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AMENDMENTS

APPLICABLE FOR MAY 24

CA Vishal Bhattad

Amendment Covered:

- ⇒ Finance Act 2023
- ⇒ CGST/IGST Amendment Act 2023
- ⇒ Notification & Circular till 31st October 2023

Index

Sr. No.	Chapter Name	Page No.
1.	Concept of Supply	1
2.	Reverse Charge Mechanism	4
3.	Composition Levy	6
4.	Exemption under GST	7
5.	Time of Supply	10
6.	Value of Supply	12
7.	Input Tax Credit	16
8.	IGST Includes Place of Supply	19
9.	Registration	25
10	Tax Invoice, Debit note & Credit Note	30
11	E-way Bill	31
12	Payment of Tax	32
13	TDS-TCS	33
14	Return	35
15	Assessment & Audit	37
16	Demand & Recovery	38
17	Refund	39
18	Appeal And Revision	43
19	Miscellaneous Provisions	46
20	Offences & Penalties	48

CUSTOMS

1	Concession under Customs	53
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CONCEPT OF SUPPLY

New Definitions Inserted

CGST (Amendment) Act, 2023 (effective from 01/10/2023):-

Sec 2(105):- Supplier	<p>"Supplier" in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied.</p> <p>Proviso inserted:- Provided that</p> <ul style="list-style-type: none">- a person who organises or arranges, directly or indirectly, supply of specified actionable claims,- including a person who owns, operates or manages digital or electronic platform for such supply, <p>shall be deemed to be a supplier of such actionable claims,</p> <ul style="list-style-type: none">- 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 <p>all the provisions of this 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.</p>
Newly inserted Sec 2(80A):- Online gaming	<p>"Online gaming" means offering of a game on the internet or an electronic network and includes online money gaming.</p>
Newly inserted Sec 2(80B):- Online money gaming	<p>"Online money gaming" means online gaming in which</p> <ul style="list-style-type: none">➤ 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.
Newly inserted Sec 2(102A):- Specified actionable claim	<p>"Specified actionable claim" means the actionable claim involved in or by way of—</p> <p>(i) betting, (ii) casinos (iii) gambling (iv) horse racing (v) lottery or online money gaming.</p>
Newly inserted Sec 2(117A):- Virtual digital asset	<p>"Virtual digital asset" shall have the same meaning as assigned to it in clause (47A) of section 2 of the Income-tax Act, 1961.</p>

Schedule III - Activities not to be treated as supply :-

<p>Paragraph 6 [Substituted by CGST (Amendment) Act, 2023 (w.e.f. 01/10/2023)]:-</p>	<p>Actionable claims, other than lottery, betting and gambling specified actionable claims</p> <div style="border: 1px solid black; padding: 5px;"> <p>Analysis:-</p> <ul style="list-style-type: none"> ➔ Earlier, actionable claims involved in only lottery, betting & gambling were treated as supply & taxable. Now, online money gaming, casinos, & horse racing are also taxable. All actionable claims other than these 6 are outside the ambit of supply. ➔ The rate applicable on them is 28% & the value has been prescribed in the Valuation Rules [Refer Chapter - Value of Supply]. </div>
<p>Retrospective effect (by F.A. 2023):- Paragraphs 7 and 8 and Explanation 2 thereof shall be deemed to have been inserted therein with effect from the 01/07/2017</p>	<p>Para 7:- Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.</p> <p>Para 8:-</p> <p>(a) Supply of warehoused goods to any person before clearance for home consumption.</p> <p>(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.</p> <p>Explanation 2:- For the purposes of paragraph 8, the expression "warehoused goods" shall have the same meaning as assigned to it in the Customs Act, 1962.</p> <div style="border: 1px solid black; padding: 5px;"> <p>Clarification by Finance Act, 2023:- No refund shall be made of all the tax which has been collected, but which would not have been so collected, had the retrospective been in force at all material times.</p> </div>

Important CBIC Clarification

Clarification on taxability of shares held in a subsidiary company by holding company (Circular No. 196/08/2023 Dt. 17/07/2023):-

<p>Issue:</p>	<p>Whether holding shares by a holding company of the subsidiary company will be treated as a supply of service or not and whether the same will attract GST or not?</p>
<p>Legal Provision:</p>	<p>There is a SAC (Services Accounting Codes) 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.</p>
<p>Explanation:</p>	<ul style="list-style-type: none"> ➔ Securities (which includes shares) are considered neither as goods nor services under definition of goods & services u/s 2(52) & u/s 2(102) of CGST Act, 2017. ➔ This implies that the securities held by the holding company in the subsidiary company are neither goods nor services & thus, purchase or sale of shares or

	<p>securities, in itself is neither a supply of goods nor a supply of services.</p> <p>⇒ For a transaction/activity to be treated as supply of services, there must be a supply as per under section 7 of CGST Act.</p>
Clarification:	<p>The activity of holding of shares of subsidiary company by holding company cannot be treated as a supply of services by a holding company to said subsidiary company & cannot be taxed under GST.</p>

Clarification on whether supply of food and beverages at cinema halls is taxable as restaurant service (Circular No. 201/13/2023 dt. 01/08/2023):-

Explanation:-	<p>⇒ Eating joint is a wide term which includes refreshment or eating stalls/ kiosks/ counters or restaurant at a cinema.</p> <p>⇒ The cinema operator</p> <ol style="list-style-type: none"> i) may run these refreshments or eating stalls/ kiosks/ counters or restaurant themselves or ii) they may give it on contract to a third party. <p>⇒ The customer may like to avail the services supplied by these refreshment/snack counters or choose not to avail these services.</p> <p>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.</p>
Clarification:-	<p>1) It is clarified that supply of food/beverages in cinema hall is taxable as 'restaurant service', if:</p> <ol style="list-style-type: none"> 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. <p>2) Also, 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.</p>



REVERSE CHARGE & ECO

RCM in case of supply of goods [Substituted by N/No. 19/2023- CT (Rate) Dt. 19/10/2023 (w.e.f. 20/10/2023):-

Sl.No.	Description of supply of goods	Supplier of goods	Recipient of goods
6	Used vehicles, seized & confiscated goods, old & used goods, waste & scrap	Central Government [excluding Ministry of Railways (Indian Railways)], State Government, Union territory or a local Authority	Any registered person

Note:- RCM in case of supply of goods is not relevant for exam.

GTA Services

Conditions for GST rate to be applied [N/No. 06/2023]:-

Once GTA exercises the option to itself pay GST on the services supplied by it under forward charge during a Financial Year will be continued unless the GTA files a declaration for RCM in the 4th Qtr. of P.F.Y.

Note:- This amendment is just for information & not relevant for exam.

Government Services

Sl. No. 5:- Services by Govt. [Inserted by N/No. 14/2023 (w.e.f. 20/10/2023)]

Sl.No.	Category of Supply of Services	Supplier of service	Recipient of service
5	Any services by Govt.	Central Government, State Government, Union territory or local Authority	Any business entity located in the taxable territory.

Exceptions:- Services excluded from RCM (i.e. normal charge is applicable for following services):-

- 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;
- 3) Transport of goods or passengers.

Sl. No. 5A:- Services by way of Renting of Immovable Property by Govt. [Inserted by N/No. 14/2023 (w.e.f. 20/10/2023)]

Sl.No.	Category of Supply of Services	Supplier of service	Recipient of service
5A	Services by way of Renting of Immovable Property	Central Government [excluding the Ministry of Railways (Indian Railways)], State Government, Union territory or local Authority	Any person Registered under the CGST Act, 2017

Services notified u/s 9(5) - tax on supplies of which shall be paid by ECO, if they are supplied through Electronic Commerce Operator (ECO) [N/No. 16/2023 (w.e.f. 20/10/2023):-

Clause	
(i) (words substituted)	Services by way of transportation of passengers by a radio-taxi, motorcab, maxicab, motorcycle, omnibus or any other motor vehicle or any other motor vehicle except omnibus.
(ia) (newly inserted)	Services by way of transportation of passengers by an omnibus except where the person supplying such service through ECO is a company. Comment:- Tax on transportation of passengers by an omnibus provided by a company through ECO is not payable by ECO.

Sl. No. 10 Omitted (N/No. 13/2023- w.e.f. 01/10/2023):-

Category of Supply of Services	Supplier of service	Recipient of service
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

Clarification on whether services supplied by director of a company in his personal capacity such as renting of immovable property to the company or body corporate are subject to RCM or not (Circular No. 201/13/2023):-

Legal Provision	As per section 9(3), for services supplied by director of a company or body corporate to the said company or body corporate, GST shall be paid by company or body corporate under RCM.
Clarification	<ul style="list-style-type: none">➔ It is clarified that services supplied by a director of a company or body corporate to the company or body corporate in his private or personal capacity such as services supplied by way of renting of immovable property are not taxable under RCM.➔ Only the services supplied by director as or in the capacity of director of that company or body corporate shall be taxable under RCM.

Liability under RCM for Supply of Goods (N/N 4/2017 Central Tax(Rate))

S. No.	Tariff item, sub-heading, heading or Chapter	Description of supply of Goods	Supplier of goods	Recipient of supply (Liable to Pay Tax)
(1)	(2)	(3)	(4)	(5)
1.	0801	Cashew nuts, not shelled or peeled	Agriculturist	Any registered person
2.	1404 90 10	Bidi Wrapper leaves (tendu)	Agriculturist	Any registered person
3.	2401	Tobacco leaves	Agriculturist	Any registered person
3A.	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 (e x m e n t h a aquatic), Horsemint oil (e x - m e n t h a sylvestries), Bergament oil (ex-mentha citrate), Mentha arvensis	Any unregistered person	Any registered person
4.	5004 to 5006	Silk yarn	Any person who manufactures silk yarn from raw silk or silk worm cocoons for supply of silk yarn	Any registered person
4A.	5201	Raw cotton	Agriculturist	Any registered person
5.	-	Supply of lottery.	State Government, Union Territory or any local authority	Lottery distributor or selling agent. Explanation.— For the purposes of this entry, lottery distributor or selling agent has the same meaning as assigned to it in clause (c) of Rule 2 of the Lotteries (Regulation) Rules, 2010, made under the provisions of section 11(1) of the Lotteries (Regulation) Act, 1998.
6.	Any Chapter	Used vehicles, seized and confiscated goods, old and used goods, waste and scrap	Central Government excluding Ministry of Railways (Indian Railways), State Government, Union territory or a local authority	Any registered person
7.	Any Chapter	PSLC (Private Sector Lending certificate)	Any registered person	Any registered person

Note – Tax payable on the goods under reverse charge is applicable for the May, 2024 examination. Therefore, students are advised to refer the abovelist for the examination purposes.



COMPOSITION LEVY

Conditions for Composition Scheme [F. A. 2023]

Finance Act, 2023

Omitted in Sec 10(2)(d)	The registered person shall be eligible to opt under sub-section (1), if:- (d) he is not engaged in making any supply of goods or services through an electronic commerce operator who is required to collect tax at source under section 52;
Omitted in Sec 10(2A)(c)	if he is not- (c) engaged in making any supply of goods or services through an electronic commerce operator who is required to collect tax at source under section 52;



EXEMPTION UNDER GST

Amendments in Existing entries

Sr.No.	Government Sector	
19C	Service Provided by Satellite services [N/No. 07/2023 w.e.f. 27/07/2023]	
	Old Provision	Satellite launch services supplied by Indian space research organisation, Antrix Corporation Limited or New Space India Limited.
	Substituted with	Satellite launch services.

Sr.No.	List of Services Exempt under IGST	
10	Exemption for services wherein location of service provider is in a non-taxable territory [N/No. 07/2023 w.e.f. 27/07/2023]:-	
	Sl. No. 10 under IGST Act	Exempt:- Services received from a provider of service located in a non-taxable territory by – (a) CG/SG/UT/LA/ governmental authority/ an individual in relation to any purpose other than commerce, industry or any other business or profession; (b) an entity registered u/s 12AA/12AB of the Income-tax Act, 1961 for the purposes of providing charitable activities; or (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.
	Old Proviso:-	Provided that the exemption shall not apply to— (i) —OIDAR services received by persons specified in entry (a) or entry (b); or 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.
	Newly Inserted Proviso	Provided that the exemption shall not apply to OIDAR services received by persons specified in items (a) or item (b).

Sr.No.

Services by Government & Local Authority

6 Services by CG, SG, UT & LA [words Inserted by N/No. 13/2023- (w.e.f. 20/10/2023)]

Exempt:- All services by the Central Government, State Government, Union territory or local 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 to a business entity by CG, SG, UT or LA [words Inserted by N/No. 13/2023- (w.e.f. 20/10/2023)]

Exempt:- Services provided by the Central Government, State Government, Union territory or local authority to a business entity with an aggregate turnover of such amount in the preceding financial year as makes it eligible for exemption from registration under the CGST Act, 2017.

Explanation:- 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.

8 Services provided by Govt. to Govt [words Inserted by N/No. 13/2023- (w.e.f. 20/10/2023)]

Exempt:- Services provided by Central Government, State Government, Union territory or local authority to another Central Government, State Government, Union territory or local authority.

Proviso:- Provided that 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.

9 Services provided by Govt. where consideration is upto ₹ 5000 [words Inserted by N/No. 13/2023- (w.e.f. 20/10/2023)]

Exempt:- Services provided by Central Government, State Government, Union territory or a local authority where the consideration for such services **does not exceed ₹5,000.**

Proviso 1:- Provided that 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.

Newly Inserted

Services to Government

Public services to Government [Newly Inserted N/No. 13/2023- (w.e.f. 20/10/2023)]

- 3B** **Exempt:-** 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.

CBIC Clarifications

Circular No. 206/18/2023 Dt. 31/10/2023:-

Issue:- Whether District Mineral Foundations Trusts (DMFTs) set up by State Governments are Governmental Authorities & thus eligible for same exemptions available to other Governmental Authority?

Clarification:-

➔ It is clarified that **DMFT set up by State Governments are Governmental Authorities** and thus **eligible for the same exemptions** from GST as available to any other Governmental Authority.

Clarification relating to Sl. No. 3 & 3A (Circular No. 206/18/2023)

Issue:- Whether supply of pure services and composite supplies by way of horticulture/horticulture works (where the value of goods constitutes not more than 25% of the total value of supply) made to CPWD are eligible for exemption from GST under Sr. No. 3 and 3A?

Clarification:- It is clarified that supply of pure services and composite supplies by way of horticulture/horticulture works (where value of goods constitutes not more than 25% of total value of supply) made to CPWD **are eligible for exemption from GST under Sr. No. 3 and 3A** of Exemption Notification.



TIME OF SUPPLY

Tax to be paid on specified actionable claims at the time of receipt of payment for such supplies by suppliers (N/ No. 50/2023 w.e.f. 01/10/2023):-

<p>Old Provision of N/N 66/2017</p>	<p>It notifies the registered person who did not opt for the composition levy under section 10 of the said Act, as the class of persons who shall pay the central tax on the outward supply of goods at the time of supply as specified in clause (a) of sub-section (2) of section 12 of the said Act including in the situations attracting the provisions of section 14 of the said Act, and shall accordingly furnish the details and returns as mentioned in Chapter IX of the said Act and the rules made thereunder and the period prescribed for the payment of tax by such class of registered persons shall be such as specified in the said Act.</p>				
<p>Exception inserted in N/No. 66/2017</p>	<p>It notifies the registered person who did not opt for the composition levy under section 10 of the said Act, other than the registered person making supply of specified actionable claims as defined in clause (102A) of section 2 of the said Act, as the class of persons who shall pay the central tax on the outward supply of goods at the time of supply as specified in clause (a) of sub-section (2) of section 12 of the said Act including in the situations attracting the provisions of section 14 of the said Act, and shall accordingly furnish the details and returns as mentioned in Chapter IX of the said Act and the rules made thereunder and the period prescribed for the payment of tax by such class of registered persons shall be such as specified in the said Act.</p>				
<p>Analysis</p>	<p>N/ N. 66/2017: No tax payable at the time of receipt of advance for SOG</p> <table border="1" data-bbox="337 1464 1552 2160"> <tr> <td data-bbox="337 1464 592 1797"> <p>Provisions of Notification</p> </td> <td data-bbox="592 1464 1552 1797"> <p>All Registered Person (RP) under forward charge are not required to pay GST at the time of receipt in relation to SOG.</p> <p>Note:-</p> <p>1) <u>Thus, entire GST shall become payable only when the invoice for the supply of such goods is issued or ought to have been issued & no GST is payable on advance payment received.</u></p> <p>2) This notification is also applicable to situations of Sec 14</p> </td> </tr> <tr> <td data-bbox="337 1797 592 2160"> <p>Non-Applicability</p> <p>Newly Inserted by N/N.50/2023 CT dt. 29/09/2023</p> </td> <td data-bbox="592 1797 1552 2160"> <p>1) Composite supplier he has to pay, in lieu of tax payable by him, and amount calculated at the prescribed rate applied on his turnover in the State/UT for quarter.</p> <p>2) For supply of services i.e. in case of SOS, GST is payable on advance receipt or invoice, whichever is earlier.</p> <p>3) RP making supply of specified actionable claims. (e.g. betting, casinos, gambling, horse racing, lottery or online money gaming)</p> </td> </tr> </table>	<p>Provisions of Notification</p>	<p>All Registered Person (RP) under forward charge are not required to pay GST at the time of receipt in relation to SOG.</p> <p>Note:-</p> <p>1) <u>Thus, entire GST shall become payable only when the invoice for the supply of such goods is issued or ought to have been issued & no GST is payable on advance payment received.</u></p> <p>2) This notification is also applicable to situations of Sec 14</p>	<p>Non-Applicability</p> <p>Newly Inserted by N/N.50/2023 CT dt. 29/09/2023</p>	<p>1) Composite supplier he has to pay, in lieu of tax payable by him, and amount calculated at the prescribed rate applied on his turnover in the State/UT for quarter.</p> <p>2) For supply of services i.e. in case of SOS, GST is payable on advance receipt or invoice, whichever is earlier.</p> <p>3) RP making supply of specified actionable claims. (e.g. betting, casinos, gambling, horse racing, lottery or online money gaming)</p>
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<p>Non-Applicability</p> <p>Newly Inserted by N/N.50/2023 CT dt. 29/09/2023</p>	<p>1) Composite supplier he has to pay, in lieu of tax payable by him, and amount calculated at the prescribed rate applied on his turnover in the State/UT for quarter.</p> <p>2) For supply of services i.e. in case of SOS, GST is payable on advance receipt or invoice, whichever is earlier.</p> <p>3) RP making supply of specified actionable claims. (e.g. betting, casinos, gambling, horse racing, lottery or online money gaming)</p>				

TOS of specified actionable claims

N/N 66/2017 is not applicable to specified actionable, the TOS for specified actionable claims such as online money gaming etc. would be determine as per normal provision of sec 12(2) i.e. earlier of:-

- the date of issue of invoice or
- the last date to issue invoice or
- the date on which supplier receives the payment.

Que:- Mr. A is registered under regular scheme under GST in Gujarat who trades in biscuits. On the other hand, he is also a partner in 2 partnership firms (registered under GST) in Gujarat, named Mehmaan Nawaazi Hotel and Lakhpati Casino. The hotel is running restaurant and serving food which had aggregate turnover of 120 lakhs in preceding financial year. Lakhpati Casino is a dealer in specified actionable claim who did not opt for composition scheme. Mr. B has availed service from all three of them (i.e. Mr. A, Mehmaan Nawaazi Hotel and Lakhpati Casino) in the month of May, the details of which are as under:-

Particulars	Mr. A	Mehmaan Nawazi Hotel	Lakhpati Casino
Date of supply	2nd May	10th May	12th May
Date of issue of invoice for Rs. 10000 in each case	4th May	11th June	10th May
Date of receipt of payment by supplier	1st May	6th May	5000 on 9th May & 5000 on 18th May

Would notification 66/2017 apply to Mehmaan Nawaazi Hotel, if it was providing goods under composition scheme instead of restaurant service? Also, Determine the time of supply in each case for Mr. A, Mehmaan Nawaazi Hotel and Lakhpati Casino.

Answer:-

Legal Provision:-

- As per **section 12(2)** of CGST Act, 2017, the time of supply of goods shall be the earlier of the following:-
 - Date of issue of invoice or
 - Last date to issue invoice or
 - Date of receipt of payment.
- As per Notification 66/2017 under CGST Act, the registered person other than following person:-
 - A composition supplier and
 - **registered person making supply of specified actionable claims as defined in clause (102A) of section 2 of the said Act,**
 shall pay CGST on the outward supply of goods at the time of supply as specified section 12(2)(a) i.e. date of issue of invoice or last date of issue of invoice.
- As per **section 13(2)(b)** of CGST Act, 2017, if **invoice is not issued within 30 days** of supply of services, then **the time of supply** of such services shall be **earlier** of:-
 - the date of provision of service or
 - the date of receipt of payment.

Discussion & Conclusion:-

1. In given case, notification 66/2017 applies to Mr. A and he shall be liable to pay tax on invoice basis only and not on advance received. Accordingly, the time of supply shall be **2nd May** i.e. the last date to issue invoice as per section 12(2) read with notification 66/2017.
2. In case of Mehmaan Nawaazi Hotel, notification 66/2017 is not applicable as this notification applies only to supply of goods and not services. Even if this firm was dealing in goods, this notification would still not apply as it is covered under the exception to notification 66/2017 (being a composition supplier) & hence, it is liable to pay tax on advance receipt also. The time of supply in this is **6th May** because invoice is issued after 30 days of supply of service & also the consideration is received in advance.
3. Lakhpati Casino is also covered under the exception to notification 66/2017 as it is dealing in specified actionable claim i.e. casino. Hence, it is liable to pay tax on advance receipt also. The time of supply in this is **9th May for 5000 & 10th May for balance 5000** as per section 12(2) read with notification 66/2017



VALUE OF SUPPLY

28	Value of supply of goods or services or both between distinct or related persons, other than through an agent
Applicability of rule 28(1)	<ul style="list-style-type: none"> ➔ Intra-State/Inter State stock transfer of goods between distinct person ➔ Import of services by a company from a holding/subsidiary company in course or furtherance of business ➔ Supplies of goods or services to related person or distinct person <u>when the same are made for consideration as well as made without consideration</u>
Method of Valuation	<p>It lays down the following methods to value a supply when supply is made between distinct persons as per sec 25(4) & 25(5) or when supplier and recipient are related, other than where supply is made through agent:</p> <p>(a) OMV:- The Open Market Value (OMV) of such supply</p> <p>(b) Value of Supply of LKQ:- If open market value is not available, the value of supply of goods and/or services of like kind and quality</p> <p>(c) Finally, if the value is not ascertainable by using the above methods, apply</p> <p>Rule 30-Cost based valuation:- based on cost of the supply plus 10% mark-up or</p> <p>Rule 31-Best Judgement method:- by other reasonable means in that sequence.</p>
Proviso 1	<p>If the goods are intended to be supplied AS SUCH by the recipient</p> <p>Value = 90% of the price charged for the supply of goods of like kind and quality by the recipient to his unrelated customer</p>
Proviso 2	<p>Value declared is accepted when recipient is eligible for full input tax credit</p> <p>where the recipient is eligible for full input tax credit,</p> <p>OMV = Value declared in the invoice for SOG or SOS.</p>

VOS for corporate guarantee (Rule 28(2))

Newly Inserted by N/N 53/2023

Notwithstanding anything contained in sub-rule (1), the **value of supply** of services by a supplier to a recipient who is a related person, by way of providing **corporate guarantee** to any banking company or FI on behalf of the said recipient, **shall be deemed to be**

- ➔ **1%** of the amount of such guarantee offered, or
- ➔ the actual consideration, **whichever is higher.”**

CBIC Clarification:

Clarification on issues pertaining to taxability of personal guarantee and corporate guarantee in GST-reg. [Circular No. 204/16/2023]

S. No.	Situations	Liability of GST	Remark
1	Director providing personal guarantee to the bank for company's borrowing credit limits.	No Tax	As per RBI's mandate, no consideration (including commission, brokerage fees, etc.) can be paid to the director by the company for this guarantee, making its taxable value zero (as no OMV is available).
2	Corporate guarantee provided by a company to the bank/financial institutions for another related company.	Taxable	This is considered a supply of service between related parties as per Schedule I of CGST Act, and is taxable even when made without any consideration (VOS = Rule 28(2)).
3	Corporate guarantee provided by a holding company for its subsidiary company.	Taxable	The holding company and subsidiary company are 'related persons'. The provision of a corporate guarantee is thus a taxable supply of service as per Schedule I of CGST Act, even when made without any consideration (VOS = Rule 28(2)).

Supply of online money gaming, online gaming other than online money gaming and actionable claims in casinos notified u/s 15(5) (N/No. 49/2023-CT w.e.f. 01/10/2023):-

U/s 15(5) of CGST Act, Government notifies the following supplies for which the value shall be determined as per prescribed rules:—

- (i) supply of online money gaming;
- (ii) supply of online gaming, other than online money gaming; and
- (iii) supply of actionable claims in casinos.

Rule

Valuation of Specified Actionable Claim

U/s 15(5) of CGST Act, Government notifies the following supplies for which the value shall be determined as per prescribed rules [N/No. 49/2023-CT Dt. 29/09/2023 w.e.f. 01/10/2023]:—

- (i) supply of online money gaming;
- (ii) supply of online gaming, other than online money gaming; and
- (iii) supply of actionable claims in casinos.

31A Valuation of supply of lottery and actionable claim in the form of betting, gambling or horse racing in a race club.

Method of Valuation	Supply	Value
	Supply of lottery	Higher of the two amounts to be deemed as the value 100/128 of the face value of ticket OR 100/128 of the price as notified in the Official Gazette by the organizing State
	Betting, gambling or horse racing in a race club	100% of the face value of the bet or the amount paid into the totalisator
	<p>Example 1: The Government of a State runs a lottery where face value of a lottery ticket is ₹ 250 and the price notified by the State Government in the Official Gazette is ₹ 240. Here, the value of lottery is ₹ 195.313, i.e. higher of ₹ 195.313 (250 x 100/128) or ₹ 187.50 (240 x 100/128).</p> <p>Example 2:- The Government of a State runs a lottery where face value of a lottery ticket is ₹ 250 and the price notified by the State Government in the Official Gazette is ₹ 260. Here, the value of lottery is ₹ 203.13, i.e. higher of ₹ 195.313 (250 x 100/128) or ₹ 203.13 (260 x 100/128).</p>	

31B Value of supply of online gaming including online money gaming

Newly Inserted

Method of Valuation	<p>Value = 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.</p>	
Proviso	<p>any amount returned or refunded by the supplier for any reasons, including player not using the amount deposited with the supplier for participating in any event</p>	<p>shall not be deductible from the value of supply of online money gaming.</p>

31C Value of supply of actionable claims in case of casino

<p>Method of Valuation</p>	<p>Value = 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.</p>	
<p>Proviso</p>	<p>Any amount returned or refunded by the casino to the player on return of token, coins, chips, or tickets,</p>	<p>Shall not be deductible from the value of the supply of actionable claims in casino.</p>
<p>Explanation</p>	<p>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, <u>shall not be considered as the amount paid to or deposited with the supplier by or on behalf of the said player.</u></p>	

Que:- Mr. Gadbad has placed a bet of Rs. 10,000 for online gaming & also bought a chip of Rs. 10,000 in casino. He paid the respective amounts in both. He wins Rs. 3,000 under both respectively. The applicable rate of GST is 28%.

Answer the following questions:-

i) Compute the GST payable in each case.

ii) What shall be the treatment of winnings of 3000 in both cases.

iii) What will be your answer, if he loses Rs. 10,000 in casino and places another Rs. 10,000 in casino?

Answer:- Legal Provision:-

- As per **Rule 31B** of CGST Rules, 2017, 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.
- As per **Rule 31C** of CGST Rules, 2017, 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 **purchase** of chips for use in casino.
- However, **for 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.

Discussion & Conclusion:-

- i) In the given case, the amount paid by Mr. Gadbad is 10000 in a bet for online gaming & 10000 for a chip in casino & thus, the value of supply is 10000 for such bet and 10000 for such chip as per rule 31B and 31C. The GST payable is **₹2800 in each case** (10000 * 28%).
- ii) The total amount in the next bet or chip becomes Rs. 13,000. Now, he will not be required to pay GST on the redeployed winnings amount of Rs. 3,000.
- iii) If Mr. Gadbad loses Rs. 10,000 in casino and places another Rs. 10,000 in casino, that will be considered a fresh chip. The value of supply of such chip will be 10000 as per Rule 31C and GST payable shall be 2800 (10000 * 28%).



INPUT TAX CREDIT

Amendments by Finance Act, 2023:-

Sec	Provision	
<u>16(2)</u>	Conditions for taking ITC	
	2nd Proviso (Words substituted)	Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon paid by him along with interest payable u/s 50 , in such manner as may be prescribed.
	3rd Proviso (Words inserted)	Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him to the supplier of the amount towards the value of supply of goods or services or both along with tax payable thereon.

Sec	Provision	
<u>17(5)</u>	Blocked Credit	
	(fa) (new clause inserted)	goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013
<u>17(3)</u>	Apportionment of ITC	
	Explanation to sec 17(3)	For the purposes of sec 17(3), the expression "value of exempt supply" shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule 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 for paragraph 8(a) of the said Schedule Comment:- ➔ Para 8(a) of Schedule III - supply of warehoused goods to any person before clearance for home consumption. ➔ It implies that activities in clauses (a) & (b) above are included in value of exempt supply. ➔ Value for clause (b) above is prescribed by inserting a new explanation 3 to rule 43 (discussed below).

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 (N/No. 38/2023-CT):-

<p><u>Explanation 1 to Rule 43</u></p>	<p>For the purposes of rule 42 and 43, the aggregate value of exempt supplies shall exclude: -</p> <p>(a) Omitted</p> <p>(b) the value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount, except in case of a banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances; and</p> <p>(c) 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. (Omitted)</p> <p>(d) the value of supply of Duty Credit Scrips specified in the notification of the Government of India, Ministry of Finance, Department of Revenue No. 35/2017-Central Tax (Rate), dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number GSR 1284(E), dated the 13th October, 2017.</p> <p>Reason for Amendment:-</p> <p>This service was exempt from GST upto 30.09.2022. Thereafter, exemption was withdrawn and GST became payable on such services & thus, this clause became redundant.</p>
<p><u>Explanation 3 to rule 43 (inserted w.e.f. 01/10/2023)</u></p>	<p>For the purpose of rule 42 & 43, the value of activities or transactions mentioned in paragraph 8(a) of Schedule III of CGST Act which is required to be included in the value of exempt supplies under clause (b) of 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.</p>

**Clarification regarding taxability of services provided by an office of an organisation in one State to the office of that organisation in another State, both being distinct persons.
[Circular No. 199/11/2023]**

Here is a table summarizing the various cases, situations, and clarifications regarding input tax credit and the determination of taxable value for services provided by the Head Office (HO) to Branch Offices (Bos):

Case	Issues	Clarification
1)	Can HO avail ITC for common services from a third party for HO and BOs, and issue tax invoices to BOs, or must it use ISD mechanism?	<ul style="list-style-type: none"> ➔ Flexible ITC Distribution: HO can distribute ITC either by ISD mechanism (Sec 20 of CGST Act and Rule 39 of CGST Rules) or directly issue tax invoices to BOs (Sec 31 of CGST Act). ISD mechanism is not mandatory. ➔ Mandatory ISD Registration: If HO opts for ISD mechanism, it must register as ISD as per Sec 24(viii) of the CGST Act. ➔ Specific Attributability/Provision: Distribution or invoice issuance only if services are specifically for or actually provided to BOs.
2)	Is it mandatory for HO to issue invoices for internally generated services provided to BOs, especially when full ITC is available to Bos?	<ul style="list-style-type: none"> ➔ Valuation as per Rule 28: The value in the invoice from HO to BOs is considered as open market value (i.e. value declared in invoice as per proviso 2 of rule 28) if BOs are eligible for full ITC. This applies regardless of whether specific costs, like employee salaries, are included or not. ➔ Uninvoiced Services Deemed as Nil Value: When full ITC is available and HO doesn't issue an invoice, the value of such services is deemed Nil and treated as open market value.
3)	Must HO include employee salary costs when computing taxable value for services to BOs, if full ITC isn't available?	No Mandatory Inclusion of Salary Costs: It's not required to include HO employee salary costs in the taxable value, even when BOs can't avail full ITC.



IGST ACT 2017

INCLUDES PLACE OF SUPPLY

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 as per section 5(1) only [Proviso to section 5(1) amended]

<p><u>Sec 5(1)</u></p>	<p><u>Levy & collection of IGST</u></p>	<p>Subject to the provisions of sub-section (2), there shall be levied a tax called the IGST</p> <ul style="list-style-type: none">➤ on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption,➤ on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding 40%., as may be notified by the Government on the recommendations of the Council and➤ collected in such manner as may be prescribed and shall be paid by the taxable person <p>Proviso (Inserted by IGST Amendment Act, 2017):- Provided that 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 provisions of section 3 of Customs Tariff Act, 1975 on value as determined under the said Act at the point when duties of customs are levied on the said goods u/s 12 of Customs Act, 1962</p> <p>N/No. 03/2023 w.e.f. 01/10/2023:- It notifies supply of online money gaming as the goods on import of which the proviso to section 5(1) of said Act shall not apply, but on which integrated tax shall be levied and collected u/s 5(1) of the said Act.</p> <p>Analysis:-</p> <ul style="list-style-type: none">➤ For intangible goods, it may not be possible to levy & collect IGST on imports as per said proviso, as the goods may not be physically crossing customs frontiers.➤ Resultantly, this amendment 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.
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Place of supply of goods purchased Over the Counter in one State & transported to another State by buyer [Amendment by IGST (Amendment Act), 2023 (w.e.f. 01/10/2023)]

Sec 10 (1)(ca)	Supply made to URP (Newly inserted)	Notwithstanding anything contrary contained u/s 10(1)(a)/(c), if supply of goods is made to a person other than a registered person , the place of supply shall be the - location as per address of said person recorded in invoice issued for said supply & - location of supplier where the address of said person is not recorded in invoice. Explanation:- Recording of the name of the State of said person in the invoice shall be deemed to be the recording of the address of said person.	
	Summary	POS in case of OTC sales to unregistered persons is as follows:-	
		If address of URP is recorded in invoice:-	POS is location as per address of URP recorded in invoice. <div style="border: 1px solid red; padding: 2px;">Note:- Simply mentioning the State of URP instead of complete address would be sufficient.</div>
		If address of URP is not recorded in invoice:-	POS is the location of supplier
Reason for Amendment	<ul style="list-style-type: none"> ➤ There are cases where an unregistered person purchases goods over the counter (OTC) in one State & transports the goods to another State (generally, the State where he resides), for instance, migrant workers, tourists, etc. ➤ 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. ➤ So, this new clause will determine POS in such cases. 		

Determination of Place of Supply

Sec 12(8)	Proviso Omitted	PLACE OF SUPPLY FOR TRANSPORTATION OF GOODS	
	Amended by F.A. 2023	The place of supply of services by way of transportation of goods, including by mail or courier to,- (a) a registered person, shall be the location of such person; (b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation. <div style="border: 1px solid black; padding: 5px; margin-top: 10px;">Proviso (Omitted):- Provided that where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods.</div>	
Sec 13(9)	Omitted	PLACE OF SUPPLY OF GOODS TRANSPORT SERVICES	
Amended by F.A. 2023	The place of supply of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of such goods		

Place of supply of service of transportation of goods, including through mail and courier (Circular No. 203/15/2023)

Issue	<ul style="list-style-type: none"> ⇒ Section 13(9) of IGST Act is omitted vide section 162 of Finance Act, 2023 (w.e.f. 01.10.2023). ⇒ So, whether place of supply of service of transportation of goods, including through mail and courier, in cases where location of supplier of services or location of recipient of services is outside India, will be determined as per section 13(2) of IGST Act or section 13(3) of IGST Act.
Clarification	<ul style="list-style-type: none"> ⇒ It is clarified that after amendment, place of supply of such services will be determined by the default rule u/s 13(2) of IGST Act and not as performance-based services u/s 13(3) of IGST Act. ⇒ Accordingly, if location of recipient of services is available, place of supply of such services shall be location of such recipient and in cases where location of recipient of services is not available in ordinary course of business, place of supply shall be location of supplier of services.

OIDAR Services (Sec 14)

Definitions of NTOR- Amended by Finance Act, 2023:-

Sec 2(16)	Old Def. of NTOR	<p>"Non taxable online recipient" means any Government, local authority, governmental authority, an individual or any other person not registered and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.</p> <p>Explanation:— For the purposes of this clause, the expression "governmental authority" means an authority or a board or any other body,—</p> <p>(i) — set up by an Act of Parliament or a State Legislature; or</p> <p>established by any Government, with ninety per cent. or more participation by way of equity or control, to carry out any function entrusted [to a Panchayat under article 243G or] to a municipality under article 243W of the Constitution;</p>
Sec 2(16)	Def. of NTOR (substituted)	<p>"Non-taxable online recipient" means any unregistered person receiving online information and database access or retrieval (OIDAR) services located in taxable territory.</p> <p>Explanation:— For the purposes of this clause, the expression "unregistered person" includes a person registered solely in terms of section 24(vi) of CGST Act, 2017;</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>Section 24(vi) of CGST Act:- Persons who are required to deduct tax u/s 51, whether or not separately registered under this Act.</p> </div>

<p>Sec 2(17)</p>	<p>Def. of OIDAR Services (words omitted)</p>	<p>"Online information and database access or retrieval services" means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services such as,-</p> <ul style="list-style-type: none"> (i) advertising on the internet; (ii) providing cloud services; (iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet; (iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network; (v) online supplies of digital content (movies, television shows, music and the like); (vi) digital data storage; and (vii) online gaming online gaming, excluding the online money gaming as defined in section 2(80B) of CGST Act, 2017. [Substituted by IGST (Amendment) Act, 2023]
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Online Money Gaming (Sec 14A)

Special provision for taxability of supply of online money gaming by a person located outside the taxable territory to a person in India:-

Newly Inserted by IGST Amendment Act 2023

<p>Sec 14A</p>	<p>(1) A supplier of online money gaming, not located in the taxable territory, shall be liable to pay IGST on supply of online money gaming by him to a person in taxable territory.</p> <p>(2) For this, 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.</p> <p>Comment:- Corresponding amendment is made in rule 8(1) & rule 14 of CGST Rules.</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>Proviso 1:- Any person located in taxable territory representing such supplier for any purpose in taxable territory shall get registered and pay IGST on behalf of supplier.</p> </div> <div style="border: 1px solid black; padding: 5px; margin-top: 5px;"> <p>Proviso 2:- If such supplier does not have a physical presence or does not have a representative for any purpose in taxable territory, he shall appoint a person in taxable territory for paying IGST and such person shall be liable for payment of such tax.</p> </div> <table border="1" style="width: 100%; margin-top: 10px;"> <tr> <td data-bbox="186 1721 435 1912"> <p>Reason for Amendment</p> </td> <td data-bbox="435 1721 1557 1912"> <p>Consequent to online money gaming becoming taxable by virtue of amendment in Schedule III of CGST Act, there was a need for special provisions for taxability of supply of online money gaming by a person located outside the taxable territory to a person in India.</p> </td> </tr> </table>	<p>Reason for Amendment</p>	<p>Consequent to online money gaming becoming taxable by virtue of amendment in Schedule III of CGST Act, there was a need for special provisions for taxability of supply of online money gaming by a person located outside the taxable territory to a person in India.</p>
<p>Reason for Amendment</p>	<p>Consequent to online money gaming becoming taxable by virtue of amendment in Schedule III of CGST Act, there was a need for special provisions for taxability of supply of online money gaming by a person located outside the taxable territory to a person in India.</p>		

Sub-Sec	Provision	
(1)	Definition of Zero Rated Supply	<p>"Zero rated supply" means any of the following supplies of goods or services or both, namely:</p> <p>(a) export of goods or services or both; or</p> <p>(b) supply of goods or services or both for authorised operations to a SEZ developer or a SEZ unit.</p>
(3)	Old Provision	<p>A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely:-</p> <p>(a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit; or</p> <p>(b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of section 54 of the CGST Act or the rules made thereunder.</p>
	New Provision (Substituted)	<p>A registered person making zero rated supply shall be</p> <ul style="list-style-type: none"> ➤ eligible to claim refund of unutilised ITC on supply of goods or services or both, ➤ without payment of IGST, ➤ under bond or Letter of Undertaking, <p>in accordance with the provisions of sec 54 of CGST Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed.</p> <p>Proviso:- Provided that the registered person making zero rated supply of goods</p> <ul style="list-style-type: none"> ➤ shall, in case of non-realisation of sale proceeds, ➤ be liable to deposit the refund so received under this sub-section ➤ along with the applicable interest u/s 50 of CGST Act <p>within 30 days after the expiry of the time limit prescribed under the FEMA, 1999 for receipt of foreign exchange remittances, in such manner as may be prescribed.</p>
(4)	Refund of IGST for notified person (without bond) newly inserted	<p>The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by notification, specify--</p> <p>(i) a class of persons who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid;</p> <p>(ii) a class of goods or services which may be exported on payment of integrated tax and the supplier of such goods or services may claim the refund of tax so paid.</p>

Important CBIC Clarifications

Place of supply in case of supply of services in respect of advertising sector (Circular No. 203/15/2023-GST Dt. 27/10/2023):-

Advertising companies procure 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. Variety of arrangements between advertising company & its vendors are as below:

Case	Situations	Place Of Supply	Remark
I	Advertising companies buy space or right to use space on hoardings or structures (immovable property) from vendors for displaying ads.	Sec 12(3)(a):- Location where the hoarding/structure (immovable property) is located	Hoarding/structure erected on land is an immovable structure/fixture as it has been embedded in earth.
II	<ul style="list-style-type: none"> ➤ Advertising companies engage vendors to arrange hoardings / billboards at specific locations. ➤ Vendors may own or take these structures on rent. ➤ Vendor is responsible for displaying the ad, retaining possession, while the advertising company doesn't occupy the space/structure. 	Determined in terms of Sec 12(2)	The vendor is providing advertisement services by displaying the advertisement on their structure, not involving the sale or supply of advertising space or sale of right to use the space (immovable property).



Place of supply in case of supply of the “co-location services” (Circular No. 203/15/2023-GST Dt. 27/10/2023):-

Co-location is a data center service where businesses rent space for their servers and hardware. It includes security and upkeep of its servers, software management, and web-based interfaces for hosting websites and applications. Co-location services typically include various bundled services related to hosting and IT infrastructure.



Case	Situations	Place Of Supply	Remark
I	Co-location services include hosting, IT infrastructure provisioning, and various bundled services.	Sec 12(2) Location of the recipient of co-location service	Co-location services encompass more than just renting physical space (immovable property) ; they involve a range of IT infrastructure services.
II	Agreement restricts services to providing physical space and basic infrastructure, with the recipient's responsibility for upkeep and operation of servers and hardware.	Sec 12(3)(a) Location where immovable property is located	It's primarily a rental of immovable property , and place of supply is determined accordingly.



REGISTRATION

Sub-Sec

Sec 23 : Persons Not Liable For Registration

Persons not required to register under Sec 23 are not classified as 'taxable persons' in GST.

(1)	(a)	Exclusively engaged in Exempt or Non Taxable supply	Persons engaged exclusively in supplying goods and/or services not subject to tax or wholly exempt from tax are not liable for registration.
	(b)	An agriculturist	<ul style="list-style-type: none"> ⇒ Agriculturists are not liable for GST registration when supplying produce from land cultivation. ⇒ The definition of agriculturist includes individuals or Hindu Undivided Families (HUFs) engaged in land cultivation using their labor, family labour, or hired labour under supervision. <p>Note: If an agriculturist is also engaged in making any supply other than supply of produce out of cultivation of land, he shall be liable to registration based on applicable threshold limit.</p>
(2)		Notified person by Govt	Notwithstanding anything to the contrary contained in section 22(1) or section 24, the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, specify the category of persons who may be exempted from obtaining registration under this Act.
		Newly Inserted by F.A. 2023	Persons making only reverse charge supplies (N/N 5/2017)
			Persons engaged only in making supplies of taxable goods &/ or services, total tax on which is liable to be paid on reverse charge basis by recipient u/s 9(3) are exempted from obtaining registration

Sec. 24 - Compulsory Registration in Certain Cases

Clause (ix)	Persons who supply goods or services or both, other than supplies specified u/s 9(5), through such electronic commerce operator who is required to collect tax at source under Sec 52				
	Exceptions : In following cases threshold is available eventhough supply is made through ECO u/s 52				
	<table border="1"> <tr> <td>Supply of Service (N/n 65/2017)</td> <td>Supplier of service (other than specified services u/s 9(5)) through ECO deducting TCS u/s 52 & Agg. T/O, not exceeding ₹20 lakhs (for 4 special category of state ₹10 Lakhs) in a F.Y. (registration is needed after threshold)</td> </tr> <tr> <td>Supply of Goods N/N. 34/2023 Newly Inserted (effective from 01/10/2023)</td> <td>Persons making supplies of goods through an ECO who is required to collect tax at source u/s 52 & Agg. T/O, not exceeding ₹20/40 lakhs (for 4 special category of state ₹10 Lakhs) in a P.F.Y./C.F.Y. subject to following conditions:- Such Person <ul style="list-style-type: none"> (i) shall not make any inter-State SOG (ii) shall not make SOG through ECO in more than one State or UT; (iii) shall be required to have a PAN </td> </tr> </table>	Supply of Service (N/n 65/2017)	Supplier of service (other than specified services u/s 9(5)) through ECO deducting TCS u/s 52 & Agg. T/O, not exceeding ₹20 lakhs (for 4 special category of state ₹10 Lakhs) in a F.Y. (registration is needed after threshold)	Supply of Goods N/N. 34/2023 Newly Inserted (effective from 01/10/2023)	Persons making supplies of goods through an ECO who is required to collect tax at source u/s 52 & Agg. T/O, not exceeding ₹20/40 lakhs (for 4 special category of state ₹10 Lakhs) in a P.F.Y./C.F.Y. subject to following conditions:- Such Person <ul style="list-style-type: none"> (i) shall not make any inter-State SOG (ii) shall not make SOG through ECO in more than one State or UT; (iii) shall be required to have a PAN
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Supply of Goods N/N. 34/2023 Newly Inserted (effective from 01/10/2023)	Persons making supplies of goods through an ECO who is required to collect tax at source u/s 52 & Agg. T/O, not exceeding ₹20/40 lakhs (for 4 special category of state ₹10 Lakhs) in a P.F.Y./C.F.Y. subject to following conditions:- Such Person <ul style="list-style-type: none"> (i) shall not make any inter-State SOG (ii) shall not make SOG through ECO in more than one State or UT; (iii) shall be required to have a PAN 				

		<p>(iv) shall declare (before making any SOG through ECO) on the common portal</p> <ul style="list-style-type: none"> ➤ their PAN ➤ their address of their place of business and ➤ the State or UT in which such persons seek to make such supply, which shall be subjected to validation on the common portal <p>(v) granted an enrolment number on the common portal on successful validation of the PAN</p> <p>(vi) shall not be granted more than one enrolment number in a State or UT</p> <p>(vii) no supply of goods through ECO unless such persons have been granted an enrolment number</p> <p>(viii) where such persons are subsequently granted registration u/s 25 of the said Act, the enrolment number shall cease to be valid from the effective date of registration.</p>
	Reason for Amendment	<ul style="list-style-type: none"> ➤ Earlier, 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 threshold limit. ➤ Thus, exemption is provided upto threshold limit to 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.
(xia)	Online Money gaming	<p>every person supplying online money gaming from a place outside India to a person in India; and</p> <p style="text-align: right; background-color: red; color: white; padding: 2px;">Newly Inserted by CGST (Amendment) Act, 2023</p>

Section 30 read with Rule 23:- Revocation of cancellation of Registration

Sec 30 (1)	Application for revocation of cancellation of registration	<ul style="list-style-type: none"> ➤ Registered person, whose registration is cancelled by PO on his own motion, may submit an application to such officer for revocation of cancellation of registration within 90 days from the date of the service of the order of cancellation of registration Substituted by N/No. 38/2023 ➤ On sufficient cause shown & reasons recorded in writing, extension may be <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="background-color: yellow;">By:-</th> <th style="background-color: yellow;">For a period:-</th> </tr> </thead> <tbody> <tr> <td>Commissioner or officer authorised by him, not below the rank of Additional Commissioner or Joint Commissioner</td> <td>not exceeding 180 days. Substituted by N/No. 38/2023</td> </tr> </tbody> </table> <ul style="list-style-type: none"> ➤ This application shall be submitted in prescribed form at the common portal either directly or through a Facilitation Centre notified by Commissioner. 	By:-	For a period:-	Commissioner or officer authorised by him, not below the rank of Additional Commissioner or Joint Commissioner	not exceeding 180 days. Substituted by N/No. 38/2023
	By:-	For a period:-				
Commissioner or officer authorised by him, not below the rank of Additional Commissioner or Joint Commissioner	not exceeding 180 days. Substituted by N/No. 38/2023					
Reason for Amendment	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 & thus, the time limit is raised.					

Rule 8:- Procedure for Application for Registration

(1)	Declaration of Part A Information in Reg - 01	Pre-Reg. Requirements	Every person who is liable to be registered under Sec 25(1) and every person seeking registration under Sec 25(3) ("the applicant"), Submit PAN and state/UT details in Form GST REG-01 , either online or at a Facilitation Centre.
		Exceptions	There are some persons who don't follow Rule 8 because they have their own specific forms and procedures. These include: <ul style="list-style-type: none"> ➔ NRTPs. ➔ Those required to deduct TDS u/s 51 or collect TCS u/s 52 tax at source. ➔ Providers of OIDAR services from outside India to non-taxable recipients in India. ➔ person supplying online money gaming from a place outside India to a person in India
		ISD	ISDs must apply separately for their registration.
(4B)	Non applicability of proviso to sub-rule 4A (Biometric authentication & Photograph)	On recommendations of Council, CG may by notification specify the States or UTs where the proviso to sub-rule (4A) shall not apply. <p style="margin-top: 10px;">N/No. 27/2022-CT Dt. 26.12.2022: Using the power given under Rule 8(4B), CG notified that</p> <ul style="list-style-type: none"> ➔ the provisions of rule 8(4A) shall not apply in all the States & UTs ➔ except the State of Gujarat & Puducherry. Inserted by N/No. 31/2023 	

Rule 9:- Verification of application for registration & approval

Sub Rule		Legal Provision
(1)	Examination of the Application	<ul style="list-style-type: none"> ➔ Application shall be forwarded to PO to examine application & accompanying documents. ➔ If the same are found to be in order, then will approve the grant of registration to applicant within 7 working days from the date of submission of the application. <p style="margin-top: 10px;">Proviso:- The registration shall be granted within 30 days of submission of application after the physical verification of place of business in the presence of the applicant in the manner given under rule 25 & verification of required document, if:- Omitted by N/No. 38/2023</p> <ul style="list-style-type: none"> (a) a person, other than person notified u/s 25(6D), fails to undergo authentication of Aadhaar number as per rule 8(4A) or does not opt for authentication of Aadhaar number or (aa) a person, who has undergone authentication of Aadhaar number as specified in sub-rule (4A) of rule 8, is identified on the common portal, based on data analysis and risk parameters, for carrying out physical verification of places of business; or (b) PO, with approval of officer authorised by Commissioner not below the rank of AC, deems it fit to carry out physical verification of POB. <p style="margin-top: 10px;">Comment:- Now, presence of the applicant is not required for physical verification</p>

Rule 10A:- Furnishing of Bank Account details

Time Limit	Bank account details shall be furnished after obtaining certificate of registration & a GSTIN but earlier of the following:-
Substituted by N/No. 38/2023	<ul style="list-style-type: none"> ➔ within 30 days from the date of grant of registration, or ➔ before furnishing the details of outward supplies of goods &/ or services u/s 37 in FORM GSTR-1 or using IFF.

Rule 25:- Physical verification of business premises in certain cases

Substituted by N/No. 38/2023

Old Provision	Where the proper officer is satisfied that the physical verification of the place of business of a person is required due to failure of Aadhaar authentication or due to not opting for Aadhaar authentication before the grant of registration, or due to any other reason after the grant of registration, he may get such verification of the place of business, in the presence of the said person, done and the verification report along with the other documents, including photographs, shall be uploaded in FORM GST REG-30 on the common portal within a period of fifteen working days following the date of such verification.	
Substituted	Physical Verification After Grant of Registration	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 do so and <ul style="list-style-type: none"> ➔ the verification report along with the other documents, including photographs, shall be uploaded in FORM GST REG-30 on the common portal ➔ within a period of 15 working days following the date of such verification.
	Physical Verification Before Grant of Registration	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), the PO shall get such verification of the place of business done and <ul style="list-style-type: none"> ➔ the verification report along with the other documents, including photographs, shall be uploaded in FORM GST REG-30 on the common portal ➔ at least 5 working days prior to the completion of the time period specified in the said proviso.

Rule 14:- Special provisions for grant of registration in case of person supplying OIDAR services to NTOR & Online gaming to any person from a place outside India

Registration of supplier of OIDAR or Online gaming	<ul style="list-style-type: none"> ➔ Suppliers outside India must apply for registration in India electronically, if they offer OIDAR services to NTOR or Online Money Gaming services to a person in India. <p style="text-align: center;">Substituted by N/No. 51/2023</p> <ul style="list-style-type: none"> ➔ The registration must be done using FORM GST REG-10 through the common portal or via a notified Facilitation Centre.
Registration Process	<ul style="list-style-type: none"> ➔ The application should be signed or verified with an electronic verification code. ➔ Once the application is made, registration will be granted using FORM GST REG-06.

Reason of Amendment	<ul style="list-style-type: none"> ➤ 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/UT 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 IGST Act] has also been made applicable to such persons.
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Suspension of Registration [1st Proviso to sec 29(1) & 2nd Proviso to sec 29(2) read with rule 21A]:-

Rule	Provision		
21A (2A)	If cancellation of registration is initiated by Department on its own motion	Suspension of Registration	If PO has reasons to believe that registration is liable to be cancelled, he may suspend the registration of such person w.e.f. a date to be determined by him where cancellation of registration is pending.
		Comparison of Returns <small>Substituted by N/No. 38/2023</small>	<ul style="list-style-type: none"> ➤ The PO compares the person's GST returns with GSTR-1, or the inward supplies derived from the suppliers' GSTR-1. ➤ Significant differences or anomalies that suggest a violation of the GST Act or rules may lead to suspension and potential cancellation of registration.
		Contravention of Rule 10A <small>Substituted by N/No. 38/2023</small>	<ul style="list-style-type: none"> ➤ When a RP violates Rule 10A(Bank Details), their registration is suspended, and they are notified via FORM GSTREG-31. ➤ This notification outlines the discrepancies, anomalies, or non-compliances, and requests an explanation within 30 days as to why their registration should not be cancelled.
21A (4)	Revocation of suspension of registration <small>Newly Inserted by N/No. 38/2023</small>	<ul style="list-style-type: none"> ➤ The suspension of registration shall be deemed to be revoked upon completion of the cancellation proceedings by PO. ➤ Such revocation shall be effective from the date the suspension had come into effect. <p>Proviso 1:- PO may revoke suspension anytime during the pendency of proceedings for cancellation.</p> <p>Proviso 2 :- where the registration has been suspended for contravention of following clauses of sec 29(2)</p> <p>(b) Composition dealer has not furnished the return for a F.Y. beyond 3 months from the due date of furnishing the said return</p> <p>(c) Other RP, has not furnished returns for a such continuous tax period of 6 months as prescribed and hasn't been cancelled under rule 22, then submitting all pending returns will automatically revoke the suspension.</p> <p>Proviso 3:- where the registration has been suspended for contravention of provisions of rule 10A and hasn't been cancelled under rule 22, then compliance with rule 10A (i.e. furnishing bank account details) will automatically revoke the suspension.</p>	



TAX INVOICE

Debit Note & Credit Note

Particulars of a tax invoice [Sections 31(1) & (2) read with rule 46]

(e) If recipient is unregistered & value of taxable supply is:-	Particulars of Invoice
Rs 50000 or more	Name and address of recipient & the address of delivery, along with the name of State & its code
< Rs 50000 (clause f)	Unregistered recipient may still request the aforesaid details to be recorded in tax invoice
<p>Proviso: Provided that 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 un-registered, 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.</p> <p style="text-align: right;">N/N. 51/2023 & N/N. 38/2023</p>	
<p>Reason for Amendment:-</p> <ul style="list-style-type: none"> ➤ Proviso to clause (f) earlier provided for mandatory recording of name & 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 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 to provide that the tax invoice may contain 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, proviso is also made applicable to supply of online money gaming. 	

Manner of issuing the invoice [Sections 31(1) & (2) read with rule 48]

(4) E-Invoice Read with [N/N 13/2020]	Suppliers to which E-invoice is applicable	<p>RP, whose aggregate turnover in any preceding financial year from 2017-18 onwards exceeds 5 Crore</p> <p>except</p> <ul style="list-style-type: none"> ➤ A Government Department, ➤ A Local Authority, ➤ Special economic zone unit and ➤ Banks, ➤ Financial institutions, insurers, ➤ GTA and passenger transport service providers and ➤ Multiplexes
	IRN requirement	invoice/other documents in respect of supply of goods or services or both to a registered person or for exports.

Clarification on applicability of e-invoicing to Government Dept./PSUs etc. registered solely to deduct tax at source u/s 51 (Circular No. 198/10/2023):-

Issue:- 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 tax at source as per section 51 of the CGST Act?

Discussion:-

- ⇒ Government Departments or establishments/ Government agencies/ local authorities/ PSUs, which are required to deduct TDS u/s 51 of CGST Act, are liable for compulsory registration u/s 24(vi).
- ⇒ Therefore, Government Departments or establishments/ Government agencies/ local authorities/ PSUs, registered solely to deduct TDS as per section 51, are to be treated as registered persons.

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



E-Way Bill

Rule 138F (Newly inserted):- Information to be furnished in case of intra-State movement of gold, precious stones, etc. and generation of e-way bills thereof (N/ No. 38/2023):-

- ⇒ Rule 138(14) illustrates the cases where e-way bill is not required to be generated.
- ⇒ One such case is where the goods being transported are
 - (i) natural or cultured pearls & precious/semi-precious stones precious metal and metals clad with precious metals and
 - (ii) Jewellery, goldsmiths' & silversmiths' wares and other articles excepting Imitation Jewellery.
- ⇒ Rule 138F is introduced for States who want to mandate requirement of e-way bill for intra-State movement of above goods and prescribes the procedure for generation of e-way bill in such cases.



PAYMENT OF TAX

Deposition of amount in E-Cash Ledger

Rule 87(3):- Deposit Modes in E-Cash Ledger

⇒ Deposits can be made via various modes through PMT -06 challan:

- **Internet Banking:** Through authorized banks.
- **Unified Payment Interface (UPI):** From any bank.
- **Immediate Payment Services (IMPS):** From any bank.
- **Credit/Debit Card:** Through authorized banks.
- **NEFT or RTGS:** From any bank.
- **Over the Counter Payment:** Up to ₹10,000 per challan per tax period, by cash, cheque, or demand draft, through authorized banks.

So, deposits can be made **online (no limit)** as well as **over the counter (with limit)**.

Exceptions to Deposit Limit over the counter :- The ₹10,000 limit per challan for Over the Counter payments does not apply to:

- Government Departments or others notified by the Commissioner.
- Proper Officer or Authorized Officer: For recovering dues, including through property (movable or immovable) attachment or sale.
- During Investigations or Enforcement Activities: Cash, cheque, or demand draft collected by officers.

- **Special Payment mode for OIDAR or Online money gaming:-** A person from outside India providing OIDAR services to NTOR or online money gaming services to any person in India are permitted to make their payments through the international money transfer system of the Society for Worldwide Interbank Financial Telecommunication (SWIFT) network.

**Substituted by
N/No. 51/2023**

Clarification on charging of interest u/s 50(3) of CGST Act, 2017, in cases of wrong availment of IGST credit and reversal thereof (Circular No. 192/04/2023)

1)	Total ITC for Interest Calculation	While calculating interest under Rule 88B of the CGST Rules, consider the total Input Tax Credit (ITC) available in your E- credit ledger. This includes the credit from IGST, CGST and SGST combined, not just IGST.
	No Interest if sufficient balance of total ITC	If you've wrongly availed IGST credit but reversed it, you won't face interest liability under Sec 50(3) of the CGST Act as long as your total ITC (IGST, CGST, SGST combined) never dropped below the wrongly availed IGST credit during that period.
	Interest on Utilization of Wrongly Availed IGST Credit	If your total ITC (including IGST, CGST, SGST) falls below the amount of wrongly availed IGST credit, it's considered as utilizing the wrongly availed credit. Interest will apply based on how much the total ITC falls below the wrongly availed amount.

2) Availability of compensation cess credit available in e-credit ledger to calculate interest under rule 88B(3) for wrongly availed & utilized IGST, CGST or SGST credit

- ITC of compensation cess can be utilised only towards payment of compensation cess & **not for payment of any tax &/or reversal of credit** under CGST/SGST/IGST heads.
- Accordingly, credit of compensation cess available in electronic credit ledger **cannot be taken into account while considering the balance of electronic credit ledger** for calculation of interest rule 88B(3) of CGST Rules for wrongly availed and utilized IGST, CGST or SGST credit.



TDS-TCS

52(15): Time limit to furnish a statement for an ECO:-

Newly Inserted By F.A . 2023

The operator shall not be allowed to furnish a statement under sub-section (4) after the expiry of **3 years** from the due date of furnishing the said statement.

Proviso:- Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow an operator or a class of operators to furnish a statement under sub-section (4), even after the expiry of the said 3 years from the due date of furnishing the said statement

Details of TCS furnished by ECO to be made available electronically to only registered suppliers (N/No. 38/2023 (w.e.f. 01/10/2023)):-

Substituted By N/No. 38/2023

Old Provision	The details furnished by the operator under sub-rule (1) shall be made available electronically to each of the suppliers
Rule 67(2)	The details of TCS u/s 52(1) furnished by the operator under sub-rule (1) 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.
Reason for Amendment	<ul style="list-style-type: none"> ➤ Unregistered suppliers of services and now goods also are allowed to make supplies through ECOs till the time their turnover does not exceed the threshold limit. ➤ Now, details of TCS furnished by ECOs in Form GSTR-8 shall be made available only to registered suppliers, as the supplies by unregistered persons do not attract TCS.

Special procedure to be followed by ECO required to collect tax at source u/s 52 for goods supplied through it by composition dealer [N/No. 36/2023]

Central Government, on the recommendations of the Council, hereby notifies the **electronic commerce operator (ECO) who is required to TCS u/s 52** as the class of persons who shall follow the following special procedure in respect of supply of **goods made through it by the persons paying tax under sec 10 of the said Act: —**

- (i) ECO shall not allow any inter-State supply of goods through it by the said person;
- (ii) ECO shall collect tax at source u/s 52(1) of the said Act in respect of supply of goods made through it by the said person and pay to the Government as per section 52(3) of said Act; and
- (iii) 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.

Note:- ECOs would be required to declare the supplies made by such composition dealers through them through existing GSTR-8 statement.

Special procedure to be followed by ECO required to TCS u/s 52 for goods supplied through it by persons exempted from obtaining registration u/s 23(2) vide N/No. 34/2023 [N/No. 37/2023]:-

Central Government, on recommendations of Council, notifies ECO **who is required to collect tax at source u/s 52** as the class of persons who shall follow the following **special procedure** in respect of **supply of goods made through it by the persons exempted from obtaining registration u/s 23(2), subject to specified conditions** as per N/No. 34/2023-

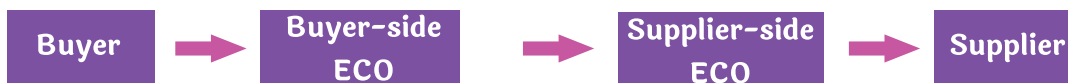
- (i) ECO shall allow the supply of goods through it by the said person only if enrolment number has been allotted on the common portal to the said person;
- (ii) ECO shall not allow any inter-State supply of goods through it by the said person;
- (iii) ECO shall not TCS u/s 52(1) in respect of supply 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.

Note:- 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.

Where **multiple ECOs** are involved in a single supply of goods through ECO platform, “the 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.

Clarification on TCS liability u/s 52 of CGST Act, 2017 in case of multiple E-commerce Operators (ECOs) in one transaction in the context of Open Network for Digital Commerce (ONDC) (Circular No. 194/06/2023):-

Issue :- If multiple ECOs are involved in a single transaction of supply of goods &/or services through ECO platform and where the supplier-side ECO himself is not the supplier in the said supply, who is liable for compliances u/s 52 including collection of TCS?



Clarification:-

- The compliances u/s 52 of CGST Act, including collection of TCS, is to be done by supplier-side **ECO who finally releases the payment to supplier** for a particular supply made by the said supplier through him.
- e.g.: Buyer-side ECO collects payment from buyer, deducts its fees/commissions & remits the balance to Seller-side ECO. The Seller-side ECO will release payment to supplier after deduction of his fees/commissions & will also be required to collect TCS & pay the same to Government as per section 52 and also make other compliances u/s 52.
- Buyer-side ECO will neither be required to collect TCS nor will be required to make other compliances as per section 52 of CGST Act for this particular supply.

Issue :- If multiple ECOs are involved in a single transaction of supply of goods &/or services through ECO platform and the Supplier-side ECO is himself the supplier of the said supply, who is liable for compliances u/s 52 including collection of TCS?



Clarification:-

- **TCS is to be collected by the Buyer-side ECO** while making payment to the supplier for the particular supply being made through it. e.g. Buyer-side ECO collects payment from buyer, deducts its fees & remits the balance to supplier (who is itself an ECO). Buyer-side ECO will also be required to collect TCS, pay the same to Government as per section 52 of CGST Act & also make other compliances u/s 52.



RETURNS

Maximum Time limit for furnishing GSTR -1/ GSTR-3B & others / GSTR-9

<p>Sec 37(5) & Sec 39(11) & Sec 44(2)</p>	<p>A RP shall not be allowed to furnish the details of outward supplies (GSTR-1)/ Return u/s 39 & annual return u/s 44 for a tax period/ F.Y. after the expiry of 3 years from the due date of furnishing the said details.</p> <p>Proviso:- CG may, on the recommendations of the Council, by notification, allow a RP or a class of RP to furnish the details of outward supplies/return/AR for a tax period/F.Y., even after the expiry of the said period of 3 years from the due date of furnishing the said details.</p>	<p>Newly Inserted by F.A. 2023</p>
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Sec 44 read with Rule 80:- Annual Return

<p>Exemption from filing</p>	<p>Commissioner exempts the registered person whose aggregate turnover in F.Y. 2022-23 is up to ₹2 Cr from filing annual return for the said F.Y.</p>	<p>Newly Inserted by N/No. 32/2023</p>
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Rule 59(6) :- Registered person debarred from furnishing details of outward supplies in Form GSTR-1/ IFF

<p>If previous GSTR-1 is/ are not furnished</p>	<p>A RP shall not be allowed to furnish GSTR-1 for a tax period, if the details of outward supplies for any of the previous tax periods has not been furnished by him. However, Govt. may allow notified persons to furnish GSTR-1, even if he has not furnished GSTR-1 for 1 or more previous tax periods.</p>	
<p>If previous GSTR-3B is/ are not furnished</p>	<p>a) A registered person (Monthly Scheme):- shall not be allowed to furnish GSTR-1, if he has not furnished the return in FORM GSTR-3B for preceding month</p> <p>b) A registered person (QRMP Scheme):- shall not be allowed to furnish GSTR-1 or IFF, if he has not furnished the return in FORM GSTR-3B for preceding tax period</p>	
<p>Non compliance of intimation under rule 88C(1)</p>	<p>A RP, to whom an intimation has been issued on the common portal under Rule 88C(1) (where tax liability shown in GSTR-1 exceeds the tax liability paid in GSTR-3B) in respect of a tax period, ⇒ shall not be allowed to furnish GSTR-1 or IFF for a subsequent tax period, ⇒ unless he has either deposited the amount specified in the said intimation or has furnished a reply explaining the reasons for any amount remaining unpaid, as required under rule 88C(2).</p>	
	<p>Comments:-</p> <ul style="list-style-type: none"> ➤ If reply was furnished but found to be not satisfactory, then only recovery proceedings u/s 79 would be triggered as this rule does not prescribe blocking of GSTR-1/ IFF in such case. ➤ If no action was taken against the issuance of DRC-01B, there would be blocking of GSTR-1/IFF along with initiation of recovery proceedings u/s 79 of CGST Act, 2017. 	

Non compliance of intimation under rule 88D(1)	<p style="background-color: red; color: white; padding: 2px;">Newly Inserted by N/N 38/2023</p> <p>If any intimation is issued rule 88D(1)(for excess ITC) on RP in respect of a tax period or periods, he 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.</p>
Non furnishing Bank Details	RP shall not be allowed to furnish GSTR-1/ IFF, if he has not furnished the details of the bank account under rule 10A.

GSTR-5A: Submission of return by persons providing OIDAR services and by persons supplying online money gaming

Substituted by [N/No. 51/2023]

Rule 64	<p>Every registered person either</p> <ul style="list-style-type: none"> ➤ providing online money gaming from a place outside India to a person in India, or ➤ providing OIDAR services from a place outside India to a NTOR referred to in Sec 14 of IGSTAct, 2017 or to a registered person other than a NTOR, ➤ shall file return in FORM GSTR-5A on or before the 20th day of the month succeeding the calendar month or part thereof.
Reason for Amendment	<ul style="list-style-type: none"> ➤ Earlier GSTR-5A did not capture supplies made by OIDAR service provider to registered persons in India on which tax is payable under RCM. ➤ Rule 64 is amended to include the details of supplies made by OIDAR service provider located outside India to registered persons in India other than NTOR in India to track 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.



ASSESSMENT & AUDIT

Sec 62 :- Assessment of non-filers of returns

<p>a)</p>	<p>Best Judgement Assessment</p>	<p>Notwithstanding anything to the contrary contained in section 73 or section 74, where a registered person fails to furnish the return under</p> <ul style="list-style-type: none">⇒ section 39 (Monthly or Quarterly Return) or section 45, (Final return on cancellation or registration)⇒ a notice under section 46 has been issued by proper officer to the defaulting taxable person requiring him to furnish the return within a period of 15 days and taxable person fails to file return within the given time; <p style="text-align: center;">even after the service of a notice under section 46,</p> <p style="text-align: center;">the proper officer may proceed to assess the tax liability of the said person to the best of his judgement taking into account all the relevant material which is available or which he has gathered.</p>
<p>b)</p>	<p>Time limit for assessment order</p>	<p>The Assessment Order shall be issued by Proper Officer within a period of 5 years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.</p> <p style="text-align: right;">Substituted by F.A. 2023</p>
<p>c)</p>	<p>Withdrawal of assessment order</p> <p style="text-align: left;">Newly Inserted by F.A. 2023</p>	<p>Where the registered person furnishes a valid return within 60 days of the service of the assessment order under sub-section (1), the said assessment order shall be deemed to have been withdrawn but the liability for payment of interest u/s 50(1) or for payment of late fee u/s 47 shall continue.</p> <div style="border: 1px solid red; padding: 5px;"><p>Proviso:- Where the RP fails to furnish a valid return within 60 days of the service of the assessment order,</p><p style="text-align: center;">he may furnish the same within a further period of 60 days on payment of an additional late fee of ₹100 for each day of delay beyond 60 days of the service of the said assessment order and</p><p style="text-align: center;">in case he furnishes valid return within such extended period, the said assessment order shall be deemed to have been withdrawn, but the liability to pay interest u/s 50(1) or to pay late fee u/s 47 shall continue.</p></div>



DEMANDS AND RECOVERY

Provisional attachment of movable/immovable property

Rule 159(2)

- ⇒ Commissioner shall send a copy of order of attachment in prescribed form (FORM GST DRC-22) to concerned Revenue/Transport Authority, etc. to place encumbrance on the said movable or immovable property.
- ⇒ The encumbrance on said movable/immovable property shall be removed:-
 - on written instructions from the Commissioner to that effect **or**
 - **on expiry of 1 year from the date of issuance of order of provisional attachment of property, whichever is earlier.**

Inserted by N/No. 52/2023

Rule 88D :- Manner of dealing with difference in ITC available in autogenerated statement containing the details of ITC and that availed in return (Newly inserted via N/No. 38/2023):-

1	Intimation for difference in ITC in GSTR-3B & GSTR-2B:-	<ul style="list-style-type: none"> ⇒ If ITC availed by a RP in the return for a tax period(s) furnished by him in GSTR-3B exceeds ITC available to such person as per auto-generated statement containing the details of ITC in GSTR-2B for said tax period(s), by specified amount & percentage, the said RP shall be intimated of such difference in prescribed form. ⇒ A copy of such intimation shall also be sent to his e-mail address. ⇒ Such intimation shall highlight the said difference and direct him to— <ul style="list-style-type: none"> (a) pay an amount equal to excess ITC availed in the said FORM GSTR-3B, along with interest payable u/s 50, through prescribed form, or (b) explain the reasons for the aforesaid difference in ITC on the common portal, within 7 days.
2	Consequences for failure to pay or reply:-	<p>If any amount specified in the intimation remains to be paid within 7 days' period and</p> <ul style="list-style-type: none"> ⇒ 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, <p>the said amount shall be liable to be demanded as per section 73 or section 74.</p>

Some Important Comments:-

⇒ Effective date of new rule 88D:-

- Rule 88D is not yet effective. The said rule gets triggered only where the difference between GSTR-2B and GSTR-3B would exceed a certain amount & percentage as may be recommended by council which have not yet been notified.
- Thus, the rule cannot be implemented until the amount and percentage are notified.



REFUNDS

Provisional refund order in case of unutilized ITC refund of ZRS.

Sec 54(6)	Refund of Tax:-	<ul style="list-style-type: none"> ➤ In case of any claim for refund on account of ZRS of goods or services made by RP (other than notified category of RP), the PO may grant refund on provisional basis for 90% of the total amount so claimed, excluding the amount of ITC provisionally accepted. ➤ Thereafter, he shall issue order for final settlement of the refund claim after due verification of documents furnished by the applicant.
Omitted by F.A. 2023		

Sec 56: Interest on Delayed Refunds

Interest on refund consequent to order passed by PO	<ul style="list-style-type: none"> ➤ If any tax ordered to be refunded to any applicant is not refunded within 60 days from the date of receipt of application, Substituted by F.A. 2023 ➤ Interest shall be payable @ 6% p.a. ➤ Interest is payable to the applicant tax for the period of delay beyond 60 days from the date of receipt of such application till the date of refund of such tax, to be computed in manner & subject to conditions & restrictions as may be prescribed.
Interest on refund consequent to order passed in an appeal etc.	<ul style="list-style-type: none"> ➤ If any claim of refund arises from an order passed by an Adjudicating Authority / Appellate Authority / Appellate Tribunal / Court which has attained finality and it is not refunded within 60 days from the date of receipt of application, ➤ interest shall be payable @ 9% p.a. ➤ Interest is payable to the applicant tax for the period of delay beyond 60 days from the date of receipt of such application till the date of refund of such tax, to be computed in manner & subject to conditions & restrictions as may be prescribed.

Eligibility of refund claim to CTP & NRTP

Rule 89 (1)	CTP and NRTP	<p>In case of CTP/NRTP, refund can be claimed for any amount after adjusting the tax payable by the applicant out of the advance tax deposited by him under section 27 at the time of registration.</p> <p>Such refund can be claimed only after the last return required to be furnished by him has been so furnished.</p>
Substituted by N/No. 38/2023		

Documents for refund of excess payment of tax

Rule 89 (2)	Excess payment of Tax, Interest or any other amount paid	Statement showing the details of the amount of such Claim.
Substituted by N/No. 38/2023		

Clarification in respect of admissibility of refund where an exporter applies for refund subsequent to compliance of the provisions of rule 96A(1) [(Circular No. 197/09/2023)]

Issue:- 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 rule 96A(1)(a)/(b) of CGST Rules. Whether subsequent to export of said goods or realization of payment for export of services, the said exporters are entitled to claim not only refund of unutilized ITC on account of export but also refund of IGST and interest so paid in compliance of rule 96A(1)?

Clarification:-

- It is clarified on actual export of goods or on realization of payment in case of export of services, the **said exporters would be entitled to refund of unutilized ITC u/s 54(3)** of CGST Act, if otherwise admissible.
- The said exporters would also be entitled to claim refund of IGST paid earlier on account of goods not being exported, or payment not being realized for export of services, within the time frame as per rule 96A(1)(a)/(b). **No refund of applicable interest** paid shall be admissible.
- Applicant may file the refund application under category “Any Other” on portal because till date it cannot be filed under the category “Excess payment of tax”.

Refund of accumulated ITC u/s 54(3) on the basis of that available as per FORM GSTR 2B (Circular No. 197/09/2023)

Issue:- Whether the refund of accumulated ITC u/s 54(3) of CGST Act shall be admissible on the basis of ITC as reflected in FORM GSTR-2A or that available as per FORM GSTR-2B?

Discussion & Clarification:-

- Since availment of ITC has been linked with FORM GSTR-2B w.e.f. 01.01.2022, availability of refund of the accumulated ITC u/s 54(3) of CGST Act 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 for the refund claims for the tax period of January 2022 onwards.
- However, such refund claims have already been disposed of by proper officer before the issuance of this circular, the same shall not be reopened.
- Consequently, CBIC circular (circular No. 139/09/2020-GST dt. 10.06.2020), which provides for restriction on 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.

Manner of calculation of Adjusted Total Turnover under Rule 89(4) consequent to Explanation inserted therein (Circular No. 197/09/2023)

Issue:- Whether value of goods exported out of India has to be considered as per Explanation under rule 89(4) of CGST Rules for calculation of “adjusted total turnover” in the formula under said sub-rule?

Discussion:- Consequent to amendment in definition of “Turnover of zero-rated supply of goods”, CBIC clarified that the same value of zero-rated/ export supply of goods, as calculated as per amended definition of “Turnover of zero-rated supply of goods”, needs to be taken into consideration while calculating “turnover in a state or a union territory” & in “adjusted total turnover” for Rule 89(4).

Clarification:- On similar lines, it is clarified that consequent to insertion of Explanation in rule 89(4), the value of goods exported out of India to be included while calculating “adjusted total turnover” will be same as being determined as per the Explanation inserted.

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 [N/No. 01/2023 as amended by N/No. 05/2023 IT (w.e.f. 01/10/2023)]:-

As per section 16(4), a registered person making zero rated supply may supply goods &/or services under bond/LUT without payment of IGST & 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 & refund of such tax paid on goods &/or services supplied may be claimed.

Following goods/ services/ suppliers have been notified:

- (i) all goods or services (except the goods specified below) as the class of goods or services which may be exported on payment of IGST and on which the supplier of such goods or 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 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

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

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,	Following essential oils other than those of citrus fruit namely: - a) Of peppermint (<i>Mentha piperita</i>); b) Of other mints : Spearmint oil (<i>ex-mentha spicata</i>), Water mint-oil



APPEALS AND REVISION

Sec 107:- Appeals to Appellate Authority (AA) read with Rule 108, 109 & 109C

	Appeal to AA by aggrieved person (taxpayer)	Application before the AA by the Department (Review application)
	Manner of filing appeal	
Form for appeal to AA & date of filing appeal	<ul style="list-style-type: none"> ⇒ It shall be filed electronically. ⇒ It can be filed manually only if Commissioner notified it or appeal cannot be electronically due to non-availability of decision/order to be appealed against on portal. 	<ul style="list-style-type: none"> ⇒ It shall be filed electronically. substituted by N/No. 38/2023 ⇒ It can be filed manually only if Commissioner notified it or appeal cannot be electronically due to non-availability of decision/order to be appealed against on portal.
<div style="background-color: red; color: white; padding: 2px;">Inserted by N/No. 38/2023</div>		

Section 109:- Constitution of Appellate Tribunal (AT) & Benches thereof

Substituted by F.A. 2023

GST Appellate Tribunal	On recommendations of Council, Govt. shall, by notification, establish w.e.f. specified date, an Appellate Tribunal (AT) known as the GST AT for hearing appeals against the orders passed by <ul style="list-style-type: none"> ⇒ Appellate Authority (AA) or ⇒ Revisional Authority (RA).
Jurisdiction, powers and authority exercised by	The jurisdiction, powers and authority conferred on AT shall be exercised by Principal Bench and State Benches constituted u/s 109(3) & 109(4).
Constitution of Principal Bench	By notification, Government shall constitute a Principal Bench of AT at New Delhi which shall consist of:- <ul style="list-style-type: none"> ⇒ President, ⇒ a Judicial Member, ⇒ a Technical Member (Centre) & a Technical Member (State).
Constitution of State Bench	On request of State, Government may, by notification, constitute such number of State Benches at such places & with such jurisdiction as may be recommended by Council, which shall consist of:- <ul style="list-style-type: none"> ⇒ 2 Judicial Members ⇒ a Technical Member (Centre) & a Technical Member (State)
Hearing of appeals	<ul style="list-style-type: none"> ⇒ Principal Bench & State Bench shall hear appeals against orders passed by AA or RA. ⇒ However, If any one issue involved relates to place of supply, it shall be heard only by Principal Bench.
Transfer of cases among Benches	The President shall, from time to time, by a general or special order, distribute the business of AT among Benches and may transfer cases from one Bench to another.
Vice-President for State Benches & it's powers	The senior-most Judicial Member within the State Benches, as may be notified, shall act as the Vice-President for such State Benches and shall exercise such powers of the President as may be prescribed, but for all other purposes be considered as a Member.

No. of members required to hear appeal	<p>⇒ If tax or ITC involved or fine, fee or penalty determined in any order appealed against does not exceed ₹ 50 lakhs & does not involve any question of law, then with approval of President & subject to prescribed conditions, appeal may be heard by single Member.</p> <p>⇒ In all other cases, it shall be heard together by 1 Judicial Member & 1 Technical Member.</p>													
Difference in opinion:-	<p>After hearing the case, if Members differ in their opinion on any point(s), such Member shall state the point(s) on which they differ, & President shall refer such case for hearing, —</p> <table border="1" data-bbox="318 420 1523 883"> <thead> <tr> <th></th> <th>Situations</th> <th>Case referred to</th> </tr> </thead> <tbody> <tr> <td rowspan="2">a.</td> <td>where appeal was originally heard by Members of a State Bench:</td> <td>to another Member of a State Bench within State or,</td> </tr> <tr> <td>where no such other State Bench is available within State:</td> <td>to a Member of a State Bench in another State.</td> </tr> <tr> <td rowspan="2">b.</td> <td>where appeal was originally heard by Members of Principal Bench:</td> <td>to another Member from the Principal Bench or,</td> </tr> <tr> <td>where no such other Member is available:</td> <td>to a Member of any State Bench,</td> </tr> </tbody> </table> <p>& such point(s) shall be decided as per majority opinion including opinion of Members who first heard the case.</p>		Situations	Case referred to	a.	where appeal was originally heard by Members of a State Bench:	to another Member of a State Bench within State or,	where no such other State Bench is available within State:	to a Member of a State Bench in another State.	b.	where appeal was originally heard by Members of Principal Bench:	to another Member from the Principal Bench or,	where no such other Member is available:	to a Member of any State Bench,
	Situations	Case referred to												
a.	where appeal was originally heard by Members of a State Bench:	to another Member of a State Bench within State or,												
	where no such other State Bench is available within State:	to a Member of a State Bench in another State.												
b.	where appeal was originally heard by Members of Principal Bench:	to another Member from the Principal Bench or,												
	where no such other Member is available:	to a Member of any State Bench,												
Transfer of members amongst bench	<p>⇒ In consultation with President, Government may transfer Members from 1 Bench to another Bench for the administrative efficiency.</p> <p>⇒ However, A Technical Member (State) of a State Bench may be transferred to a State Bench only of the same State in which he was originally appointed, in consultation with State Government.</p>													
Defect not to render proceedings invalid	<p>Any act or proceedings of AT shall not be questioned or invalid merely on the ground of existence of any vacancy or defect in the constitution of AT.</p>													

Section 114:- Financial and administrative powers of President:-

Substituted by F.A. 2023

Old Provision	<p>The President shall exercise such financial and administrative powers over the National Bench and Regional Benches of the Appellate Tribunal as may be prescribed. Provided that the President shall have the authority to delegate such of his financial and administrative powers as he may think fit to any other Member or any officer of the National Bench and Regional Benches, subject to the condition that such Member or officer shall, while exercising such delegated powers, continue to act under the direction, control and supervision of the President.</p>
Substituted with	<p>The President shall exercise such financial and administrative powers over the Appellate Tribunal as may be prescribed.</p>

Section 117:- Appeal to the High Court

1	Appealable orders:- Substituted by F.A. 2023	Any person aggrieved by any order passed by the State Bench or Area Benches State Benches of the AT may file an appeal to the High Court and the High Court may admit such appeal, if it is satisfied that the case involves a substantial question of law.
5	Decision of the High Court Substituted by F.A. 2023	The High Court may determine any issue which- (a) has not been determined by the State Bench or Area Benches State Benches ; or (b) has been wrongly determined by the State Bench or Area Benches State Benches , by reason of a decision on such question of law as herein referred to in sub-section (3).

Section 118:- Appeal to Supreme Court

1	An appeal shall lie to the Supreme Court	An appeal shall lie to the Supreme Court:- (a) from any order passed by Principal Bench of the AT, or (b) from any judgment or order passed by High Court in an appeal, which High Court certifies to be a fit one for appeal to Supreme Court immediately after passing of judgment/order, on its own motion or on application made by party aggrieved. Note: Principal Bench of AT can hear appeal if one of the issues in dispute involves place of supply .
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Section 119:- Sums due to be paid notwithstanding appeal, etc

Sums due to Govt. as a result of an order passed by **Principal Bench / State Benches** of the AT or High Court shall be payable though an appeal is **preferred** to High Court or Supreme Court. **Substituted by F.A. 2023**



MISCELLANEOUS PROVISIONS

Sec 158A :- Consent based sharing of information furnished by taxable person

Newly Inserted by
F.A. 2023

Sub-Sec	Legal Provision	
1.	<p>Which information can be shared by common portal with other systems?</p>	<p>⇒ This section overrides section 133, 152 & 158.</p> <p>⇒ After obtaining the consent of supplier or recipient as required, the common portal may share the following details that are furnished by RP with other systems notified by Govt., with prescribed manner & conditions:-</p> <p>(a) particulars furnished in the application for registration u/s 25 or in the return filed u/s 39 (GSTR-3B) or u/s 44 (Annual return);</p> <p>(b) particulars uploaded on common portal for preparation of invoice, details of outward supplies furnished u/s 37 (GSTR-1) & particulars uploaded on common portal for generation of documents u/s 68;</p> <p>(c) other prescribed details.</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>N/No. 33/2023:-</p> <p>⇒ “Account Aggregator (AG)” is notified as systems with which information may be shared by common portal based on consent u/s 158A of CGST Act.</p> <p>⇒ Account Aggregator means NBFC undertaking business of Account Aggregator as per policy directions issued by RBI & as so defined under NBFC directions.</p> </div> <div style="border: 1px solid red; padding: 5px; margin-top: 10px;"> <p>Note:</p> <p>⇒ Sec 133: Liability of Officers & certain other persons</p> <p>⇒ Sec 152: Bar on disclosure of information</p> <p>⇒ Sec 158: Disclosure of information by a public servant</p> </div>
2.	<p>Consent required</p>	<p>Common portal can share such details with other notified systems (i.e. Account Aggregator) on obtaining consent of:-</p> <p>(a) supplier, for details furnished u/s 158A(1)(a), (b) & (c); and</p> <p>(b) recipient, for details furnished u/s 158A(1)(b) & (c) only where such details include identity information of recipient, in prescribed form & manner.</p>
3.	<p>Impact of sharing information</p>	<p>⇒ Govt. or common portal shall not be liable to any action for any liability arising due to information shared.</p> <p>⇒ Liability to pay tax on relevant supply or as per relevant return shall have no impact.</p>

Rule 163

**Newly Inserted by
N/No. 38/2023**

Consent based sharing of information:-

- 1) **AG to obtain consent of RP:-**
 - If RP opts to share information furnished in REG-01, GSTR-3B or GSTR-1 with requesting system (AG), AG shall obtain consent of said RP for same.
 - AG shall communicate consent with details of tax periods to common portal.
- 2) **Supplier to obtain consent of all recipients:-**
 - RP shall give his consent for sharing of information of GSTR-1 only after he has obtained the consent for the same of all recipients, to whom he has issued invoice, credit notes & debit notes during the said tax periods.
 - If he provides his consent, the consent of such recipients shall be deemed to have been obtained.



Offences & Penalties

Section 122:- Penalty for certain offences

Sub Sec	Legal Provision			
1B	Penalty leviable on ECO	ECO shall be liable to penalty who— (i) allows a supply of goods &/or services through it by an unregistered person other than a person exempted from registration by a notification to make such supply; (ii) allows an inter-State supply of goods &/or services through it by a person who is not so eligible; or (iii) fails to furnish the correct details in statement (GSTR-8) to be furnished u/s 52(4) of any outward supply of goods effected through it by a person exempted from obtaining registration under GST,	Quantum of Penalty:-	
			CGST/SGST/UTGST law	IGST law
Newly Inserted by F.A. 2023			ECO shall be liable to pay a penalty HIGHER of:- ➤ 10,000, or ➤ tax involved had such supply been made by a RP other than a person paying tax u/s 10.	ECO shall be liable to pay a penalty HIGHER of:- ➤ 20,000, or ➤ tax involved had such supply been made by a RP other than a person paying tax u/s 10.

Section 132:- Punishments for certain offences

Sub Sec	Legal Provision	
1.	Person who commits or causes to commit & retain the benefits of any of the listed offences shall be liable to punishment	(a) Supplies goods &/or services without issue of invoice with intention to evade tax, (b) Issues invoice/bill without supply leading to wrongful availment/utilisation of ITC or tax refund, (c) Avails ITC using invoice/bill referred to in clause (b) or fraudulently avails ITC without invoice/bill, (d) Collects any amount as tax but fails to pay it to Govt. within 3 months from due date of payment, (e) Evades tax or fraudulently obtains refund & such offence is not covered under clauses (a) to (d), (f) Falsifies/substitutes financial records or produces fake accounts/documents or furnishes any false information to evade payment of tax due, (g) Obstructs or prevents any officer in the discharge of his duties, (h) Deals with goods liable to confiscation in any way by acquiring possession, transporting, removing, depositing, keeping, concealing, supplying or purchasing or in any other manner,
Omitted by by F.A. 2023		

<p>Omitted by F.A. 2023</p>	<p>(i) Receives or deals with supply of services in contravention of GST law, (j) Tamper with or destroys any material evidence or documents, (k) Fails to supply required information or (unless with a reasonable belief, burden of proving which shall be upon him, that information supplied by him is true) supplies false information or (l) Attempts to commit, or abets commission of any offences mentioned in clauses (a) to (k) clauses (a) to (f) and clauses (h) and (i).</p> <p style="text-align: right;">Substituted by F.A. 2023</p>																				
<p>Prosecution & Punishment for above offences:-</p>	<p>Person covered above shall be punishable as under:-</p> <table border="1"> <thead> <tr> <th data-bbox="396 546 444 697"></th> <th data-bbox="444 546 889 697">Cases where tax evaded or ITC wrongly availed/ utilised or refund wrongly taken:-</th> <th data-bbox="889 546 1182 697">Punishment</th> <th data-bbox="1182 546 1549 697">In absence of special & adequate reasons to contrary to be recorded in judgment of Court [sec 132(3)]</th> </tr> </thead> <tbody> <tr> <td data-bbox="396 697 444 803">i.</td> <td data-bbox="444 697 889 803">Exceeds ₹500 lakhs:-</td> <td data-bbox="889 697 1182 803">Imprisonment upto 5 years & fine</td> <td data-bbox="1182 697 1549 803">Imprisonment of minimum 6 months</td> </tr> <tr> <td data-bbox="396 803 444 909">ii.</td> <td data-bbox="444 803 889 909">Exceeds ₹200 lakhs but does not exceed ₹500 lakhs</td> <td data-bbox="889 803 1182 909">Imprisonment upto 3 years & fine</td> <td data-bbox="1182 803 1549 909">Imprisonment of minimum 6 months</td> </tr> <tr> <td data-bbox="396 909 444 1060">iii.</td> <td data-bbox="444 909 889 1060">Exceeds ₹100 lakhs but does not exceed ₹200 lakhs in an offence specified in clause (b),</td> <td data-bbox="889 909 1182 1060">Imprisonment upto 1 years & fine</td> <td data-bbox="1182 909 1549 1060">Imprisonment of minimum 6 months</td> </tr> <tr> <td data-bbox="396 1060 444 1212">iv.</td> <td data-bbox="444 1060 889 1212">Person commits or abets commission of an offence specified in clause (f) or (g) or (j):-</td> <td data-bbox="889 1060 1182 1212">Imprisonment upto 6 months or fine or both</td> <td data-bbox="1182 1060 1549 1212">-</td> </tr> </tbody> </table>		Cases where tax evaded or ITC wrongly availed/ utilised or refund wrongly taken:-	Punishment	In absence of special & adequate reasons to contrary to be recorded in judgment of Court [sec 132(3)]	i.	Exceeds ₹500 lakhs:-	Imprisonment upto 5 years & fine	Imprisonment of minimum 6 months	ii.	Exceeds ₹200 lakhs but does not exceed ₹500 lakhs	Imprisonment upto 3 years & fine	Imprisonment of minimum 6 months	iii.	Exceeds ₹100 lakhs but does not exceed ₹200 lakhs in an offence specified in clause (b),	Imprisonment upto 1 years & fine	Imprisonment of minimum 6 months	iv.	Person commits or abets commission of an offence specified in clause (f) or (g) or (j):-	Imprisonment upto 6 months or fine or both	-
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Substituted by F.A. 2023

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Section 138 read with Rule 162:- Compounding of offences

Sub Sec	Legal Provision
1.	<p>Compounding of offence</p> <p>Before or after institution of prosecution, Commissioner may compound any offence if person accused of offence pays the compounding amount to CG/SG.</p> <p>Note:- Compounding means payment of money instead of undergoing prosecution</p>
	<p>Proviso :- Offences that shall not be compounded</p> <p>a. a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f) of sub-section (1) of section 132 and the offences specified in clause (l) which are relatable to offences specified in clauses (a) to (f) of the said sub-section; a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f), (h), (i) and (l) of section 132(1); (Substituted by F.A.2023)</p> <p>b. a person who has been allowed to compound once in respect of any offence, other than those in clause (a), under this Act or under the provisions of any SGST Act or UTGST Act or IGST Act in respect of supplies of value exceeding 1 crore; (Omitted by F.A.2023)</p>

		<p>c. A person who has been accused of committing an offence under this Act which is also an offence under any other law for the time being in force; a person who has been accused of committing an offence under u/s 132(1)(b); (Substituted by F.A.2023)</p> <p>d. a person who has been convicted for an offence under this Act by a court;</p> <p>e. a person who has been accused of committing an offence specified u/s 132(1)(g)/(j)/(k); (Omitted by F.A.2023) and</p> <p>f. any other class of persons or offences as may be prescribed:</p>
	Proviso: Other proceedings to continue	<ul style="list-style-type: none"> ➤ Compounding allowed under GST shall not affect the proceedings instituted under any other law. ➤ Compounding is allowed only after payment of tax, interest & penalty involved in such offences
2.	Minimum & maximum compounding amount	<ul style="list-style-type: none"> ➤ The minimum limit for compounding amount is 25% of tax involved to be the higher of 50% of tax involved or ₹10,000. ➤ The maximum limit for compounding amount is 100% of tax involved to be higher of 150% of tax involved or ₹30,000. <p style="text-align: right;">Substituted by F.A. 2023</p>
3.	Consequences of paying compounding amount	<ul style="list-style-type: none"> ➤ No further proceedings shall be initiated under GST law against accused person for same offence. ➤ Any criminal proceeding already initiated for said offence shall stand abated
	Application & order for compounding of offence	<ul style="list-style-type: none"> ➤ On receipt of application, commissioner shall call for a relevant report from concerned officer. ➤ Rule 162(3):- Omitted by N/No. 38/2023- If Commissioner is satisfied that applicant has cooperated in the proceedings before him & has made full & true disclosure of facts relating to the case, he may, by order:- <ul style="list-style-type: none"> ➤ allow application indicating the compounding amount & grant him immunity from prosecution or ➤ reject application within 90 days of receipt of application, after giving opportunity of being heard & recording grounds of rejection. ➤ Compounding amount shall be paid within 30 days from date of receipt of order, failing which the order of compounding shall be vitiated & be void.
	Withdrawal of immunity granted by commissioner	<ul style="list-style-type: none"> ➤ If person had concealed any material particulars or given false evidence in compounding proceedings, then commissioner may withdraw the immunity granted at any time. ➤ GST Act shall apply as if no immunity had been granted & person may be tried for said offence.

Determination of compounding amount:- Rule 162(3A) (Newly inserted by N/No. 38/2023)	The Commissioner shall determine the compounding amount as per the Table below:-			
	S. No.	Offence	Compounding amount if offence is punishable u/s 132(1)(i)	Compounding amount if offence is punishable u/s 132(1)(ii)
	1.	Offence specified in sec 132(1)(a) of the Act	Up to 75% of tax evaded or ITC wrongly availed or utilised or refund wrongly taken, subject to minimum of 50% of such tax evaded or ITC wrongly availed or utilised or refund wrongly taken.	Up to 60% of tax evaded or ITC wrongly availed or utilised or refund wrongly taken, subject to minimum of 40% of such amount of tax evaded or ITC wrongly availed or utilised or refund wrongly taken.
	2.	Offence specified in sec 132(1)(c) of the Act		
	3.	Offence specified in sec 132(1)(d) of the Act		
	4.	Offence specified in sec 132(1)(e) of the Act		
	5.	Offence specified in of sec 132(1)(f) of the Act	Amount equivalent to 25% of tax evaded.	Amount equivalent to 25% of tax evaded.
	6.	Offence specified in sec 132(1)(h) of the Act		
	7.	Offence specified in sec 132(1)(i) of the Act		
	8.	Attempt to commit the offences or abets the commission of offences mentioned in clause (a), (c) to(f) and clauses (h) and (i) of sub-section (1) of section 132 of the Act	Amount equivalent to 25% of such tax evaded or ITC wrongly availed or utilised or refund wrongly taken.	Amount equivalent to 25% of such tax evaded or ITC wrongly availed or utilised or refund wrongly taken.
Proviso:- If offence committed by person falls under more than one category specified in Table above, the compounding amount, in such case, shall be the amount determined for the offence for which higher compounding amount has been prescribed.				

CUSTOMS ACT 1962

CONCESSIONS UNDER CUSTOMS OR EXCEPTION TO SEC 12

SEC 25:- EXEMPTION FROM CUSTOMS DUTY

1	<p>General exemption:- If necessary in public interest, CG may, by notification in Official Gazette, exempt generally either absolutely or subject to notified conditions (to be fulfilled before or after clearance) goods of any specified description from the whole or any part of duty of customs leviable thereon.</p>
2	<p>Special exemption:- If necessary in public interest, CG may, by special order in each case, exempt any goods on which duty is leviable from payment of duty under circumstances of an exceptional nature to be stated in such order.</p>
3	<p>Special points:-</p> <ul style="list-style-type: none"> ➤ Both above-mentioned exemptions may be granted by providing for the levy of duty on such goods at a rate expressed in a form or method different from the form or method in which the statutory duty is leviable. ➤ Further, duty leviable under such altered form or method shall not exceed the statutory duty leviable under the normal form or method. <p>Validity of exemption:-</p> <ul style="list-style-type: none"> ➤ Exemption granted subject to any condition under sub-section (1) shall be valid up to 31st day of March falling immediately after 2 years from the date of such grant or variation, unless otherwise specified or varied or rescinded. ➤ For any such exemption in force as on the date on which Finance Bill, 2021 receives the assent of President, said period of 2 years shall be reckoned from the 1st day of February, 2021. <p>Explanation:- No duty shall be collected, if duty leviable is $\leq ₹ 100$.</p>
4A	<p>Exemption not applicable to :-</p> <ul style="list-style-type: none"> (a) any multilateral or bilateral trade agreement; (b) obligations under international agreements, treaties, conventions or such other obligations including with respect to United Nations agencies, diplomats and international organisations; (c) privileges of constitutional authorities; (d) schemes under the Foreign Trade Policy; (e) the Central Government schemes having validity of more than two years; (f) re-imports, temporary imports, goods imported as gifts or personal baggage; (g) any duty of customs under any law for the time being in force, including integrated tax leviable under sub-section (7) of section 3 of the Customs Tariff Act, 1975, other than duty of customs leviable under section 12."

Newly Inserted
by F.A. 2023

