1962 and insertion of new section 65A in the Customs Act, 1962 have not become effective till 31.10.2023 and thus, are not applicable for May 2024 examination. Further, the amendments made by the Finance (No. 2) Act, 2019 in sections 2(4), 95, 102, 103, 104, 105 and 106 of the CGST Act, 2017 and the insertion of new sections 101A, 101B & 101C in the CGST Act, 2017, have not become effective till 31.10.2023

and thus, are not applicable for May 2024 examination.

Further, since the amendments made by the Central Goods and Services Tax (Amendment) Act, 2023 and Integrated Goods and Services Tax (Amendment) Act, 2023, (enacted as on 18.08.2023) have become effective from 01.10.2023, the same are also applicable for May 2024 examination.

The subject matter of Part I: Goods and Services Tax of the October edition of the Study Material on Indirect Tax Laws is based on the provisions of the CGST Act and IGST Act as amended by the notifications and circulars issued up to 30.04.2023 as well as by the amendments made by the Finance Act, 2021 and Finance Act, 2023.

The significant notifications and circulars issued between 01.05.2023 and 31.10.2023 in GST laws as well as the amendments made by the CGST Amendment Act, 2023 and IGST Amendment Act, 2023, are given in this Statutory Update.

The content discussed in Part II: Customs & FTP of the Study Material is based on the customs law as amended by the Finance Act, 2023 (amendments which have become effective till the date of printing of Study Material) and significant notifications and circulars issued till 30.04.2023.

The significant notifications/ circulars issued from 01.05.2023 and 31.10.2023 in Customs & FTP are given in this Statutory Update.

For the ease of reference, the amendments have been grouped into Chapters which correspond with the Chapters of the Study Material.

PART-I: GOODS AND SERVICES TAX

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CHAPTER 1

SUPPLY UNDER GST

1. Casinos, horse racing and online gaming excluded from the purview of Schedule III to clarify their taxability [Entry 6 of Schedule III amended]

Earlier, as per Entry 6 of Schedule III, actionable claims were outside the purview of GST. However, the betting, gambling and lottery were an exception. Thus, only lottery, betting and gambling were treated as supply. All other actionable claims were outside the ambit of definition of supply.

In 50th GST Council meeting, the taxability of three other actionable claims namely, online money gaming, casinos, and horse racing and rate and value applicable thereon, were discussed. Thereafter, it was recommended that Entry 6 of Schedule III needs to be amended to clarify the taxability of these actionable claims. Further, the rate applicable on them is 28% and valuation would be prescribed under Valuation Rules.

With effect from 01.10.2023, Entry 6 has been amended by the **CGST Amendment Act, 2023**.

Earlier Entry 6 provided as follows:

"Actionable claims, other than ***betting, gambling and lottery***."

Amended Entry 6 provides as follows:

"Actionable claims, other than ***specified actionable claims***."

Thus, ***specified actionable claims*** qualify as supply. All other actionable claims are outside the ambit of definition of supply.

In order to define the term specified actionable claim, new clause (102A) has been inserted to section 2, which defines this term as follows:

Specified actionable claim means the actionable claim involved in or by way of—

(i) betting;

(ii) ***casinos;***

(iii) gambling;

(iv) ***horse racing;***

(v) lottery; or

(vi) ***online money gaming***;

The terms online money gaming has been defined by the newly inserted clause (80B) to section 2, as follows:

Newly inserted section 2(80A) defines specified online gaming as follows:

Online money gaming means **online gaming** in which players pay or deposit money or money's worth, including **virtual digital assets**, in the expectation of winning money or money's worth, including virtual digital assets, in any event including game, scheme, competition or any other activity or process, whether or not its outcome or performance is based on skill, chance or both and whether the same is permissible or otherwise under any other law for the time being in force.

The terms online gaming and virtual digital asset used in the above definition have been defined by the newly inserted clauses (80A) and (117A) to section 2, as follows:

Online gaming means offering of a game on the internet or an electronic network and includes online money gaming **[Section 2(80A)]**.

Virtual digital asset shall have the same meaning as assigned to it in section 2(47A) of the Income-tax Act, 1961 **[Section 2(117A)]**.

Definition of supplier amended **[Section 2(105)]**

The definition of supplier has been amended to incorporate a proviso which provides that a person who organises or arranges, directly or indirectly,

supply of **specified actionable claims**, including a person who owns, operates or manages digital/electronic platform for such supply, shall be deemed to be a supplier of such actionable claims, whether such actionable claims are supplied by him or through him and whether consideration in money or money's worth, including virtual digital assets, for supply of such actionable claims is paid or conveyed to him or through him or placed at his disposal in any manner, and all the provisions of CGST Act shall apply to such supplier of specified actionable claims, as if he is the supplier liable to pay the tax in relation to the supply of such actionable claims.

The value of horse racing, casinos and online money gaming has been prescribed in the Valuation Rules *[Refer Chapter 6 – Value of Supply]*.

2. Supply of food and beverages at cinema halls taxable as restaurant service

Eating joint is a wide term which includes refreshment or eating stalls/ kiosks/ counters or restaurant at a cinema also.

The cinema operator:

(i) may run these refreshment/eating stalls/ kiosks/ counters/ restaurant themselves

or

(ii) they may give it on contract to a third party.

The customer may like to avail the services supplied by these refreshment/snack counters or choose not to avail these services. Further, the cinema operator can also install vending machines, or supply any other recreational service such as through coin-operated machines etc. which a customer may or may not avail.

It is hereby clarified that:

(i) supply of food or beverages in a cinema hall is **taxable as 'restaurant service'** as long as:

  (a) the food or beverages are supplied by way of or as part of a service, and

  (b) supplied independent of the cinema exhibition service.

(ii) where the sale of cinema ticket and supply of food and beverages are

clubbed together, and such bundled supply satisfies the test of **composite supply**, the entire supply will attract GST at the rate applicable to service of exhibition of cinema, the **principal supply**.

[Circular No. 201/13/2023 GST dated 01.08.2023]

3. Clarification on taxability of shares held in a subsidiary company by holding company

The issue which arose for consideration is whether the holding of shares in a subsidiary company by the holding company will be treated as 'supply of service' and whether the same will attract GST or not.

It is clarified that securities are considered neither as goods nor as services in terms of definition of goods under section 2(52) and the definition of services under section 2(102). Further, securities include 'shares' as per definition of securities[1].

This implies that the securities held by the holding company in the subsidiary company are neither goods nor services. Further, purchase or sale of shares or securities, in itself is neither a supply of goods nor a supply of services. For a transaction/activity to be treated as supply of services, there must be a supply as defined under section 7. It cannot be said that a service is being provided by the holding company to the subsidiary company, solely on the basis that there is a specific SAC[2] entry '997171' in the scheme of classification of services mentioning; "*the services provided by holding companies, i.e. holding securities of (or other equity interests in) companies and enterprises for the purpose of owning a controlling interest.*", unless there is a supply of services by the holding company to the subsidiary company in accordance with section 7.

Therefore, **the activity of holding of shares of subsidiary company by the holding company *per se* cannot be treated as a supply of services** by a holding company to the said subsidiary company and cannot be taxed under GST.

[Circular No. 196/08/2023 GST dated 17.07.2023]

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[1] *Definition of securities under clause (h) of section 2 of Securities Contracts (Regulation) Act, 1956*

[2] *SAC (Services Accounting Codes)*

CHAPTER 2

CHARGE OF GST

1. Government empowered to notify goods for whom proviso to section 5(1) is not applicable for levy and collection of IGST and in whose case, IGST shall be levied and collected in the manner specified in section 5(1) only [Proviso to section 5(1) amended]

Section 5(1) provides for levy of IGST on inter-State supplies for collection of the same in the manner as may be prescribed. However. the proviso to section 5(1) provides that the IGST on goods imported into India shall be levied and collected in accordance with the provisions of Customs Tariff Act, 1975 at the point when the duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.

However, in case of intangible goods, it may not be possible to levy and collect IGST on imports in the manner as provided in the said proviso, as the goods may not be physically crossing customs frontiers. Resultantly, **with effect from 01.10.2023,** the said proviso has been amended by the IGST Amendment Act, 2017 so as to enable the Government to notify certain goods for whom the said proviso may not be applicable for levy and collection of IGST and in whose case, IGST shall be levied and collected in the manner specified in section 5(1) only.

Amended proviso to section 5(1) reads as follows:

Provided that the integrated tax on goods ***other than the goods as may be notified by the Government on the recommendations of the Council*** imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.

Consequently, **with effect from 01.10.2023, supply of online money gaming** has been **notified** for the said purpose vide ***Notification No. 03/2023 IT dated 29.09.2023.*** This implies that import of specified actionable claim of online money gaming will be taxed under IGST as import of goods without applicability of customs duty.

2. Tax on services supplied by director of a company in his personal capacity such as renting of immovable property to the company/body corporate not payable under RCM

Tax on services supplied by director of a company/body corporate to the said company or the body corporate is payable by the company/body corporate under reverse charge mechanism (RCM).

It is hereby clarified that services supplied by a director of a company/body corporate to the company/body corporate in his private/personal capacity such as services supplied by way of renting of immovable property **are not taxable under RCM**.

Only those services supplied by director of company/body corporate, which are **supplied by him as or in the capacity of director of that company** or body corporate shall be **taxable under RCM** in the hands of the company or body corporate under *Notification No. 13/2017 CT(R) (Sl. No. 6) dated 28.06.2017*.

[Circular No. 201/13/2023 GST dated 01.08.2023]

3. Amendments in the list of notified services tax on which is payable under reverse charge by the recipient

Notification No. 13/2017 CT (R) dated 28.06.2017 as amended has notified specified categories of intra-State supply of services wherein whole of the tax shall be paid on reverse charge basis by the recipient of services.

With effect from 20.10.2023, the said list of services, tax on which is payable under reverse charge has been amended as follows:-

S. No.	Category of supply of service	Supplier of service	Recipient of Service
5	Services supplied by the Central Government, State Government, Union	Central Government, State	Any business entity located in

	territory or local authority to a business entity excluding, - (1) renting of immovable property, and (2) services specified below- (i) services by the Department of Posts ***and the Ministry of Railways (Indian Railways)*** (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.	Government, Union territory or local authority	the taxable territory.
5A	Services supplied by the Central Government ***excluding the Ministry of Railways (Indian Railways),*** State Government, Union territory or local authority by way of renting of immovable property to a person registered under the CGST Act.	Central Governm ent, State Government, Union territory or local authority	Any person registered under the CGST Act.

Parallel amendments in reverse charge entries in case of inter-State supply of services have been carried out by amending *Notification No. 10/2017 IT(R) dated 28.06.2017*.

[Notification No. 14/2023 CT(R) dated 19.10.2023 and Notification No. 17/2023 IT(R) dated 19.10.2023]

Further, **with effect from 01.10.2023,** Entry 10 of *Notification No. 10/2017 IT(R) dated 28.06.2017* which provides for reverse charge on following inter-State supply of services tax has been omitted:

S. No.	Category of supply of service	Supplier of service	Recipient of service
~~10.~~	~~Services supplied by a person located in non- taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India~~	~~A person located in non-taxable territory~~	~~Importer, located in the taxable territory.~~

[Notification No. 13/2023 IT(R) dated 26.09.2023]

CHAPTER 3

PLACE OF SUPPLY

1. Place of supply of goods purchased Over the Counter in one State and transported to another State by the buyer [Section 10 of the IGST Act amended]

There are cases where an unregistered person purchases goods over the counter (OTC) in one State and thereafter, transports the goods to another State (generally, the State where he resides). For instance, migrant workers, tourists, etc. who come to a State for work, tourism, etc. and purchase goods in that State to take it to their respective State. Similarly, in automobile sector, the residents of a State may travel to another State to purchase vehicle from that State to take advantage of lower registration charges and road tax, which vary from State to State and thereafter, take the vehicle to their State.

For bringing in clarity in respect of the determination of place of supply (POS) in such cases, **with effect from 01.10.2023,** IGST Amendment Act, 2023 has amended section 10 of the IGST Act to insert new clause (ca) in said section which provides as follows:

Where the supply of goods is made to a person other than a registered person, the place of supply shall, notwithstanding anything contrary contained in clause (a) or clause (c) of section 10, be the location as per the address of the said person recorded in the invoice issued in respect of the said supply and the location of the supplier where the address of the said person is not recorded in the invoice.

For the purposes of this clause, recording of the name of the State of the said person in the invoice shall be deemed to be the recording of the address of the said person.

Above provision has been summarized as follows:

POS in case of OTC sales to unregistered persons is as follows:

Where the **address** of the unregistered person **is recorded** in the invoice.	•POS is location as per address of unregistered person recorded in the invoice**
Where the **address** of the unregistered person **is not recorded** in the invoice.	•POS is location of the supplier

**Simply mentioning the State of unregistered person instead of complete address would be sufficient.

2. Special provision for taxability of supply of online money gaming by a person located outside the taxable territory to a person in India [New section 14A]

Consequent to the online money gaming becoming taxable by virtue of the amendment in Schedule III of the CGST Act by the CGST Amendment Act, 2023, there was a need for special provisions to be introduced for taxability of supply of online money gaming by a person located outside the taxable territory to a person in India, *inter-alia*, providing for:

- liability on the said supplier for payment of IGST on such supply.
- single registration of the said supplier through the Simplified Registration Scheme [as referred in section 14 of the IGST Act].
- power of the Government for blocking of access by the public to any information generated, transmitted. received or hosted in any computer resource used for supply of online money gaming by such supplier, in case of failure to comply with the above provisions.

Resultantly, **with effect from 01.10.2023,** new section 14A has been introduced by the IGST Amendment Act, 2023 which provides as follows:

A supplier of online money gaming, not located in the taxable territory, shall

in respect of the supply of online money gaming by him to a person in the taxable territory, be liable to pay IGST on such supply.

For the purposes of complying with the above provisions, the supplier of online money gaming shall obtain a single registration under the Simplified Registration Scheme referred to in section 14(2) of this Act. *[Corresponding amendment has been made in rule 8(1) and rule 14 of the CGST Rules, 2017.]*

However, any person located in the taxable territory representing such supplier for any purpose in the taxable territory shall get registered and pay the integrated tax on behalf of the supplier.

Further that if such supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, he shall appoint a person in the taxable territory for the purpose of paying integrated tax and such person shall be liable for payment of such tax.

In case of failure to comply with the above provisions by the supplier of the online money gaming or a person appointed by such supplier or both, notwithstanding anything contained in section 69A of the Information Technology Act, 2000, any information generated, transmitted, received or hosted in any computer resource used for supply of online money gaming by such supplier shall be liable to be blocked for access by the public in such manner as specified in the IGST Act.

Note - Consequential amendment in the CGST Rules related to registration and returns has been covered in the respective chapters.

3. Clarification regarding place of supply in specified cases

(i) Place of supply in case of supply of service of transportation of goods, including through mail and courier

With effect from 01.10.2023, section 13(9) of the IGST Act, 2017 has been omitted vide Finance Act, 2023.

Consequent to omission of said sub-section, the place of supply of services of transportation of goods, other than through mail and courier, in cases where location of supplier of services or location of recipient of services is outside India, will be determined by the default rule under section 13(2) of the IGST Act. Accordingly, in cases where location of recipient of services is available, the place of supply of such services shall be the location of recipient of services and in cases where

location of recipient of services is not available in the ordinary course of business, the place of supply shall be the location of supplier of services. On the same principles as mentioned above, the place of supply in case of service of transportation of goods by mail or courier will continue to be determined by the default rule under section 13(2) of IGST Act.

(ii) Place of supply in case of supply of services in respect of advertising sector

Advertising companies are often involved in procuring space on hoardings/ bill-boards erected and mounted on buildings/land, in different States, from various suppliers ("vendors") for providing advertisement services to its corporate clients. There may be variety of arrangements between the advertising company and its vendors as below:

(i) **Issue:** There may be a case wherein there is supply (sale) of space or supply (sale) of rights to use the space on the hoarding/ structure (immovable property) belonging to vendor to the client/advertising company for display of their advertisement on the said hoarding/ structure. What will be the place of supply of services provided by the vendor to the advertising company in such case?

Clarification: The hoarding/structure erected on the land should be considered as immovable structure or fixture as it has been embedded in earth. Further, place of supply of any service provided by way of supply (sale) of space on an immovable property or grant of rights to use an immovable property shall be governed by the provisions of section 12(3)(a) of the IGST Act.

As per section 12(3)(a) of the IGST Act, the place of supply of services directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or coordination of construction work shall be the location at which the immovable property is located.

Therefore, the **place of supply of service provided by way of supply of sale of space on hoarding/ structure for advertising**

or for grant of rights to use the hoarding/ structure for advertising in this case would be the location where such hoarding/ structure is located.

(ii) **Issue:** There may be another case where the advertising company wants to display its advertisement on hoardings/ billboards at a specific location availing the services of a vendor. The responsibility of arranging the hoardings/ billboards lies with the vendor who may himself own such structure or may be taking it on rent or rights to use basis from another person. The vendor is responsible for display of the advertisement of the advertisement company at the said location.

During this entire time of display of the advertisement, the vendor is in possession of the hoarding/structure at the said location on which advertisement is displayed and the advertising company is not occupying the space or the structure. In this case, what will be the place of supply of such services provided by the vendor to the advertising company?

Clarification: In this case, as the service is being provided by the vendor to the advertising company and there is no supply (sale) of space/ supply (sale) of rights to use the space on hoarding/structure (immovable property) by the vendor to the advertising company for display of their advertisement on the said display board/structure, the said service does not amount to sale of advertising space or supply by way of grant of rights to use immovable property.

Accordingly, the place of supply of the same shall not be covered under section 12(3)(a) of IGST Act. Vendor is in fact providing advertisement services by providing visibility to an advertising company's advertisement for a specific period of time on his structure possessed/taken on rent by him at the specified location.

Therefore, **such services provided by the vendor to advertising company are purely in the nature of advertisement services in respect of which place of supply shall be determined in terms of section 12(2) of IGST Act**.

CHAPTER 4

EXEMPTIONS FROM GST

Entry Nos. referred to in this chapter correspond to entries in Notification No. 12/2017 CT (R) dated 28.06.2017 which grants exemption from GST for intra-State supply of specified services. However, these entry numbers have been given only for reference purposes and are not relevant for examination purpose.

1. Amendments in the services exempted from GST

Notification no. 12/2017 CT(R) dated 28.06.2017 provides list of services exempted from CGST. Parallel exemptions from IGST have been granted to inter-State supply of services vide *Notification No. 9/2017 IT(R) dated 28.06.2017*.

The amendments in the list of exempted services have been highlighted in bold italics/in strikethrough form, hereunder:

(i) Amendments in the existing exemptions

Following existing exemptions have been amended:

Sl. No.	Description of services	Effective from
19C	Satellite launch services ~~***supplied by Indian Space Research Organisation, Antrix Corporation Limited or New Space India Limited.***~~	27.07.2023
6	Services by the Central Government, State Government, Union territory or local	20.10.2023

	authority excluding the following services— (a) services by the Department of Posts ***and the Ministry of Railways (Indian Railways);*** (b) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (c) transport of goods or passengers; or (d) any service, other than services covered under entries (a) to (c) above, provided to business entities.	
7	Services provided by the Central Government, State Government, Union territory or local authority to a business entity with an aggregate turnover of up to such amount in the preceding financial year as makes it eligible for exemption from registration under the CGST Act, 2017. Explanation.- For the purposes of this entry, it is hereby clarified that the provisions of this entry shall not be applicable to- (a) services,- (i) by the Department of Posts ***and the Ministry of Railways (Indian Railways);*** (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.	20.10.2023

8	Services provided by the Central Government, State Government, Union territory or local authority to another Central Government, State Government, Union territory or local authority. However, nothing contained in this entry shall apply to services- (i) by the Department of Posts ***and the Ministry of Railways (Indian Railways);*** (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.	20.10.2023
9	Services provided by Central Government, State Government, Union territory or a local authority where the consideration for such services does not exceed ₹ 5,000. However, nothing contained in this entry shall apply to– (i) services by the Department of Posts ***and the Ministry of Railways (Indian Railways);*** (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. Further, in case where continuous supply of service* is provided by the Central Government, State Government, Union territory or a local authority, the exemption shall apply only where the consideration charged for such service does not exceed ₹	20.10.2023

	5,000 in a FY. *as defined in section 2(33)	

(ii) New exemptions introduced

Following new services have been exempted from CGST:

Sl. No.	Description of services	Effective from
3B	***Services provided to a Governmental Authority by way of —*** ***(a) water supply;*** ***(b) public health;*** ***(c) sanitation conservancy;*** ***(d) solid waste management; and*** ***(e) slum improvement and upgradation.***	20.10.2023

Parallel amendments in exemptions from IGST to inter-State supply of services have been carried out by amending *Notification No. 9/2017 IT(R) dated 28.06.2017*.

[Notification No. 07/2023 CT(R) dated 26.07.2023, Notification No. 13/2023 CT(R) dated 19.10.2023, Notification No. 07/2023 IT(R) dated 26.07.2023 and Notification No. 16/2023 IT(R) dated 20.10.2023]

Further, following amendment has been carried out in the amendment provided in relation to inter-State supply of services by way of Entry 10 of *Notification No. 9/2017 IT(R) dated 28.06.2017:*

10	Services received from a provider of service located in a non-taxable territory by – (a) CG/SG/UT/LA/GA/ an individual in relation to any purpose other than commerce, industry or any other business or profession; (b) an entity registered under section 12AA/12AB of the Income-tax Act, 1961 for the purposes of providing charitable activities; or	01.10.2023

	(ba) way of supply of online educational journals or periodicals to an educational institution other than an institution providing services by way of- (i) pre-school education and education up to higher secondary school or equivalent; or (ii) education as a part of an approved vocational education course; (c) a person located in a non-taxable territory. However, the exemption shall not apply to **~~—~~** **~~(i)~~** OIDAR services received by persons specified in entry (a) or entry (b). **~~; or~~** **~~(ii) services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India received by persons specified in the entry.~~**	

[Notification No. 12/2023 IT(R) dated 26.09.2023]

CHAPTER 6

VALUE OF SUPPLY

1. Supply of online money gaming, online gaming other than online money gaming and actionable claims in casinos notified under section 15(5)

Section 15(5) provides that notwithstanding anything contained in section 15(1) and 15(4), the value of such supplies, as may be notified by the Government on the recommendations of the Council, shall be determined in such manner as may be prescribed.

With effect from 01.10.2023, supply of online money gaming, supply of online gaming other than online money gaming and supply of actionable claims in casinos have been notified under section 15(5) for prescribing the manner of determination of the value of these supplies under the CGST Rules.

[Notification No. 49/2023 CT dated 29.09.2023]

2. Method for determination of value of supply in case of online gaming including online money gaming and value of supply of actionable claims in case of casino prescribed [Rule 31B and rule 31C inserted]

As discussed earlier in Chapter 1 – Supply under GST, actionable claims of online money gaming, horse racing and casinos have been brought under the purview of supply by amending Schedule III of the CGST Act, 2017. Value of horse racing is already being determined under rule 31A.

With effect from 01.10.2023, the method of determination of value of these actionable claims is prescribed by new rules 31B and 31C inserted as follows:

(i) Value of supply in case of online gaming including online money gaming [Rule 31B]

Notwithstanding anything contained in this chapter, the value of supply of online gaming, including supply of actionable claims involved in

online money gaming, shall be the total amount paid or payable to or deposited with the supplier by way of money or money's worth, including virtual digital assets, by or on behalf of the player:

However, any amount returned or refunded by the supplier to the player for any reasons whatsoever, including player not using the amount paid or deposited with the supplier for participating in any event, shall not be deductible from the value of supply of online money gaming.

(ii) Value of supply of actionable claims in case of casino [Rule 31C]

Notwithstanding anything contained in this chapter, the value of supply of actionable claims in casino shall be the total amount paid or payable by or on behalf of the player for –

(i) purchase of the tokens, chips, coins or tickets, by whatever name called, for use in casino; or

(ii) participating in any event, including game, scheme, competition or any other activity or process, in the casino, in cases where the token, chips, coins or tickets, by whatever name called, are not required:

However, any amount returned/refunded by the casino to the player on return of token, coins, chips, or tickets, as the case may be, or otherwise, shall not be deductible from the value of the supply of actionable claims in casino.

Explanation.- For the purpose of rule 31B and rule 31C, any amount received by the player by winning any event, including game, scheme, competition or any other activity or process, which is used for playing by the said player in a further event without withdrawing, shall not be considered as the amount paid to or deposited with the supplier by or on behalf of the said player.

[Effective from 01.10.2023]

[Notification No. 45/2023 CT dated 06.09.2023 and Notification No. 51/2023 CT dated 29.09.2023]

3. Tax to be paid on specified actionable claims at the time of receipt of payment for such supplies by the suppliers

Notification No. 66/2017 CT dated 15.11.2017 was earlier issued to exempt all registered persons from the requirement of payment of tax at the time of receipt of advances in case of supply of goods and provides for payment of

tax in such cases at the time of supply as specified in section 12(2)(a).

With effect from 01.10.2023, said notification has been amended to **exclude registered persons making supply of specified actionable claims** *[as discussed in Chapter 2 - Supply under GST]* from the said exemption, so that in case of specified actionable claims, the tax can be paid at the time of receipt of payment for such supplies by the suppliers.

[Notification No. 50/2023 CT dated 29.09.2023]

4. Taxability and valuation of personal guarantee by Directors and corporate guarantee by related person, for the company [Rule 28 amended]

Following issues arose for consideration were:

(i) the taxability and valuation of activity of providing personal bank guarantee by Directors to banks for securing credit facilities for the company without consideration, and

(ii) the taxability and valuation of the activity of providing corporate guarantee by a related person to banks/financial institutions for another related person, as well as by a holding company in order to secure credit facilities for its subsidiary company, without consideration.

In this regard, ***Circular No. 204/16/2023 GST dated 27.10.2023*** clarified the following:

S.No.	Issue	Clarification
1.	Whether the activity of providing personal guarantee by the Director of a company to the bank/ financial institutions for sanctioning of credit facilities to the said company without any consideration will be treated as a supply of service or not and whether the same will attract GST or not?	Since director and company are related persons [in terms of Explanation (a) to section 15], the activity of providing personal guarantee by the Director to the banks/ financial institutions for securing credit facilities for their companies is to be treated as a supply of service, even when made without consideration [in terms of section 7(1)(c) read with para 2 of Schedule I]. Value will be

		open market value (OMV) of such supply [in terms of rule 28]. However, as per the mandate provided by the RBI Guidelines in this regard, no consideration by way of commission, brokerage fees or any other form, can be paid to the director by the company, directly or indirectly, in lieu of providing personal guarantee to the bank for borrowing credit limits, except in exceptional cases. Consequently, there is no question of such supply/ transaction having any OMV. Accordingly, it is clarified that OMV of the said transaction/ supply may be treated as zero and therefore, no tax is payable on such supply of service by the director to the company. However, in exceptional cases, where remuneration is payable to the director[3], the taxable value of such supply of service shall be the remuneration/ consideration provided to such guarantor by the company, directly or indirectly.

[3] Instances where consideration is payable to the director may include cases where the director, who had provided the guarantee, is no longer connected with the management but continuance of his guarantee is considered essential because the new management's guarantee is either not available or is found inadequate, or there may be other exceptional cases where the promoters, existing directors, are paid remuneration/ consideration in any manner, directly or indirectly.

2.	Whether the activity of providing corporate guarantee by a person on behalf of another related person, or by the holding company for sanction of credit facilities to its subsidiary company, to the bank/ financial institutions, even when made without any consideration will be treated as a taxable supply of service or not, and if taxable, what would be the valuation of such supply of services?	Where the corporate guarantee is provided to the bank/financial institutions by: (i) a company for providing credit facilities to the other company, where both the companies are related, (ii) a holding company, for securing credit facilities for its subsidiary company [related in terms of explanation to section 15], the activity is to be treated as a supply of service between related parties even when made without any consideration [in terms of section 7(1)(c) read with para 2 of Schedule I]. In such cases, the taxable value will be determined as per the newly inserted sub-rule (2) to rule 28 irrespective of whether full ITC is available to the recipient of services or not. **As per rule 28(2), value in above cases will be higher of:** **(i) 1% of the amount of such guarantee offered,** **or** **(ii) actual consideration.** It is clarified that this sub-rule shall not apply for determining

		value in S.No. 1 above.

Thus, to reiterate rule 28 has been amended to provide for the method of valuation (given in table above) of the services of corporate guarantee provided by a person on behalf of another related person, or by the holding company for sanction of credit facilities to its subsidiary company, to the bank/ financial institutions.

[Notification No. 52/2023 CT dated 26.10.2023 read with Circular No. 204/16/2023 GST dated 27.10.2023]

5. Clarification regarding internally generated services - where HO is providing certain services to the BOs for which full ITC is available to the concerned BOs

Issue	Clarification
In respect of internally generated services, there may be cases where HO is providing certain services to the BOs for which full ITC is available to the concerned BOs. However, HO may not be issuing tax invoice to the concerned BOs with respect to such services, or the HO may not be including the cost of a particular component such as salary cost of employees involved in providing said services while issuing tax invoice to BOs for the services provided by HO to BOs. Whether the HO is mandatorily required to issue invoice to BOs under section 31 for such internally generated services, and/ or whether the cost of all components including salary	The value of supply of services made by a registered person to a distinct person needs to be determined as per rule 28 read with section 15(4). As per rule 28(a), the value of supply between distinct persons shall be the open market value (OMV) of such supply. The second proviso to rule 28 provides that where the recipient is eligible for full ITC, the value declared in the invoice shall be deemed to be the OMV of the goods or services. Accordingly, in respect of supply of services by HO to BOs, the value of the said supply of services declared in the invoice by HO shall be deemed to be OMV of such services, if the recipient BO is eligible for full ITC. Accordingly, in cases where full ITC is available to a BO, the value declared on the invoice by HO to the said BO in respect of a supply of services shall be deemed to be

cost of HO employees involved in providing the said services has to be included in the computation of value of services provided by HO to BOs when full ITC is available to the concerned BOs?	the OMV of such services, irrespective of the fact whether cost of any particular component of such services, like employee cost etc., has been included or not in the value of the services in the invoice. Further, in such cases where full ITC is available to the recipient, if HO has not issued a tax invoice to the BO in respect of any particular services being rendered by HO to the said BO, the value of such services may be deemed to be declared as Nil by HO to BO, and may be deemed as OMV in terms of second proviso to rule 28.
In respect of internally generated services provided by the HO to BOs, in cases where full ITC is not available to the concerned BOs, whether the cost of salary of employees of the HO involved in providing said services to the BOs, is mandatorily required to be included while computing the taxable value of the said supply of services provided by HO to BOs?	In respect of internally generated services provided by the HO to BOs, the cost of salary of employees of the HO, involved in providing the said services to the BOs, is not mandatorily required to be included while computing the taxable value of the supply of such services, even in cases where full ITC is not available to the concerned BO.

[Circular No. 199/11/2023 GST dated 17.07.2023]

CHAPTER 7

INPUT TAX CREDIT

1. Omission of redundant clause (c) of explanation 1 to rule 43. Value of transactions prescribed in respect of para 8(a) of Schedule III prescribed [Rule 43 amended]

Services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India were exempt from GST upto 30.09.2022. Thereafter, said exemption was withdrawn and GST became payable on such services.

Explanation 1 to rule 43 lists certain exclusions from the aggregate value of exempt supplies for the purposes of rule 42 and rule 43. In other words, it lists certain services which are otherwise exempt, but for the purposes of rule 42 and 43, such services will not be included while computing the aggregate value of exempt supplies. Earlier, one of the exclusions was the value of supply of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India [in terms of clause (c) of this explanation]. However, since now exemption in respect of such services has been withdrawn, this clause became redundant. Consequentially, this clause in the explanation has also been omitted by ***Notification No. 38/2023 CT dated 04.08.2023*** with effect from 04.08.2023.

Further, as per explanation to section 17(3), the expression "value of exempt supply" for the purposes of section 17(3), shall not include the value of activities or transactions specified in Schedule III, except,—

(a) the value of activities or transactions specified in paragraph 5 of the said Schedule; and

(b) the value of such activities or transactions as may be prescribed in respect of clause (a) of paragraph 8 of the said Schedule, viz. supply of warehoused goods to any person before clearance for home

consumption.

Thus, it implies that the activities/transactions mentioned in clauses (a) and (b) above are included in the value of exempt supply.

The value for the purpose of clause (b) above has been prescribed by ***Notification No. 38/2023 CT dated 04.08.2023*** by inserting a new explanation 3 to rule 43, **with effect from 01.10.2023**, which provides as follows:

For the purpose of rule 42 and rule 43, the value of activities or transactions mentioned in paragraph 8(a) of Schedule III of the CGST Act, 2017 which is required to be included in the value of exempt supplies under clause (b) of the Explanation to section 17(3) shall be the **value of supply of goods from Duty Free Shops at arrival terminal in international airports to the incoming passengers**.

2. Clarification regarding availment of ITC in respect of common input services procured from a third party but attributable to both HO and BOs or exclusively to one or more BOs

The following clarification has been issued:

Issues	Clarification
Whether HO can avail the ITC in respect of common input services procured from a third party but attributable: (i) to both HO and BOs or (ii) exclusively to one or more BOs,	It is clarified that in such a case, as per the present provisions of the law, it is not mandatory for the HO to distribute such ITC by ISD mechanism. HO has an option to: (i) distribute ITC in respect of such common input services by following ISD mechanism, or

issue tax invoices under section 31 to the said BOs for the said input services and the BOs can then avail the ITC for the same or whether is it mandatory for the HO to follow the Input Service Distributor (ISD) mechanism[4] for distribution of ITC in respect of such common input services?	(ii) issue tax invoices under section 31 to the concerned BOs in respect of common input services procured from a third party by HO but attributable to the said BOs and the BOs can then avail ITC on the same subject to the provisions of sections 16 and 17. ISD mechanism can be opted only if the said input services are attributable to the said BO or have actually been provided to the said BO. In case ISD mechanism is opted, HO is required to get itself registered mandatorily as an ISD[5]. Similarly, the HO can issue tax invoices under section 31 to the concerned BOs, only if the common input services have actually been provided to the concerned BOs.

[Circular No. 199/11/2023 GST dated 17.07.2023]

[4] ISD mechanism is laid down in section 20 read with rule 39

[5] in accordance with section 24(viii)

CHAPTER 8

REGISTRATION

1. Mandatory registration for every person supplying online money gaming from a place outside India to a person in India [New clause (xia) inserted in section 24]

Since online money gaming has been made taxable by amending Schedule III by the CGST Amendment Act, 2023, **with effect from 01.10.2023,** every person supplying online money gaming from a place outside India to a person in India are required to obtain registration compulsorily.

2. Requirement of the presence of the applicant for physical verification of business premises done away with [Proviso to rule 9(1) amended and rule 25 substituted]

Proviso to rule 9(1) has amended to do away with the requirement of the presence of the applicant for physical verification of business premises. Thus, as per amended proviso to rule 9(1), where—

(a) a person[6], fails to undergo Aadhaar authentication or does not opt for Aadhaar authentication; or

(aa) a person, who has undergone Aadhaar authentication, is identified on the common portal, based on data analysis and risk parameters, for carrying out physical verification of places of business; or

(b) the proper officer deems it fit to carry out physical verification of places of business,

the registration shall be granted within 30 days of submission of application,

[6] *other than a person exempted from aadhaar authentication as notified under sub-section (6D) of section 25*

after physical verification of the place of business, ~~***in the presence of the said person***~~ in the manner provided under rule 25 and verification of such documents as the proper officer may deem fit.

Thus, now, **presence of the applicant is not required for physical verification**.

Corresponding amendment has been made in rule 25. Substituted rule 25 provides as follows:

(i) Where the proper officer is satisfied that the physical verification of the place of business of a person is required AFTER the grant of registration:, he may get such verification of the place of business done and the verification report along with the other documents, including photographs, shall be uploaded in prescribed form on the common portal **within a period of 15 working days following the date of such verification**.

(ii) Where the physical verification of the place of business of a person is required BEFORE the grant of registration in the circumstances specified in the proviso to rule 9(1) *[as given above]:* the proper officer shall get such verification of the place of business done and the verification report along with the other documents, including photographs, shall be uploaded in prescribed form on the common portal **at least 5 working days prior to the completion of the time period specified** in the said proviso.

[Effective from 04.08.2023]

[Notification No. 38/2023 CT dated 04.08.2023]

3. Details of bank account required to be furnished by the applicant (i) within 30 days of grant of registration or (ii) before filing of GSTR- 1/ IFF, whichever is earlier [Rule 10A amended]

While filing the application for registration, a person is required to furnish the details of his bank account. Rule 10A provides that the details of bank account can be provided soon after obtaining certificate of registration and

a GSTIN, but not later than specified time limit. Earlier, this time limit was **45 days** from the date of grant of registration or the **due date** of furnishing **return under section 39**, whichever is earlier.

This time limit has now been amended. Amended rule 10A provides that the registered person (except TDS deductor/TCS collector), after obtaining certificate of registration and a GSTIN, is allowed to furnish information with respect to details of bank account on the common portal, ***within a period of 30 days from the date of grant of registration, or before furnishing the details of outward supplies of goods or services or both under section 37 in Form GSTR-1 or using IFF (Invoice Furnishing Facility),*** whichever is earlier.

[Effective from 04.08.2023]

[Notification No. 38/2023 CT dated 04.08.2023]

4. System based suspension of registration in case of failure to furnish the details of valid bank account within stipulated time. Automatic revocation on furnishing said details [Rule 21A(2A) substituted and third proviso to rule 21A(4) inserted]

Rule 21A(2A) has been amended to provide for system based suspension of the registration in respect of such registered persons who do not furnish details of valid bank account under rule 10A within the time period prescribed in the said rule. Further, third proviso to rule 21A(4) has been inserted to provide for automatic revocation of suspension in such cases upon compliance with provisions of rule 10A.

The detailed amendments are as under:

Earlier, rule 21A(2A) provided that where,

(a) (i) a comparison of the returns furnished by a registered person under section 39 with:

- the details of outward supplies furnished in Form GSTR-1; or
- the details of inward supplies derived based on the details of outward supplies furnished by his suppliers in their Form GSTR-1,

(ii) or such other analysis, as may be carried out on the

recommendations of the Council,

show that there are significant differences or anomalies indicating contravention of the provisions of the CGST Act or the rules made thereunder, leading to cancellation of registration of the said person, his registration shall be suspended.

Said person shall be intimated in prescribed form by sending a communication to his e-mail address provided at the time of registration or as amended from time to time. In this intimation for suspension and notice for cancellation of registration, the said differences and anomalies are highlighted and said person is asked to explain, within a period of 30 days, as to why his registration shall not be cancelled.

Rule 21A(2A) has been substituted to provide as follows:

Where,-

(a) (i) a comparison of the returns furnished by a registered person under section 39 with:

- the details of outward supplies furnished in Form GSTR-1 or
- the details of inward supplies derived based on the details of outward supplies furnished by his suppliers in their Form GSTR-1,

OR

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

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

(b) there is a contravention of the provisions of rule 10A by the registered person,

the registration of such person shall be suspended.

Said person shall be intimated in prescribed form by sending a communication to his e-mail address provided at the time of registration or

as amended from time to time. In this intimation for suspension and notice for cancellation of registration, the said differences and anomalies are highlighted and said person is asked to explain, within a period of 30 days, as to why his registration shall not be cancelled.

Further, third proviso has been inserted to rule 21A(4) to provide that where the registration has been suspended as above for contravention of provisions of rule 10A and the registration has not already been cancelled by the proper officer under rule 22, the suspension of registration shall be deemed to be revoked upon compliance with the provisions of rule 10A.

[Effective from 04.08.2023]

[Notification No. 38/2023 CT dated 04.08.2023]

5. Time-limit for filing application for revocation of cancellation of registration increased to 90 days and extension of 180 days permitted on sufficient reason being shown [Rule 23(1) amended]

A need was sensed to extend the time limit for filing application for revocation of cancellation of registration, as a facility for the benefit of MSME Sector since several taxpayers could not file their application for revocation of cancelation of registration within the time limit specified under section 30. Representations were received by the Department to the effect that the earlier time limit of 30 days (normal period of revocation) plus 30 days (extension by Additional/Joint Commissioner) plus 30 days (extension by Commissioner) for applying for revocation of cancellation of registration under section 30 was quite less and there was a need to increase this time limit. In large number of cases, small taxpayers could not apply in time for revocation due to lack of funds or other reasons, adversely affecting business and there was a need to bring them again in mainstream by giving them a chance to revive their registrations.

Consequently, the time limit for making an application for revocation of cancellation of registration has been raised from 30 days to 90 days and Commissioner or an officer authorized by him in this behalf can further extend this time period for a further period not exceeding 180 days on sufficient reason being shown.

In order to carry out this amendment, section 30(1) has been accordingly

amended to remove the earlier time limit provided to apply for revocation as well as for extension of said time limit and gave power to prescribe the same through the rules. Simultaneously, rule 23(1) has also been amended to provide the revised new time limits to apply for revocation of cancellation of registration as well as extension of the same.

Amended portion of rule 23(1) provides as follows:

A registered person, whose registration is cancelled by the proper officer on his own motion, may, subject to the provisions of rule 10B, submit an application for revocation of cancellation of registration, in prescribed form, to such proper officer, ***within a period of 90 days from the date of the service of the order of cancellation of registration.***

However, such period may, on sufficient cause being shown, and for reasons to be recorded in writing, be extended by the Commissioner or an officer authorised by him in this behalf, not below the rank of Additional Commissioner or Joint Commissioner, as the case may be, ***for a further period not exceeding 180 days.***

[Effective from 01.10.2023]

[Notification No. 38/2023 CT dated 04.08.2023]

6. Simplified registration scheme for a person supplying OIDAR services from a place outside India to a non-taxable online recipient also made applicable for a person supplying online money gaming from a place outside India to a person in India [Rule 8(1) and rule 14 amended]

Rule 8(1) has been amended to exclude a person supplying online money gaming from a place outside India to a person in India from declaring their PAN and State/Union territory for applying for registration. Instead, the simplified registration scheme earlier prescribed for a person supplying OIDAR services from a place outside India [referred to in section 14A of the IGST Act] has also been made applicable to such persons.

[Effective from 01.10.2023]

[Notification No. 51/2023 CT dated 29.09.2023]

7. Unregistered persons with aggregate turnover upto threshold limit permitted to supply goods through an ECO. Special procedure to be followed by ECOs in respect of supplies of goods through them by such

unregistered persons

As per section 24(ix), persons who supply goods and/or services, other than services notified under section 9(5), through such ECO who is required to collect TCS under section 52 is required to obtain registration mandatorily. However, persons making supplies of services through an ECO [other than supplies specified under section 9(5)] are exempted from obtaining registration with aggregate turnover up to ` 20 lakh (` 10 lakh in case of Special Category States of Mizoram, Tripura, Manipur and Nagaland). No such exemption was available for a person supplying goods through such ECO. Thus, as per the prevalent position, unregistered persons were not permitted to make supply of goods through an ECO (who is required to collect TCS). However, other suppliers supplying goods offline were allowed exemption from registration upto the threshold limit.

Consequently, it was decided to provide an exemption upto threshold limit to the suppliers supplying goods online through ECOs provided they are making only intra-State supply; since inter-State supplier of goods has to otherwise obtain compulsory registration.

The GST Council in its 47th meeting, had in-principle approved the scheme of allowing unregistered persons to make supply of goods through ECOs. They would be required to declare their PAN and principal place of business so that it can be verified from the PAN that the turnover is less than the threshold limit.

The details of these supplies made by the unregistered persons through their PAN will be given in the GSTR 8 filed by the ECOs. In cases where the total supply approaches the threshold limit, it would be flagged to the concerned supplier to take registration and to officers for information. Further, the suppliers would not be required to pay any tax upto supplies of applicable threshold limits and ECOs would not deduct TCS till the suppliers cross the threshold limit.

Accordingly, **with effect from 01.10.2023, *Notification No. 34/2023 CT dated 31.07.*2023** provided that the persons making supplies of goods through an ECO who is required to collect TCS under section 52 and having an aggregate turnover in the preceding financial year and in the current financial year not exceeding the threshold limit in accordance with the provisions of section 22(1), are exempted from obtaining registration, subject to the following conditions, namely:

(i) such persons shall **not make any inter-State supply** of goods;

(ii) such persons shall **not make supply** of goods through ECO **in more than one State/Union territory**;

(iii) such persons shall be required to have a **PAN issued** under the Income-tax Act, 1961;

(iv) such persons shall, before making any supply of goods through ECO, **declare on the common portal**:

a. their **PAN**

b. **address** of their place of business and

c. **State/UT in which such persons seek to make such supply**,

which shall be subjected to validation on the common portal;

(v) such persons have been **granted an enrolment number** on the common portal on successful validation of the PAN declared above;

(vi) such persons shall **not be granted more than one enrolment number** in a State/UT;

(vii) no supply of goods shall be made by such persons through ECO unless such persons have been granted an enrolment number on the common portal; and

(viii) where such persons are subsequently granted registration under section 25, the enrolment number shall cease to be valid from the effective date of registration.

Apart from this, **with effect from 01.10.2023,** a special procedure has been laid down under section 148 to be followed by ECO through which above unregistered persons supply goods, vide ***Notification No. 37/2023 CT dated 04.08.2023***. The ECOs would ensure that no inter-State supply would be made and the supply made by such unregistered person (PAN-wise) would be declared in their monthly GSTR 8. The aggregate of total turnover made through different ECOs would be done PAN wise. In online mode, there would be a PAN based trail.

Said notification provides that the ECO who is required to collect tax at source under section 52 has been notified as the class of persons who shall follow the following special procedure in respect of supply of goods made through it by said unregistered persons (hereinafter referred as said person):

(i) ECO shall allow the supply of goods through it by the said person only if enrolment number has been allotted on the common portal to the said person;

(ii) ECO shall not allow any inter-State supply of goods through it by the said person;

(iii) ECO shall not collect tax at source under section 52(1) in respect of supply of goods made through it by the said person; and

(iv) ECO shall furnish the details of supplies of goods made through it by the said person in the statement in Form GSTR-8 electronically on the common portal.

Where multiple ECOs are involved in a single supply of goods through ECO platform, "ECO" shall mean the ECO who finally releases the payment to the said person for the said supply made by the said person through him.

9. Special procedure to be followed by ECOs in respect of supplies of goods through them by composition taxpayers

Earlier, composition suppliers were not permitted to make supply of goods or services through an ECO (who is required to collect TCS). However, GST Council in its 47th meeting held on 28th & 29th June 2022, had in-principle approved the scheme of allowing composition taxpayers to make supplies through ECOs. Consequently, the Finance Act, 2023 amended section 10, **with effect from 01.10.2023,** to permit the composition suppliers to make supply of goods through such ECOs. Supply of services by composition suppliers through ECO is still not permitted.

Further, **with effect from 01.10.2023, a** special procedure has also been laid down under section 148 to be followed by ECO through which composition supplier supplies goods, vide ***Notification No. 36/2023 CT dated 04.08.2023***. ECOs would be required to declare the supplies made by such composition dealers through them through existing GSTR-8 statement. ECOs would also be mandated to ensure that no inter-State supply through them is allowed in respect of composition dealers by making necessary checks and validations on their system/platform.

Notification No. 36/2023 CT dated 04.08.2023 provides that ECO who is required to collect tax at source under section 52 has been notified as the class of persons who shall follow the following special procedure in respect of supply of goods made through it by the composition suppliers, namely: —

(i) the ECO shall not allow any inter-State supply of goods through it by the said person;

(ii) the ECO shall collect tax at source under section 52(1) in respect of supply of goods made through it by the said person and pay to the Government as per provisions of section 52(3); and

(iii) the ECO shall furnish the details of supplies of goods made through it by the said person in the statement in Form GSTR-8 electronically on the common portal.

(iv) the ECO shall not allow any inter-State supply of goods through it by the said person;

(v) the ECO shall collect tax at source under section 52(1) in respect of supply of goods made through it by the said person and pay to the Government as per provisions of section 52(3); and

(vi) the ECO shall furnish the details of supplies of goods made through it by the said person in the statement in Form GSTR-8 electronically on the common portal.

CHAPTER 9

TAX INVOICE, CREDIT AND DEBIT NOTES

1. Threshold limit for e-invoicing reduced to ₹ 5 crore

With effect from 01.10.2020, e-invoicing was made mandatory for all registered businesses with an aggregate turnover (based on PAN) in any preceding financial year from 2017-18 onwards greater than ₹ 500 crore for issue of all B2B invoices. Since then, the threshold limit of aggregate turnover for issuing the e-invoices is being progressively reduced.

With effect from 01.08.2023, such limit has been reduced to ₹ 5 crore. Thus, e-invoicing has been made mandatory for all registered businesses with an aggregate turnover in any preceding financial year from 2017-18 onwards greater than ₹ 5 crore.

[Notification No. 10/2023 CT dated 10.05.2023]

2. Applicability of e-invoicing to Government Departments/PSUs etc. registered solely for the purpose of deduction of tax at source as per provisions of section 51

The issue which arose for consideration was whether e-invoicing is applicable for supplies made by a registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, to Government Departments or establishments/ Government agencies/ local authorities/ PSUs which are registered solely for the purpose of deduction of TDS as per provisions of section 51.

It is clarified that Government Departments or establishments/ Government agencies/ local authorities/ PSUs, which are required to deduct TDS under section 51, are liable for compulsory registration in accordance with section 24(vi).

Therefore, Government Departments or establishments/ Government agencies/ local authorities/ PSUs, registered solely for the purpose of deduction of TDS as per provisions of section 51, are to be treated as registered persons under the GST law as per provisions of section 2(94).

Accordingly, the registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, is required to issue e-invoices for the supplies made to such Government Departments or establishments/ Government agencies/ local authorities/ PSUs, etc under rule 48(4).

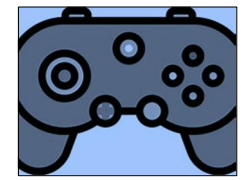
[Circular No. 198/10/2023 GST dated 17.07.2023]

3. In cases involving supply of online money gaming/service provided by/through ECO or by supplier of OIDAR services to unregistered recipient, tax invoice to contain the name of the State irrespective of value of supply [Rule 46 amended]

Rule 46 prescribes the particulars that a tax invoice issued by a registered person should contain. It, *inter alia*, prescribes that:

- Where **recipient is registered**, tax invoice shall contain the name, address and GSTIN/UIN of the recipient [Clause (d)].
- Where the **recipient is unregistered**:
  - (i) tax invoice shall contain name and address of the recipient and the address of delivery, along with the name of the State and its code, **only where the value of taxable supply ≥ ₹ 50,000** [Clause (e)].
  - (ii) **In case where the value of taxable supply < ₹ 50,000**, invoice shall contain the name and address of the recipient and the address of delivery, along with the name of the State and its code **only when the recipient requests that such details be recorded in the tax invoice** [Clause (f)].

Proviso to clause (f) earlier provided for mandatory recording of **name and address of unregistered recipients of service along with the PIN code and name of the State and the said address shall be deemed to be the address on record of the recipient** when the said services were provided by or through an electronic commerce operator (ECO) or by a supplier of OIDAR services to an unregistered recipient even if the value of taxable supply < ₹ 50,000.



Said proviso has been amended **with effect from 04.08.2023** to provide that the tax invoice may contain the name of the State of the recipient only and the same shall be deemed to be the address on record of the recipient. The name and address of the recipient along with its PIN code is not mandatory to be declared on the tax invoice.

Further, as seen earlier, since online gaming has been made taxable with effect from 01.10.2023, above proviso has been made applicable to cases involving supply of online money gaming **with effect from 01.10.2023**.

Amended proviso to rule 46(f) provides as follows:

In ***cases involving supply of online money gaming*** or in cases where any taxable service is supplied by or through an ECO or by a supplier of OIDAR services to a recipient who is unregistered, irrespective of the value of such supply, a tax invoice issued by the registered person shall contain the ***name of the State of the recipient and the same shall be deemed to be the address on record of the recipient***.

[Notification No. 38/2023 CT dated 04.08.2023 and 51/2023 CT dated 29.09.2023]

CHAPTER 11

PAYMENT OF TAX

1. Clarification on charging of interest under section 50(3) in cases of wrong availment of IGST credit and reversal thereof

The issues which arose for consideration are as to:

(i) whether in the cases of wrong availment of IGST credit by a registered person and reversal thereof, for the calculation of interest under rule 88B, whether the balance of ITC available in electronic credit ledger (ECL) under the head of IGST only needs to be considered or total ITC available in electronic credit ledger, under the heads of IGST, CGST and SGST taken together, has to be considered.

Since the amount of ITC available in ECL, under any of the heads of IGST, CGST or SGST, can be utilized for payment of liability of IGST, it is the total ITC available in ECL, under the heads of IGST, CGST and SGST taken together, that has to be considered for calculation of interest under rule 88B and for determining as to whether the balance in the ECL has fallen below the amount of wrongly availed ITC of IGST, and to what extent the balance in ECL has fallen below the said amount of wrongly availed credit.

Thus, in the cases where IGST credit has been wrongly availed and subsequently reversed on a certain date, there will not be any interest liability under section 50(3) if, during the time period starting from such availment and up to such reversal, the balance of ITC in the ECL, under

the heads of IGST, CGST and SGST taken together, has never fallen below the amount of such wrongly availed ITC, even if available balance of IGST credit in ECL individually falls below the amount of such wrongly availed IGST credit.

However, when the balance of ITC, under the heads of IGST, CGST and SGST of ECL taken together, falls below such wrongly availed amount of IGST credit, then it will amount to the utilization of such wrongly availed IGST credit and the extent of utilization will be the extent to which the total balance in ECL under heads of IGST, CGST and SGST taken together falls below such amount of wrongly availed IGST credit, and will attract interest as per section 50(3) read with section 20 of the IGST Act, 2017 and of rule 88B(3).

(ii) whether the credit of compensation cess available in ECL shall be taken into account while considering the balance of ECL for the purpose of calculation of interest under rule 88B(3) in respect of wrongly availed and utilized IGST, CGST or SGST credit.

Since ITC in respect of compensation cess can be utilised only towards payment of compensation cess. Thus, credit of compensation cess cannot be utilized for payment of any tax under CGST or SGST or IGST heads and/ or reversals of credit under the said heads. Accordingly, credit of compensation cess available in ECL cannot be taken into account while considering the balance of ECL for the purpose of calculation of interest under rule 88B(3) in respect of wrongly availed and utilized IGST, CGST or SGST credit.

[Circular No. 192/04/2023 GST dated 17.07.2023]

CHAPTER 12

ELECTRONIC COMMERCE TRASACTIONS

1. Details of TCS furnished by ECO to be made available electronically to only registered suppliers [Rule 67(2) amended]

Unregistered suppliers of services and now unregistered suppliers of goods also are allowed to make supplies through ECOs till the time their turnover does not exceed the prescribed threshold limit. Rule 67 has been amended to clearly bring out that the details of TCS furnished by ECOs in Form GSTR-8 shall be made available only to the registered suppliers, as the supplies by unregistered persons do not attract TCS.

Amended rule 67(2) provides as follows:

The details of tax collected at source under section 52(1) furnished by the ECO shall be made available electronically to each of the registered suppliers on the common portal after filing of Form GSTR-8 for claiming the amount of tax collected in his electronic cash ledger after validation.

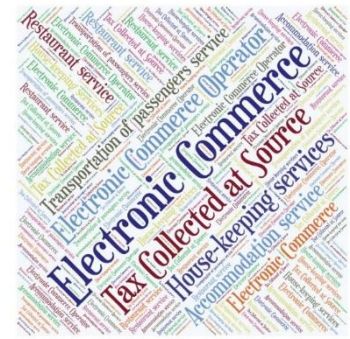
2. Clarification on TCS liability in case of multiple ECOs in one transaction

In the current platform-centric model of e-commerce, the buyer interface and seller interface are operated by the same ECO.

This ECO:

- collects the consideration from the buyer,
- deducts the TCS under section 52,

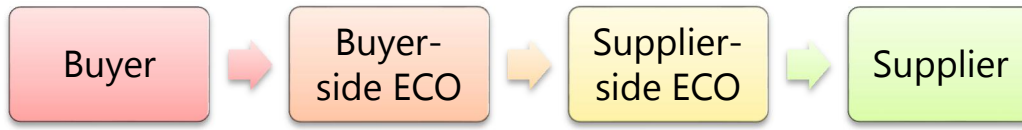
- credits the deducted TCS amount to the GST cash ledger of the seller and
- passes on the balance of the consideration to the seller after deducting their service charges.



In the case of the **ONDC Network (Open Network for Digital Commerce)** or similar other arrangements, there can be multiple ECOs in a single transaction - one providing an interface to the buyer and the other providing an interface to the seller. In this setup, buyer-side ECO could collect consideration, deduct their commission and pass on the consideration to the seller-side ECO. In this context, clarity has been sought as to which ECO should deduct TCS and make other compliances under section 52 in such situations, as in such models having multiple ECOs in a single transaction, both the Buyer-side ECO and the Seller-side ECO qualify as ECOs as per section 2(45).

CBIC has clarified following issues in this regard:

Issue 1: In a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and where the supplier-side ECO himself is not the supplier in the said supply, who is liable for compliances under section 52 including collection of TCS?



Clarification: In such a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and where the **supplier-side ECO himself is not the supplier of the said goods or services**, the compliances under section 52, including collection of TCS, is to be done by the supplier-side ECO who finally releases the payment to the supplier for a particular supply made by the said supplier through him.

Buyer-side ECO collects payment from the buyer, deducts its fees/commissions and remits the balance to Seller-side ECO. Here, the Seller-side ECO will release the payment to the supplier after deduction of his fees/commissions and therefore will also be required to collect TCS, as applicable and pay the same to the Government in accordance with section 52 and also make other compliances under section 52.

In this case, the Buyer-side ECO will neither be required to collect TCS nor will be required to make other compliances in accordance with section 52 with respect to this particular supply.

Issue 2: In a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and the **Supplier-side ECO is himself the supplier of the said supply**, who is liable for compliances under section 52 including collection of TCS?

Clarification: In such a situation, TCS is to be collected by the Buyer-side ECO while making payment to the supplier for the particular supply being made through it.

Buyer-side ECO collects payment from the buyer, deducts its fees and remits the balance to the supplier [who is itself an ECO as per the definition in Sec 2(45)] In this scenario, the Buyer-side ECO will also be required to collect TCS, as applicable, pay the same to the Government in accordance with section 52 and also make other compliances under section 52.

[Circular No. 194/06/2023 GST dated 17.07.2023]

3. Tax on passenger transportation services by omnibus except where the person supplying such services through ECO is a company, payable by ECO

The Government may, on the recommendations of the GST Council, notify specific categories of services the tax [CGST/SGST/IGST] on supplies of which shall be paid by the **electronic commerce operator (ECO)** if such services are supplied through it. Such services shall be notified on the recommendations of the GST Council [Section 9(5) of the CGST Act/Section 5(5) of the IGST Act].

Notification No. 17/2017 CT (R) dated 28.06.2017[7]*/ Notification No. 14/2017 IT (R) dated 28.06.2017*[8] as amended has notified the specific categories of services the tax on supplies of which shall be paid by the electronic commerce operator (ECO) **if such services are supplied through ECO**.

One of such notified categories of services is services by way of transportation of passengers by a radio-taxi, motorcab, maxicab, motor cycle, omnibus or any other motor vehicle;

With effect from 20.10.2023, services by way of transportation of passengers by an omnibus has been excluded from the above entry and a separate category of services has been introduced for transportation of passengers by an omnibus. This has been undertaken as follows:

Above category of services has been amended as under:-

Services by way of transportation of passengers by a radio-taxi, motorcab, maxicab, motorcycle, ***or any other motor vehicle except omnibus.***

Further, following new category of services has been introduced:

Services by way of transportation of passengers by an omnibus except where the person supplying such service through ECO is a company.

The term "Company" has the same meaning as assigned to it in section 2(20)

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[7] *This notification notifies specific categories of services the CGST/SGST on intra-State supplies of which shall be paid by ECO.*

[8] *This notification notifies specific categories of services the IGST on inter-State supplies of which shall be paid by ECO.*

of the Companies Act, 2013.

Thus, **with effect from 20.10.2023**, the tax on services by way of transportation of passengers by an omnibus provided by a company through ECO is not payable by ECO. It will be payable by the company itself.

[Notification No. 16/2023 CT(R) dated 19.10.2023 and Notification No. 19/2023 IT(R) dated 19.10.2023]

CHAPTER 13

RETURNS

1. Additional cases prescribed wherein a registered person is debarred from furnishing details of outward supplies in Form GSTR-1/IFF [Rule 59(6) amended]

Rule 59(6) stipulates the cases where a registered person is debarred from furnishing details of outward supplies in Form GSTR-1/IFF. Said rule has been amended to provide that a registered person will not be allowed to furnish GSTR-1/IFF unless (i) he has reversed the amount of excess ITC specified in the intimation under rule 88D(1) or has furnished the reply explaining reasons for any amount of excess ITC remaining to be reversed and (ii) he has not furnished details of a valid bank account as per rule 10A.

Newly inserted clauses (e) and (f) in rule 59 read as follows:

(e) a registered person, to whom an intimation has been issued on the common portal under the provisions of rule 88D(1) in respect of a tax period/periods, shall not be allowed to furnish GSTR-1/IFF for a subsequent tax period, unless he has either paid the amount equal to the excess ITC as specified in the said intimation or has furnished a reply explaining the reasons in respect of the amount of excess ITC that still remains to be paid, as required under the provisions of rule 88D(2);

(f) a registered person shall not be allowed to furnish GSTR-1/IFF, if he has not furnished the details of the bank account as per the provisions of rule 10A.

[Effective from 04.08.2023]

[Notification No. 38/2023 CT dated 04.08.2023]

2. Return form - GSTR-5A also to (i) contain details of supplies made by the OIDAR service provider outside India to registered persons in India and (ii) be furnished by persons supplying online money gaming from a place outside India to a person in India [Rule 64 amended]

Earlier, rule 64 stipulated that every registered person providing OIDAR services from a place outside India to a person in India other than a registered person shall file return in **Form GSTR-5A.** Thus, earlier GSTR-5A did not capture the details or supplies made by the OIDAR service provider to registered persons in India; tax on such services is payable under reverse charge basis.

With effect from 01.10.2023, rule 64 has been amended to include the details of supplies made by the OIDAR service provider located outside India to registered persons in India other than non-taxable online recipient in India for tracking of payment of tax on reverse charge basis by registered taxpayers. Further, a registered person providing online money gaming from a place outside India to a person in India is also required to furnish Form GSTR-5A.

Amended rule 64 provides as follows:

Every registered person **either providing**:

(i) online money gaming from a place outside India to a person in India,

or

(ii) providing OIDAR services from a place outside India:

(a) to a non-taxable online recipient referred to in section 14 of the IGST Act

or

(b) to a registered person other than a non-taxable online recipient,

shall file return in GSTR-5A on or before 20th day of the month succeeding the calendar month or part thereof.

[Effective from 01.10.2023]

[Notification No. 38/2023 CT dated 04.08.2023 and 51/2023 CT dated 29.09.2023]

3. Manner of dealing with difference in ITC available in auto-generated statement containing the details of ITC and that availed in return prescribed [New rule 88D introduced]

A mechanism has been devised which allows system-based intimation to the taxpayer about the excess availment of ITC in Form GSTR-3B vis-a-vis that reported in Form GSTR-2B, above a particular threshold and with provision for self-compliance on the portal by the said taxpayer. Consequently, new rule 88D has been introduced to give a system-based intimation to the registered person in those cases where difference between the ITC availed as per GSTR-3B and that available as per GSTR-2B exceeds such amount and such percentage as may be recommended by the Council. In such cases, the registered person shall be directed to pay an amount equal to the said excess amount of ITC availed along with interest or to give a reasonable explanation and if neither of these is done, then the amount can be demanded under section 73 or section 74.

This provision would help in safeguarding the revenue by controlling the difference in ITC availed in Form GSTR-3B and that available as per Form GSTR-2B of the taxpayers and will reduce the ITC mismatches.

New rule 88D provides as follows:

Where the amount of ITC availed by a registered person in the return for a tax period(s) furnished by him in Form GSTR-3B exceeds the ITC available to such person in accordance with the auto-generated statement containing the details of ITC in Form GSTR-2B in respect of the said tax period(s), by specified amount and percentage, the said registered person shall be given an intimation in prescribed form electronically on the common portal, and a copy of such intimation shall also be sent to his e-mail address provided at the time of registration or as amended from time to time. Said intimation shall highlight the said difference and will direct him to—

(a) pay an amount equal to the excess ITC availed in the said Form GSTR-

3B, along with interest payable under section 50, through prescribed form, or

(b) explain the reasons for the aforesaid difference in ITC on the common portal,

within a period of 7 days.

Such registered person shall, upon receipt of said intimation, either,

(a) pay an amount equal to the excess ITC, as specified in intimation, fully or partially, along with interest payable, through prescribed form and furnish the details thereof, electronically on the common portal, or

(b) furnish a reply, electronically on the common portal, incorporating reasons in respect of the amount of excess ITC that has still remained to be paid,

within 7 days' period.

Where any amount specified in the intimation remains to be paid within 7 days' period and where no explanation/reason is furnished by the registered person in default or where the explanation/reason furnished by such person is not found to be acceptable by the proper officer, the said amount shall be liable to be demanded in accordance with the provisions of section 73/section 74.

[Effective from 04.08.2023]

[Notification No. 38/2023 CT dated 04.08.2023]

CHAPTER 14

IMPORT AND EXPORT UNDER GST

1. Class of persons who may make zero-rated supply or notified class of goods or services which may be exported on payment of IGST and claim refund thereof notified

As per section 16(4), a registered person making zero rated supply may supply goods and/or services under bond or Letter of Undertaking (LUT) without payment of IGST and claim refund of unutilized ITC. Further, notified class of persons may make zero-rated supply or notified class of goods or services may be exported, on payment of IGST and refund of such tax paid on goods and/or services supplied may be claimed.

In pursuance of the same, **with effect from 01.10.2023,** following goods/services/suppliers have been notified:

(i) **all goods or services** (except the goods specified in footnote below) as the class of goods or services which may be exported on payment of IGST and on which the supplier of such goods/services may claim the refund of tax so paid; and

(ii) **all suppliers** to a Developer or a unit in SEZ undertaking authorised operations as the class of persons who may make supply of goods or services (except the goods specified in footnote below) to such Developer or a unit in SEZ for authorised operations on payment of IGST and on which the said suppliers may claim the refund of tax so paid[9].

[9] *The list of notified goods is only for reference purposes. Same is not expected to be memorised*

for the examination purposes:

Chapter / Heading / Sub-heading / Tariff item	***Description of Goods***
2106 90 20	*Pan-masala*
2401	*Unmanufactured tobacco (without lime tube) – bearing a brand name*
2401	*Unmanufactured tobacco (with lime tube) – bearing a brand name*
2401 30 00	*Tobacco refuse, bearing a brand name*
2403 11 10	*'Hookah' or 'gudaku' tobacco bearing a brand name*
2403 11 10	*Tobacco used for smoking 'hookah' or 'chilam' commonly known as 'hookah' tobacco or 'gudaku' not bearing a brand name*
2403 11 90	*Other water pipe smoking tobacco not bearing a brand name.*
2403 19 10	*Smoking mixtures for pipes and cigarettes*
2403 19 90	*Other smoking tobacco bearing a brand name*
2403 19 90	*Other smoking tobacco not bearing a brand name*
2403 91 00	*"Homogenised" or "reconstituted" tobacco, bearing a brand name*
2403 99 10	*Chewing tobacco (without lime tube)*
2403 99 10	*Chewing tobacco (with lime tube)*
2403 99 10	*Filter khaini*
2403 99 20	*Preparations containing chewing tobacco*
2403 99 30	*Jarda scented tobacco*
2403 99 40	*Snuff*
2403 99 50	*Preparations containing snuff*
2403 99 60	*Tobacco extracts and essence bearing a brand name*
2403 99 60	*Tobacco extracts and essence not bearing a brand Name*

[Notification No. 01/2023 IT dated 31.07.2023 as amended by Notification No. 05/2023 IT dated 26.10.2023]

2. Clarification regarding admissibility of export remittances received in Special Rupee Vostro account, as permitted by RBI, for the purpose of consideration of supply of services to qualify as export of services

Export of services has been defined under clause (6) of section 2 of IGST Act. As per the said definition, any supply of services needs to fulfill five conditions for it to qualify as export of services. Clause (6) of section 2 of the IGST Act is reproduced below for reference:

Export of services means the supply of any service when, –

(i) the supplier of service is located in India;

(ii) the recipient of service is located outside India;

(iii) the place of supply of service is outside India;

(iv) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and

(v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;'

One of the conditions mentioned in sub-clause (iv) of section 2(6) of the IGST

2403 99 70	*Cut tobacco*
2403 99 90	*Pan masala containing tobacco 'Gutkha'*
2403 99 90	*All goods, other than pan masala containing tobacco 'gutkha', bearing a brand name*
2403 99 90	*All goods, other than pan masala containing tobacco 'gutkha', not bearing a brand name*
3301 24 00, 3301 25 10, 3301 25 20, 3301 25 30, 3301 25 40, 3301 25 90	*Following essential oils other than those of citrus fruit namely: -* a) *Of peppermint (Mentha piperita);* b) *Of other mints : Spearmint oil (ex-mentha spicata), Water mint-oil (ex- mentha aquatic), Horsemint oil (ex-mentha sylvestries), Bergament oil (ex- mentha citrate), Mentha arvensis*

Act is that the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India.

In this regard, it is clarified that when the Indian exporters, undertaking export of services, are **paid the export proceeds in Indian rupees from the Special Rupee Vostro Accounts** of correspondent bank(s) of the partner trading country, opened by Authorised Dealer (AD) banks, the same shall be considered to be fulfilling the conditions of sub-clause (iv) of section 2(6) of the IGST Act, 2017, subject to the conditions/ restrictions mentioned in Foreign Trade Policy, 2023 & extant RBI Circulars[10] and without prejudice to the permissions / approvals, if any, required under any other law .

[Circular No. 202/14/2023 GST dated 27.10.2023]

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[10] Settlement of trade transactions in INR (Indian Rupees), as per Foreign Trade Policy, 2023 & extant RBI Circulars, shall take place through the Special Rupee Vostro Accounts opened by AD banks in India, as under:

(a) Indian importers undertaking imports through this mechanism shall make payment in INR which shall be credited into the Special Vostro account of the correspondent bank of the partner country, against the invoices for the supply of goods or services from the overseas seller /supplier.

(b) Indian exporters, undertaking exports of goods and services through this mechanism, shall be paid the export proceeds in INR from the balances in the designated Special Vostro account of the correspondent bank of the partner country.

CHAPTER 15

REFUNDS

1. Refund of unaccumulated ITC linked to GSTR-2B instead of GSTR-2A

Earlier, it was clarified[11] that the refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in Form GSTR-1 and are reflected in the Form GSTR-2A of the applicant. However, **w.e.f. 01.01.2022**, section 16(2) and rule 36(4) have been amended to provide that said details of ITC will be reflected in Form GSTR-2B.

Consequently, there arose a doubt as to whether the refund of the accumulated ITC under section 54(3) shall be admissible on the basis of the ITC as reflected in Form GSTR-2A or on the basis of that available as per Form GSTR-2B of the applicant.

It is clarified that since availment of ITC has been linked with Form GSTR-2B w.e.f. 01.01.2022, availability of refund of the accumulated ITC under section 54(3) for a tax period shall be restricted to ITC as per those invoices, the details of which are reflected in Form GSTR-2B of the applicant for the said tax period or for any of the previous tax periods and on which the ITC is available to the applicant[12].

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[11] vide Circular No. 125/44/2019 GST dated 18.11.2019 as modified by Circular No. 135/05/2020 GST dated 31.03.2020

[12] Accordingly, para 36 of Circular No. 125/44/2019 GST dated 18.11.2019, which was earlier modified vide Circular No. 135/05/2020 GST dated 31.03.2020, stands modified to this extent. Consequently, Circular No. 139/09/2020 GST dated 10.06.2020, which provides for restriction on

[Circular No. 197/09/2023 GST dated 17.07.2023]

2. Manner of calculation of 'Adjusted Total Turnover' under rule 89(4) clarified consequent to Explanation inserted to said sub-rule

Explanation to rule 89(4) inserted vide *Notification No. 14/2022 CT dated 05.07.2022* provides that the **value of goods exported out of India** shall be taken as –

(i) FOB value declared in Shipping Bill/Bill of Export form

or

(ii) Value declared in tax invoice/bill of supply,

whichever is less.

The issue which arose for consideration is whether while computing "Adjusted Total Turnover" in the formula under rule 89(4), the value of goods exported out of India has to be considered as per above Explanation.

It is clarified that consequent to incorporation of above Explanation, while calculating "Adjusted Total Turnover", the value of goods exported out of India to be included will be same as being determined as per the said Explanation.

[Circular No. 197/09/2023 GST dated 17.07.2023]

3. Clarification in respect of admissibility of refund where an exporter applies for refund subsequent to compliance of the provisions of sub-rule (1) of rule 96A

As per rule 96A(1), a registered person availing of the option to export without payment of IGST is required to furnish a bond/LUT, prior to export, binding himself to pay the tax due along with applicable interest within a period of —

(a) 15 days after the expiry of 3 months, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the goods are not exported out of India; or

(b) 15 days after the expiry of 1 year, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for

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refund of accumulated ITC on those invoices, the details of which are uploaded by the supplier in Form GSTR-1 and are reflected in the Form GSTR-2A of the applicant, also stands modified accordingly.

export, if the payment of such services is not received by the exporter in convertible foreign exchange or in Indian rupees, wherever permitted by the RBI.

There are instances where exporters have voluntarily made payment of due IGST, along with applicable interest, in cases where goods could not be exported or payment for export of services could not be received within time frame as prescribed in clause (a) or (b), as the case may be, of sub-rule (1) of rule 96A.

A doubt arose as to whether subsequent to export of the said goods or as the case may be, realization of payment in case of export of services, the said exporters are entitled to claim not only refund of unutilized ITC on account of export but also refund of the IGST and interest so paid in compliance of the provisions of rule 96A(1).

In this context, it has been clarified *vide Circular No. 125/44/2019 GST dated 18.11.2019* that exports have been zero rated under the IGST Act and as long as goods have actually been exported even after a period of 3 months, payment of IGST first and claiming refund at a subsequent date should not be insisted upon. In such cases, the jurisdictional Commissioner may consider granting extension of time limit for export as provided in the said sub-rule on *post facto* basis keeping in view the facts and circumstances of each case. The same principle should be followed in case of export of services. Further, in Para 44 of the aforesaid Circular, it has been emphasized that the substantive benefits of zero rating may not be denied where it has been established that exports in terms of the relevant provisions have been made.

The above clarifications imply that as long as goods are actually exported or as the case may be, payment is realized in case of export of services, even if it is beyond the time frames as prescribed in rule 96A(1), the benefit of zero-rated supplies cannot be denied to the concerned exporters. Accordingly, it is clarified that in such cases, on actual export of the goods or as the case may be, on realization of payment in case of export of services, the said exporters would be entitled to refund of unutilized ITC in terms of section 54(3), if otherwise admissible.

It is also clarified that in such cases subsequent to export of the goods or realization of payment in case of export of services, as the case may be, the said exporters would be entitled to claim refund of the IGST so paid earlier on account of goods not being exported, or as the case be, the payment not being realized for export of services, within the time frame prescribed in

clause (a) or (b), as the case may be, of rule 96A(1). It is further being clarified that no refund of the interest paid in compliance of rule 96A(1) shall be admissible.

[Circular No. 197/09/2023 GST dated 17.07.2023]

CHAPTER 19

DEMANDS AND RECOVERY

1. Encumbrance on provisionally attached property to be removed upto on expiry of a period of 1 year of order in case written instructions not received from Commissioner

Rule 159(2) stipulates that in case of provisional attachment of property, the encumbrance on the said movable/immovable property shall be removed only on the written instructions from the Commissioner to that effect. This sub-rule has been amended to provide that encumbrance can be removed:

(i) on the written instructions from the Commissioner to that effect

or

(ii) on expiry of a period of 1 year from the date of issuance of order of provisional attachment of property,

whichever is earlier.

[Effective from 26.10.2023]

[Notification No. 52/2023 CT dated 26.10.2023]

CHAPTER 20

OFFENCES AND PENALTIES AND ETHICAL ASPECTS UNDER GST

1. Compounding amount for various offences prescribed [Rule 162 amended]

Earlier, rule 162, *inter alia,* provided that the Commissioner could allow the application for compounding of offences only on being satisfied that the applicant:

(i) has co-operated in due proceedings before him

(ii) has made full and true disclosure of facts relating to the case.

First condition prescribed above that the applicant has cooperated in the proceedings has been relaxed **with effect from 01.10.2023**. Now, the compounding application can be accepted only if the applicant has made full and true disclosure of facts relating to the case.

Section 132(2) stipulates that the amount for compounding of offences shall be such as may be prescribed, subject to the minimum amount not being less than 25% of the tax involved and the maximum amount not being more than 100% of the tax involved. The said compounding amount has been prescribed by the newly inserted sub-rule (3) to rule 162. The compounding amount shall be determined in the following manner:

S. No.	Offence	Compounding amount if offence is punishable under section 132(1)(i)	Compounding amount if offence is punishable under section 132(1)(ii)
1	Offence specified in section 132(1)(a)	(i) Up to 75% of the amount of tax evaded or ITC wrongly availed/utilised or refund wrongly taken **OR** (ii) 50% of such amount of tax evaded or ITC wrongly availed/utilised or refund wrongly taken whichever is higher.	(i) Up to 60% of the amount of tax evaded or ITC wrongly availed/utilised or refund wrongly taken **OR** (ii) 40% of such amount of tax evaded or ITC wrongly availed/utilised or refund wrongly taken whichever is higher.
2	Offence specified in section 132(1)(c)		
3	Offence specified in section 132(1)(d)		
4	Offence specified in section 132(1)(e)		
5	Offence specified in section 132(1)(f)	Amount equivalent to 25% of tax evaded.	Amount equivalent to 25% of tax evaded.
6	Offence specified in section 132(1)(h)		
7	Offence specified in clause (i) of section 132(1)		
8	Attempt to commit the offences or abets the	Amount equivalent to 25% of such amount of tax	Amount equivalent to 25% of such amount of tax

	commission of offences mentioned in clause (a), (c) to (f)and clauses (h) and (i) of sub-section (1) of section 132	evaded or ITC wrongly availed/utilised or refund wrongly taken.	evaded or ITC wrongly availed/utilised or refund wrongly taken.

However, where the offence committed by the person falls under more than one category specified in the Table above, the compounding amount, in such case, shall be the amount determined for the offence for which higher compounding amount has been prescribed.

[Effective from 01.10.2023]

[Notification No. 38/2023 CT dated 04.08.2023]

CHAPTER 22

APPEALS AND REVISION

1. Facility for filing appeal manually to Appellate Authority in certain specified circumstances [Rules 108(1) and 109(1) amended]

An appeal against any decision or order passed by an adjudicating authority to Appellate Authority can be filed either:

(i) by the aggrieved person (taxpayer) [Section 107(1) read with rule 108]

or

(ii) by the Department [Section 107(2) read with rule 109].

Proviso have been inserted to each rule 108(1) and rule 109(1) to provide as follows:

An appeal to the Appellate Authority may be filed manually in GST APL-01 (in case of appeal by aggrieved person) or GST APL-03 (in case of appeal by Department), along with the relevant documents, only if-

(i) the Commissioner has so notified, or

(ii) the same cannot be filed electronically due to non-availability of the decision or order to be appealed against on the common portal,

and in such case, a provisional acknowledgement shall be issued to the appellant immediately.

[Effective from 04.08.2023]

[Notification No. 38/2023 CT dated 04.08.2023]

CHAPTER 24

MISCELLANEOUS PROVISIONS

1. Consent based sharing of information [Rule 163 inserted]

Section 158A provides for consent-based sharing of information with notified systems furnished by taxable person. The said provision is implemented by rule 163 which provides that where a registered person opts to share the information furnished in—

(a) application for registration in Form GST REG-01 as amended from time to time;

(b) return in Form GSTR-3B for certain tax periods;

(c) Form GSTR-1 for certain tax periods, pertaining to invoices, debit notes and credit notes issued by him, as amended from time to time**,

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.

***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.*

The common portal shall communicate the information referred in this rule with the requesting system on receipt from the said system-

(a) the consent of the said registered person, and

(b) the details of the tax periods or the recipients, as the case may be, in respect of which the information is required.

Central Government has notified **"Account Aggregator"** as the systems with which information may be shared by the common portal based on consent under section 158A.

"Account Aggregator" means an NBFC which undertakes the business of an Account Aggregator in accordance with the policy directions issued by the RBI[13] and defined as such in the NBFC-Account Aggregator (Reserve Bank) Directions, 2016.

[Effective from 01.10.2023]

[Notification No. 33/2023 CT dated 31.07.2023 and 38/2023 CT dated 04.08.2023]

[13] *under section 45JA of the Reserve Bank of India (RBI) Act, 1934*

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