

SUPPLY UNDER GST

Clarification on GST applicability on Liquidated Damages, Compensation and Penalty arising out of breach of contract or other provisions of law [Circular No. 178/10/2022 - GST dated 03.08.2022]

“Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act” has been specifically declared to be a supply of service in para 5(e) of Schedule II of CGST Act if the same constitutes a “supply” within the meaning of the Act. **(Pg 2.11)**

The above statement has following 3 parts:

Parts	Example
Agreeing to the obligation refrain from an act	Non-Compete Agreements
Agreeing to the obligation tolerate an act or a situation	A shopkeeper allowing a hawker to operate from the common pavement in front of his shop against a monthly payment by the hawker.
Agreeing to the obligation to do an act	An Industrial unit agrees to install equipment for zero emission/discharge at the behest of the RWA of a neighbouring residential complex against a consideration paid by such RWA, even though the emission/discharge from the industrial unit was within permissible limits and there was no legal obligation upon the individual unit to do so.

Taxability of various transactions:

Transaction	Taxability
Agreement to do or refrain from an act should not be presumed to exist:	<ul style="list-style-type: none"> ➤ Payments such as liquidated damages for breach of contract, Penalty imposed for violation of laws such as traffic violations, or for violation of pollution norms or other laws, penalties under the mining act for excess stock found with the mining company, forfeiture of salary or payment of amount as per the employment bond for leaving the employment before the minimum agreed period, penalty for cheque dishonor, etc. are not a consideration for tolerating an act or situation. ➤ Such amounts are for preventing breach of contract or non-performance and are thus mere ‘events’ in a contract. Further, such amounts do not constitute payment (or consideration) for tolerating an act, because there cannot be any contract: (a) for breach thereof, or (b) for violation of laws, or (c) for holding more stock than permitted under the mining contract, or (d) for leaving the employment before the agreed minimum period, or (e) for doing something leading to the dishonor of a cheque. ➤ Such payments are merely flow of money and are not a consideration for any supply. Hence, such activities will not constitute “supply” and will not be chargeable to GST.

Late payment fees or surcharge	<ul style="list-style-type: none"> ➤ The facility of accepting late payments with interest or late payment fee, fine or penalty is a facility granted by supplier naturally bundled with the main supply. ➤ Since, it is ancillary to and naturally bundled with the principal supply such as of electricity, water, telecommunication, cooking gas, insurance etc., it should be assessed at the same rate as the principal supply.
Fixed Capacity charges for Power	<ul style="list-style-type: none"> ➤ The minimum fixed charge or part of it is not a charge for tolerating the act of not scheduling or consuming the minimum the contracted or available capacity or a minimum threshold. ➤ Both the components of the price, the minimum fixed charges/capacity charges and the variable/energy charges are charged for sale of electricity and are thus not taxable as electricity is exempt from GST.
Cancellation charges	<ul style="list-style-type: none"> ➤ The amount forfeited in the case of non-refundable ticket for air travel or security deposit or earnest money forfeited in case of the customer failing to avail the travel, tour operator or hotel accommodation service or such other intended supplies are elements of composite supply and should be assessed at the same rate as applicable to the service contract, say air transport or tour operator service, or other such services. ➤ Forfeiture of earnest money is not a consideration for any supply and is not taxable.

Clarifications regarding applicability of GST on Sale of Land after levelling, laying down of drainage lines, etc. [Circular No. 177/09/2022 - GST dated 03.08.2022] (Pg 2.12)

- (i) Land may be sold either as it is or after some development such as levelling, laying down of drainage lines, water lines, electricity lines, etc. It is clarified that sale of such developed land is also sale of land and is covered by Sr. No. 5 of Schedule III of the CGST Act, 2017 and accordingly does not attract GST.
- (ii) However, it may be noted that any service provided for development of land, like levelling, laying of drainage lines (as may be received by developers) shall attract GST at applicable rate for such services.

Service by way of grant of alcoholic liquor license, against consideration in the form of license fee or application fee or by whatever name it is called (valid on alcoholic licence only, not on other licences) will not be treated as Supply.

[made applicable retrospectively w.e.f. 01.07.2017, vide Finance Act, 2022] (Pg. 2.3)

CHARGE OF GST

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

Transportation of Goods by Road by a GTA

(Pg 3.5)

Supplier: Goods Transport Agency ~~who has not paid CGST @ 6%~~ (Omitted by NN 05/2022 – CTR)

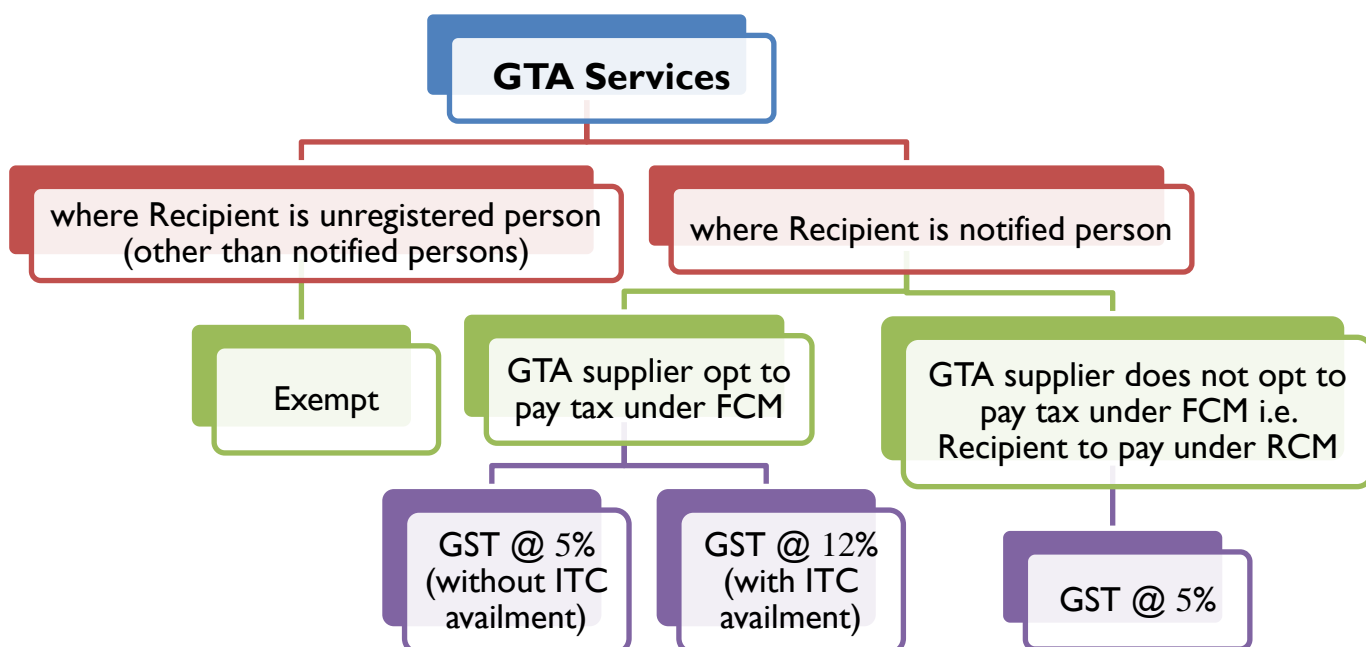
Recipient: Specified person liable to pay freight

Notes: -

- This entry will not be applicable to recipient who has taken registration in GST for deducting Tax u/s 51 of CGST Act and not for making any taxable supplies. (NN 29/2018 – CT)
- This entry shall not be applicable when supplier has obtained registration under GST and exercised option to pay tax under FCM & issues tax invoice charging GST at applicable rates and has made prescribed declaration.

Analysis: -

- If GTA provides services to other than Specified recipient (including unregistered Casual Taxable person) it is exempt vide NN 32/2017 – CTR.) (As per explanation to NN 13/2017 - CTR, person who is liable to pay freight is recipient)
- Tax paid by person under reverse charge would be eligible to avail credit of tax paid under RCM, however, GTA shall not be eligible to avail ITC on his purchases.
- Exemption has been specified in Notification 12/2017 - CTR when freight services are availed for agriculture, relief items etc. in case of those services no RCM be payable. Exemption is also for GTA services provided to tax deductors u/s 51.

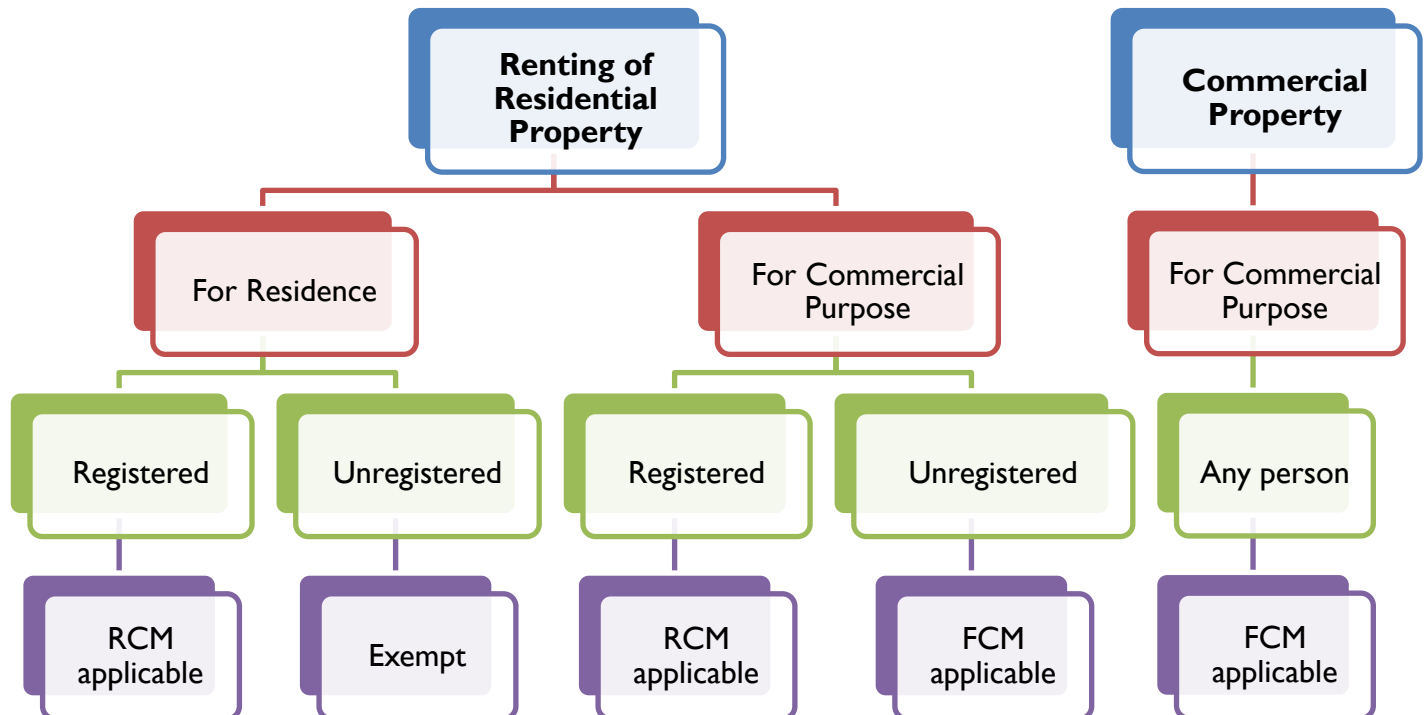


Entry 12: Services by way of renting of residential dwelling for residence **except where the residential dwelling is rented to a registered person.** [inserted by NN 04/2022 – CT (R), w.e.f. 18.07.2022] (Refer: Exemptions-Pg 4.3)

Entry 5AA: Service by way of renting of residential dwelling to a registered person (Pg 3.8)

Analysis of taxability:

Nature of Property	Recipient	Taxability
Residential property used for residence	Unregistered	Exempt
	Registered	Taxable under RCM (Entry 5AA) (Earlier exempt)
Residential property used for commercial purposes	Registered	Taxable under RCM (Entry 5AA) (Earlier FCM)
	Unregistered	Taxable under FCM
Commercial property used for commercial purpose	Any person	Taxable under FCM



EXEMPTIONS UNDER GST

ENTRY 6: (SG, CG, UT etc)

(Pg 4.12)

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

- a. ~~services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory;~~
- 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**.

Governmental authority: means an authority or a board or any other body,

- i. set up by an Act of Parliament or a State Legislature; or
- ii. established by any Government, with 90%, or more participation by way of equity or control, to carry out any function entrusted to a Municipality under article 243W of the Constitution or to a Panchayat under article 243G of the Constitution.

ENTRY 7: (Services to small business entity):

(Pg 4.13)

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

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

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

ENTRY 8: (Govt to Govt)

(Pg 4.13)

Services provided by the Central Government, State Government, Union territory or local authority to **another Central Government, State Government, Union territory or local authority except** -

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

ENTRY 9: (Small services by govt.)

(Pg 4.13)

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

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

Further, in case where **continuous supply of service** is provided by the Central Government, State Government, Union territory or a local authority, the exemption shall apply only where the consideration charged for such service **does not exceed ₹ 5,000 in a F.Y.**

Notes:

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

- Storage / Warehousing of Tea & Coffee – **Exempt** Taxable w.e.f.,18.07.2022 (Pg 4.22)(Ref. Entry 24B)

Clarifications [Circular No. 177/09/2022 – GST dated 03.08.2022]

1. Clarification regarding on applicability of GST on services in form of ART / IVF

[Entry 74 Health Care Services – Pg 4.3]

The abnormality/disease/ailment of infertility is treated using Assisted Reproductive Technology (ART) procedure such as In vitro fertilization (IVF). It is clarified that services by way of IVF are also covered under the definition of health care services for the purpose of above exemption notification.

2. Clarification on Applicability of GST on hiring of vehicles by firms for transportation of their employees to and from work

[Entry 15(b) Passenger Transport – Pg 4.5]

The exemption covered under clause (b) of entry no. 15 would apply to passenger transportation services by non-air conditioned contract carriages where according to explanatory notes, transportation takes place over pre-determined route on a pre-determined schedule. The exemption shall not be applicable where contract carriage is hired for a period of time, during which the contract carriage is at the disposal of the service recipient and the recipient is thus free to decide the manner of usage (route and schedule). Therefore, hiring of Non-A.C. Contract Carriages by firms for transportation of their employees to and from work is not exempt.

3. Clarification on Applicability of GST on tickets of private ferry used for passenger transportation from one island to another in Andaman and Nicobar Islands

[Entry 17(d) Passenger Transport – Pg 4.6]

It is clarified that, the expression 'public transport' used in the exemption notification only means that the transport should be open to public. It can be privately or publicly owned. Only exclusion is

on transportation which is predominantly for tourism, such as services which may combine with transportation, sightseeing, food and beverages, music, accommodation such as in shikara, cruise, etc.

4. **Clarification on applicability of GST on application fee charged for entrance or the fee charged for issuance of eligibility certificate for admission or for issuance of migration certificate by Edu. Inst.** [Entry 66 Educational Services – Pg 4.9]

The exemption is wide enough to cover the amount or fee charged for admission or entrance, or amount charged for application fee for entrance, or the fee charged from prospective students for issuance of eligibility certificate to them in the process of their entrance/admission to the educational institution. Services supplied by an educational institution by way of issuance of migration certificate to the leaving or ex-students are also covered by the exemption.

5. **GST exempted on location charges or preferential location charges (PLC) paid upfront in addition to the lease premium for long term lease of land** [Entry 41 - Pg 4.15]

It is clarified that location charges or preferential location charges (PLC) paid upfront in addition to the lease premium for long term lease of land constitute part of upfront amount charged for long term lease of land and are eligible for the same tax treatment, and thus eligible for the above exemption.

6. **Clarification regarding applicability of GST on sanitation and conservancy services supplied to Army and other CG & SG Depts.** [Entry 3 & 3A - Pg 4.16]

The functions entrusted to Municipalities and Panchayats under articles 243W & 243G of the Indian Constitution also include the activities of Sanitation and conservancy services. If such services are provided to Indian Army or any other Government Ministry/Department, in the same manner as a local authority does for the general public, then, the same will be eligible for exemption under Entries 3 and 3A. Otherwise, it will be chargeable to GST.

7. **GST exempted on transportation of empty containers returning from Nepal and Bhutan after delivery of transit cargo, to India** [Misc. Services Pg 4.21]

It is also clarified that movement of empty containers from Nepal and Bhutan, after delivery of goods there, is a service associated with the transit cargo to Nepal and Bhutan. Therefore, return of empty containers is also covered by this exemption.

8. **Clarification on applicability of GST on payment of Honorarium to the Guest Anchors**

- Sansad TV and other TV channels invite guest anchors for participating in their shows and pay remuneration to them in the form of honorarium.
- It is clarified that supply of all goods & services are taxable unless exempt or declared as 'neither a supply of goods nor a supply of service'. **Services provided by the guest anchors in lieu of honorarium attract GST liability.** However, guest anchors whose aggregate turnover in a financial year does not exceed ₹ 20 lakhs (₹ 10 lakhs in case of special category states) shall not be liable to take registration and hence, will not be liable to pay GST.

INPUT TAX CREDIT

Unmatched ITC: (Pg 8.4)

No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished u/s 37(1) unless, -

- a. the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 or using the invoice furnishing facility; and
- b. the details of **input tax credit in respect of** such invoices or debit notes have been communicated to the registered person in FORM GSTR-2B. **[inserted by NN 19/2022 – CT, w.e.f. 01.10.2022]**

METHODOLOGY OF APPORTIONMENT OF CREDIT OF CAPITAL GOODS AND REVERSAL THEREOF [RULE 43 OF THE COST RULES]

STEP 1: Determine common credit 'T_c' on capital goods (Pg 8.11)

Input tax on capital goods used / intended to be used exclusively for non-business purposes or making exempt supplies.

(a)	Input Tax on Capital Goods used / intended to be used exclusively for Non-Business purposes or making exempt supplies and declare the same in GSTR-2 / 3B [omitted words, omitted by NN 19/2022 – CT, w.e.f. 01.10.2022]	Not Eligible	-
(b)	Input Tax on Capital Goods used / intended to be used exclusively for making taxable supplies including zero rated supplies and declare the same in GSTR-2 / 3B [omitted words, omitted by NN 19/2022 – CT, w.e.f. 01.10.2022]	Credited to ECrL	-

REGISTRATION UNDER GST

AMENDMENT IN CANCELLATION OF REGISTRATION

Circumstances when the proper officer can cancel registration on his own (Pg 9.15)

In the following cases, registration can be cancelled by the proper officer from such date, including any retrospective date, as he may deem fit.

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

TAX INVOICE, DEBIT NOTE & CREDIT NOTE

TAX INVOICE TO CONTAIN DECLARATION FOR NON-ISSUANCE OF E – INVOICING
[Notification No. 14/2022 – CT dated 5th July, 2022] (Pg 10.4)

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

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

Time Limit to Issue Credit Note (Pg 10.7)

Details of credit in the return for the month during which such credit note has been issued, but not later than-

- September ~~30th~~ **November** following the end of FY in which such supply was made, or
- The date of filing of the relevant annual return, whichever is earlier.

Return of time expired goods by issuing Credit Note: (Pg 8.22)

Date of Supply	Date of Return	Treatment in terms of tax liability & credit
01.07.2020	20.09.2021	Credit note will be issued by the supplier (manufacturer / wholesaler). Subsequently, tax liability can be adjusted by such supplier provided the recipient (wholesaler / retailer) has either not availed ITC or if availed has reversed the ITC.
01.07.2020	20.10.2021 15.12.2021	Credit note will be issued by the supplier (manufacturer / wholesaler) but there is no requirement to upload the same on the common portal. Subsequently, tax liability cannot be adjusted by such supplier.

TDS – TCS UNDER GST

ECO in case of any omission in return can rectify, subject to payment of interest, return before earlier of ~~due date of furnishing September return~~ **30th November** following the end of FY or date of furnishing annual return (same as return filing chapter). (Pg 17.3)

[words “due date of furnishing September return” are substituted by “30th November” by Finance Act, 2022, w.e.f. 01.10.2022]

RETURNS UNDER GST

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

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

2. AMENDMENT IN DUE DATE TO FILE GSTR – 5 (Pg 20.1)

The due date to furnish GSTR 5 would be earlier of

- ❖ Within ~~20 days~~ **13 days** after the end of a calendar month or
- ❖ Within 7 days after the last day of the period of registration.

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

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

4. RECTIFICATION OF DETAILS FURNISHED IN GSTR-1

The maximum time limit within which rectifications/amendments are permissible in GSTR-1 is,

- ❖ ~~Due date of furnishing September return~~ **30th November** following end of FY to which details pertain or,
- ❖ Date of filing of relevant annual return, whichever is earlier

5. Furnishing of GSTR-1 for the current tax period is not allowed, if GSTR-1 for any of the previous tax periods has not been furnished.

However, the Government may allow a registered person or a class of registered persons to furnish GSTR-1, even if he has not furnished GSTR-1 for one or more previous tax periods. [inserted by Finance Act, 2022, w.e.f. 01.10.2022]

6. Omission of Forms GSTR-1A, GSTR-2 & GSTR-3 which never came into effect and whose applicability was persistently being deferred, have now been omitted w.e.f. 01.10.2022.

7. Communication of details of Inward Supplies and Input Tax Credit [Section 38, as substituted by Finance Act, 2022, w.e.f. 01.10.2022] :
1. The details of outward supplies furnished by the registered persons under sub-section (1) of section 37 and of such other supplies as may be prescribed, and an auto-generated statement containing the details of input tax credit shall be made available electronically to the recipients of such supplies in such form and manner, within such time, and subject to such conditions and restrictions as may be prescribed.
 2. The auto-generated statement under sub-section (1) shall consist of—
 - (a) details of inward supplies in respect of which credit of input tax may be available to the recipient; and
 - (b) details of supplies in respect of which such credit cannot be availed, whether wholly or partly, by the recipient, on account of the details of the said supplies being furnished u/s 37(1),—
 - i. by any registered person within such period of taking registration as may be prescribed; or
 - ii. by any registered person, who has defaulted in payment of tax and where such default has continued for such period as may be prescribed; or
 - iii. by any registered person, the output tax payable by whom in accordance with the statement of outward supplies furnished by him under the said sub-section during such period, as may be prescribed, exceeds the output tax paid by him during the said period by such limit as may be prescribed; or
 - iv. by any registered person who, during such period as may be prescribed, has availed credit of input tax of an amount that exceeds the credit that can be availed by him in accordance with clause (a), by such limit as may be prescribed; or
 - v. by any registered person, who has defaulted in discharging his tax liability in accordance with the provisions of section 49(12) subject to such conditions and restrictions as may be prescribed; or
 - vi. by such other class of persons as may be prescribed

LATE FEES - FOR FAILURE TO FURNISH RETURN [SECTION 47]

Maximum late fees payable under section 47 for delayed filing of Forms GSTR-1, GSTR-3B, GSTR-4 and GSTR-7, rationalized (Pg 20.4)

Section 47 stipulates a specified amount of late fee for delay in filing any of the following by their respective due dates:

- (A) Statement of Outward Supplies [Section 37]
- (B) Returns (including returns under QRMP Scheme) Returns [Section 39]
- (C) Final Return [Section 45]
- (D) TCS Statement by ECO [Section 52] [inserted by Finance Act, 2022, w.e.f. 01.10.2022]

PAYMENT OF TAX

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

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

2. TRANSFER OF ELECTRONIC CASH LEDGER BALANCES BETWEEN DISTINCT PERSONS [Sec. 49(10) substituted by Finance Act, 2022 w.e.f. 05.07.2022]

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

- Integrated tax, Central tax, State tax, Union territory tax or cess; or
- Integrated tax or central tax of a distinct person, and such transfer shall be deemed to be a refund from the electronic cash ledger under this Act.

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

Crux: This amendment has given relief to the taxpayers by allowing transfer of the amount available in Electronic Cash Ledger of one GSTIN to another GSTIN of the same PAN. However, such amount cannot be transferred, if there is any unpaid liability in the Electronic Liability register of the transferor.

3. NEW MODES OF PAYMENT INTRODUCED FOR PAYMENT OF TAX

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

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

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

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

(Note: If ITC is wrongly availed but not utilized, then, interest will not be payable – i.e., only incorrect availment of ITC does not attract interest, incorrect AVAILMENT & UTILISATION shall attract interest)

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

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

Date of utilisation of ITC would be as below:

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

REFUND UNDER GST

1. REFUND RELATED AMENDMENTS [DEEMED EXPORTS]

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

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

- Further, there may however, be cases where though inputs and output goods are same but the output supplies are made under a concessional notification due to which the rate of tax on output supplies is less than the rate of tax on inputs. In such cases, as the rate of tax of output supply is less than the rate of tax on inputs at the same point of time due to supply of goods by the supplier under such concessional notification, the credit accumulated on account of the same is admissible for refund under the provisions of clause (ii) of the first proviso to section 54(3) of the CGST Act.
- However, no refund shall be allowed in cases where output supply is either Nil rated or fully exempted.
- Further, no refund shall be allowed in case of supply of such goods or services which are notified by the Government for their exclusion from refund of accumulated ITC under this clause.

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

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

The said rule 95A has been omitted, retrospectively w.e.f. 01.07.2019, vide notification No. 14/2022-Central Tax, dated 05.07.2022. Accordingly, Circular No 106/25/2019-GST dated 29th June, 2019 has been withdrawn retrospectively. (Pg 19.16)

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

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

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

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

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

Rule 96(b): Filing of 3B must for refund claim: Newly Inserted R. 96(b): (Ref. Pg 19.10)

The applicant has furnished a valid return in FORM GSTR-3B.

Provided that if there is any mismatch between the data furnished by the exporter of goods in Shipping Bill and those furnished in statement of outward supplies in FORM GSTR-1, such application for refund of IGST paid on the goods exported out of India shall be deemed to have been filed on such date when such mismatch in respect of the said shipping bill is rectified by the exporter; [Proviso inserted by NN. 14/2022 – CT, retrospectively w.e.f. 01.07.2017]

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

The claim for refund shall be withheld when, -

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

Omission of Rule 96(5):

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

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

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

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

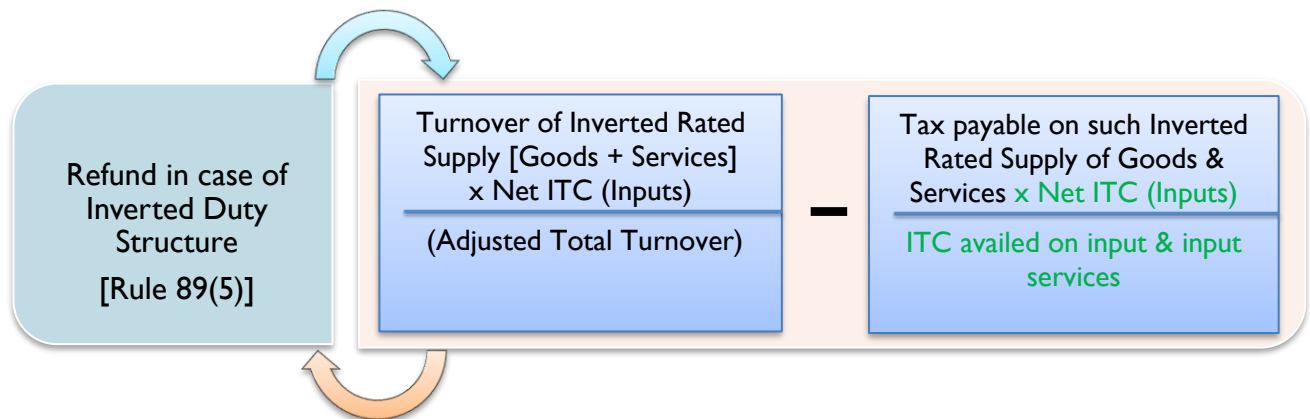
The application for refund in FORM GST RFD-01 transmitted electronically through the common portal in terms of sub-rules (5A) and (5B) shall be dealt in accordance with the provisions of rule 89 [Rule 96(5C)]

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

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

8. NOTIFYING RELEVANT DATE IN CASE OF REFUND BY SUPPLIER IN CASE OF SUPPLIES TO SEZ [S. 113 of Finance Act]: (Pg 19.3)

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

Refund of Inverted-tax Structure [Rule 89(5)] (Pg 19.5)

**REFUND TO UN BODIES, EMBASSIES ETC.
[SECTION 55 READ WITH SEC 54(2) OF CGST ACT]**

- **Time Limit:** Once in every Quarter, but before the expiry of ~~18 months~~ **2 years** from the last day of quarter in which supply was received. (Pg 19.4)

DEMANDS & RECOVERY

Deposit of Tax during the course of Search, Inspection or Investigation [Instruction No. 01/2022-23 (GST – Investigation) dated 25.05.2022] (Sec. 79 - Pg 11.5)

- It is observed that recovery of taxes not paid or short paid, can be made under the provisions of Section 79 of CGST Act, 2017 only after following due legal process of issuance of notice and subsequent confirmation of demand by issuance of adjudication order. No recovery can be made unless the amount becomes payable in pursuance of an order passed by the adjudicating authority or otherwise becomes payable under the provisions of CGST Act and rules made therein.
- Therefore, it is clarified that there may not be any circumstance necessitating recovery of tax dues during the course of search or inspection or investigation proceedings. However, there is also no bar on the taxpayers for voluntarily making the payments on the basis of ascertainment of their liability on non-payment/short payment of taxes before or at any stage of such proceedings to avoid burden of more interest as well as penalty u/s 73 or 74.

BASIC PROVISIONS OF CUSTOMS

Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022 [NN. 74/2022 - Customs (N.T.) dated 09.09.2022]

Rule 2 : Application

These rules shall apply where –

- a. a notification provides for the observance of these rules;
- b. an importer intends to avail the benefit of any notification and such benefit is dependent upon the use of the goods imported being covered by that notification for the manufacture of any commodity or provision of output service or being put to a specified end use.

Rule 3 : Definition

In these rules, unless the context otherwise requires, -

- (b) **“capital goods”** means goods, the value of which is capitalized in the books of account of the importer;
- (c) **“customs automated system”** means the Indian Customs Electronic Data Interchange System;
- (d) **“date of import”** means the date of the order made by the proper officer under section 47, permitting clearance of the goods;
- (f) **“information”** means the information provided by the importer who intends to avail the benefit of a notification;
- (g) **“job work”** means any treatment, process or manufacture, consistent with the notification undertaken by a person on goods belonging to the importer except gold, jewellery and articles thereof, and other precious metals or stones and the term **“job worker”** shall be construed accordingly;
- (h) **“jurisdictional Custom Officer”** means an officer of Customs of a rank equivalent to the rank of Superintendent or Appraiser exercising jurisdiction over –
 - a. the premises where either the goods imported shall be put to use for manufacture or for rendering output services;
 - b. the primary address specified in the Importer Exporter Code issued by Directorate General of Foreign Trade in other cases;

- (i) **“manufacture”** means the processing of raw materials or inputs by the importer in any manner that results in emergence of a new product having a distinct nature or character or use or name; and the term “manufacturer” shall be construed accordingly;
- (k) **“output service”** means supply of service excluding after-sales service, utilising imported goods.
- (m) **“specified end use”** means dealing with the goods imported in a manner specified in the notification and includes supply to the intended person and the term **“end use recipient”** shall be construed accordingly.

Rule 4 : Importer to give one time prior information

- (1) The importer shall provide one-time prior information on the common portal, in Form IGCR-1 containing the following particulars, namely: —
 - i. the name and address of the importer and his job worker, if any;
 - ii. the goods produced or process undertaken at the manufacturing facility of the importer or his job worker, if any, or both;
 - iii. the nature and description of goods imported used in the manufacture of goods at the premises of the importer or the job worker, if any;
 - iv. particulars of the notification applicable on such import;
 - v. nature of output service rendered utilising the goods imported;
 - vi. particulars of premises intended to be used in case of unit transfer;
 - vii. details of the end use recipient in cases where goods imported are supplied for specified end use; and
 - viii. the intended ports of import.
- (2) On acceptance of the information, an Import of Goods at Concessional Rate of Duty (IGCR) Identification Number (IIN) shall be generated against such information:
 However, such information may be updated on the common portal in case of a change in the details furnished in Form IGCR-1.
- (3) The importer who intends to avail the benefit of a notification shall submit a continuity bond with such surety or security as deemed appropriate by the AC/DC of Customs having jurisdiction over the premises where the goods imported shall be put to use for manufacture of goods or for rendering output service or being put to use for a specified end use, with an undertaking to pay-
 - a. in case of a notification that provides a duty exemption, the amount equal to the exemption benefit claimed at the time of import, along with interest @ 15% p.a. for the period from the date of import of the goods till the date of actual payment of the entire amount that he is liable to pay;
 - b. in all cases where the notification is other than one that provides an exemption benefit, the amount equal to the assessable value of the goods being imported.

Rule 5 : Procedure to be followed

- (1) The importer who intends to avail the benefit of a notification shall be required to mention the IIN and continuity bond number and details while filing the Bill of Entry.
- (2) The AC/DC of Customs at the custom station of importation shall allow the benefit of the notification to the importer.
- (3) Where a Bill of Entry is cleared for home consumption, the bond submitted by the importer gets debited automatically in the customs automated system and the details shall be made available electronically to the jurisdictional Customs Officer.

Rule 6 : Importer to maintain records

- (1) The importer shall maintain an account so as to clearly indicate –
- i. quantity and value of goods imported;
 - ii. quantity and date of receipt of the goods imported in the relevant premises;
 - iii. quantity of such goods consumed including the quantity used domestically for manufacture, quantity exported, if any, to fulfil the intended purpose and quantity of goods sent to an end use recipient;
 - iv. quantity of goods sent for job work and the nature of job work carried out;
 - v. quantity of goods received after job work;
 - vi. quantity of goods re-exported, if any, under rule 10; and
 - vii. quantity remaining in stock, according to bills of entry,

and shall produce the said account as and when required by the AC/DC of Customs having jurisdiction over the premises or where the goods imported shall be put to use for manufacture of goods or for rendering output service.

However, in case of non-receipt or short receipt of goods imported in the relevant premises, the importer shall intimate such non-receipt or short receipt immediately on the common portal in the Form IGCR-2.

- (2) The importer shall submit a monthly statement on the common portal in the Form IGCR-3 by the 10th day of the following month;

However, the importer may submit details of goods consumed in the Form IGCR-3A at any point of time, for immediate re-credit of the bond which shall become a part of the monthly statement of the subsequent month.

Rule 7 : Procedure for allowing imported goods for job work

- (1) The importer shall maintain a record of the goods sent for job work during the month and mention the same in the monthly statement referred to in sub-rule (2) of Rule 6.
- (2) The importer shall send the goods to the premises of the job worker under an invoice or wherever applicable, through an e-way bill, as specified in the CGST Act, 2017, mentioning the description and quantity of the goods.
- (3) The maximum period for which the goods can be sent to the job worker shall be 6 months from the date of invoice or e-way bill.
- (4) In case the importer is unable to establish that the goods sent for job work have been used as per the particulars mentioned under rule 4, the jurisdictional Customs Officer shall take necessary action against the importer under rule 11 and 12.
- (5) The job worker shall,-
 - i. maintain an account of receipt of goods, manufacturing process undertaken thereon and the waste generated, if any, during such process;
 - ii. produce the account details before the jurisdictional Customs Officer as and when required by the said officer;
 - iii. after completion of the job work send the processed goods to the importer or to another job worker as directed by the importer for carrying out the remaining processes, if any, under the cover of an invoice or electronic way bill.

Rule 8 : Procedure for allowing imported goods for unit transfer

- (1) The importer shall maintain a record of the goods sent for unit transfer during the month and mention the same in the monthly statement referred to in sub-rule (2) of rule 6.
- (2) The importer shall send the goods under an invoice or wherever applicable, through an e-way bill, as specified in the CGST Act, 2017, mentioning the description and quantity of the goods.
- (3) The importer shall in relation to transfer of goods to another unit,-
 - i. maintain an account of receipt of goods, manufacturing process undertaken thereon and the waste generated, if any, during such process;
 - ii. produce the account details before the jurisdictional Customs Officer as and when required by the said officer;
 - iii. after completion of the said process, send the processed goods back to the premises of the importer from where the goods were received or to a job worker for carrying out the remaining processes, if any, under the cover of an invoice or electronic way bill.

Rule 9 : Procedure for supplying imported goods to the end use recipient

- (1) The importer shall maintain a record of the goods supplied to the end use recipient during the month and mention the same in the monthly statement referred to in sub-rule (2) of rule 6.
- (2) The importer shall send the goods under an invoice or wherever applicable, through an e-way bill, as specified in the CGST Act, 2017, mentioning the description and quantity of the goods.
- (3) In case of supply for replenishment or Export against supply, the end use recipient shall,-
 - i. maintain an account of receipt of goods, manufacturing process undertaken thereon and the waste generated, if any, during such process;
 - ii. produce the account details before the jurisdictional Customs Officer as and when required by the said officer;
 - iii. produce the relevant details to the importer for fulfilment of the benefit under the notification;

Rule 10 : Re-export or clearance of unutilised or defective goods

- (1) The importer who has availed the benefit of a notification shall use the goods imported in accordance with the conditions mentioned in the concerned notification within the period and with respect to unutilised or defective goods, so imported, the importer shall have an option to either re-export or clear the same for home consumption, within the said period, namely –
 - (i) within the period specified in the notification;
 - (ii) within 6 months from the date of import, where the time period is not specified in the notification:
However, the said period of 6 months can be further extended by the jurisdictional Commissioner for a period not exceeding 3 months, if sufficient reason is shown that the causes for not conforming to the time period were beyond the importer's control.
- (2) Any re-export of the unutilised or defective goods referred to in sub rule (1) shall be recorded by the importer in the monthly statement by providing the details of necessary export documents:
However, the value of such goods for re-export shall not be less than the value of the said goods at the time of import.
- (3) The importer who intends to clear unutilised or defective goods for home consumption shall have an option of voluntary payment of applicable duty along with interest on the common portal and the particulars of such clearance and the duty payment shall be recorded by the importer in the monthly statement.

- (4) The importer shall have an option to clear the capital goods imported, after having been used for the specified purpose, on payment of duty equal to the exemption claimed at the time of importation, along with interest @ 15% p.a. on the depreciated value allowed in straight line method as under —
- i. for every quarter in the first year @ 4%;
 - ii. for every quarter in the second year @ 3%;
 - iii. for every quarter in the third year @ 3%;
 - iv. for every quarter in the fourth and fifth year @ 2.5%;
 - v. and thereafter for every quarter @ 2%.

Explanation. —

- (1) For the purpose of computing rate of depreciation under this rule for any part of a quarter, a full quarter shall be taken into account.
 - (2) The depreciation shall be allowed from the date when the capital goods imported have come into use for the purpose as laid down in the notification, upto the date of its clearance.
- (5) The importer shall have the option of voluntary payment of the duty along with interest, through the common portal and the particulars of such clearance and the duty payment shall be recorded by the importer in the monthly statement.

Rule 11 : Recovery of duty in certain case

- (1) In the event of any failure on the part of the importer to comply with the conditions mentioned in sub-rule (1) of rule 10 or where the payment referred in sub-rules (3) and (4) of rule 10 is not paid or short paid, the AC/DC of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for specified end use or for rendering output service shall take action by invoking the Bond to initiate the recovery proceedings of an amount as under —
 - a. in case of a notification that provides a duty exemption, equal to the amount of exemption claimed at the time of importation, along with interest @ 15% p.a. for the period from the date of import of the goods till the date of actual payment of the entire amount of duty that he is liable to pay;
 - b. in cases where the notification is other than one that provides an exemption benefit, an amount equal to the assessable value of the goods being imported.
- (2) Notwithstanding anything contained in these rules in relation to removal and processing of imported goods for job-work, the importer shall be responsible for ensuring that the said goods are used in accordance with the purposes provided in the notification and in the event of failure to do so, the AC/DC of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for specified end use or for rendering output service shall take action in accordance with these rules.

Rule 12 : Penalty

The importer or a job worker who contravenes any of the provisions of these rules or abets such contravention shall be liable to a penalty to an extent of the amount specified u/s 158(2)(ii) (i.e., Rs. 2,00,000/-).

FOREIGN TRADE POLICY (2015-20)

Applicability of FTP extended till 31.03.2023 (Pg-27 Customs)

It will remain in force up to ~~30.09.2022~~ **31.03.2023**, unless otherwise specified. [The existing FTP 2015-2020 which was valid upto 30th September, 2022 is further extended upto 31st March, 2023.]

Exemption from IGST and GST compensation cess, in case of imports under Advance Authorisation, EPCG, EOU / EHTP / STP / BTP units, granted without any time restriction

Imports under Advance Authorisation, EPCG, EOU/EHTP/STP/BTP units, are exempted from payment of Basic Customs Duty, Additional Customs Duty, Education Cess, Anti-dumping Duty, Safeguard Duty and Transition Product Specific Safeguard Duty. Further, Imports under Advance Authorisation for physical exports are also exempted from Additional Custom Duties under section 3(7) [i.e., IGST] and Additional Custom Duties under section 3(9) i.e. [GST Compensation Cess] upto ~~31.03.2022~~ ~~30.06.2022~~. [Time limit of exemption removed by NN 37/2022 - Customs, dated 30.06.2022].