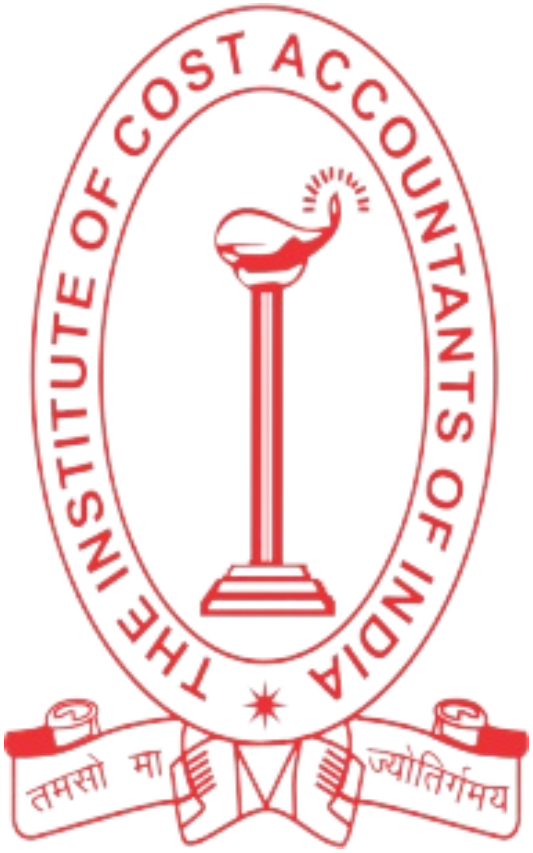


SUPPLEMENTARY FOR JUNE 2025 TERM OF EXAMINATION

PAPER 19

INDIRECT TAX LAWS AND PRACTICE

SYLLABUS 2022

[Amendments up to 30th Nov 2024]

Scope of Supply:

1. Clarification on taxability of salvage/ wreck value earmarked in the claim assessment of the damage caused to the motor vehicle (Circular No.-215/9/2024- dated 26th June 2024 GST)):

Taxability of wreck and salvage values in motor insurance claims.

Insurance companies provide services of insuring vehicles for damages, charging premiums from the vehicle owners. It is the responsibility of the insurance company to either get the vehicle repaired or compensate the insured person, as per the terms of the insurance contract.

Clarification:

No GST Liability for Insurance Companies: If the insurance company deducts the salvage value from the claim amount, the salvage remains with the insured (due to deduction in claim settlement). In such cases, there is no supply of salvage by the insurance company, and hence, no GST liability on the insurance company for the salvage value.

GST Liability for Insurance Companies: If the insurance company settles the claim for the full IDV (Insured's Declared Value) without deducting the salvage value, the salvage becomes the property of the insurance company. In such cases, the insurance company is liable to discharge GST on the disposal or sale of the salvage.

Example 1: Salvage Value Deducted by Insurance Company

- **Scenario**:
  - Insurance Company: ABC Insurance Ltd.
  - Insured Vehicle Owner: Mr. Kumar.
  - Vehicle's IDV (Insured Declared Value): ₹5,00,000.
  - Assessed Salvage Value: ₹50,000.
  - Damage Claim: ₹3,00,000.
- **Claim Settlement**:
  - ABC Insurance Ltd. settles the claim by deducting the salvage value of ₹50,000 from the claim amount.
  - Amount Paid to Mr. Kumar = ₹3,00,000 (claim amount) - ₹50,000 (salvage value) = ₹2,50,000.
  - The salvage remains with **Mr. Kumar**, who may dispose of it.
- **GST Implication**:
  - **No GST Liability** on ABC Insurance Ltd. for the salvage value since the salvage remains with Mr. Kumar, and no supply of salvage occurs by the insurance company.

Example 2: Salvage Retained by Insurance Company

- **Scenario**:
  - Insurance Company: XYZ Insurance Pvt. Ltd.
  - Insured Vehicle Owner: Ms. Priya.
  - Vehicle's IDV (Insured Declared Value): ₹8,00,000.
  - Assessed Salvage Value: ₹80,000.

- Total Damage: Complete loss of vehicle.

- **Claim Settlement**:
  - XYZ Insurance Pvt. Ltd. pays Ms. Priya the full IDV of ₹8,00,000 without deducting the salvage value.
  - The salvage is retained by XYZ Insurance Pvt. Ltd., which later sells it for ₹90,000.
- **GST Implication**:
  - The sale of salvage by XYZ Insurance Pvt. Ltd. is considered a **supply** under GST.
  - XYZ Insurance Pvt. Ltd. is liable to pay GST on the **sale of salvage** (₹90,000).
  - Assume GST Rate = 18%, GST Payable = ₹90,000 × 18% = ₹16,200.

Summary:

1. **No GST Liability**: When the salvage value is deducted from the claim amount, and the salvage remains with the insured.
2. **GST Liability**: When the insurance company pays the full claim (IDV) and retains the salvage, GST is applicable on the subsequent sale of the salvage.

2. Circular No. 218/12/2024-GST dated 26 June 2024 -

Taxability of the transaction of providing a loan by an overseas affiliate to its Indian affiliate or by a person to a related person:

Interest or discount charged on loan amounts is exempt from GST.

When no consideration is charged for processing, administering or facilitating a loan, processing fees, which are generally non-refundable, cover the administrative costs. For related entities, credit assessment may not be necessary, and the administrative costs may be absent, distinguishing these services from those provided by banks or independent lenders. Even between unrelated parties, administrative charges might be waived based on the relationship. Therefore, no service or supply exists between related persons for processing, administering or facilitating loans, and no GST is applicable as per section 7(1)(c) read with Schedule I of the CGST Act.

However, when a fee is charged for processing, administering or facilitating a loan, it qualifies as consideration for the supply of services and is subject to GST.

Example: Taxability of Loan Transactions Between Related Entities

Scenario 1: No Fee Charged for Loan Processing

1. **Entities Involved**:
   - **Overseas Affiliate**: ABC Global Ltd., located in the USA.
   - **Indian Affiliate**: ABC India Pvt. Ltd.
2. **Transaction**:
   - ABC Global Ltd. provides a loan of ₹50,00,000 to ABC India Pvt. Ltd.
   - **Interest Charged**: 5% per annum (₹2,50,000 annually).
   - **Processing Fee**: No processing, administration, or facilitation fee is charged.

3. **GST Implications**:
   - The interest on the loan (₹2,50,000) is **exempt from GST** as per GST laws.
   - Since no processing fee or other charges are involved, there is **no taxable supply** between ABC Global Ltd. and ABC India Pvt. Ltd.
   - Hence, **no GST is applicable** on this transaction.

Scenario 2: Fee Charged for Loan Processing

1. **Entities Involved**:
   - **Unrelated Entities**: XYZ Finance Inc. (Lender) and DEF Enterprises (Borrower), both registered under GST.
2. **Transaction**:
   - XYZ Finance Inc. provides a loan of ₹1,00,00,000 to DEF Enterprises.
   - **Interest Charged**: 6% per annum (₹6,00,000 annually).
   - **Processing Fee**: ₹50,000 is charged by XYZ Finance Inc. for processing the loan.
3. **GST Implications**:
   - The **interest on the loan** (₹6,00,000) is **exempt from GST**.
   - The **processing fee** (₹50,000) qualifies as consideration for the supply of services.
   - XYZ Finance Inc. must charge **GST** on the processing fee. Assuming a GST rate of 18%:
   - GST = ₹50,000 × 18% = ₹9,000.
4. **Total Payable for Processing Fee**:
   - ₹50,000 (processing fee) + ₹9,000 (GST) = ₹59,000.

Key Points

1. **No Fee Charged**:
   - If no fee is charged for loan processing, administration, or facilitation, **no GST** applies as there is no taxable supply.
2. **Fee Charged**:
   - When a fee is charged for processing or facilitating the loan, it qualifies as consideration for a supply of services, and **GST is applicable**.

3. Packages exceeding 25 kg or 25 litre:

Notification No.03/2024-Integrated Tax (Rate), Dated 12th July, 2024, has clarifies that supply of agricultural farm produce in package(s) of commodities containing quantity of more than 25 kilogram or 25 litre shall not be considered as a supply made within the scope of expression ‘pre-packaged and labelled’. This Notification Effective from 15th July 2024.

Example: Supply of Agricultural Farm Produce Exceeding 25 kg or 25 Litre

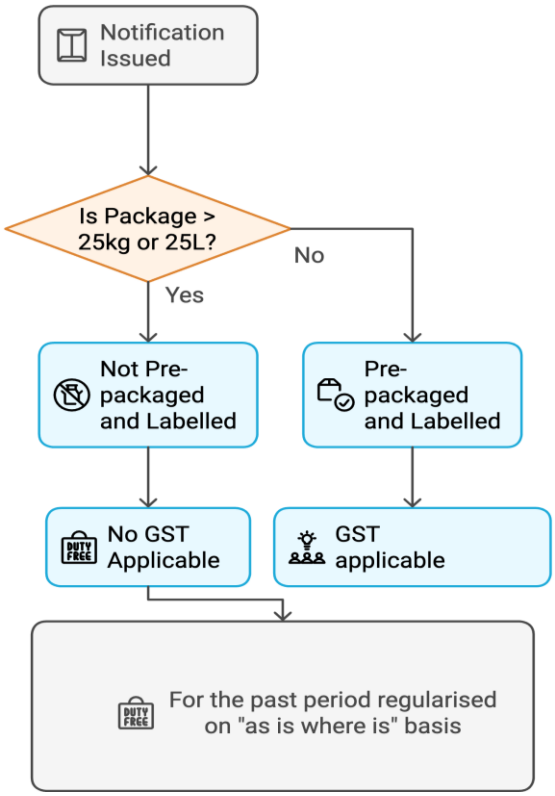
Scenario:

M/s Fresh Harvest Supplies, a supplier of agricultural farm produce, deals in wheat and mustard oil. The company wants to determine whether GST applies to certain supplies of their products after the notification.

Case 1: Wheat in 50 kg Bags

1. **Details**:
   - **Product**: Wheat
   - **Packaging**: 50 kg bags
   - **Nature**: Pre-packaged and labelled bags.
2. **Analysis**:
   - As per **Notification No. 03/2024**, agricultural produce supplied in packages containing more than **25 kg** does **not fall under the category of 'pre-packaged and labelled'** for GST applicability.
3. **GST Impact**:
   - Since the bag contains **50 kg**, which is more than **25 kg**, the supply is **not treated as pre-packaged and labelled**.
   - **Result**: No GST is applicable on this supply.

Further, on the basis of the recommendation of the GST Council, in view of the prevailing genuine doubts, the issues for the past period are hereby regularized on "as is where is" basis (CBIC Circular No. 229/23 /2024-GST Dt. 15th July 2024).



4. Inserted in Schedule – III, by F.A. 2024, dated 16-8-2024, w.e.f. 1-11-2024:

Paragraph No. 9. Activity of apportionment of co-insurance premium by the lead insurer to the co-insurer for the insurance services jointly supplied by the lead insurer and the co-insurer to the insured in coinsurance agreements, subject to the condition that the lead insurer pays the central tax, the State tax, the Union territory tax and the integrated tax on the entire amount of premium paid by the insured.

Example: New India Assurance (lead insurer) bears responsibility for managing all tax obligations on the total premium amount, regardless of how the risk is shared. Consider a co-insurance policy for a large commercial property valued at ₹10 million:

- Premium split: New India Assurance (40%) = ₹4 million, United India Insurance (30%) = ₹3 million, Oriental Insurance (30%) = ₹3 million
- Tax responsibility: New India Assurance pays IGST of 18% on full ₹10 million = ₹1.8 million
- United India Insurance and Oriental Insurance receive their share without additional tax burden

5. Inserted in Schedule – III, by F.A. 2024, dated 16-8-2024, w.e.f. 1-11-2024:

Paragraph No. 10. Services by insurer to the reinsurer for which ceding commission or the reinsurance commission is deducted from reinsurance premium paid by the insurer to the reinsurer, subject to the condition that the central tax, the State tax, the Union territory tax and the integrated tax is paid by the reinsurer on the gross reinsurance premium payable by the insurer to the reinsurer, inclusive of the said ceding commission or the reinsurance commission.".

Example 1: An insurance company (Insurer A) enters into a reinsurance agreement with a reinsurer (Reinsurer B) to mitigate its risk exposure.

- Insurer A cedes 50% of its insurance risk portfolio worth ₹2,00,00,000 to Reinsurer B.
- Reinsurer B pays a ceding commission of ₹10,00,000 to Insurer A as consideration for transferring the risk.

The ceding commission of ₹10,00,000 paid by Reinsurer B to Insurer A is treated as no supply under Schedule III of the CGST Act, 2017, meaning it is outside the scope of GST.

Example 2: Proportional Treaty Reinsurance

Scenario:

- **Insurer: HDFC ERGO General Insurance** underwrites an insurance policy for ₹50 crore for a large commercial complex.
- **Reinsurer: Swiss Re** (a global reinsurer) agrees to reinsure 50% of the risk under a proportional treaty agreement.

Details of the Agreement:

1. **Risk Transferred:**
   - 50% of ₹50 crore = ₹25 crore.
2. **Reinsurance Premium:**
   - HDFC ERGO pays a gross premium of ₹1 crore to Swiss Re.
3. **Ceding Commission:**
   - Swiss Re agrees to pay a ceding commission of ₹15 lakh to HDFC ERGO as a reimbursement for acquisition costs.

GST Implications:

1. **Ceding Commission:**
   - The ceding commission of ₹15 lakh paid by Swiss Re to HDFC ERGO is treated as **"no supply"** under Schedule III and is **not taxable**.
2. **Reinsurance Premium:**
   - Swiss Re must pay GST at 18% on the gross premium of ₹1 crore.

Summary of Tax Liability:

- **Ceding Commission:** No GST.
- **GST on Reinsurance Premium:** ₹1 crore × 18% = ₹18 lakh.
- **Taxpayer:** Swiss Re pays GST on the gross premium.

No refund of tax paid or input tax credit reversed.

- No refund shall be made of all the tax paid or the input tax credit reversed, which would not have been so paid, or not reversed, had section 118 been in force at all material times.

Practical Example for "No Refund of Tax Paid or Input Tax Credit (ITC) Reversed"

The **Finance Act, 2024**, with Section 118, introduced retrospective amendments to certain GST provisions. These amendments clarified that certain activities (like apportionment of co-insurance premium and ceding commission in reinsurance) are **not considered as supply** under GST. However, the provision also specifies that **no refund will be granted** for any GST already paid or ITC reversed before these amendments came into effect.

Let's break this down with a practical example.

Scenario: Apportionment of Co-Insurance Premium

Background:

- **Time Period:** Before Section 118 came into force (1-11-2024).
- **Activity:** New India Assurance (lead insurer) apportions co-insurance premium among co-insurers.
- **Transaction Details:**
  - Total premium collected from the insured: ₹10,00,000.
  - Co-insurance arrangement:
  - New India Assurance: 40% risk = ₹4,00,000.
  - United India Insurance: 30% risk = ₹3,00,000.
  - Oriental Insurance: 30% risk = ₹3,00,000.
- **GST Paid Before Amendment:**
  - New India Assurance paid GST on the entire premium of ₹10,00,000 (₹1,80,000 @ 18%).
  - United India Insurance and Oriental Insurance also **paid GST on their respective shares** of ₹3,00,000 (₹54,000 each).

Retrospective Amendment Impact:

- With the Finance Act, 2024, this apportionment of co-insurance premium is treated as **"no supply"** under Schedule III, effective from 1-7-2017.

- The amendment clarifies that United India Insurance and Oriental Insurance should **not have paid GST** on their shares of the premium.

Can They Claim Refunds?

- As per the provision: **"No refund shall be made of all the tax paid."**
- United India Insurance and Oriental Insurance **cannot claim a refund** of the ₹54,000 GST they paid earlier, even though the activity is now treated as "no supply."

Example: ITC Reversal on Ceding Commission

Scenario:

- **Insurer (Cedent):** ICICI Lombard General Insurance.
- **Reinsurer:** Swiss Re.
- **Arrangement:** ICICI Lombard cedes 40% of its insurance portfolio worth ₹50 crore to Swiss Re under a proportional reinsurance agreement.
- **Reinsurance Premium Paid to Swiss Re:** ₹2 crore.
- **Ceding Commission Received from Swiss Re:** ₹40 lakh.
- **Input Tax Credit (ITC) Claimed by ICICI Lombard:** ₹10 lakh on various input services (e.g., acquisition, administrative, marketing expenses).

Step 1: Understanding the Pre-Amendment Scenario (Before 1-11-2024)

GST Treatment of Ceding Commission:

1. Before the amendment, **ceding commission (₹40 lakh)** was treated as **exempt supply** under GST.
2. Proportionate ITC reversal was mandatory as per **Rule 42** of the CGST Rules.

Step 2: Applying Rule 42 for ITC Reversal

Key Values:

1. **Exempt Turnover:** ₹40 lakh (ceding commission).
2. **Taxable Turnover:** ₹10 crore (insurance premiums collected from policyholders for taxable insurance services).
3. **Total Turnover:** ₹10 crore + ₹40 lakh = ₹10.4 crore.
4. **Total ITC Claimed:** ₹10 lakh.

Proportionate ITC Reversal:

1. Calculate the proportion of exempt turnover:
   - Exempt turnover ÷ Total turnover = ₹40 lakh ÷ ₹10.4 crore = 3.85%.
2. Calculate the ITC attributable to exempt turnover:
   - ITC attributable to exempt turnover = 3.85% × ₹10 lakh = ₹38,500.
3. Reverse ITC:
   - ICICI Lombard must reverse ₹38,500 of ITC as it is attributable to the exempt ceding commission.

Step 3: GST Liability for Swiss Re (Reinsurer):

1. **Reinsurance Premium:** ₹2 crore (payable by ICICI Lombard to Swiss Re).

2. **GST on Reinsurance Premium:** 18% of ₹2 crore = ₹36 lakh.
    - Swiss Re must pay GST of ₹36 lakh on the gross reinsurance premium.

Step 4: Post-Amendment Scenario (After 1-11-2024)

Amendment Impact:

1. The ceding commission of ₹40 lakh is now treated as **"no supply"** under Schedule III of the CGST Act.
2. **Implications:**
    - ITC reversal is **no longer required**, as ceding commission is outside the scope of GST.

Step 5: Applying the "No Refund" Clause

Situation:

- ICICI Lombard had already reversed ₹38,500 of ITC on ceding commission before 1-11-2024.
- With the amendment, the reversal was unnecessary, as the ceding commission is no longer considered a supply.

Outcome:

1. ICICI Lombard **cannot reclaim the ₹38,500 ITC** already reversed before the amendment due to the **"no refund" clause**.
2. The reversal stands final, even though the activity is now treated as "no supply."

Summary of ITC Reversal and Tax Implications

Aspect	Pre-Amendment (Before 1-11-2024)	Post-Amendment (After 1-11-2024)
Ceding Commission (₹40 lakh)	Treated as **exempt supply**.	Treated as **"no supply"**.
ITC Reversal (Rule 42)	₹38,500 reversed based on turnover ratio.	No ITC reversal required for future transactions.
Refund or Adjustment of Reversed ITC	No refund allowed; reversal stands final.	Not applicable.
GST on Reinsurance Premium (₹2 crore)	₹36 lakh payable by Swiss Re (18% GST).	₹36 lakh payable by Swiss Re (no change).

Conclusion:

1. **Pre-Amendment:** ICICI Lombard was required to reverse ₹38,500 ITC on the ceding commission based on Rule 42.
2. **Post-Amendment:** Ceding commission is treated as "no supply," so ITC reversal is no longer required for future transactions.
3. **No Refund Clause:** ICICI Lombard cannot reclaim the ₹38,500 ITC already reversed before the amendment.

Levy and Collection

1. CBIC issued **Circular No. 213/07/2024-GST**, dated 26th June 2024 providing critical clarifications regarding the taxability of Employee Stock Option Plans (ESOP), Employee Stock Purchase Plans (ESPP), and Restricted Stock Units (RSU) provided by companies to their employees through their overseas holding companies.

Nature of ESOP/ESPP/RSU Transactions

1. **Purpose**:
   - ESOPs, ESPPs, or RSUs are issued to incentivize employees as part of their compensation package.
2. **Mechanics of Transactions**:
   - The **domestic subsidiary** provides employees the option/facility of ESOP/ESPP/RSU as compensation.
   - Employees can:
   - Purchase shares at the grant price, or
   - Hold the options until they vest.
   - The **foreign holding company**:
   - Issues the ESOP/ESPP/RSU to employees of the domestic subsidiary.
   - Transfers the shares directly to the employees.
   - The **domestic subsidiary** reimburses the cost of shares to the foreign holding company on a **cost-to-cost basis**, through:
   - Actual remittance, or
   - Equity transfer.

GST Applicability

1. **Securities Are Neither Goods Nor Services**:
   - Under GST law, securities (shares) are **not considered goods or services**.
   - Transactions involving the purchase or sale of shares do **not attract GST**.
2. **Employee Compensation**:
   - ESOP/ESPP/RSU are part of the **remuneration** paid to employees.
   - As per Entry 1 of Schedule III of the CGST Act, services by employees to employers in the course of employment are **not subject to GST**.
3. **Reimbursement of Costs**:
   - When the domestic subsidiary reimburses the foreign holding company on a **cost-to-cost basis** (no markup, fee, or commission):
   - This reimbursement is **not considered an import of services**.
   - **GST is not applicable**.

4. **Additional Fees, Markups, or Commissions**:
    - If the foreign holding company charges any **additional fee, markup, or commission**:
    - This is treated as consideration for the **supply of services**.
    - The domestic subsidiary must pay GST on these amounts on a **reverse charge basis**.

Conclusion

- **Non-Taxable**:
    - The mere transfer of securities/shares from a foreign holding company to employees of the domestic subsidiary, with reimbursement on a cost-to-cost basis, is **not subject to GST**.
- **Taxable**:
    - Any additional charges (markup, fees, commission) attract GST, payable by the domestic subsidiary under the reverse charge mechanism.

Example: ESOP/ESPP/RSU Transactions and GST Applicability

Scenario

1. **Entities Involved**:
    - **Foreign Holding Company**: XYZ Inc., located in the USA.
    - **Domestic Subsidiary**: XYZ India Pvt. Ltd., registered in India under GST.
    - **Employee**: Mr. A, working for XYZ India Pvt. Ltd.
2. **ESOP/RSU Issuance**:
    - XYZ Inc. grants Mr. A **1,000 shares** under an ESOP plan as part of his compensation package.
    - Mr. A exercises his option after two years by purchasing the shares at a grant price of ₹100/share.
3. **Cost Reimbursement**:
    - The **market value** of the shares at the time of exercise is ₹200/share.
    - XYZ India Pvt. Ltd. reimburses XYZ Inc. **₹1,00,000 (1,000 shares × ₹100 grant price)** on a **cost-to-cost basis**.

GST Applicability Analysis

1. **Transfer of Shares**:
    - XYZ Inc. transfers the shares directly to Mr. A.
    - **GST Treatment**: As per GST law, securities are neither goods nor services, so **no GST is applicable** on the transfer of shares.
2. **Reimbursement Without Markup**:
    - XYZ India Pvt. Ltd. reimburses ₹1,00,000 to XYZ Inc. on a **cost-to-cost basis** without any markup, fee, or commission.
    - **GST Treatment**: This reimbursement is **not considered an import of services**, so **no GST is applicable**.
3. **Additional Charges** (Hypothetical):
    - If XYZ Inc. charged an **administrative fee of ₹10,000** along with the ₹1,00,000 reimbursement:
    - The ₹10,000 fee would be treated as consideration for a **supply of services**.
    - XYZ India Pvt. Ltd. would need to pay GST on ₹10,000 under the **reverse charge mechanism**.

Conclusion

- For the **cost-to-cost reimbursement** of ₹1,00,000, **no GST** is applicable.
- For the **additional fee of ₹10,000** (if charged), GST would be payable by XYZ India Pvt. Ltd. under the reverse charge mechanism.

2. Levy and Collection:

CGST Act, 2017	IGST Act, 2017
Section 9(1): CGST will be levied and collected on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption ("and un-denatured extra neutral alcohol or rectified spirit used for manufacture of alcoholic liquor, for human consumption" shall be inserted **w.e.f. 1-11-2024, F.A. 2024 dt. 16-8-2024**), on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendation of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.	Section 5(1): IGST will be levied and collected on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption ("and un-denatured extra neutral alcohol or rectified spirit used for manufacture of alcoholic liquor, for human consumption" shall be inserted **w.e.f. 1-11-2024, F.A. 2024 dt. 16-8-2024**), on the value determined under section 15 of the CGST Act, and at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendation of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person. IGST also be levied on import of goods.

3. Circular No. 236/30/2024-GST dated 11th October, 2024:

Key Points: Clarification on "As Is / As Is, Where Is Basis" in GST Circulars

1. **Context**: Confusion among trade and field officers regarding the scope of "as is" or "as is, where is basis" in GST Circulars addressing rates and classifications of goods/services based on GST Council recommendations.
2. **GST Council Recommendation**: In its **54th Meeting (9th September 2024)**, the GST Council advised issuing clarifications on regularization intent. Circular issued under **Section 168 of CGST Act, 2017**.
3. **Regularization Basis**:
   - Applies to cases of **genuine doubts** or **diverse interpretations**, e.g., two competing rates in notifications.
   - Payments made at **lower or nil rates** are accepted as full compliance.
   - **No refunds** for GST paid at higher rates.
4. **Definition**:
   - In GST, "as is, where is" means tax paid at a **lower or nil rate** is treated as full discharge of liability based on taxpayer returns.
5. **Policy**: Past payments at **lower rates** are regularized without penalty, promoting fairness in cases of genuine misinterpretation of GST laws.

This ensures uniformity and clarity for taxpayers and field officers.

Illustration 1:

In a situation where certain taxpayers have paid 5% GST on supply of "X", while some have paid 12% and the GST Council recommends reducing the rate to 5% prospectively and regularizing the past on "as is where is basis" which is notified on 1.12.2023, this means that for the period prior to 1.12.2023, the 5% GST paid by the taxpayer will be treated as tax fully paid and they would not be required to pay duty differential of 7% between 5% and 12%. For those taxpayers who have paid 12% GST, no refund would be allowed.

Illustration 2:

In a situation where certain taxpayers have paid 5% GST on the supply of "X" while some have paid nil duty due to the genuine doubt that there was an exemption entry for "X", the GST Council recommends clarifying that the applicable rate is 5% and to regularize the past on "as is where is basis", in view of prevailing genuine doubts, which is notified on 1.12.2023, this means that for the period prior to 1.12.2023, non payment of GST and declaring such transactions as exempted supply in their return by the taxpayer will be treated as a full discharge of tax liability and they would not be required to pay duty differential of 5 % between Nil and 5%. For those taxpayers who have paid 5%, no refund would be made.

Illustration 3:

In a situation where the interpretational issue is between 5% and 12% rates and some taxpayers have paid 5 % , others have paid 12% while certain taxpayers have not paid GST on supply of "X", and the GST Council recommends clarifying that the applicable rate is 12% and regularize the past on "as is where is basis" which is notified on 1.12.2023, this means that for the period prior to 1.12.2023, the 5% GST paid by the taxpayer will be treated as tax fully paid and they would not be required to pay duty differential between 5% and 12% . For those taxpayers who have paid 12%, no refund would be made. However, the regularization would not apply to situations where no tax has been paid. In such cases, the applicable tax i.e. 12% shall be recovered.

Illustrative Scenarios for Regularization:

Scenario	GST rates applied by taxpayers	Confusion between the rates	Rate regularised by GST Council	Action required
1	a) Taxpayer "X" paid 5% b) Taxpayer "Y" paid 12%	5% and 12%	5%	a) No action required by X b) Y will not get refund of differential 7% (12%-5%)
2	a) Taxpayer "X" paid 5% b) Taxpayer "Y" paid Nil	5% or exempted	5%	a) No action required by X b) Y does not have to pay differential 5% (5%- nil)
3	a) Taxpayer "X" paid 5% b) Taxpayer "Y" paid 12% c) Taxpayer "Z" paid nil	5% or 12%	12%	a) X does not have to pay differential 7% (12%-5%) b) No action required by Y c) Z has to pay differential 12% (12%-nil)

Reverse Charge Mechanism

1. The following goods on which GST shall be levied under Reverse Charge have been notified (vide **Notification No. 06/2024 C.T. dated 8th October 2024 –**):

Description of supply of goods	Supplier of goods	Recipient of Goods
w.e.f. 10-10-2024, Supply of metal scrap	Un-registered person	Registered person

w.e.f. 10-10-2024. reverse charge mechanism will be applied to the supply of metal scrap from unregistered to registered persons. Suppliers must register once they surpass the threshold limit, while recipients will be responsible for paying tax under RCM.

Note: Additionally, a TDS of 2% will be imposed on the supply of metal scrap in B2B transactions.

2. w.e.f. 10-10-2024, GST payable under RCM on renting of any Property ["any property" was amended to "any immovable property"] other than Residential Dwelling from unregistered supplier - Notification No: 09/2024 - Central Tax (Rate) dated 8th October 2024:

W.e.f 10th October' 2024, GST under RCM shall be payable if the supplies of renting of any immovable property other than residential dwelling is received from an un-registered person (Supplier) by any registered person (Recipient).

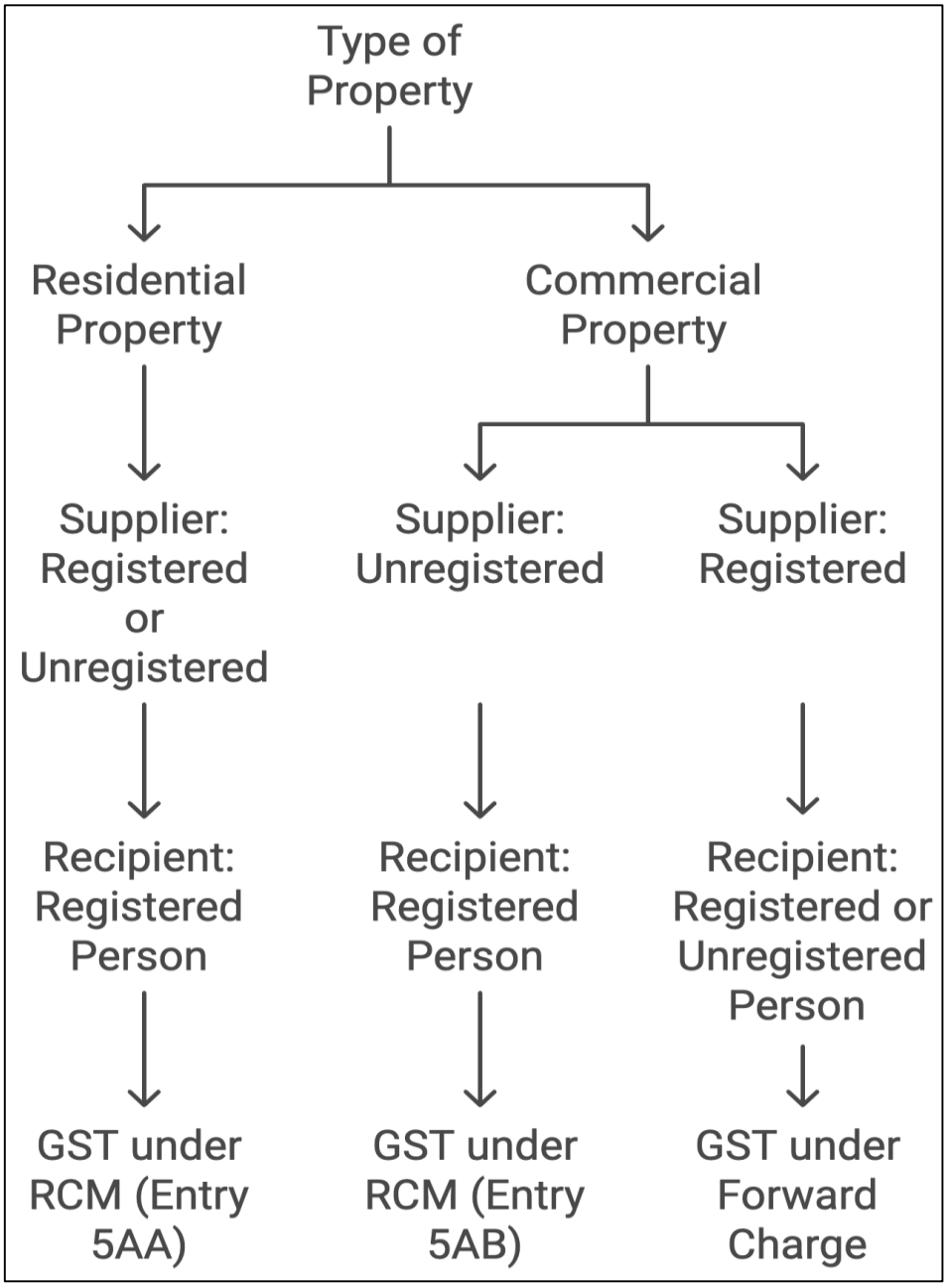
It may be noted that if the supplier is having a turnover above the threshold limit of Rs. 20 lakhs (or Rs. 10 lakhs as the case may be), he would be required to register and pay taxes under Forward Charge on renting of commercial property. RCM would not be applicable in such a scenario.

Entry No. 5AB has now been inserted vide Notification No. 09/2024 – Central Tax w.e.f 10th October' 2024 in the principal Notification for GST payable under RCM for Services i.e., Notification No. 13/2017 – Central Tax (Rate), after entry 5AA.

Entry 5AA provides for GST under RCM to be paid on renting of a residential dwelling by a registered person, supplier being any person (supplier can be registered or un-registered). This provision was made effective from 18th July' 2022.

As per the press release for 54th GST Council Meeting, the entry said: "To bring renting of commercial property by unregistered person to a registered person under Reverse Charge Mechanism (RCM) to prevent revenue leakage."

Summary Flowchart



Composition levy

1. w.e.f. 1-11-2024, (F.A 2024 dt, 16-8-2024) Amendment in Section 10(5) of CGST Act, 2017: If the proper officer has reasons to believe that a taxable person has paid tax under sub-section (1) or sub-section (2A), as the case may be, despite not being eligible, such person shall, in addition to any tax that may be payable by him under any other provisions of this Act, be liable to a penalty and the provisions of section 73 or section 74 [or **section 74A, newly inserted w.e.f. 1-11-2024**] shall, mutatis mutandis, apply for determination of tax and penalty.

2. Form GSTR-4: For Financial Year (FY) 2024-25 onwards, the due date for composition taxpayers to file FORM GSTR-4 is extended to June 30 following the end of the financial year.

Exemptions under GST

1. Clarification on GST Regularization for Supplies of Pulses and Cereals Made to or by Agencies Engaged by Government (vide CBIC Circular No. 229/23 /2024-GST dated 15th July 2024):

Key Highlights of Regularization

1. **Scope of Applicability (Pre-17th July 2022):**
   - **Goods Covered:**

     Pulses and cereals that were:
     - Packaged in **unit containers**.
     - Bearing a **registered brand name** or any brand name on which an actionable claim or enforceable right exists in a court of law.
     - These supplies attracted **5% GST** before 17th July 2022.
2. **Period Regularized:**
   - The regularization applies for the period from **01.07.2017 to 17.07.2022** for supplies made:
   - **To or by any agency** engaged by the Union Government, State Government, or Union Territory.
   - Under **government-approved programs or schemes** intended to distribute such goods either **free of cost** or at **subsidized rates** to eligible beneficiaries, such as economically weaker sections of society.
3. **Conditions for Regularization:**
   - **Certification Requirement:**

     To avail the benefits of regularization, the supplier must:
     - Furnish a certificate from an officer of **Deputy Secretary rank or higher** (of the Central Government, State Government, or Union Territory).
     - The certificate should confirm that:
       1. Supplies were made under a **government-approved program/scheme**.
       2. The goods were distributed to eligible beneficiaries (economically weaker sections).
     - This certificate must be submitted to the jurisdictional GST officer (Central Tax, State Tax, or Union Territory Tax) within **180 days** from the date of this circular.
   - **Reversal of Input Tax Credit (ITC):**
     - **ITC is not allowed** on inputs used for such supplies.
     - If ITC was already availed, it must be **reversed within 180 days** from the date of this circular if the supplier intends to take the benefit of regularization.
4. **'As Is Where Is' Basis Regularization:**
   - All disputes or issues regarding GST liability for the specified period (01.07.2017 to 17.07.2022) will be regularized **'as is where is'**:
   - If GST was paid during this period, no refunds will be provided.
   - If GST was not charged, no further demands will be raised.

5. **Objective:**

This regularization aims to resolve interpretational issues and provide compliance relief for suppliers and agencies involved in government-approved schemes for the economically weaker sections.

Illustrative Example

- **Scenario:**

  A government-approved scheme for distributing cereals to economically weaker sections, like the **Public Distribution System (PDS)**, involves the procurement and sale of cereals by an agency engaged by the State Government.
- **Supplier:** A private company supplies packaged cereals to the government agency.
- **Issue:** For the period 01.07.2017 to 17.07.2022, there were inconsistencies:
  - Some suppliers charged 5% GST.
  - Others claimed exemption due to the scheme's nature.
- **Regularization Impact:**
  - Suppliers who charged 5% GST can continue without claiming refunds.
  - Suppliers who did not charge GST during this period will not face additional tax demands, provided they comply with the conditions (e.g., certification and ITC reversal).

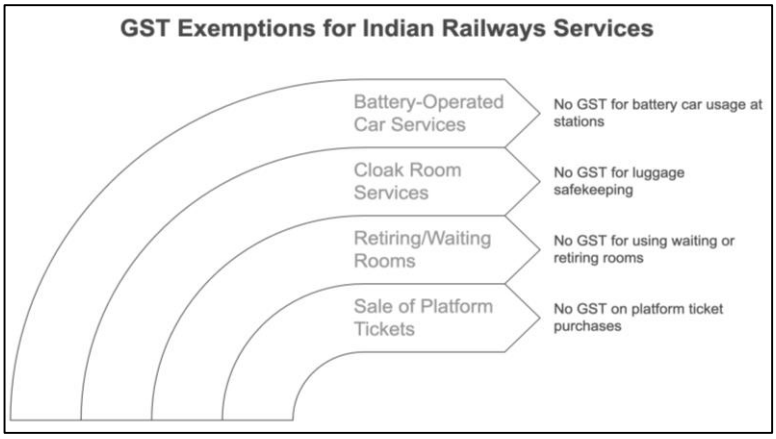
2. w.e.f. 15th July 2024 the following are exempted:

Entry No.	Exemptions
9E	w.e.f. 15-7-2024, Services provided by Ministry of Railways (Indian Railways) to individuals by way of – (a) sale of platform tickets; (b) facility of retiring rooms/waiting rooms; (c) cloak room services; (d) battery operated car services. [Notification No. 04/2024-CT dated 12th July, 2024]
9F	w.e.f. 15-7-2024, Services provided by one zone/division under Ministry of Railways (Indian Railways) to another zone(s)/division(s) under Ministry of Railways (Indian Railways). [Notification No. 04/2024-CT dated 12th July, 2024]
9G	w.e.f. 15-7-2024, Services provided by Special Purpose Vehicles (SPVs) to Ministry of Railways (Indian Railways) by way of allowing Ministry of Railways (Indian Railways) to use the infrastructure built and owned by them during the concession period against consideration and services of maintenance supplied by Ministry of Railways (Indian Railways) to SPVs in relation to the said infrastructure built and owned by the SPVs during the concession period against consideration. [Notification No. 04/2024-CT dated 12th July, 2024]

w.e.f. 15th July 2024 the following are exempted (vide Notification No. 04/2024-CT dated 12th July, 2024)

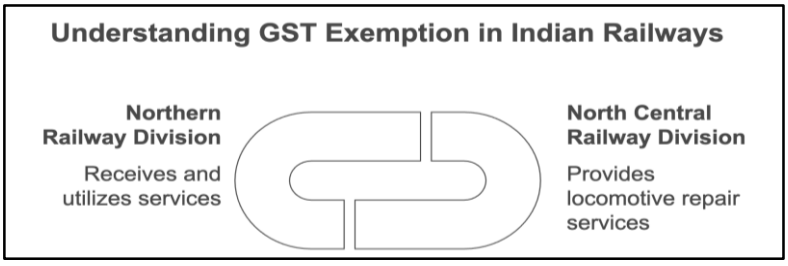
Entry 9E: The following services provided by the **Ministry of Railways (Indian Railways)** to individuals are **exempted from GST**:

1. **Sale of Platform Tickets**:
   - Example: An individual purchasing a platform ticket worth ₹10 is not required to pay GST on it.
2. **Facility of Retiring Rooms/Waiting Rooms**:
   - Example: A passenger using a waiting room or retiring room facility provided by Indian Railways will not pay GST for such services.
3. **Cloak Room Services**:
   - Example: GST will not apply to cloakroom services where passengers deposit their luggage for safekeeping at railway stations.
4. **Battery-Operated Car Services**:
   - Example: Senior citizens or passengers using battery-operated cars for mobility at railway stations will avail this service without GST.



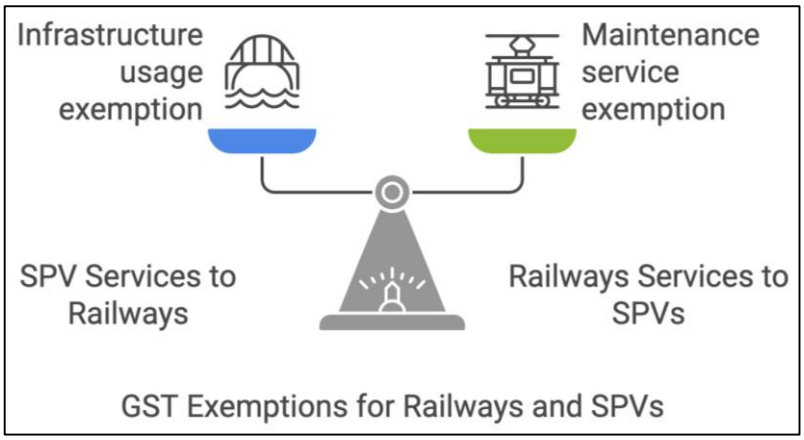
Entry 9F: Services provided by one zone/division of Indian Railways to another zone/division of Indian Railways are **exempted from GST**.

- **Example**:
  - The North Central Railway Division provides repair and maintenance services for locomotives to the Northern Railway Division. No GST is applicable on these inter-divisional services within Indian Railways.



Entry 9G: The following services are **exempted from GST**:

1. **Services by Special Purpose Vehicles (SPVs) to Indian Railways**:
   - Allowing Indian Railways to use infrastructure built and owned by SPVs during the concession period.
   - Example: An SPV constructs a new railway bridge and allows Indian Railways to use it during the concession period. No GST is applicable for this service.
2. **Maintenance Services by Indian Railways to SPVs**:
   - Indian Railways provides maintenance services for the infrastructure built and owned by the SPV during the concession period.
   - Example: Indian Railways maintains a railway station or tracks constructed by an SPV during the concession period. No GST is applicable for these maintenance services.



3. CBIC Circular No. 228/22/2024-GST Dated 15-7-2024: GST Applicability on Statutory Collections by RERA:

Scenario:

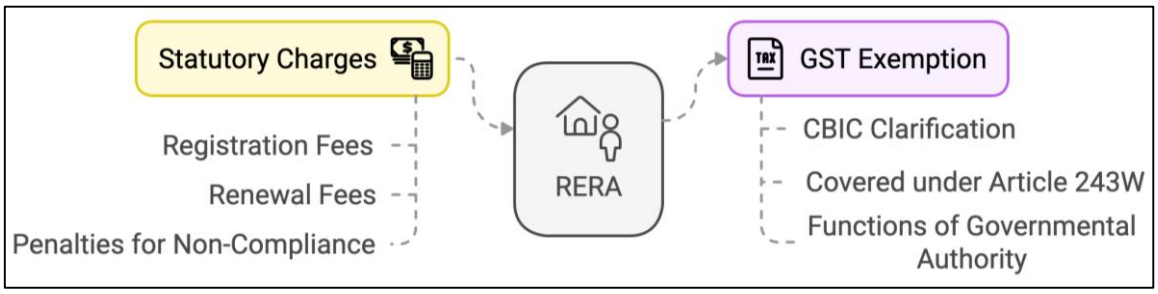
The Real Estate Regulatory Authority (RERA), constituted under the **Real Estate (Regulation and Development) Act, 2016**, collects statutory charges such as registration fees from real estate developers and agents, as well as penalties for non-compliance. There has been confusion about whether these collections attract GST.

Clarification Based on Notification and GST Council's Recommendation:

1. **Definition of RERA**:
   - RERA is established as a statutory body to regulate the real estate sector and ensure compliance with the **Real Estate (Regulation and Development) Act, 2016**.
   - Its functions fall under **Entry 1 (Regulation of land use) and Entry 2 (Planning of land and construction) of the Twelfth Schedule** of the Indian Constitution.
2. **RERA as a Governmental Authority**:
   - As per **Notification No. 12/2017-CT(R), dated 28.06.2017**, a "governmental authority" includes:

- An authority established by the government to carry out functions related to municipal administration or functions assigned under the Twelfth Schedule of the Constitution.
- RERA qualifies as a "governmental authority."

3. **Exemption under Notification No. 12/2017-CT(R)**:
   - **Sl. No. 4** of the notification exempts services provided by a governmental authority relating to:
   - Functions entrusted under Article 243W of the Constitution (e.g., regulation of land use and construction of buildings).
   - As clarified by the **GST Council in its 53rd meeting**, statutory collections made by RERA are exempt from GST under **Sl. No. 4 of Notification No. 12/2017-CT(R)**.



Practical Example: RERA Statutory Collections

Case 1: Registration Fees for Real Estate Projects

1. **Scenario**:
   - M/s ABC Developers submits an application to RERA for registration of their new housing project.
   - RERA charges a statutory **registration fee of ₹50,000** for processing the application.
2. **GST Applicability**:
   - Since the registration fee is a statutory collection made by RERA in performance of its regulatory functions under the **Real Estate (Regulation and Development) Act, 2016**, this fee is **exempt from GST**.
3. **Outcome**:
   - M/s ABC Developers pays only the ₹50,000 registration fee, without any additional GST.

Case 2: Penalty for Non-Compliance

1. **Scenario**:
   - M/s XYZ Builders fails to adhere to RERA's timeline for project completion and is charged a **penalty of ₹1,00,000** by RERA under its statutory authority.
2. **GST Applicability**:
   - The penalty is a statutory collection by RERA and is **exempt from GST** under **Sl. No. 4 of Notification No. 12/2017-CT(R)**.
3. **Outcome**:
   - M/s XYZ Builders pays only the ₹1,00,000 penalty amount, with no GST liability.

Case 3: Renewal of Real Estate Agent Registration

1. **Scenario**:
   - A real estate agent applies for the renewal of their RERA registration.
   - RERA charges a **renewal fee of ₹20,000** for the process.
2. **GST Applicability**:
   - As the renewal fee is a statutory collection by RERA in accordance with its regulatory functions, it is **exempt from GST**.
3. **Outcome**:
   - The agent pays ₹20,000 for renewal, with no additional GST.

Summary Table of RERA Statutory Collections and GST Applicability

Nature of Collection	Purpose	GST Applicability	Reason
Registration Fees	For registering real estate projects	**Exempt**	Statutory collection by a governmental authority for regulatory functions.
Penalties for Non-Compliance	Penalizing violations of RERA regulations	**Exempt**	Statutory penalty imposed by RERA under its authority.
Renewal Fees for Agent Registration	For renewing registration of real estate agents	**Exempt**	Statutory fee for performing regulatory functions.

4. Accommodation services:

12A	w.e.f. 15-7-2024, Exempted service:- Supply of accommodation services having value of supply less than or equal to twenty thousand rupees per person per month provided that the accommodation service is supplied for a minimum continuous period of ninety days. [Notification No. 04/2024-CT dated 12th July, 2024]

Explanation of Entry 12A: Exemption for Accommodation Services

Effective Date: 15th July 2024

Description:

Supply of **accommodation services** is **exempt from GST** if the following conditions are satisfied:

1. **Value of Supply**: The **value of supply is less than or equal to ₹20,000 per person per month**.
2. **Duration**: The **accommodation is provided for a minimum continuous period of 90 days**.

Examples:

Example 1: Accommodation Below ₹20,000 Per Month for More Than 90 Days

- **Scenario**:

  A company rents a serviced apartment from M/s XYZ Hospitality for its employee at ₹18,000 per month for a continuous period of 3 months (90 days).

- **Analysis**:
- The **value of supply** is ₹18,000 per person per month, which is **less than ₹20,000**.
- The **duration** of accommodation is **90 days**, satisfying the minimum period requirement.
- **Outcome**:

  This supply is **exempt from GST** under Entry 12A.

Example 2: Accommodation Above ₹20,000 Per Month

- **Scenario**:

  M/s ABC Resorts provides long-term accommodation to a corporate client for ₹25,000 per month per person for a continuous period of 3 months (90 days).
- **Analysis**:
- The **value of supply** is ₹25,000 per person per month, which **exceeds ₹20,000**.
- Even though the **duration** exceeds 90 days, the exemption does **not apply** due to the higher monthly value.
- **Outcome**:

  This supply is **taxable under GST** at the applicable rate.

Example 3: Accommodation for Less than 90 Days

- **Scenario**:

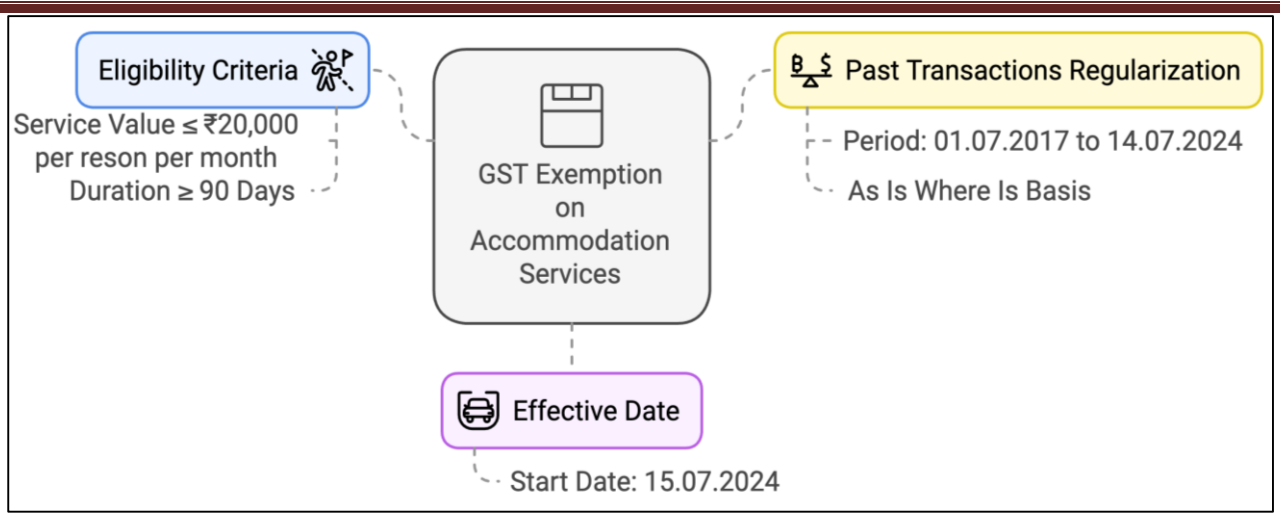
  M/s PQR Hotels rents out rooms for ₹15,000 per person per month to a client for a continuous period of **60 days**.
- **Analysis**:
- The **value of supply** is ₹15,000 per month, which satisfies the monetary limit.
- However, the **duration** is **only 60 days**, which is less than the required 90 days.
- **Outcome**:

  This supply is **taxable under GST** at the applicable rate.

Summary of Conditions and GST Applicability:

Condition	**Requirement**	**Example 1**	**Example 2**	**Example 3**
Value of Supply	≤ ₹20,000 per person/month	Yes	No	Yes
Duration	≥ 90 continuous days	Yes	Yes	No
GST Applicability	**Exempt**	**Exempt**	**Taxable**	**Taxable**

GST on Certain Accommodation Services: Accommodation services valued at or below ₹20,000 per person per month for a continuous period of at least 90 days are exempt from GST, effective from 15.07.2024. Past transactions meeting these criteria from 01.07.2017 to 14.07.2024 are also regularized on an 'as is where is' basis [CBIC Clarification circular no: 228/22/2024 GST dated 15/07/2024].



5. Clarification on "No Supply" Status for Co-Insurance Premiums and Reinsurance Commissions – Regularized on 'As Is Where Is' Basis [Circular No. 228/22/2024-GST dated 15.07.2024]:

1. Co-Insurance Premium Apportioned by Lead Insurer Declared as No Supply:

Scenario:

An individual purchases a comprehensive insurance policy worth ₹1,00,00,000, which is under a co-insurance agreement between two insurers:

- Lead Insurer (Insurer A): Responsible for 60% of the policy risk and ₹60,00,000 of the premium.
- Co-Insurer (Insurer B): Responsible for 40% of the policy risk and ₹40,00,000 of the premium.

The insured pays the full premium of ₹1,00,00,000 to the lead insurer (Insurer A). Insurer A subsequently transfers ₹40,00,000 to Insurer B as the latter's share of the premium.

Clarification as Per Circular:

The transfer of ₹40,00,000 by Insurer A to Insurer B is treated as no supply under Schedule III of the CGST Act, 2017. This means such transactions are not taxable under GST.

Impact (Regularization on 'As Is Where Is' Basis):

1. If GST was charged:
   - Insurer A had charged GST on the ₹40,00,000 transfer to Insurer B and deposited it.
   - Under this circular, no refund will be issued for the GST paid earlier, even though the transaction is now classified as no supply.
2. If GST was not charged:
   - Insurer A had not charged GST on the ₹40,00,000 transfer.
   - Under this circular, no retrospective tax demand will be raised for such non-compliance.

3. Conclusion:
    - The regularization of past cases 'on an as is where is basis' ensures that no further disputes arise, and the ambiguity over GST treatment of co-insurance agreements is eliminated.

2. Ceding Commission/Reinsurance Commission Declared as No Supply

Scenario:

An insurance company (Insurer A) enters into a reinsurance agreement with a reinsurer (Reinsurer B) to mitigate its risk exposure.

- Insurer A cedes 50% of its insurance risk portfolio worth ₹2,00,00,000 to Reinsurer B.
- Reinsurer B pays a ceding commission of ₹10,00,000 to Insurer A as consideration for transferring the risk.

Clarification as Per Circular:

The ceding commission of ₹10,00,000 paid by Reinsurer B to Insurer A is treated as no supply under Schedule III of the CGST Act, 2017, meaning it is outside the scope of GST.

Impact (Regularization on 'As Is Where Is' Basis):

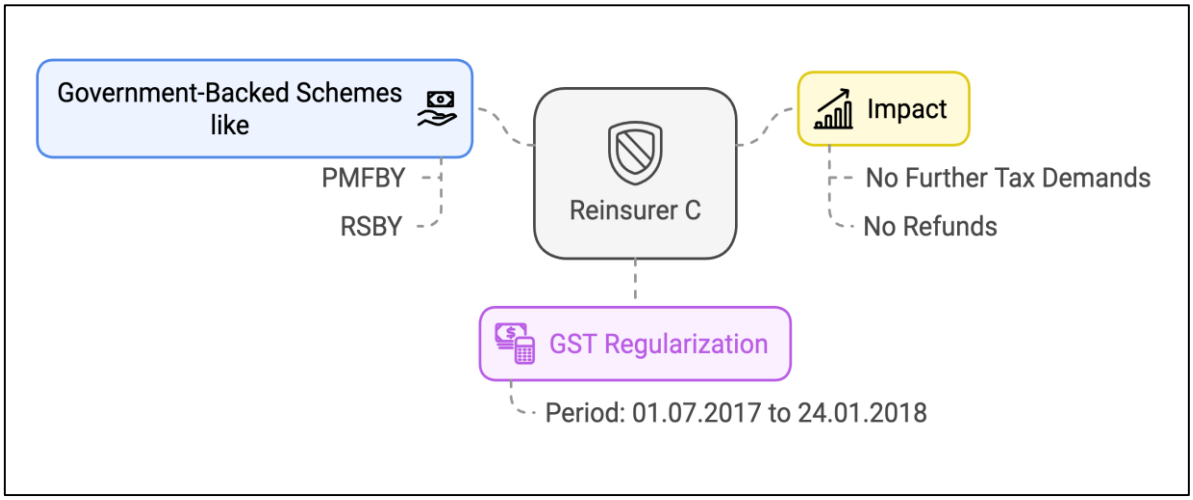
1. If GST was charged:
    - Insurer A had charged GST on the ₹10,00,000 commission and deposited it.
    - No refund will be issued for the GST already paid, even though the transaction is now clarified as no supply.
2. If GST was not charged:
    - Insurer A had not charged GST on the ₹10,00,000 commission.
    - No retrospective tax demand will be raised for this past non-compliance.
3. Conclusion:
    - By regularizing past cases 'on an as is where is basis,' the circular provides clarity and finality, avoiding unnecessary compliance disputes for insurers and reinsurers.

Key Clarifications on GST Provisions in Insurance and Reinsurance Services – Circular No. 228/22/2024-GST dated 15.07.2024:

- GST liability on reinsurance services of specified insurance schemes covered by Sr. Nos. 35 & 36 of notification No. 12/2017-CT (Rate) dated 28.06.2017 have been regularized on 'as is where is' basis for the period from 01.07.2017 to 24.01.2018 [Circular No. 228/22/2024-GST dated 15.07.2024].

  Example: Suppose a reinsurer (Reinsurer C) provides reinsurance services for government-backed schemes like the Pradhan Mantri Fasal Bima Yojana (PMFBY) or Rashtriya Swasthya Bima Yojana (RSBY) for the period 01.07.2017 to 24.01.2018.
- **Clarification:** GST liability on reinsurance services for these specified schemes during the above period has been regularized.

- **Impact:** Even if GST was incorrectly charged or not charged during this period, the issue is settled on an 'as is where is' basis. No further tax demands or refunds will be issued.

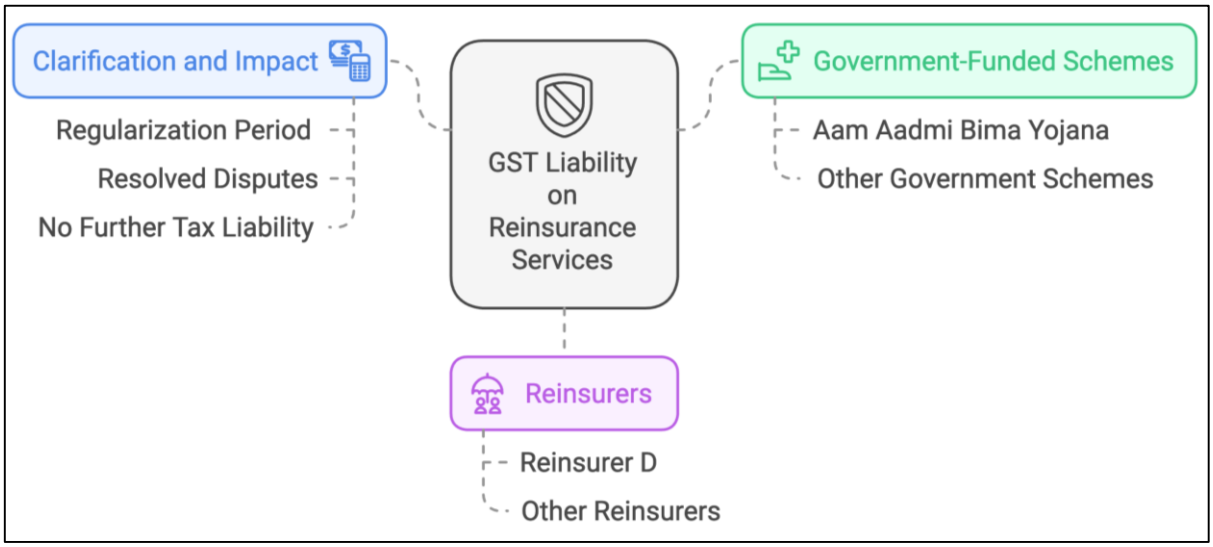


- GST liability on reinsurance services of the insurance schemes for which total premium is paid by the Government that are covered under Sr. No. 40 of notification No. 12/2017-CTR dated 28.06.2017 have been regularized on 'as is where is' basis for the period from 01.07.2017 to 26.07.2018 [Circular No. 228/22/2024-GST dated 15.07.2024].

  Example: The Aam Aadmi Bima Yojana (AABY) is a fully government-funded scheme where the government pays 100% of the insurance premium. A reinsurer (Reinsurer D) provides reinsurance services to the primary insurer (Insurer A) for this scheme.

  Clarification from Circular:

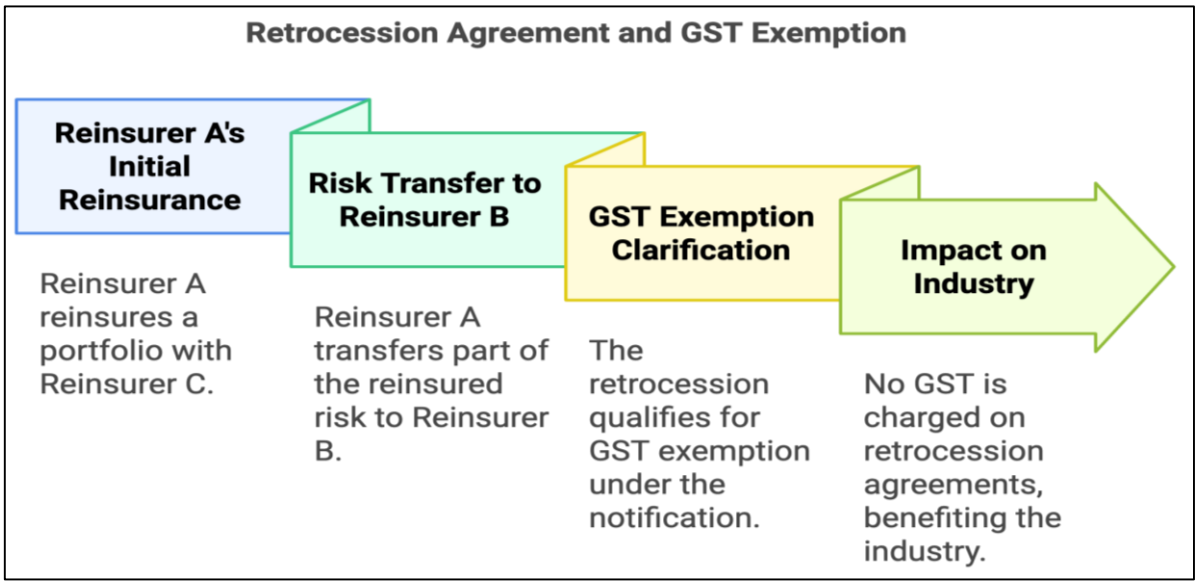
  - The government has regularized all past cases for the period 01.07.2017 to 26.07.2018 on an 'as is where is' basis.
  - If GST was charged and paid, no refund will be issued.
  - If GST was not charged, no tax demand will be raised.



- Clarification has been issued that retrocession is 're-insurance of re- insurance' and therefore, eligible for the exemption under Sl. No. 36A of the notification No. 12/2017-CTR dated 28.06.2017 [Circular No. 228/22/2024- GST dated 15.07.2024].

  Example: A retrocession agreement is where a reinsurer (Reinsurer A) transfers part of its reinsured risk to another reinsurer (Reinsurer B). For instance:

  - Reinsurer A had reinsured a portfolio of ₹50,00,000 with another reinsurer (Reinsurer C).
  - Reinsurer A now transfers part of this reinsurance risk worth ₹20,00,000 to Reinsurer B (retrocession).
  - Clarification: The retrocession (re-insurance of re-insurance) qualifies for GST exemption under Sr. No. 36A of Notification No. 12/2017-CTR.
  - Impact: No GST is charged on retrocession agreements, providing clarity and relief to the industry.



6. w.e.f. 1-11-2024, vide F.A. 2024 dt16-8-2024: power not to recover GST not levied or short-levied as a result of general practice Section 11A:

After section 11 of the Central Goods and Services Tax Act, the following section shall be inserted, namely:– – "11A. Power not to recover Goods and Services Tax not levied or short-levied as a result of general practice. - Notwithstanding anything contained in this Act, if the Government is satisfied that —

(a) a practice was, or is, generally prevalent regarding levy of central tax (including non-levy thereof) on any supply of goods or services or both; and

(b) such supplies were, or are, liable to, –

  (i) central tax, in cases where according to the said practice, central tax was not, or is not being, levied, or

  (ii) a higher amount of central tax than what was, or is being, levied, in accordance with the said practice,

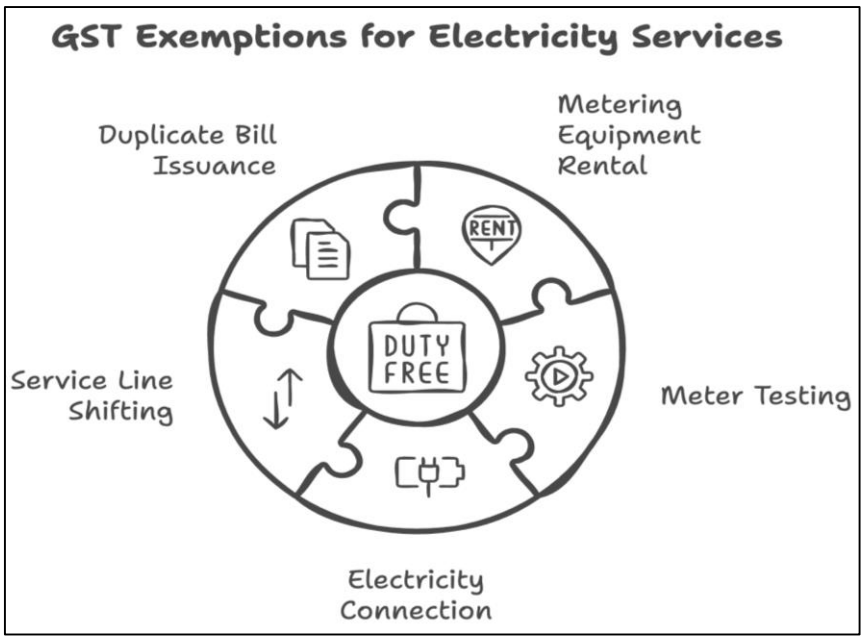
the Government may, on the recommendation of the Council, by notification in the Official Gazette, direct that the whole of the central tax payable on such supplies, or, as the case may be, the central tax in excess of that payable on such supplies, but for the said practice, shall not be required to be paid in respect of the supplies on which the central tax was not, or is not being levied, or was, or is being, short-levied, in accordance with the said practice.".

Example**:** Retailers in sectors like FMCG and apparel frequently offer promotional schemes such as "Buy 1 Get 1 Free." GST is often levied only on the **price of the paid item**, assuming the "free" item does not constitute a supply.

- This practice is based on a prevalent interpretation in the retail industry that "free" items are not separately taxable.
- **Issue:**
- According to GST law, the value of the "free" item should be included in the taxable value. This leads to **short-levy of GST**.
- **Application of Section 11A:**
- The government, recognizing this **industry-wide practice**, may issue a notification stating that GST short-levied on "free" items will not be recovered for the past period. This protects retailers from retrospective demands and avoids disruption in their promotional practices.

7. supply of transmission and distribution of electricity:

Entry No. 25A: w.e.f. 10-10-2024, Supply of services by way of providing metering equipment on rent, testing for meters/transformers/capacitors etc., releasing electricity connection, shifting of meters/service lines, issuing duplicate bills etc., which are incidental or ancillary to the supply of transmission and distribution of electricity provided by electricity transmission and distribution utilities to their consumers are exempt under GST [Notification No. 08/2024 C.T. dated 8th October 2024].



Circular No. 234/28/2024-GST dt. 11/10/2024 regularizes the payment of GST on services provided by an electricity transmission or distribution utility which are incidental or ancillary to the supply of transmission and distribution of electricity by such utility, such as those listed above on 'as is where is' basis from 01.07.2017 to 09.10.2024.

8. Research and development services:

Entry No. 44A: w.e.f. 10-10-2024, Research and development services against consideration received in the form of grants supplied by – (a) a Government Entity; or (b) a research association, university, college or other institution, notified under clauses (ii) or (iii) of sub-section (1) of section 35 of the Income Tax Act, 1961.

Provided that the research association, university, college or other institution, notified under clauses (ii) or (iii) of sub-section (1) of section 35 of the Income Tax Act, 1961 is so notified at the time of supply of the research and development service," exempt from GST [vide Notification No. 08/2024 C.T. dated 8th October 2024].

Example 1: R&D Services Supplied by a Government Entity

- **Supplier of Service:**

  The **Department of Biotechnology (DBT)**, a **Government Entity**, provides research and development services for vaccine development.

- **Recipient of Service:**

  A **private pharmaceutical company** contracts DBT to conduct research for the development of a new vaccine. The pharmaceutical company provides a **grant of ₹10 crore** to fund the research.

Analysis:

- The **supplier of service** is a **Government Entity (DBT)**.
- The **recipient of service** is the **private pharmaceutical company**.
- The **consideration** is in the form of a **grant**.

GST Outcome:

This transaction is **exempt from GST** under **Entry No. 44A** because:

- The supplier is a **Government Entity**.
- The payment is in the form of a **grant**.

Example 2: R&D Services Supplied by a Notified University

- **Supplier of Service:**

  The **Indian Institute of Science (IISc)**, a **university notified under Section 35(1)(ii)** of the Income Tax Act, 1961, conducts research on renewable energy technology.

- **Recipient of Service:**

  A **renewable energy corporation** provides a **grant of ₹5 crore** to IISc to carry out the research.

Analysis:

- The **supplier of service** is a **notified university (IISc)**.

- The **recipient of service** is the **renewable energy corporation**.
- The **consideration** is in the form of a **grant**.

GST Outcome:

This transaction is **exempt from GST** under **Entry No. 44A** because:

- The supplier is a **notified university**.
- The payment is in the form of a **grant**.

Comparison of Supplier and Recipient Roles:

Supplier of Service	Recipient of Service	Consideration	GST Applicability
Government Entity (e.g., DBT)	Private company (e.g., Pharmaceutical firm)	₹10 crore (grant)	Exempt under Entry No. 44A
Notified University (e.g., IISc)	Renewable energy corporation	₹5 crore (grant)	Exempt under Entry No. 44A

Key Takeaway:

The **supplier of service** under Entry No. 44A is indeed a **Government Entity** or a **notified institution** (university, research association, etc.), while the **recipient** is the entity funding the research through grants.

9. Entry No. 66A: w.e.f. 10-10-2024, Services of affiliation provided by a Central or State Educational Board or Council or any other similar body, by whatever name called, to a school established, owned or controlled by the Central Government, State Government, Union Territory, local authority, Governmental authority or Government entity, exempt under GST [Notification No. 08/2024 C.T. dated 8th October 2024].

Affiliation services - The following services have been exempted from tax:

Services of affiliation provided by a Central or State Educational Board or Council or any other similar body, by whatever name called, to a school established, owned or controlled by the Central Government, State Government, Union Territory, local authority, Governmental authority or Government entity.

Circular No. 234/28/2024-GST dt. 11/10/2024 clarifies that the affiliation services provided by universities to their constituent colleges are not covered within the ambit of exemptions and GST at the rate of 18% is applicable on the affiliation services provided by the universities. Further, it clarifies that services of affiliation, provided to schools by Central or State educational boards or councils, or other similar bodies, by whatever name called, are taxable. Further, as recommended by the Council, the payment of GST on the services of affiliation provided by Central and State educational boards or Councils, or other similar bodies, to all schools is regularized on an 'as is where is' basis for the period from 01.07.2017 to 17.06.2021.

Below is a detailed breakdown of the clarifications provided in the circular:

1. GST on Affiliation Services by Universities to Colleges

Universities provide affiliation services to colleges to ensure they meet the necessary infrastructure, faculty strength, financial liquidity, and other criteria required for conducting courses. These services are not related to student admission or examination services.

- Clarification: Affiliation services provided by universities to colleges are not exempt under Notification No. 12/2017-CT(R) dated June 28, 2017, and will attract an 18% GST rate.

2. GST on Affiliation Services by Educational Boards to Schools

Educational boards and councils provide affiliation services to schools, ensuring that schools meet required standards.

- Clarification: Affiliation services provided to schools by educational boards or councils are taxable. However, affiliation services provided to government schools (i.e., those controlled by the Central Government, State Government, or a local authority) are exempt from GST from October 10, 2024, as per Notification No. 08/2024-Central Tax (Rate).
- Past Regularization: GST paid on affiliation services from July 1, 2017, to June 17, 2021, has been regularized on an "as is where is" basis. This period covers the time before Circular No. 151/07/2021 clarified the taxability of these services.

GST on DGCA-Approved Flying Training Courses (The CBIC issued Circular No. 234/28/2024-GST dated October 11, 2024**)**

Flying Training Organizations (FTOs) approved by the Directorate General of Civil Aviation (DGCA) conduct training courses for pilot licenses. The question arose regarding the GST applicability on such training courses.

- Clarification: DGCA-approved flying training courses conducted by FTOs fall under the exemption provided to educational institutions under Sl. No. 66 of Notification No. 12/2017-Central Tax (Rate), and are thus exempt from GST.

10. GST on Ancillary Services by Goods Transport Agencies (GTAs) [As per The CBIC issued Circular No. 234/28/2024-GST dated October 11, 2024]:

Incidental services such as loading, unloading, packing, and temporary warehousing provided by GTAs during the transportation of goods have been a matter of dispute.

Clarification: Incidental services **provided** by GTAs as part of goods transportation are to be treated as a composite supply. These services will not attract a separate GST rate unless they are invoiced separately and not provided as part of transportation.

11. Import of services by foreign airline companies (w.e.f. 10-10-2024): Vide Notification No. 08/2024-Integrated Tax (Rate), dated 08-10-2024, CBIC exempted Import of services by an establishment of a foreign airlines company from a related person or any of its establishment outside India, when made without consideration.

This GST exemption is applicable provided that:

- Indian establishment of the foreign airline company is required to pay GST at the applicable rates on the transport of goods and passengers, as per the GST law
- Certification is obtained from the Ministry of Civil Aviation

Reciprocal treatment is confirmed, ensuring that Indian airlines are not subject to similar taxes by the foreign country for identical services

GST on Import of Services by Foreign Airlines' Establishments (vide CBIC Circular No. 234/28/2024-GST dated October 11, 2024]:

The GST Council recommended exempting the import of services by foreign airlines' establishments from related entities abroad when made without consideration.

- Clarification: Services imported by an establishment of a foreign airline from a related person or another establishment outside India are exempt from GST when made without consideration, effective from October 10, 2024. GST paid from July 1, 2017, to October 9, 2024, is regularized on an "as is where is" basis.

Illustrative Example:

Scenario 1: Exempt Import of Services

- **Foreign Airline:** XYZ Airlines is a foreign airline headquartered in the USA.
- **Indian Establishment:** XYZ Airlines has an office in Mumbai (Indian establishment).
- **Imported Service:** The Mumbai office receives IT support services from the airline's headquarters in the USA (a related entity) to manage its operations in India.
- **Consideration:** No payment is made for the IT support services (i.e., no consideration).

Analysis:

1. The imported services are between related persons (Mumbai office and USA headquarters).
2. No consideration is involved.
3. XYZ Airlines' Indian establishment pays GST on passenger and cargo transport services provided in India.
4. Certification from the Ministry of Civil Aviation and reciprocal tax treatment are confirmed.

Outcome:

The imported IT services are **exempt from GST** under Notification No. 08/2024.

12. The National Skill Development Corporation (NSDC):

Entry No. 69
w.e.f. 10-10-2024, Notification No. 08/2024 dated 08-10-2024 the following shall be substituted, namely:-

Any services provided by –

(a) the National Skill Development Corporation set up by the Government of India;

(b) the National Council for Vocational Education and Training;

(c) an Awarding Body recognized by the National Council for Vocational Education and Training;

(d) an Assessment Agency recognized by the National Council for Vocational Education and Training;

(e) a Training Body accredited with an Awarding Body that is recognized by the National Council for Vocational Education and Training, in relation to-

(i) the National Skill Development Programme or any other scheme implemented by the National Skill Development Corporation; or

(ii) a vocational skill development course under the National Skill Certification and Monetary Reward Scheme; or

(iii) any National Skill Qualification Framework aligned qualification or skill in respect of which the National Council for Vocational Education and Training has approved a qualification package are exempt under GST.

13. Construction Service:

GST on Preferential Location Charges (PLC) [CBIC issued Circular No. 234/28/2024-GST dated October 11, 2024]:

PLC is often collected as part of the consideration for residential or commercial properties, leading to questions about its tax treatment.

Clarification: PLC forms part of the composite supply of construction services and attracts the same GST rate as the construction service itself.

14. GST on Film Distribution Services [CBIC issued Circular No. 234/28/2024-GST dated October 11, 2024**]:**

Transactions between distributors and exhibitors involving the grant of theatrical rights have caused confusion over the applicable GST rate.

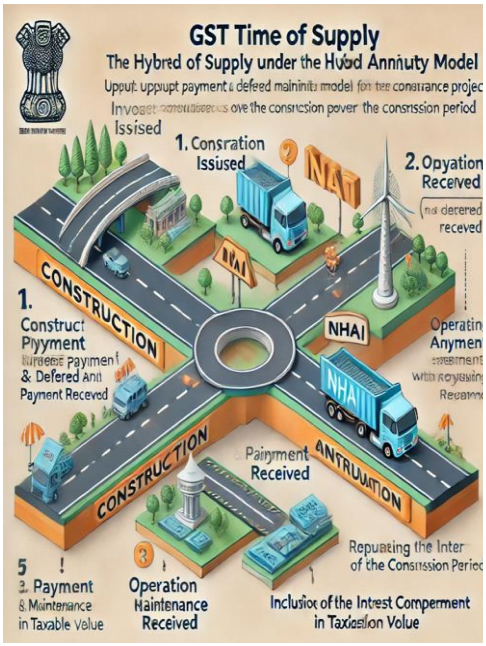
- Clarification: GST at 18% applies to transactions involving theatrical rights between distributors and exhibitors. GST paid between July 1, 2017, and September 30, 2021, is regularized on an "as is where is" basis.

Time of supply

1. Circular No. 221/15/2024-GST dated 26 June 2024 -
Clarification on the time of supply regarding the supply of services of construction of road and maintenance thereof under the National Highway Projects of National Highways Authority of India (NHAI) in the Hybrid Annuity Mode (HAM) model:

The circular has clarified the issue of the Time of Supply for the purpose of payment of tax on the deferred annuity payments received by the concessionaire from NHAI for the construction of road and operation and maintenance (O&M) thereof under the HAM model.

In HAM contracts, a certain portion of payment linked to construction is payable during the construction and the remaining payment is received in instalments over the concession period as per the payment schedule. However, the revenue authorities have been advancing the view that GST is payable on the percentage of construction completion method. The circular has clarified the time of supply provisions mainly considering that the HAM contract should be considered holistically as a single contract for both construction and O&M services. It cannot be artificially split based on payment terms.



The following clarifications have been provided.

a. The tax liability on the concessionaire under the HAM contract, including on the balance portion linked to the construction portion will arise at the time of issuance of invoice or receipt of payment, whichever is earlier [if the invoice is issued on or before the specified date or date of completion of the event specified in the contract].

b. If the invoices are not issued on or before the specified date or date of completion of the event as specified in the contract, the tax liability will arise on the date of provision of the said service or date of receipt of payment whichever is earlier.

c. Instalments or annuity payable by NHAI to the concessionaire includes the interest component. The interest amount should also be includible in the taxable value for the purpose of payment of tax on the annuity or instalment in terms of section 15(2)(d) of the CGST Act.

Comprehensive Example: Time of Supply for Deferred Annuity Payments under HAM Model:

Project Details

1. **Concessionaire:** XYZ Infra Ltd. (Supplier of service)
2. **Authority:** National Highways Authority of India (NHAI) (Recipient of the service)
3. **Project Value:** ₹1,000 crores
4. **HAM Model Payment Terms:**
   - **Construction Phase (2 years):**
     40% of the project cost (₹400 crores) to be paid in milestone-based instalments, meaning the due date of payment is linked to the completion of specific events.

- **Deferred Annuity Phase (15 years):**
  Remaining 60% (₹600 crores) to be paid as annual instalments, including interest. The due date of payment, as mentioned in the contract, is **1st April every year**.
- **Annual Instalment:** ₹50 crores (₹40 crores principal + ₹10 crores interest).

Application of Time of Supply Rules

As per **Section 13(2)** of the CGST Act for continuous supply of services:

1. If the invoice is issued within the specified time (on or before the due date of payment linked to the completion of an event):
   - The time of supply is **the earlier of the date of issue of the invoice or the date of receipt of payment**.
2. If the invoice is not issued within the specified time:
   - The time of supply arises **on the date of provision of service or the date of receipt of payment, whichever is earlier**.

Phase 1: Construction Phase

Scenario 1: First Milestone Payment

- **Milestone Completed:** 25% of construction completed on 31st December 2024.
- **Invoice Raised:** 5th January 2025 for ₹100 crores (25% of ₹400 crores).
- **Payment Received:** 15th January 2025.

Time of Supply Determination:

- Since the invoice was not issued within the specified time (on or before 31st December 2024), the time of supply is **31st December 2024** (date of milestone completion).

Scenario 2: Second Milestone Payment

- **Milestone Completed:** 75% of construction completed on 1st April 2025.
- **Invoice Raised:** 31st March 2025 for ₹300 crores (75% of ₹400 crores).
- **Payment Received:** 15th May 2025.

Time of Supply Determination:

- Since the invoice was issued on or before the due date of payment (1st April 2025), the time of supply is **31st March 2025** (date of invoice).

Phase 2: Deferred Annuity Payments

Scenario: First Annuity Payment

- **Annuity Payment Due:** ₹50 crores (₹40 crores principal + ₹10 crores interest).
- **Service Period Covered:** 1st April 2025 to 31st March 2026.
- **Invoice Raised:** 1st April 2026.
- **Payment Received:** 10th April 2026.

Time of Supply Determination:

- Since the invoice was issued on or before the due date of payment (1st April 2026), the time of supply is **1st April 2026** (date of invoice).

Taxable Value: ₹50 crores (including ₹10 crores interest).

GST Computation (Assuming 18%):

- GST = ₹50 crores × 18% = ₹9 crores.
- **Due date for tax payment:** 20th May 2026.

Phase 3: O&M Services

Scenario: Quarterly O&M Payment

- **Service Provided:** January to March 2026.
- **Due Date of Payment:** 10th April 2026 (as per the contract).
- **Invoice Raised:** 31st March 2026 for ₹5 crores.
- **Payment Received:** 10th April 2026.

Time of Supply Determination:

- Since the invoice was issued on or before the due date of payment (10th April 2026), the time of supply is **31st March 2026** (date of invoice).

Taxable Value: ₹5 crores.

GST Computation (Assuming 18%):

- GST = ₹5 crores × 18% = ₹0.9 crores.
- **Due date for tax payment:** 20th April 2026.

Summary of GST Liability

Phase	Event	Taxable Value (₹ Crores)	GST (₹ Crores)	Time of Supply	Due Date for Tax Payment
Construction (Milestone 1)	25% Milestone Completion	100	18	31st December 2024	20th January 2025
Construction (Milestone 2)	75% Milestone Completion	300	54	31st March 2025	20th April 2025
Deferred Annuity Payment	First Annual Instalment	50	9	1st April 2026	20th May 2026
O&M Services	Quarterly Maintenance (Jan-Mar)	5	0.9	31st March 2026	20th April 2026

Key Points:

1. **Deferred Annuities:** Time of supply is aligned with invoice issuance or payment, ensuring clarity for GST compliance.
2. **Interest Component:** Interest is includible in the taxable value.
3. **Unified Contract:** Construction and O&M services are treated as a single supply, avoiding artificial splitting of GST liability.
4. **Continuous Supply of Services:** Provisions ensure GST compliance without ambiguity regarding phased payments.

2. Circular No. 222/16/2024GST dated 26 June 2024 -

Clarification on the time of supply of services of spectrum usage and other similar services under GST

The circular clarifies the time of supply for the GST payment on spectrum allocation services when the telecom operator opts for deferred payment in instalments. The spectrum allocation service provided by the Department of Telecommunications (DoT) is treated as a continuous supply of services under section 2(33) of the CGST Act.

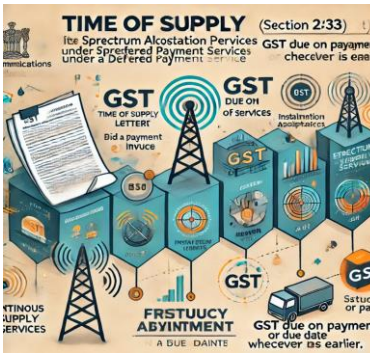
The circular clarifies that the Frequency Assignment Letter issued by the DoT which details the auction results and payment options, is not considered as an invoice but it is only a bid acceptance document.

Hence, the GST liability arises at the time the instalment payments are due or made, whichever is earlier.

GST is payable on these spectrum allocation services under reverse charge mechanism as per Notification No. 13/2017-Central Tax (Rate) dated 28th June, 2017.

Time of Supply under different Payment Options:

- Upfront Payments: GST is payable when the upfront payment is made or due, whichever is earlier.
- Deferred Payments: GST is payable on deferred payments as and when they are due or made, whichever is earlier.



Example: Time of Supply for Spectrum Allocation Services

Scenario Overview

1. **Service Provided:** Spectrum allocation services by the Department of Telecommunications (DoT) to a telecom operator.
2. **Payment Mechanism:** Reverse charge mechanism (RCM) as per Notification No. 13/2017-Central Tax (Rate) dated 28th June 2017.
3. **Payment Options:** The telecom operator can choose between upfront payment or deferred payment in instalments.

Case 1: Upfront Payment

- **Details:**
- Spectrum Allocation Value: ₹500 crores.
- Payment Due Date: 1st July 2024.
- Payment Made: 25th June 2024.

Time of Supply Determination:

- Under **Section 13(2)** of the CGST Act, the time of supply is **earlier of**:
- **Due Date of Payment:** 1st July 2024.
- **Actual Payment Date:** 25th June 2024.

Time of Supply: 25th June 2024.

GST Payable Date: 20th July 2024 (due by the 20th of the following month under RCM).

Case 2: Deferred Payment

Scenario: First Instalment

- **Details:**
- Spectrum Allocation Value: ₹500 crores, divided into 5 annual instalments of ₹100 crores each.
- First Instalment Due Date: 1st July 2024.
- Payment Made: 15th July 2024.

Time of Supply Determination:

- Under **Section 13(2)** of the CGST Act, the time of supply is **earlier of**:
- **Due Date of Payment:** 1st July 2024.
- **Actual Payment Date:** 15th July 2024.

Time of Supply: 1st July 2024.

GST Payable Date: 20th August 2024 (due by the 20th of the following month under RCM).

Scenario: Subsequent Instalments

- **Second Instalment Details:**

- Due Date: 1st July 2025.
- Payment Made: 1st June 2025.

Time of Supply Determination:

- Time of supply is **earlier of**:
- **Due Date of Payment:** 1st July 2025.
- **Actual Payment Date:** 1st June 2025.

Time of Supply: 1st June 2025.
GST Payable Date: 20th July 2025.

Key Notes

1. **Reverse Charge Mechanism (RCM):** The telecom operator is liable to pay GST on the spectrum allocation services under RCM.
2. **GST Rate:** Applicable GST rate for spectrum services is assumed to be 18%.

Summary of GST Liability

Case	Payment Type	Payment Amount (₹ Crores)	Time of Supply	GST Payable (₹ Crores)	GST Due Date
Upfront Payment	Full Payment	500	25th June 2024	90	20th July 2024
Deferred Payment (Year 1)	First Instalment	100	1st July 2024	18	20th August 2024
Deferred Payment (Year 2)	Second Instalment	100	1st June 2025	18	20th July 2025

3. w.e.f. 1-11-2024, F.A. 2024 dt. 16-8-2024, Amendment of section 13. - In section 13 of the Central Goods and Services Tax Act, in sub-section (3):

(i) in clause (b), for the words "by the supplier:", the words "by the supplier, in cases where invoice is required to be issued by the supplier; or" shall be substituted;

(ii) after clause (b), the following clause shall be inserted, namely:— "(c) the date of issue of invoice by the recipient, in cases where invoice is to be issued by the recipient:";

(iii) in the first proviso, after the words, brackets and letter "or clause (b)", the words, brackets and letter "or clause (c)" shall be inserted.

section 13(3) after amendment is as follows:

In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earlier of the following dates, namely :—

(a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or

(b) the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier, in cases where invoice is required to be issued by the supplier; or:

"(c) the date of issue of invoice by the recipient, in cases where invoice is to be issued by the recipient:"

Provided that where it is not possible to determine the time of supply under clause (a) or clause (b) or clause (c), the time of supply shall be the date of entry in the books of account of the recipient of supply :

Provided further that in case of supply by associated enterprises, where the supplier of service is located outside India, the time of supply shall be the date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier.

Place of supply

1. W.e.f. 1st October 2023, Insertion of new clause (ca) to Section 10(1) of the IGST Act, 2017 [Place of supply of goods made to a person other than a registered person]:

The place of supply of goods made to an unregistered person, [not withstanding anything contrary contained in the provisions of clause (a) and (c) of section 10(1)] shall be,-

- ✓ the location as per the address of the said person recorded in the invoice issued in respect of the said supply and,
- ✓ the location of the supplier where the address of the said person is not recorded in the invoice.

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

CBIC Circular No.209/3/2024-GST dated 26th June 2024 [sec 10(1)(ca)]:

Vide this Circular, clarification has been issued to address and resolve the ambiguity regarding the place of supply in cases where the billing and delivery addresses of goods supplied to unregistered persons differ, particularly in **e-commerce transactions**.

Clarification:- When goods are supplied to an unregistered person and the billing address differs from the delivery address, the place of supply is the location as per the delivery address recorded in the invoice. Also, Suppliers should record the delivery address as the recipient's address on the invoice when the billing and delivery addresses differ.

Example 1: This implies that when an unregistered person from State 'X' places an order for supply of goods and directs delivery to a different address in State 'Y', the place of supply will be State 'Y', i.e. the place of delivery.

Example 2: Place of Supply for Goods Delivered to an Unregistered Person

Scenario

1. **Buyer (Unregistered Person)**: Ms. Priya from **Mumbai, Maharashtra** (Billing Address).
2. **Delivery Address**: Her friend's address in **Bengaluru, Karnataka** (Delivery Address).
3. **Seller**: XYZ E-commerce Pvt. Ltd., registered in **Chennai, Tamil Nadu**.
4. **Transaction**:
   - Ms. Priya places an online order for a smartphone with XYZ E-commerce Pvt. Ltd.
   - She requests delivery to her friend's address in Bengaluru, Karnataka.

Clarification on Place of Supply

1. **Place of Supply**:
   - The **billing address** is in Maharashtra, but the **delivery address** is in Karnataka.
   - As per the GST law, when the billing and delivery addresses differ, the **place of supply** is determined by the **delivery address**.
   - **Place of Supply** = **Karnataka (Delivery Address)**.
2. **GST Implications**:
   - The supplier (XYZ E-commerce) is registered in Tamil Nadu.
   - Since the **supplier's location (Tamil Nadu)** and the **place of supply (Karnataka)** are in different states, the supply is treated as an **inter-state supply**.
   - XYZ E-commerce must charge **Integrated GST (IGST)** on this transaction.

3. **Invoice Details**:
   - **Billing Address**: Mumbai, Maharashtra (Ms. Priya).
   - **Delivery Address**: Bengaluru, Karnataka (Ms. Priya's friend's address).

   where the billing address and delivery address are different, the supplier may record the delivery address as the address of the recipient on the invoice for the purpose of determination of place of supply of the said supply of goods.

2. CBIC Circular No. 230/24/2024-GST dt. 10th September, 2024 - Clarification in respect of advertising services provided to foreign clients.

This clarification from the Board addresses concerns raised by Indian advertising companies regarding the classification of services provided to foreign clients. Field formations have been treating these services as supplied within India, thereby denying export benefits. The Board, invoking Section 168(1) of the Central Goods and Services Tax (CGST) Act, provides clarity on this matter to ensure consistent application across field formations.

In this circular – following issues has addressed.

Here's a structured and summarized explanation of the issues, clarifications, and examples based on the scenarios mentioned:

Case 1: Comprehensive Advertising Agreement

Scenario:

A foreign client hires an Indian advertising company for a comprehensive advertising agreement. The advertising company provides end-to-end services, including media planning, content creation, media space procurement, and campaign monitoring. The foreign client pays the advertising company in foreign exchange.

Issues and Clarifications:

1. **Is the advertising company an intermediary?**
   - **Clarification:** The advertising company is **not an intermediary** because:
   - It provides the entire scope of services on its own account.
   - Agreements are executed on a principal-to-principal basis.
   - The media owners do not have a direct agreement with the foreign client.
   - **Place of Supply:** Determined under **Section 13(2)** of the IGST Act as the **location of the recipient**, which is outside India. Therefore, the service qualifies as an **export of service** if conditions under Section 2(6) of the IGST Act are met.

2. **Who is the recipient of services?**
   - **Clarification:** The **foreign client** is the recipient because:
   - The foreign client is liable to pay for the services.
   - Representatives in India or the target audience cannot be considered recipients under Section 2(93) of the CGST Act.

3. **Can these services be considered performance-based under Section 13(3)?**
   - **Clarification:** The services are **not performance-based** because:
   - There is no physical presence of goods or individuals required.
   - The services involve coordination and planning, which do not fall under the purview of Section 13(3).
   - **Place of Supply:** Determined under **Section 13(2)** as the location of the recipient (foreign client), i.e., outside India.

Case 2: Facilitation Services (Acting as an Agent)

Scenario:

An Indian advertising company acts as an agent for the foreign client, arranging media space directly with the media owner. The media owner invoices the foreign client, and the client pays the media owner directly. The advertising company charges the foreign client only for its facilitation services.

Issues and Clarifications:

1. **Is the advertising company an intermediary?**
   - **Clarification:** The advertising company is an **intermediary** because:
   - It facilitates the service of procuring media space and broadcasting advertisements.
   - It does not supply the media services on its own account.
   - **Place of Supply:** Determined under **Section 13(8)(b)** of the IGST Act as the **location of the supplier**, i.e., India. Consequently, these services do not qualify as exports.

2. **Who is the recipient of services?**
   - **Clarification:** The **foreign client** remains the recipient, as they pay for the facilitation services.

3. **Can these services be considered performance-based?**
   - **Clarification:** No, these services involve facilitation and coordination rather than physical performance or presence.
   - **Place of Supply:** Determined under **Section 13(8)(b)** as the location of the supplier, i.e., India.

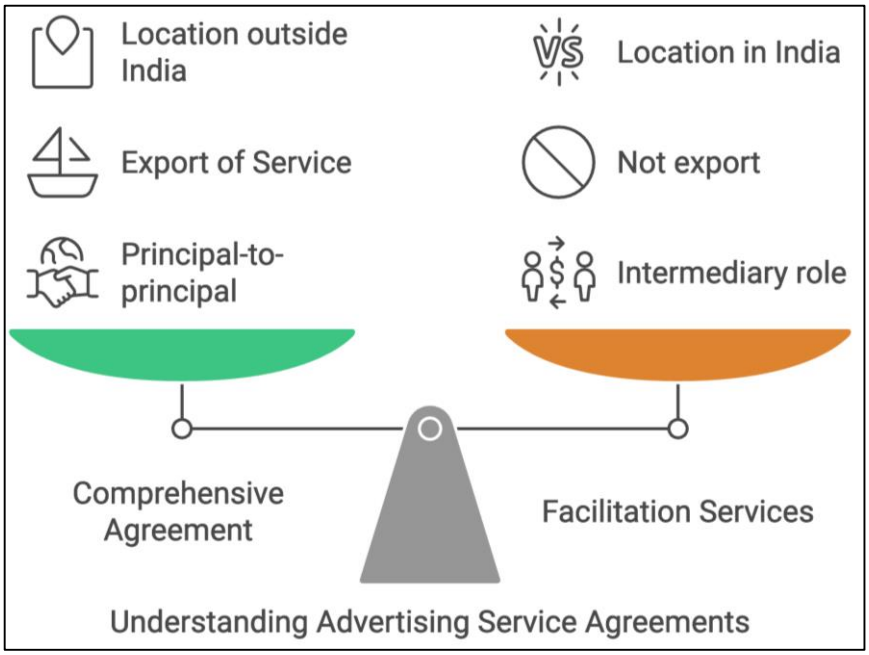
Examples to Illustrate the Clarifications:

Example 1: Comprehensive Agreement (Not an Intermediary)

- **Facts:** ABC Ltd. (India) enters into a comprehensive agreement with XYZ Inc. (USA) for planning, creating, and displaying advertisements. ABC Ltd. procures media space and pays media owners on its own account. ABC Ltd. invoices XYZ Inc. for the entire service and receives payment in foreign exchange.
- **Outcome:**
- ABC Ltd. is **not an intermediary**.
- **Place of Supply:** Outside India (location of XYZ Inc.).
- The service qualifies as an **export of service** under Section 2(6) of the IGST Act.

Example 2: Facilitation Services (Acting as an Intermediary)

- **Facts:** ABC Ltd. (India) facilitates the procurement of media space for XYZ Inc. (USA). The media owner directly invoices XYZ Inc., and payment is made by XYZ Inc. to the media owner. ABC Ltd. charges XYZ Inc. only for facilitation.
- **Outcome:**
- ABC Ltd. is an **intermediary**.
- **Place of Supply:** India (location of ABC Ltd.).
- The service does **not qualify as an export**.



3. Circular No. 220/1/2024-GST dated 26 June 2024

Clarification on the place of supply applicable for custodial services provided by banks to Foreign Portfolio Investors (FPI):

The circular clarifies the place of supply for custodial services provided by banks to FPIs. It states that these services should not be considered as services provided to 'account holders' under section 13(8)(a) of the IGST Act. The place of supply for such services should be determined under the default provision, which is sub-section (2) of section 13 of the IGST Act. The circular provides details on the definition of custodial services, the types of securities FPIs can invest in, and the main activity of banks in providing custodial services. The circular also specifies that similar provisions were there under the service tax regime.

Custodial Services Definition and Scope: Include safekeeping of securities of clients and incidental services. Account Holder Clarification: "Account" has been defined in the rules to mean an account which bears an interest to the depositor. Custodial services are not considered services provided to account holders as per Section 13(8)(a) of the IGST Act.

The place of supply for services supplied by a banking company or financial institution to account holders is the location of the supplier.

Place of Supply Determination: Custodial services are not covered under Section 13(8)(a) of the IGST Act as they do not qualify as services provided to 'account holders'.

Place of supply for custodial services is determined under the default provision, Section 13(2), implying the location of the recipient of services.

Here's an example illustrating the application of **Circular No. 220/1/2024-GST dated 26 June 2024** regarding custodial services provided by banks to Foreign Portfolio Investors (FPIs):

Scenario:

ABC Bank Ltd., located in Mumbai, India, provides custodial services to **XYZ Capital**, an FPI based in Singapore.

Details of Services Provided by ABC Bank:

1. **Custodial Services:** Safekeeping of XYZ Capital's securities in India (e.g., shares, debentures, and government bonds).
2. **Incidental Services:** Record-keeping, settlement of securities transactions, collection of dividends/interest, and reporting of holdings.
3. **Fee Structure:** ABC Bank charges a custodial fee based on the volume of securities under management.

Step-by-Step Analysis of the Place of Supply:

1. **Understanding Section 13(8)(a) of the IGST Act**:
   Section 13(8)(a) states that for services provided by a banking company, financial institution, or NBFC to an "account holder," the place of supply is the location of the supplier of services (in this case, India).
   - **Key Point of the Circular**: Custodial services are not considered services provided to an "account holder."
   - **Reason**: An "account" under this section is defined as an account bearing interest, such as a savings or fixed deposit account. Custodial accounts do not bear interest.
2. **Applicability of Section 13(2) – Default Rule**:
   Since custodial services do not qualify under Section 13(8)(a), the place of supply is determined under **Section 13(2)**, which specifies:
   - **Place of supply** = Location of the recipient of services, if the recipient's location is available.

   In this case:
   - The location of the recipient, XYZ Capital, is Singapore.
3. **Tax Implications**:
   - The place of supply for custodial services is **outside India (Singapore)**.
   - As the place of supply is outside India and the supplier is in India, this transaction qualifies as an **export of services** under GST.
   - Therefore, ABC Bank can provide these services under a **zero-rated supply** and may claim refunds for input tax credits, if any.

Numerical Illustration:

- **Custodial Fee Charged by ABC Bank:** ₹10,00,000
- **GST Implication:**
- Since this is an export of services, no GST is charged to XYZ Capital.
- ABC Bank must comply with the export documentation requirements to treat this as zero-rated.

Key Takeaways from Circular:

1. Custodial services are excluded from the ambit of Section 13(8)(a).
2. The place of supply is determined as per Section 13(2) and is based on the recipient's location.
3. Similar treatment was provided under the service tax regime for custodial services to foreign clients.

4. Clarification on place of supply of data hosting services provided by service providers located in India to cloud computing service providers located outside India (vide CBIC Circular No. 232/26/2024-GST Dt. 10th September 2024):

Here's a **practical example** illustrating the clarified position regarding data hosting services:

Issue 1: Data Hosting Service Provider and Cloud Computing Service Provider

1. **Parties Involved:**
   - **Data Hosting Service Provider (Provider)**: Located in India, operating a data center.
   - **Cloud Computing Service Provider (Recipient)**: Located in the USA, offering cloud-based services to its global customers.
   - **End Users (Consumers)**: Located in various countries, accessing cloud computing services from the Recipient.
2. **Nature of Contract:**
   - The **Recipient** contracts with the **Provider** to host their data on the Provider's servers.
   - The **Provider** operates data centers equipped with computing and networking infrastructure to manage data storage, processing, and distribution.
   - The **Provider** does not interact with or have any knowledge about the **End Users**.
3. **Billing and Payments:**
   - The **Provider** charges the **Recipient** for data hosting services based on the usage of infrastructure (e.g., server space, processing power).
   - Payment is made by the **Recipient** (located outside India) in foreign exchange.
4. **Service Flow:**
   - The **Provider** provides services like server hosting, IT management, monitoring, and data security directly to the **Recipient**.
   - The **Recipient** uses these services to deliver cloud computing solutions (e.g., software, storage, analytics) to its **End Users**.

Practical Example Analysis

1. **Whether the Data Hosting Provider is an "Intermediary"?**
   - The **Provider** supplies hosting services directly to the **Recipient** on a principal-to-principal basis.
   - The **Provider** is not facilitating the supply of cloud computing services between the **Recipient** and the **End Users**.
   - **Conclusion:** The **Provider** is **not an intermediary** under Section 2(13) of the IGST Act.
2. **Place of Supply:**
   - Since the **Provider** is not an intermediary, the place of supply cannot be determined under Section 13(8)(b) (location of the supplier).
   - Instead:
   - No goods are "made available" by the **Recipient** to the **Provider**; hence, Section 13(3)(a) does not apply.
   - The services are not directly related to immovable property, so Section 13(4) does not apply.
   - The place of supply defaults to **Section 13(2)**, which specifies the **location of the recipient** as the place of supply.
   - **Conclusion:** The place of supply is the **location of the Recipient (USA)**.
3. **Export of Services:**

   To qualify as an **export of services** under Section 2(6) of the IGST Act:
   1. The **Supplier** of service is located in India.
   2. The **Recipient** of service is located outside India.

3. The place of supply is outside India.
4. Payment is received in convertible foreign exchange.
5. The supplier and recipient are not merely establishments of the same entity.

Outcome:

All conditions are satisfied, and the services qualify as **export of services**. The **Provider** is eligible for GST benefits, such as:

- Zero-rated supply under Section 16 of the IGST Act.
- Refund of input tax credit, if any, on inputs/services used for providing the exported services.

Numerical Illustration

1. **Contract Value:**
   - The Provider charges $50,000 (approximately ₹40,00,000) per month for hosting services.
   - Payment is received in USD.
2. **GST Implications:**
   - The service qualifies as an **export of service** and is zero-rated under GST.
   - The Provider does not charge GST on the invoice raised to the Recipient.
3. **Input Tax Credit Refund:**
   - The Provider incurs GST on purchases such as servers, electricity, and IT equipment.
   - Total Input GST for the month: ₹2,00,000.
   - Since the service is zero-rated, the Provider can claim a **refund** of the ₹2,00,000 input GST.

Key Takeaways

1. **Place of Supply:** The location of the cloud computing service provider (USA).
2. **Export of Service:** Hosting services qualify as export and are zero-rated.
3. **Input Tax Credit:** The Provider can claim a refund for input taxes incurred in providing the exported service.

Issue 2: Whether data hosting services are provided in relation to goods "made available" by the recipient (cloud computing provider) and whether the place of supply can be determined under Section 13(3)(a) of the IGST Act.

Key Points:

1. **Section 13(3)(a):**
   - Applies when goods are physically made available by the recipient to the provider, and the place of supply is the **location of the service provider**.
2. **Scenario:**
   - Data hosting providers operate independently, using their own premises, infrastructure (hardware, cooling, power, software, etc.), and personnel.
   - Cloud computing providers (recipients) do not own or "make available" the infrastructure used by the data hosting provider.
3. **Clarification:**
   - Data hosting services are **not related to goods "made available"** by the cloud computing providers.

- Even if some hardware is provided by the recipient, the hosting provider manages all aspects of the service independently.
- Therefore, **Section 13(3)(a) does not apply**, and the place of supply cannot be determined based on this section.

4. **Outcome:**
   - Place of supply is determined under **Section 13(2)** (default rule), which is the **location of the recipient** (overseas cloud computing provider).

Issue 3: Are data hosting services directly related to immovable property, and is the place of supply determined under Section 13(4) of the IGST Act?

Key Points:

1. **Section 13(4):**
   - Applies when services are directly related to immovable property, and the place of supply is the location of the property.
2. **Scenario:**
   - Data hosting providers use premises, IT infrastructure, and additional resources to deliver hosting services.
   - The services involve operating data centers, managing power supplies, ensuring network connectivity, and maintaining servers, not just managing or maintaining immovable property.
3. **Clarification:**
   - Data hosting services are **not directly related to immovable property** but are comprehensive IT services.
   - **Section 13(4) does not apply**.
4. **Place of Supply:**
   - Determined under **Section 13(2)** (default rule), which is the **location of the recipient**.
   - If the recipient (cloud computing provider) is outside India, the place of supply is outside India, and the service qualifies as **export of services**, subject to conditions in Section 2(6).

Value of Supply

1. Circular No. 212/6/2024-GST dated 26 June 2024:

Mechanism for providing evidence of compliance with section 15(3)(b)(ii) of the CGST Act for excluding post- sale discounts from the taxable value:

Clarification verifying the reversal of Input Tax Credit (ITC) by recipients when discounts are offered by suppliers through credit notes after the supply has been effected.

Currently, there is no facility on the common portal to verify whether the ITC attributable to the discount has been reversed by the recipient.

In view of the above, till the time a functionality/ facility is made available on the common portal to enable the suppliers as well as the tax officers to verify whether the input tax credit attributable to such discounts offered through tax credit notes has been reversed by the recipient or not, the supplier may procure a certificate from the recipient of supply, issued by the Chartered Accountant (CA) or the Cost Accountant (CMA), [containing a Unique Document Identification Number (UDIN)] certifying that the recipient has made the required proportionate reversal of input tax credit at his end in respect of such credit note issued by the supplier.

In cases, where the amount of tax (CGST+SGST+IGST and including compensation cess, if any) involved in the discount given by the supplier to a recipient through tax credit notes in a Financial Year is not exceeding ₹5,00,000 (rupees five lakhs only), then instead of CA/CMA certificate, the said supplier may procure an undertaking/ certificate from the said recipient that the said input tax credit attributable to such discount has been reversed by him.

CA/CMA Certificate must include details of credit notes, relevant invoice numbers, amount of ITC reversal, and the relevant document through which the ITC reversal has been made.

Such certificates or undertakings are considered suitable and admissible evidence for the purpose of section 15(3)(b)(ii) of the CGST Act.

Suppliers should produce these certificates/undertakings during proceedings such as scrutiny, audit, investigations, etc.

Even for past periods, these certificates can be produced as evidence of ITC reversal.

Example: Mechanism for Post-Sale Discounts and ITC Reversal Compliance

Scenario

1. **Supplier**: XYZ Pvt. Ltd. issues tax credit notes for post-sale discounts to its recipient, ABC Pvt. Ltd.
2. **Discount Details**: A discount of ₹60,00,000 (tax amount of ₹9,15,254 included) is given via credit notes in FY 2024-25.

Mechanism for Compliance

- **ITC Reversal Verification**:
- Since the recipient (ABC Pvt. Ltd.) must reverse the proportionate ITC related to the discount, the supplier (XYZ Pvt. Ltd.) needs evidence of this reversal.
- **Compliance Evidence Based on Amount**:
- **If** the amount of tax (CGST+SGST+IGST and including compensation cess, if any) involved in the **Discount ≤ ₹5,00,000**:
- The supplier may procure an **undertaking or certificate** directly from the recipient.

- **If** the amount of tax (CGST+SGST+IGST and including compensation cess, if any) involved in the **Discount > ₹5,00,000**:
- A certificate issued by a **CA/CMA** with a **UDIN** is required, confirming ITC reversal.
- The certificate must include credit note details, invoice numbers, and reversal records.

Outcome

- **XYZ Pvt. Ltd. obtains a CA or CMA certificate** certifying that ABC Pvt. Ltd. has reversed the proportionate ITC of ₹9,15,254 in compliance with Section 15(3)(b)(ii) of the CGST Act.
- **Relevance in Proceedings**:
- The certificate serves as valid evidence during scrutiny, audits, or investigations.
- **Applicability to Past Periods**:
- Certificates for earlier financial years can also be used to demonstrate compliance.

2.Second proviso to Rule 28(1) of CGST Rules, 2017 - Clarification on valuation of supply of import of services by a related person where recipient is eligible to full input tax credit (vide CBIC Circular No.210/4/2024-GST dt. 26th June, 2024):

In case of import of services by a registered person in India from a related person located outside India, the tax is required to be paid by the registered person in India under reverse charge mechanism. In such cases, the registered person in India is required to issue self-invoice under Section 31(3)(f) of CGST Act and pay tax on reverse charge basis.

It is clarified that in cases where the foreign affiliate is providing certain services to the related domestic entity, and where full input tax credit is available to the said related domestic entity, the value of such supply of services declared in the invoice by the said related domestic entity may be deemed as open market value in terms of second proviso to rule 28(1) of CGST Rules. Further, in cases where full input tax credit is available to the recipient, if the invoice is not issued by the related domestic entity with respect to any service provided by the foreign affiliate to it, the value of such services may be deemed to be declared as Nil, and may be deemed as open market value in terms of second proviso to rule 28(1) of CGST Rules

Example: Import of Services from a Related Person under Reverse Charge Mechanism

Scenario

- **Indian Entity (Recipient)**: ABC Pvt. Ltd., a registered person under GST in India.
- **Foreign Affiliate (Supplier)**: XYZ Inc., located in the USA, related to ABC Pvt. Ltd.
- **Nature of Service**: Consulting services provided by XYZ Inc. to ABC Pvt. Ltd.
- **Service Value**: $10,000 (₹8,00,000 equivalent).
- **Input Tax Credit (ITC)**: Fully available to ABC Pvt. Ltd.

Steps Involved in Compliance

1. **Reverse Charge Mechanism (RCM)**:
   - Since the service provider (XYZ Inc.) is located outside India and is a related person, GST is payable by ABC Pvt. Ltd. in India under the **reverse charge mechanism**.
2. **Issuance of Self-Invoice**:
   - As per Section 31(3)(f) of the CGST Act, ABC Pvt. Ltd. must issue a **self-invoice** for the import of services.
   - The self-invoice should include details such as the value of the services (₹8,00,000) and the applicable GST.

3. **Open Market Value**:
   - Since ABC Pvt. Ltd. is eligible for **full ITC**, the value declared in the self-invoice (₹8,00,000) is deemed the **open market value** of the service as per Rule 28(1) of the CGST Rules.
4. **GST Payment**:
   - ABC Pvt. Ltd. calculates GST on the value of ₹8,00,000 and pays it under the reverse charge mechanism.
   - For example, if the applicable GST rate is 18%:
   - **GST Payable** = ₹8,00,000 × 18% = ₹1,44,000.
   - The same amount of ₹1,44,000 can be claimed as ITC by ABC Pvt. Ltd. in its GST return.
5. **Case of Non-Issuance of Invoice**:
   - If ABC Pvt. Ltd. does not issue a self-invoice for the services provided by XYZ Inc., the **value of services may be deemed as Nil**, and this Nil value is treated as the **open market value** under the second proviso to Rule 28(1).

3. Rule 28(2) of CGST Rules, 2017:

w.e.f. 26th October 2023, Insertion of sub-rule (2) to rule 28: [Notification No 52/2023-CT dt 26-10-2023] Value of supply of services by a supplier to a recipient who is a related person (vide NT 12/2024 dated 10-7-2024, w.e.f. 26-10-2023 the term "**located in India**" inserted), by way of providing corporate guarantee to any banking company or financial institution on behalf of the said recipient, shall be deemed to be 1% of the amount of such guarantee offered (vide NT 12/2024 dated 10-7-2024, w.e.f. 26-10-2023 the term "**per annum**" inserted), or the actual consideration,
whichever is higher.

Provided that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the value of said supply of service (vide Notification No. 12/2024 CT dt. 10-07-2024, w.e.f. 26-10-2023).

CBIC issued Circular No. 225/19/2024-GST dt. 11th July, 2024 regarding Clarification on various issues pertaining to taxability and valuation of supply of services of providing corporate guarantee between related persons are as under:

Issue 1:

a. Whether **Rule 28(2)** of CGST Rules applies to corporate guarantees issued before its introduction on **26th October 2023**.
b. Whether intra-group corporate guarantees issued prior to this date, still in force, would require GST payment based on **"1% of the amount of such guarantee offered"**.

Clarification:

Example 1: Corporate Guarantee Issued Before 26th October 2023

Scenario:

- **ABC Ltd. (Holding Company)** provided a corporate guarantee to **PQR Bank** on behalf of its **subsidiary, XYZ Ltd.**, on **1st January 2023**, for a loan of ₹10 crore.
- No consideration was charged by ABC Ltd. for this guarantee.

GST Implications:

1. **Taxability:**
   - The corporate guarantee qualifies as a taxable supply of service between related parties under Schedule I of CGST Act.
2. **Valuation:**
   - Since the guarantee was issued **before 26th October 2023**, its value must be determined as per the **earlier Rule 28**, considering:
   - Open market value, or
   - Value of similar services, or
   - Residual valuation as prescribed under Rule 30 or Rule 31.

Calculation:

- If the open market value of a similar corporate guarantee is determined to be ₹1 lakh, GST will be calculated on ₹1 lakh.

Example 2: Corporate Guarantee Issued On or After 26th October 2023

Scenario (no consideration):

- On **1st November 2023**, **ABC Ltd.** renewed its earlier guarantee for the same loan of ₹10 crore on behalf of **XYZ Ltd.**

GST Implications:

1. **Taxability:**
   - The renewed guarantee is a taxable supply under Schedule I.
2. **Valuation:**
   - Since the guarantee is renewed **after 26th October 2023**, valuation will be done as per **Rule 28(2)**.
   - Taxable Value = 1% of the guarantee amount.

Example Calculation:

- Taxable Value = 1% of ₹10 crore = ₹10 lakh.
- GST at 18% = ₹10 lakh × 18% = ₹1.8 lakh.

Key Differences:

1. **Before 26th October 2023:** Valuation relied on open market value or other earlier rules.
2. **On or After 26th October 2023:** Valuation is explicitly **1% of the corporate guarantee amount** as per Rule 28(2).

Issue 2:

a. When a corporate guarantee is issued for a specific amount, but the loan is only partly availed or not availed at all, how is the value of the corporate guarantee determined?

b. Is the recipient eligible to claim full **Input Tax Credit (ITC)** for the GST charged, even before the full loan amount is disbursed?

Clarification:

Part 1: Valuation of Corporate Guarantee

1. **Facts:**
   - **ABC Ltd. (Guarantor)** provides a corporate guarantee to **XYZ Ltd. (Recipient)** for a loan of ₹10 crore from **PQR Bank**. ABC Ltd., and XYZ Ltd., are related persons.
   - PQR Bank approves the loan, but only ₹6 crore is disbursed to XYZ Ltd. initially, and the remaining ₹4 crore is not availed.

2. **Valuation of Service:**
   - The taxable value for the corporate guarantee service is calculated on the **guaranteed amount**, i.e., ₹10 crore.
   - As per **Rule 28(2)** of CGST Rules, the taxable value is **1% of the guaranteed amount**.
3. **Calculation:**
   - Taxable Value = 1% of ₹10 crore = ₹10 lakh.
   - GST at 18% = ₹10 lakh × 18% = ₹1.8 lakh.
4. **Outcome:**
   - GST payable by ABC Ltd. = ₹1.8 lakh, irrespective of the actual loan disbursed (₹6 crore).

Part 2: ITC Eligibility for XYZ Ltd.

1. **Facts:**
   - XYZ Ltd. receives an invoice from ABC Ltd. for the corporate guarantee service with a taxable value of ₹10 lakh and GST of ₹1.8 lakh.
   - XYZ Ltd. has availed only ₹6 crore of the ₹10 crore loan.
2. **Eligibility for ITC:**
   - XYZ Ltd. is eligible to claim the **full ITC of ₹1.8 lakh** for the GST paid on the corporate guarantee service.
   - The claim is valid irrespective of:
   - The amount of loan disbursed.
   - The timing of loan disbursement.

Issue 3: GST Implications on Takeover of Existing Loans with Corporate Guarantees:

Case 1: Assignment of Existing Corporate Guarantee

- **ABC Ltd.** provides a corporate guarantee for a loan of ₹20 crore taken by its related entity, **XYZ Ltd.,** from **Bank A.**
- Later, **Bank B** takes over the loan from Bank A.
- No new corporate guarantee is issued, and the existing guarantee is merely assigned to Bank B.
- The takeover of the loan by Bank B does **not involve a fresh supply of service**.
- The corporate guarantee issued by ABC Ltd. remains the same and is assigned to Bank B.
- As clarified, this activity does **not attract GST** since no new corporate guarantee is issued or renewed.

Case 2: Issuance of a Fresh Corporate Guarantee

- Following the loan takeover by Bank B, a new corporate guarantee is issued by ABC Ltd. to replace the existing one.
- If ABC Ltd. issues a fresh corporate guarantee to Bank B for the same loan amount of ₹20 crore, it constitutes a **new taxable supply of service.**
- **Taxable Value of Service:** Calculated as per **Rule 28(2)** of CGST Rules.
- Taxable Value = 1% of ₹20 crore = ₹20 lakh.
- GST @18% = ₹20 lakh × 18% = ₹3.6 lakh.
- ABC Ltd. must charge GST on the fresh corporate guarantee provided.

Issue 4: GST on Corporate Guarantee Provided by Multiple Co-Guarantors

Scenario 1: Equal Sharing of Guarantee

1. **Facts:**
   - Two co-guarantors, **Company A** and **Company B,** jointly provide a corporate guarantee for ₹1 crore on behalf of a related recipient, **Company C.**
   - Both A and B share the guarantee equally, i.e., ₹50 lakh each.
   - No specific consideration is paid to either co-guarantor.
2. **GST Calculation:**
   - Since the guarantee amount is shared equally, GST liability is calculated based on **1% of the total guarantee amount.**
   - Each co-guarantor will pay GST on their proportion of the guarantee.

Taxable Value:
- **Company A:** 1% of ₹50 lakh = ₹50,000
- **Company B:** 1% of ₹50 lakh = ₹50,000

GST @18%:
- **Company A:** ₹50,000 × 18% = ₹9,000
- **Company B:** ₹50,000 × 18% = ₹9,000

Conclusion: Both co-guarantors are liable to pay GST on their respective taxable values.

Scenario 2: Unequal Sharing of Guarantee

1. **Facts:**
   - Two co-guarantors, **Company A** and **Company B,** jointly provide a corporate guarantee for ₹1 crore on behalf of **Company C.**
   - A provides 60% of the guarantee, i.e., ₹60 lakh.
   - B provides the remaining 40%, i.e., ₹40 lakh.
   - No specific consideration is paid to either co-guarantor.
2. **GST Calculation:**
   - GST liability is calculated based on **1% of the guarantee provided by each co-guarantor.**

Taxable Value:
- **Company A:** 1% of ₹60 lakh = ₹60,000
- **Company B:** 1% of ₹40 lakh = ₹40,000

GST @18%:
- **Company A:** ₹60,000 × 18% = ₹10,800
- **Company B:** ₹40,000 × 18% = ₹7,200

Conclusion: Each co-guarantor is liable to pay GST on their respective taxable values based on the proportion of the guarantee provided.

Scenario 3: Higher Actual Consideration Paid

1. **Facts:**
   - Two co-guarantors, **Company A** and **Company B,** jointly provide a corporate guarantee for ₹1 crore on behalf of **Company C.**
   - A and B share the guarantee equally, i.e., ₹50 lakh each.
   - The actual consideration paid to A is ₹80,000, and to B is ₹70,000.
2. **GST Calculation:**
   - Since the total consideration (₹1,50,000) exceeds 1% of the guarantee amount (₹1,00,000), GST is payable on the **actual consideration received.**

Taxable Value:

- **Company A:** ₹80,000
- **Company B:** ₹70,000

GST @18%:

- **Company A:** ₹80,000 × 18% = ₹14,400
- **Company B:** ₹70,000 × 18% = ₹12,600

Conclusion: In cases where the total consideration exceeds 1% of the guarantee amount, GST is payable on the actual consideration received by each co-guarantor.

Issue 5: GST Payment on Intra-Group Corporate Guarantees

Scenario 1: Domestic Corporate Guarantee

1. **Facts:**
   - **Company A** (parent company in India) issues a corporate guarantee to a bank on behalf of its subsidiary, **Company B** (also in India).
   - The guarantee amount is ₹1 crore.
   - Since both entities are domestic and related, GST is applicable under the **forward charge mechanism.**
2. **GST Process:**
   - **Company A** (guarantor) must issue an invoice to **Company B** (recipient) for providing the corporate guarantee.
   - GST is calculated as **1% of the guarantee amount,** i.e., ₹1,00,000.
   - **Company A** will charge and pay GST to the government.
3. **Taxable Value and GST Calculation:**
   - **Taxable Value:** ₹1,00,000 (1% of ₹1 crore)
   - **GST @18%:** ₹1,00,000 × 18% = ₹18,000
4. **Input Tax Credit (ITC):**
   - **Company B** can claim ITC of ₹18,000 based on the invoice issued by **Company A** under Section 31 of the CGST Act, 2017.

Scenario 2: Foreign Intra-Group Corporate Guarantee

1. **Facts:**
   - **Parent Company X** (located overseas) issues a corporate guarantee to a bank on behalf of its wholly-owned subsidiary, **Subsidiary Company Y** (located in India).
   - The guarantee amount is ₹20 crore.
   - Since the guarantor is a foreign entity and the recipient is in India, GST is payable under the **reverse charge mechanism** by **Subsidiary Company Y.**
2. **GST Process:**
   - **Subsidiary Company Y** must self-account for GST and pay it to the government under the reverse charge mechanism.
3. **Taxable Value and GST Calculation:**
   - **Taxable Value:** ₹20,00,000 (1% of ₹20 crore)
   - **GST @18%:** ₹20,00,000 × 18% = ₹3,60,000
4. **Input Tax Credit (ITC):**
   - **Subsidiary Company Y** can claim ITC of ₹3,60,000 for the GST paid under the reverse charge mechanism, provided all conditions for claiming ITC are satisfied.

Key Distinctions

Aspect	Domestic Intra-Group Guarantee	Foreign Intra-Group Guarantee
Guarantor	Indian Parent Company (e.g., A)	Overseas Parent Company (e.g., X)
Recipient	Indian Subsidiary (e.g., B)	Indian Subsidiary (e.g., Y)
Relationship	Related Persons (intra-group)	Related Persons (intra-group)
GST Mechanism	Forward Charge	Reverse Charge
Taxpayer	Guarantor pays GST	Recipient pays GST
Invoice Requirement	Invoice issued by Parent Company A	No invoice; self-accounting by Subsidiary Y. Hence, invoice issued by recipient.
ITC Eligibility	Subsidiary B claims ITC based on invoice	Subsidiary Y claims ITC for GST paid under RCM

Issue 6: Discharge of Tax Liability on Corporate Guarantee

Scenario 1: Corporate Guarantee Issued for a Fixed Term of 5 Years

1. **Facts:**
   - A **holding company (A)** provides a corporate guarantee to a bank for securing a loan of ₹10 crore on behalf of its **subsidiary (B)** for a tenure of **5 years**.
   - The actual consideration for the corporate guarantee is ₹3 lakh per year.
2. **Valuation of Supply:**
   - **One per cent per annum of the guarantee amount:** ₹10 crore × 1% = ₹10 lakh per year.
   - **Total for 5 years:** ₹10 lakh × 5 = ₹50 lakh.
   - **Actual consideration:** ₹3 lakh × 5 = ₹15 lakh.
   - As per Rule 28(2), the higher of the two is the taxable value.
3. **Taxable Value and GST Calculation:**
   - **Taxable Value:** ₹50 lakh (higher of ₹50 lakh and ₹15 lakh).
   - **GST @18%:** ₹50 lakh × 18% = ₹9 lakh.
4. **Tax Payment Timeline:**
   - Time of supply - GST is payable **at the time of issuance** of the corporate guarantee for the full tenure (5 years).

Scenario 2: Corporate Guarantee Issued for 1 Year and Renewed Annually for 5 Years

1. **Facts:**
   - A **holding company (A)** provides a corporate guarantee to a bank for ₹10 crore on behalf of its **subsidiary (B)** for **1 year**, renewable annually for 5 years.
   - The actual consideration is ₹3 lakh per year.
2. **Valuation of Supply for Each Year:**
   - **One per cent per annum of the guarantee amount:** ₹10 crore × 1% = ₹10 lakh per year.
   - **Actual consideration:** ₹3 lakh per year.
   - As per Rule 28(2), the higher of the two is the taxable value.
3. **Taxable Value and GST Calculation (Per Year):**
   - **Taxable Value:** ₹10 lakh (higher of ₹10 lakh and ₹3 lakh).
   - **GST @18%:** ₹10 lakh × 18% = ₹1.8 lakh per year.
4. **Tax Payment Timeline:**
   - Time of supply - GST is payable **each time the corporate guarantee is renewed** for that year.

Scenario 3: Corporate Guarantee Issued for Less Than 1 Year (6 Months)

1. **Facts:**
   - A **holding company (A)** provides a corporate guarantee to a bank for ₹10 crore on behalf of its **subsidiary (B)** for **6 months**.
   - The actual consideration is ₹1.5 lakh.
2. **Valuation of Supply for 6 Months:**
   - **Proportionate value for 6 months:** ₹10 crore × (6/12) × 1% = ₹5 lakh.
   - **Actual consideration:** ₹1.5 lakh.
   - As per Rule 28(2), the higher of the two is the taxable value.
3. **Taxable Value and GST Calculation:**
   - **Taxable Value:** ₹5 lakh (higher of ₹5 lakh and ₹1.5 lakh).
   - **GST @18%:** ₹5 lakh × 18% = ₹90,000.
4. **Tax Payment Timeline:**
   - Time of supply - GST is payable **at the time of issuance** of the corporate guarantee for 6 months.

Issue 7: Whether the benefit of second proviso to sub-rule (1), which states that value declared in invoice is deemed to be the open market value in cases where full input tax credit is available to the recipient of services, is not applicable in cases falling under sub-rule (2)?

Clarification: Proviso has been inserted in sub-rule (2) of Rule 28 of CGST Rules, retrospectively with effect from 26th October 2023 vide notification No. 12/2024 - CT dated 10.07.2024, similar to that provided in the second proviso to sub-rule (1) of Rule 28 of CGST Rules, to provide the benefit in cases involving supply of service of corporate guarantees provided between related persons.

Accordingly, it is clarified that in cases involving the supply of service of corporate guarantees provided between related persons, where full input tax credit is available to the recipient of services, the value declared in the invoice shall be deemed to be the value of supply of the said service

Scenario:

1. **Facts:**
   - A **holding company (A)** provides a corporate guarantee to a bank for securing a loan of ₹10 crore on behalf of its **subsidiary (B)**.
   - **Subsidiary B** is eligible to claim **full Input Tax Credit (ITC)** on the services of the corporate guarantee.
   - **Value Declared in the Invoice:** ₹1.5 lakh per year as the consideration for the corporate guarantee.
2. **Valuation of Supply:**
   - As per **sub-rule (2) of Rule 28**, the taxable value should generally be the higher of:
   - **1% of the guarantee amount per annum:** ₹10 crore × 1% = ₹10 lakh.
   - **Actual consideration declared in the invoice:** ₹1.5 lakh.
   - However, since **full ITC is available to the recipient (B)**, the proviso to sub-rule (2) of Rule 28 applies.
   - **Result:** The value declared in the invoice (₹1.5 lakh) is deemed to be the taxable value.
3. **GST Calculation:**
   - **Taxable Value:** ₹1.5 lakh (as declared in the invoice).
   - **GST @18%:** ₹1.5 lakh × 18% = ₹27,000.

4. **Key Clarification:**
   - The benefit of the proviso ensures that the declared invoice value is accepted as the taxable value if **full ITC is available** to the recipient.
   - The higher valuation (e.g., 1% of the guarantee amount) is not applied in such cases.

Comparison Without ITC Benefit:

If **Subsidiary B** was **not eligible for full ITC**, the taxable value would be determined as the higher of:

- **1% of ₹10 crore = ₹10 lakh**
- **Declared Invoice Value = ₹1.5 lakh**

In such a case, the taxable value would be ₹10 lakh, and GST payable would be ₹10 lakh × 18% = ₹1.8 lakh.

Issue 8: Whether the valuation in terms of Rule 28(2) of CGST Rules will apply to the export of the service of providing corporate guarantee between related persons?

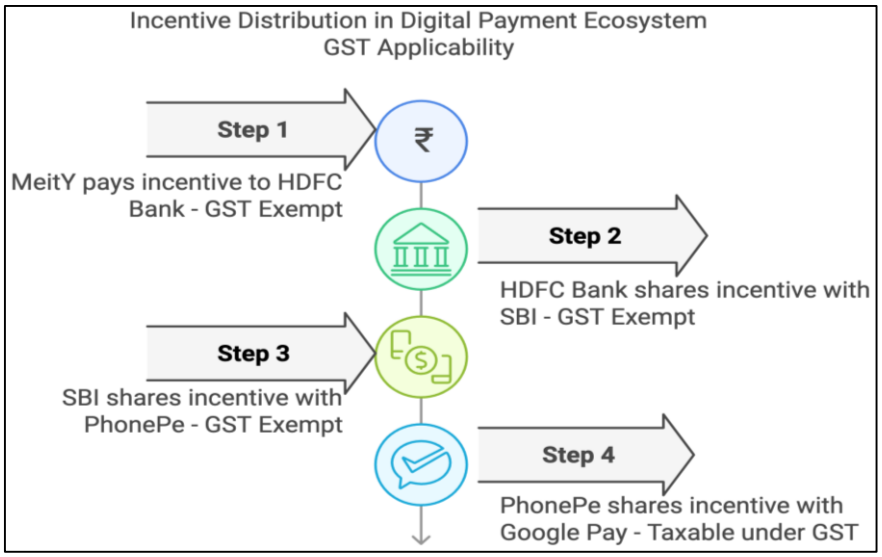
Clarification:

As per the amendment done in sub-rule (2) of rule 28 of CGST Rules retrospectively w.e.f. 26th October 2023 vide notification No. 12/2024 -CT dated 10.07.2024, the provisions of the said sub-rule will not apply in cases where the recipient of the services of providing corporate guarantee between related persons is located outside India. Accordingly, the provisions of the said sub-rule shall not apply to the export of the services of providing corporate guarantee between related persons.

4. CBIC Circular No. 228/22/2024-GST dated 15thJuly 2024: Applicability of GST on the incentive amount shared by acquiring banks with other stakeholders in the digital payment ecosystem under the notified Incentive Scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions:

The Ministry of Electronics and Information Technology (MeitY) pays incentives to acquiring banks under the **Incentive Scheme for the promotion of RuPay Debit Cards and low-value BHIM-UPI transactions**. These incentives are shared with various stakeholders in the digital payment ecosystem (e.g., issuer banks, payment service providers, and UPI apps) as per the proportion and manner decided by the **National Payments Corporation of India (NPCI)**. The **GST Council** clarified that these incentives are **not taxable** as they are in the nature of a subsidy.

Here is a **practical, detailed example** involving specific names for each stakeholder and a step-by-step flow explaining the **GST applicability** in the digital payment ecosystem.



Practical Example

Transaction Details:

1. **Transaction Type**: BHIM-UPI payment.
2. **Transaction Value**: ₹1,000.
3. **Incentive Amount**: 1% of the transaction value = ₹10.
4. **Stakeholders Involved**:
    - **MeitY (Ministry of Electronics and IT)**: Pays the incentive to the acquiring bank.
    - **Acquiring Bank (HDFC Bank)**: Processes the payment for the merchant.
    - **Issuer Bank (SBI)**: The bank that issued the UPI access/debit card to the customer.
    - **PSP (PhonePe)**: Facilitates the UPI transaction via its app.
    - **TPAP (Third-Party App Provider)**: Google Pay, which is used by the customer to make the payment.

Step-by-Step Flow of the Incentive Distribution:

Step 1: MeitY Pays Incentive to Acquiring Bank (HDFC Bank)

- **Details**:
- MeitY pays an incentive of ₹10 (1% of ₹1,000) to **HDFC Bank**, the acquiring bank, for promoting RuPay Debit Card and UPI transactions.
- **GST Applicability**:
- **Not Taxable**.
- Reason: This payment is a **subsidy** from MeitY to promote digital payments, as clarified by Circular No. 190/02/2023-GST.

Step 2: Acquiring Bank (HDFC Bank) Shares Incentive with Issuer Bank (SBI)

- **Details**:
- NPCI directs HDFC Bank to share 70% of the incentive (₹7) with **SBI**, the bank that issued the customer's debit card or enabled their UPI account.
- **GST Applicability**:
- **Not Taxable**.
- Reason: This sharing is part of the **subsidy-sharing mechanism** mandated by NPCI, as clarified in the 53rd GST Council meeting.

Step 3: Issuer Bank (SBI) Shares Incentive with PSP (PhonePe)

- **Details**:
- NPCI instructs **SBI** to share 50% of the ₹7 it received with **PhonePe**, the Payment Service Provider that facilitated the transaction.
- Amount shared: ₹3.50.
- **GST Applicability**:
- **Not Taxable**.
- Reason: This sharing is also part of the NPCI-regulated mechanism and remains a **subsidy**.

Step 4: PSP (PhonePe) Shares Incentive with TPAP (Google Pay)

- **Details**:
    - As per a private business agreement, **PhonePe** shares ₹1 (out of the ₹3.50 it received) with **Google Pay**, the Third-Party App Provider (TPAP) used by the customer for the transaction.

- **GST Applicability**:
- **Taxable**.
- Reason: This sharing is based on a private contract between PhonePe and Google Pay and is not part of the subsidy-sharing mechanism mandated by NPCI.

Detailed Flow of Incentive:

Step	From	To	Amount Shared	Mechanism	GST Applicability	Reason
Step 1	MeitY	HDFC Bank	₹10	Subsidy from MeitY	**Not Taxable**	Incentive from MeitY is a subsidy.
Step 2	HDFC Bank	SBI	₹7	NPCI-regulated mechanism	**Not Taxable**	Shared as part of the subsidy.
Step 3	SBI	PhonePe	₹3.50	NPCI-regulated mechanism	**Not Taxable**	Shared as part of the subsidy.
Step 4	PhonePe	Google Pay	₹1	Private business agreement	**Taxable**	Not part of the NPCI-regulated mechanism.

Why GST is Taxable at Step 4 (PhonePe → Google Pay)?

1. **Nature of Sharing**:
   - At this stage, the sharing of the incentive is no longer part of the **subsidy-sharing mechanism** mandated by NPCI.
   - It is based on a **private business agreement** between PhonePe and Google Pay.
2. **Classification Under GST**:
   - This ₹1 payment is treated as a **service** provided by Google Pay to PhonePe, and thus, GST is **applicable**.

Outcome:

1. MeitY, HDFC Bank, SBI, and PhonePe are not liable to pay GST for the incentives received or shared under the **NPCI-regulated mechanism**.
2. Google Pay is liable to pay GST on the ₹1 it receives from PhonePe as this is based on a **commercial agreement**.

Input Tax Credit

1. Circular No. 211/5/2024-GST dated 26 June 2024

Clarification regarding the time limit under section 16(4) of the CGST Act for RCM supplies received from unregistered persons:

Section 16(4) of the CGST Act links the time limit for ITC availability with the financial year (FY) to which the invoice or debit note pertains.

This circular clarifies that in case the supplies on which tax is paid by a recipient under RCM are received from unregistered suppliers and the invoice is issued by recipient as per section 31(3)(f) of the CGST Act, the relevant FY for the calculation of time limit for availing ITC will be the FY in which self-invoice has been issued by the recipient, as per section 16(4) of the CGST Act. This is subject to the fulfilment of other conditions and restrictions of sections 16 and 17 of the CGST Act.

Additionally, when the recipient issues invoice after the time of supply and pays tax thereon, it will be required to pay interest and may also be liable to pay a penalty according to section 122 of the CGST Act.

Example: Time of Supply and ITC for RCM on GTA Services

Scenario

- **Supplier**: M/s Hanu & Co (unregistered person, GTA service provider).
- **Recipient**: M/s Bhola Ltd. (registered person under GST).
- **Date of Service Provided**: April 1, 2019.
- **Freight Amount**: ₹2,00,000.
- **Applicable GST**: 5% (under reverse charge mechanism).

Step 1: Time of Supply Under Section 13(3)

As per Section 13(3) of the CGST Act, the **time of supply** for services under RCM is determined as the **earlier of**:

1. **Date of payment**: April 10, 2019.
2. **60 days from the date of invoice**: If no payment date is provided, the time of supply would be June 1, 2019.

Here, the **time of supply is April 10, 2019**, based on the date of payment. Due date to pay is 20th May 2019.

Step 2: Tax Payment and Self-Invoice Issuance by M/s Bhola Ltd.

- **Delay in Compliance**:
  - M/s Bhola Ltd. issued the **self-invoice** only on **July 12, 2024**, after a significant delay.
  - GST under RCM was paid on **August 20, 2024**.
- **Interest and Penalty**:
  - As per Section 50(1) of the CGST Act:
  - Interest @18% p.a. is payable on the delayed tax payment from **21st May, 2019**, until the payment date (August 20, 2024).
  - Penalty of ₹25,000 under Section 122(3)(e) may also be levied for the delayed payment of tax. An equal amount of penalty under SGST Act will be levied.

Step 3: Relevant Financial Year for ITC

As per **Section 16(4)** and the circular:

- The **relevant FY** for ITC purposes is the year in which the **self-invoice was issued** (July 12, 2024).
- Therefore, the relevant FY is **2024-25**.

Step 4: ITC Time Limit

Under Section 16(4), ITC can be availed until:

1. 30th November **of the next FY** (FY 2025-26), or
2. The **date of filing the annual return for FY 2024-25** (i.e. last date is 31st December 2025), whichever is earlier.

Thus, M/s Bhola Ltd. can claim ITC until:

- **30th November 2025**, or
- Annual return filing date for FY 2024-25, whichever is earlier.

Outcome

1. **GST Payable**:
   - GST on ₹2,00,000 at 5% = ₹10,000.
   - This was paid on **August 20, 2024** under RCM.
2. **Interest**:
   - Interest is payable on ₹10,000 from **21st May, 2019**, to **August 20, 2024**.
3. **Penalty**:
   - A penalty under Section 122(3)(e) may be applicable due to the delay in issuing the self-invoice and paying GST.
4. **ITC Claim**:
   - M/s Bhola Ltd. can claim ITC for the ₹10,000 GST paid under RCM in the **2024-25 FY**, as the self-invoice was issued in July 2024.

2. Circular No. 214/8/2024-GST dated 26 June 2024, Clarification on the requirement of ITC reversal regarding the portion of premium for life insurance policies which is not included in the taxable value:

Life insurance policies which include a component of investment along with the component of risk cover for life insurance, are covered under the life insurance business.

The provisions regarding the value of supply of the services in relation to life insurance business are contained in rule 32(4) of the CGST Rules. It provides that the value of supply of services in respect of life insurance business is primarily to be determined by deducting the amount of premium allocated for investment or savings on the policy holder's behalf from the gross premium charged from them. It also provides for the determination of value of supply of such services based on a certain percentage of gross premium in other situations.

Section 17(2) of the CGST Rules read with rules 42 or 43 of the CGST Rules require ITC reversal where ITC is used partly for effecting taxable supplies and partly for exempt supplies.

The circular clarifies that just because some amount of consideration is not included in the value of taxable supply as per valuation provisions, the said portion of consideration cannot be said to be attributable to a non-taxable or exempt supply. Hence, there is no requirement of ITC reversal regarding the said amount.

Example: Life Insurance Policies with Investment and Risk Cover Components

Scenario

- **Insurance Company**: ABC Life Insurance Ltd., registered under GST.
- **Policy Details**: A life insurance policy includes:
- **Premium**: ₹1,00,000 annually.
- **Risk Cover Component**: ₹30,000.
- **Investment Component**: ₹70,000 (allocated to a savings/investment account).

Value of Supply Under Rule 32(4)

1. **Gross Premium**: ₹1,00,000.
2. **Investment Component**: ₹70,000 (not part of the value of supply as it is allocated for investment/ savings).
3. **Value of Taxable Supply**:
   - As per Rule 32(4), the value of taxable supply = Gross Premium - Investment Component.
   - **Taxable Value** = ₹1,00,000 - ₹70,000 = ₹30,000.

GST Implications

1. **Output Tax on Taxable Supply**:
   - Assume the GST rate for life insurance services is **18%**.
   - GST Payable = ₹30,000 × 18% = ₹5,400.
2. **Input Tax Credit (ITC)**:
   - ABC Life Insurance Ltd. uses inputs (goods/services) for taxable and exempt components.
   - Normally, **ITC reversal** is required for the exempt portion of supplies (as per Section 17(2) and Rule 42/43).
3. **Clarification on ITC Reversal**:
   - The **₹70,000 investment component** is **not exempt or non-taxable**; it is merely excluded from the value of taxable supply due to valuation provisions.
   - Hence, there is **no ITC reversal required** for the investment component.

Conclusion

- **Taxable Value of Supply**: ₹30,000.
- **GST Payable**: ₹5,400.
- **ITC Reversal**: No ITC reversal is required for the ₹70,000 investment component, as clarified in the circular.

3. Circular No. 216/10/2024-GST dated 26 June 2024 - Under warranty replacements and extended warranties:

Circular 195/07/2023-GST dated 17 July 20234 had clarified that if the manufacturer replaces any parts free of cost during the warranty period, they are neither liable to pay any GST thereon, nor any ITC availed on such parts needs to be reversed.

The present circular is further clarifying the following –

- The clarification via the previous circular will be equally applicable, even when the entire goods are supplied or replaced completely (instead of only parts) during warranty.
- If the distributor replaces the parts or goods during warranty, from his own stock on the behalf of the manufacturer and gets replenishment of the same from the manufacturer, the same treatment will apply, i.e. the manufacturer is neither liable to charge any GST nor liable to reverse any ITC.
- If extended warranty against payment is provided by the supplier of the goods itself at the time of original supply, it will be a composite supply, but if the supplier of goods (dealer or distributor) and the supplier of extended warranty (manufacturer) are different, the supply of extended warranty would be a distinct supply of service and the supplier of extended warranty will be liable to discharge

Examples for Warranty Replacements and Extended Warranties

Example 1: Manufacturer Replaces Goods Entirely During Warranty

- **Scenario**:
  - Manufacturer: ABC Electronics Ltd.
  - Product: Refrigerator under a 1-year standard warranty.
  - Issue: The refrigerator malfunctions during the warranty period, and ABC Electronics replaces the entire refrigerator **free of cost**.
- **GST Treatment**:
  - Since the replacement occurs during the warranty period:
  - **No GST is applicable** on the replacement.
  - **No ITC reversal** is required for the replacement goods provided by the manufacturer.

Example 2: Distributor Replaces Goods During Warranty

- **Scenario**:
  - Manufacturer: XYZ Appliances Pvt. Ltd.
  - Distributor: Retail World (sells products on behalf of the manufacturer).
  - Product: Washing machine under warranty.
  - Issue: The distributor replaces a faulty washing machine from its **own stock** during the warranty period.
  - Replenishment: XYZ Appliances Pvt. Ltd. replenishes the replaced washing machine to Retail World **free of cost**.
- **GST Treatment**:
  - Replacement during warranty:
  - The manufacturer (XYZ Appliances) **does not charge GST** on the replenished goods sent to Retail World.
  - **No ITC reversal** is required for the replacement washing machine provided by the manufacturer.

Example 3: Extended Warranty Provided by the Manufacturer

- **Scenario**:
  - Supplier: DEF Motors Ltd.
  - Product: Car with an **extended warranty** of 2 years offered at the time of purchase for an additional ₹10,000.
- **GST Treatment**:
  - The extended warranty is treated as part of the **composite supply** of the car.
  - GST is charged on the entire value (car price + extended warranty price) at the applicable rate for the car.

Example 4: Extended Warranty Provided by a Third Party

- **Scenario**:
  - Dealer: Auto World Ltd. (sells cars).
  - Warranty Provider: GHI Warranties Pvt. Ltd. (offers extended warranties).
  - Product: Car sold by Auto World with an **optional extended warranty** for 2 years offered by GHI Warranties at ₹15,000.

- **GST Treatment**:
  - The supply of the car and the supply of extended warranty are **distinct supplies**:
  - **Auto World Ltd.** charges GST on the car at the applicable rate.
  - **GHI Warranties Pvt. Ltd.** charges GST on the extended warranty as a **supply of service** at the applicable rate for warranties.

4. Circular No. 217/11/2024-GST dated 26 June 2024 - Entitlement of ITC by insurance companies on expenses incurred for the repair of motor vehicles in the case of reimbursement mode of an insurance claim settlement:

ITC is available to insurance companies for the motor vehicle repair expenses incurred by them in the case of the reimbursement mode of claim settlement. This is because the insurance company qualifies as a recipient and the consideration includes payment made by third person.

Some scenarios may exist where the amount of repair services is more than the approved claim cost and the insurance company only reimburses the approved claim cost to the garage after considering the standard deductions. The remaining amount is to be paid by the insured to the garage. Here, the circular clarified on following two scenarios

- The garage issues 2 separate invoices to the – (1) insurance company regarding the approved claim cost; and (2) customer for the amount of repair service in excess of the approved claim cost: ITC is available to the insurance company on the said invoice subject to the reimbursement of the said amount by the insurance company to the customer.
- The garage issues an invoice for the full amount for repair services to the insurance company while the latter makes a reimbursement to the insured only for the approved claim cost: ITC is available to the insurance company only to the extent of the reimbursement of approved claim cost to the insured, and not on full invoice value.

ITC is available to the insurer only when the invoice for the repair of the vehicle is in the name of the insurance company to satisfy the conditions laid down in section 16(2)(a) and (aa) of the CGST Act.

Examples for ITC on Motor Vehicle Repairs in Insurance Claim Settlements

Example 1: Separate Invoices Issued by the Garage

1. **Scenario**:
   - **Insured Person**: Mr. Sharma.
   - **Insurance Company**: ABC Insurance Ltd.
   - **Garage**: XYZ Auto Repairs.
   - **Repair Cost**: ₹50,000.
   - **Approved Claim by Insurance Company**: ₹40,000.
   - **Balance Amount Paid by Mr. Sharma**: ₹10,000 (due to standard deductions).
2. **Invoicing**:
   - XYZ Auto Repairs issues:
     1. **Invoice 1**: ₹40,000 to ABC Insurance Ltd. for the approved claim cost.
     2. **Invoice 2**: ₹10,000 to Mr. Sharma for the excess amount.
3. **GST Implications and ITC for ABC Insurance Ltd.**:
   - **ITC Eligibility**:
     - ABC Insurance Ltd. is entitled to claim ITC on the ₹40,000 invoice if it reimburses the same amount to XYZ Auto Repairs.

- **Conditions Fulfilled**:
  - The invoice for ₹40,000 is in the name of ABC Insurance Ltd., satisfying Section 16(2)(a) and (aa) of the CGST Act.

Example 2: Single Invoice Issued for Full Repair Cost

1. **Scenario**:
   - **Insured Person**: Ms. Priya.
   - **Insurance Company**: XYZ Insurance Pvt. Ltd.
   - **Garage**: ABC Auto Services.
   - **Repair Cost**: ₹60,000.
   - **Approved Claim by Insurance Company**: ₹45,000.
   - **Balance Paid by Ms. Priya**: ₹15,000.
2. **Invoicing**:
   - ABC Auto Services issues a **single invoice** for ₹60,000 in the name of XYZ Insurance Pvt. Ltd.
3. **Payment**:
   - XYZ Insurance Pvt. Ltd. reimburses ₹45,000 (approved claim cost) to ABC Auto Services.
   - Ms. Priya pays the remaining ₹15,000 to ABC Auto Services.
4. **GST Implications and ITC for XYZ Insurance Pvt. Ltd.**:
   - **ITC Eligibility**:
     - XYZ Insurance Pvt. Ltd. can claim ITC **only on ₹45,000**, the amount reimbursed for the approved claim.
     - ITC cannot be claimed on the ₹15,000 balance paid by Ms. Priya since it was not reimbursed by the insurance company.
   - **Conditions Fulfilled**:
     - The invoice is in the name of XYZ Insurance Pvt. Ltd., satisfying Section 16(2)(a) and (aa) of the CGST Act.

Key Points to Remember

1. **Separate Invoices**:
   - If the garage issues separate invoices for the insurance company and the insured person, ITC is available only on the amount reimbursed by the insurance company.
2. **Single Invoice**:
   - If the garage issues a single invoice for the full repair cost, ITC is limited to the approved claim cost reimbursed by the insurance company.
3. **Invoice in the Name of the Insurance Company**:
   - ITC eligibility requires the invoice to be issued in the name of the insurance company as per Section 16(2)(a) and (aa) of the CGST Act.

5. Circular No. 219/13/2024-GST dated 26 June 2024 -

Clarification regarding availability of ITC on ducts and manholes used in the network of Optical Fibre Cables (OFCs) according to section 17(5) of the CGST Act, 2017:

The circular has clarified the issue of availing ITC on ducts and manholes used in the network of OFC's which was denied as the same was said to be restricted in terms of sections 17(5)(c) and 17(5)(d) of the CGST Act. Now, it has been clarified that availing ITC on ducts and manholes used in the network of OFC's is not restricted in terms of the said section because of the following –

a. Ducts and manholes are basic components for the optical fibre network used in providing Telecommunication services.

b. Regarding the explanation to section 17 of the CGST Act, 2017, ducts and manholes are not specifically excluded from the definition of plant and machinery as they are neither in the nature of land, building or civil structures nor are they in the nature of telecommunication towers or pipelines laid outside factory.

c. Ducts and Manholes are in the nature of plant and machinery as they are used as part of the OFC network for making outward supply of the transmission of telecommunication signals.

Example: Availability of ITC on Ducts and Manholes in OFC Networks

Scenario:

1. **Company**: XYZ Telecom Ltd.
2. **Infrastructure**:
   - **Ducts**: Used to house and protect optical fibre cables (OFCs) underground.
   - **Manholes**: Provide access points for maintaining and connecting OFCs.

Key Clarifications for ITC:

1. **Ducts and Manholes Are Essential**:
   - They are basic components for setting up and operating the OFC network.
   - Used directly in providing telecommunication services.
2. **Not Excluded from Plant and Machinery**:
   - As per Section 17 of the CGST Act, ducts and manholes:
   - Are not categorized as land, building, or civil structures.
   - Are not telecommunication towers or pipelines outside a factory.
3. **Eligible for ITC**:
   - Since ducts and manholes are part of the telecommunication network (plant and machinery), ITC is available for their purchase and installation.

6. w.e.f 1-4-2025 (vide Notification No. 16/2024–CT Dated: 6th August, 2024):

Section 2(61) "Input Service Distributor" means an office of the supplier of goods or services or both which receives tax invoices towards the receipt of input services, including invoices in respect of services liable to tax under sub-section (3) or sub-section (4) of section 9, for or on behalf of distinct persons referred to in section 25, and liable to distribute the input tax credit in respect of such invoices in the manner provided in section 20;

7. w.e.f. 1-4-2025 (vide Notification No. 16/2024–CT Dated: 6th August, 2024):

Substitution of section 20. For section 20 of the Central Goods and Services Tax Act, the following section shall be substituted, namely:–

"Section 20. Manner of distribution of credit by Input Service Distributor.

(1) Any office of the supplier of goods or services or both which receives tax invoices towards the receipt of input services, including invoices in respect of services liable to tax under sub-section (3) or sub-section (4) of section 9, for or on behalf of distinct persons referred to in section 25, shall be required to be registered as Input Service Distributor under clause (viii) of section 24 and shall distribute the input tax credit in respect of such invoices.

(2) The Input Service Distributor shall distribute the credit of central tax or integrated tax charged on invoices received by him, including the credit of central or integrated tax in respect of services subject to levy of tax under sub-section (3) or sub-section (4) of section 9 paid by a distinct person registered in the same State as the said Input Service Distributor, in such manner, within such time and subject to such restrictions and conditions as may be prescribed.

(3) The credit of central tax shall be distributed as central tax or integrated tax and integrated tax as integrated tax or central tax, by way of issue of a document containing the amount of input tax credit, in such manner as may be prescribed.".

Rule 39 - Procedure for distribution of input tax credit by Input Service Distributor (vide Notification No. 12/2024 CT dt. 10-7-2024, w.e.f. the date yet to be notified):

Numerical Example: Distribution of Input Tax Credit by an Input Service Distributor (as per revised Rule 39)

Scenario Setup:

1. **Input Service Distributor (ISD):** XYZ Pvt. Ltd. (Located in Delhi).
2. **Input Tax Credit (ITC) Available:**
   - Integrated Tax (IGST): ₹1,20,000.
   - Central Tax (CGST): ₹60,000.
   - State Tax (SGST): ₹60,000.
3. **Recipients of Services:**
   - **R1:** Recipient in Delhi (same state as ISD), turnover: ₹50 lakhs.
   - **R2:** Recipient in Maharashtra (different state), turnover: ₹30 lakhs.
   - **R3:** Recipient in Karnataka (different state), turnover: ₹20 lakhs.
4. **Aggregate Turnover of Recipients (T):** ₹1 crore (₹50 lakhs + ₹30 lakhs + ₹20 lakhs).

Step 1: Distribution Formula for Each Recipient

The ITC to be distributed is determined using the formula:

Where:

- = Total ITC to be distributed.
- = Turnover of the recipient.
- = Aggregate turnover of all recipients.

Step 2: ITC Distribution for Integrated Tax (IGST)

Total IGST: ₹1,20,000.

- For **R1 (Delhi):**
- For **R2 (Maharashtra):**
- For **R3 (Karnataka):**

Step 3: ITC Distribution for Central Tax (CGST) and State Tax (SGST)
Total CGST and SGST: ₹60,000 each.

For R1 (Delhi):
Since R1 is in the same state as the ISD, the ITC is distributed as CGST and SGST directly:

- CGST: ₹30,000 (50% of ₹60,000).
- SGST: ₹30,000 (50% of ₹60,000).

For R2 (Maharashtra) and R3 (Karnataka):

Since R2 and R3 are in different states, the ITC for CGST and SGST is combined and distributed as IGST:

- For R2: (converted to IGST).
- For R3: (converted to IGST).

Step 4: Summary of ITC Distribution

Recipient	CGST (₹)	SGST (₹)	IGST (₹)	Total ITC (₹)
R1 (Delhi)	30,000	30,000	60,000	1,20,000
R2 (Maharashtra)	-	-	54,000	54,000
R3 (Karnataka)	-	-	36,000	36,000

Step 5: Issuance of ISD Invoice

- ISD issues separate invoices to each recipient, specifying the type and amount of ITC distributed.
- These invoices are included in the monthly **FORM GSTR-6** return.

Adjustments for Debit/Credit Notes

- If a debit note is issued to the ISD, the additional ITC is distributed as per the above method in the same month.
- If a credit note reduces the ITC, the reduction is apportioned among the recipients based on the original distribution ratio.

This example demonstrates how ITC is calculated and distributed according to Rule 39, ensuring accurate allocation across multiple recipients.

Rule 39(1A) For the distribution of credit in respect of input services, attributable to one or more distinct persons, subject to levy of tax under sub-section (3) or (4) of section 9, a registered person, having the same PAN and State code as an Input Service Distributor, may issue an invoice or, as the case may be, a credit or debit note as per the provisions of sub-rule(1A) of rule 54 to transfer the credit of such common input services to the Input Service Distributor, and such credit shall be distributed by the said Input Service Distributor in the manner as provided in sub-rule (1).‖;

Explanation. — For the purpose of this rule, – (i) the term ―relevant period‖ shall be—

(a) if the recipients of credit have turnover in their States or Union territories in the financial year preceding the year during which credit isto be distributed, the said financial year; or

(b) if some or all recipients of the credit do not have any turnover in their States or Union territories in the financial year preceding the year during which the credit is to be distributed, the last quarter for which details of such turnover of all the recipients are available, previous to the month during which credit is to be distributed;

(ii) the expression ―recipient of credit‖ means the supplier of goods or services or both having the same Permanent Account Number as that of the Input Service Distributor;

(iii) the term _turnover", in relation to any registered person engaged in the supply of taxable goods as well as goods not taxable under this Act, means the value of turnover, reduced by the amount of any duty or tax levied under entries 84 and 92A of List I of the Seventh Schedule to the Constitution and entries 51 and 54 of List II of the said Schedule.‖.

8. Section 16(5) of CGST Act, 2017 [inserted by F.A. 2024, dated 16-8-2024, w.e.f 27-9-2024, vide SO 4253(E), dt. W.r.e.f. 01-07-2017]:

Amendment of section 16. - In section 16 of the Central Goods and Services Tax Act, with effect from the 1st day of July, 2017, after subsection (4), the following section 16(5) shall be inserted, namely:— "Notwithstanding anything contained in sub-section (4), in respect of an invoice or debit note for supply of goods or services or both pertaining to the Financial Years 2017- 18, 2018-19, 2019-20 and 2020-21, the registered person shall be entitled to take input tax credit in any return under section 39 which is filed upto the thirtieth day of November, 2021.

Example: A registered taxpayer, **ABC Ltd**, received a service invoice dated **15th March 2021** for FY 2020–21 but failed to claim ITC in the returns filed within the original deadlines under Section 16(4).

- The taxpayer later claimed this ITC in the **September 2021 return**, filed on **20th October 2021**.

Issue Before Amendment:

- Tax authorities could disallow the ITC claim, citing the time limit under Section 16(4).

Impact of Section 16(5):

- The ITC claim by **ABC Ltd** is now valid because it was claimed before **30th November 2021**, even if it exceeded the original time limit under Section 16(4).

9. Section 16(6) of CGST Act, 2017 [inserted by F.A. 2024, dated 16-8-2024, w.e.f 27-9-2024, vide SO 4253(E), dt. W.r.e.f 01-07-2017]:

Where registration of a registered person is cancelled under section 29 and subsequently the cancellation of registration is revoked by any order, either under section 30 or pursuant to any order made by the Appellate Authority or the Appellate Tribunal or court and where availment of input tax credit in respect of an invoice or debit note was not restricted under sub-section (4) on the date of order of cancellation of registration, the said person shall be entitled to take the input tax credit in respect of such invoice or debit note for supply of goods or services or both, in a return under section 39,—

(i) filed upto thirtieth day of November following the financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier; or

(ii) for the period from the date of cancellation of registration or the effective date of cancellation of registration, as the case may be, till the date of order of revocation of cancellation of registration, where such return is filed within thirty days from the date of order of revocation of cancellation of registration,

whichever is later.".

Example 1: Revocation by the Tax Authorities

- **Scenario:**
  - A taxpayer, **XYZ Ltd.**, had its GST registration cancelled on **15th March 2024** for non-filing of returns.
  - The registration was reinstated on **1st August 2024** upon filing an application for revocation under **Section 30**.
  - XYZ Ltd. has invoices from **February 2024 to July 2024** for which ITC was not claimed.
- **Entitlement Under Section 16(6):**
  - **XYZ Ltd. can claim ITC for:**
    1. **Invoices dated before the cancellation (February 2024):**

These invoices belong to **FY 2023–24**, so ITC can be claimed in the return filed up to **30th November 2024** or with the relevant **annual return** for FY 2023–24, whichever is earlier.

2. **Invoices during the cancellation period (March 2024 to July 2024):**
   ITC for these invoices can be claimed if XYZ Ltd. files the return for this period **within 30 days of the revocation order**, i.e., by **31st August 2024**.
3. **Whichever Is Later Rule:**
   The later date between **30th November 2024** and **31st August 2024** applies. Therefore, ITC for all invoices (pre-cancellation and cancellation period) can be claimed up to **30th November 2024**.

Example 2: Revocation by Court Order

- **Scenario:**
  - A taxpayer, **ABC Pvt. Ltd.**, had its GST registration cancelled effective **1st July 2023** due to tax arrears.
  - On **15th April 2025**, the Appellate Tribunal revoked the cancellation and reinstated the registration retroactively.
  - ABC Pvt. Ltd. has invoices from **June 2023 to March 2024** for which ITC was not availed.
- **Entitlement Under Section 16(6):**
  - **ABC Pvt. Ltd. can claim ITC for:**
    1. **Invoices dated before the cancellation (June 2023):**
       These invoices belong to **FY 2023–24**, so ITC can be claimed in the return filed up to **30th November 2024** or with the relevant **annual return** for FY 2023–24, whichever is earlier.
    2. **Invoices during the cancellation period (July 2023 to March 2024):**
       ITC for these invoices can be claimed if ABC Pvt. Ltd. files the return for this period **within 30 days of the Tribunal's order**, i.e., by **15th May 2025**.
    3. **Whichever Is Later Rule:**
       The later date between **30th November 2024** (pre-cancellation timeline) and **15th May 2025** (30 days from the revocation order) applies. Therefore, ITC for all invoices (pre-cancellation and cancellation period) can be claimed up to **15th May 2025**.

10. Notification No. 22/2024-Central Tax dated 8th October 2024: Special procedure for rectification of certain specified orders issued under sections 73, 74, 107 or 108 of CGST Act:

This notification provides a streamlined rectification process for addressing cases where the ITC, initially disallowed, is now permissible under the law, allowing taxpayers to avoid unnecessary litigation.

Process Summary:

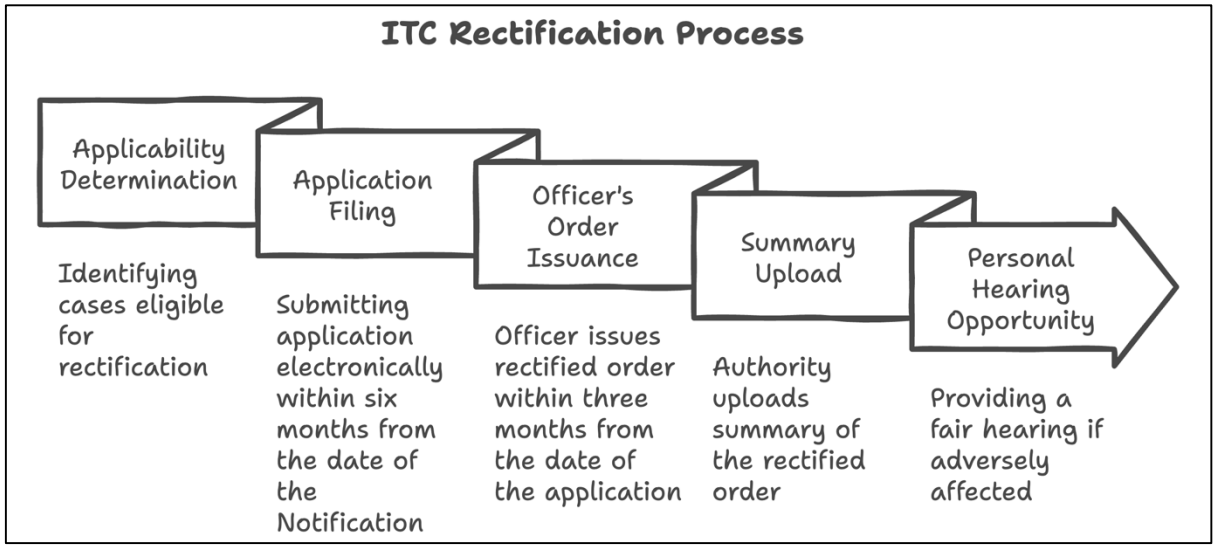
Applicability: The procedure applies to registered persons against whom an order has been issued confirming a demand for wrongful availment of input tax credit (ITC) in violation of Section 16(4). In other words, case where ITC initially disallowed, is now available under Section 16(5) or Section 16(6), and the person has not filed an appeal against the original order.

Filing of Application: The registered person must file an application for rectification of the order electronically on the common portal. Such application for rectification is to be filed within six months from

the date of the notification, and the officer must issue a rectified order within three months from the date of the application. Along with the application, the person must upload information in the prescribed Annexure A format.

Summary of Rectified Order: Once the rectification is made, the authority must upload a summary of the rectified order electronically in the relevant forms based on the section under which the original order was issued.

Opportunity for personal hearing: If the rectification process adversely affects the registered person, the principles of natural justice must be followed, ensuring that the person is provided a fair opportunity to be heard before any adverse decision is made.



11. Extension of ITC Claim Deadlines under Sections 16(5) and 16(6) of the CGST Act: Clarification of GST Circular No. 237/31/2024, dated 15th October 2024:

Sections 16(5) and 16(6) of the CGST Act extend the time limits for claiming ITC retrospectively from July 1, 2017. This amendment offers relief to taxpayers who were unable to claim ITC within the prescribed period under Section 16(4). The retrospective application, however, has raised concerns about how past cases—where ITC claims were disallowed—should be handled.

To address these concerns, the GST Circular No. 237/31/2024 lays out specific instructions for various scenarios, ensuring that taxpayers can claim ITC for earlier periods without facing penalties for having missed the original deadlines.

Key Clarifications for Handling Past ITC Cases

The GST Circular No. 237/31/2024 provides clarity on how authorities and taxpayers should approach cases involving incorrect ITC availment due to non-compliance with Section 16(4). The guidance applies to different stages of tax proceedings, such as investigations, demand notices, and appeals.

Cases Without Demand Notices

In situations where proceedings for wrong ITC claims were initiated but no formal demand notice was issued under Sections 73 or 74 of the CGST Act, tax authorities must now consider the amended Sections 16(5) and 16(6). This allows taxpayers to benefit from the extended period for claiming ITC. Proper officers are required to take appropriate action under these provisions, even if informal documents like FORM DRC-01A were previously issued.

Cases with Demand Notices Issued but No Final Order

For cases where demand notices were issued but no final order was passed by the adjudicating authority, retrospective amendments to Sections 16(5) and 16(6) should be taken into account when issuing the final order. This will allow taxpayers to claim ITC, provided their case qualifies under the new provisions.

Appeals in Progress

In cases where orders have already been passed under Sections 73 or 74 and an appeal has been filed under Section 107, but no appellate order has been issued, the appellate authority must now consider the retrospective extension of ITC claims. This ensures that taxpayers who filed appeals due to denied ITC claims are treated fairly under the new legal framework.

Revisional Proceedings Pending

If revisional proceedings were initiated under Section 108 but no final order has been issued, the Revisional Authority is required to factor in the amendments. The revised provisions should guide the decision, ensuring that taxpayers are allowed to rectify their claims where applicable.

Final Orders with No Appeal Filed

Where final orders have already been passed, and either no GST appeal was filed, or no appeal is pending with the Appellate Tribunal, taxpayers can still apply for rectification under the special procedure laid out in Notification No. 22/2024 within 6 months. This must be done within six months of the notification date to rectify any past discrepancies involving ITC claims.

Special Procedure for Rectification of ITC Claims

For taxpayers whose ITC claims were denied due to violations of Section 16(4), but are now eligible under the retrospective amendments, the CBIC has provided a specific rectification process. Here are the key steps:

- **Filing Period:** Taxpayers must file for rectification within six months from the date of the notification issued on October 8, 2024.
- **Application Submission**: Applications can be filed electronically through the GST portal. Taxpayers need to submit relevant details, including Annexure A, to rectify past ITC claims.
- **Order Processing:** The proper officer who issued the original order will handle the rectification and is required to issue a new order within three months of the application.
- **Rectified Orders**: Summaries for rectified orders will be uploaded through the appropriate forms—FORM DRC-08 for cases under Sections 73 or 74, and FORM GST APL-04 for cases under Sections 107 or 108.
- **Adverse Effect of Rectification**: If rectification adversely affects the applicant, the principle of natural justice will apply. This means before passing the adverse order the proper office will give the opportunity to be heard to taxpayer.
- **Appeal Rights**: If the rectified order results in adverse outcomes for the taxpayer, they have the right to appeal under Sections 107 or 112 of the CGST Act.
- **No refund**: No refund will be granted for taxes already paid of ITC reversed, even if the ITC is now eligible due to the retrospective amendments in Section 16(5) and 16(6).

Limitations of the Rectification Process

It's important to note that the special rectification process only applies to cases where ITC was denied due to violations of Section 16(4). Taxpayers whose cases don't involve such contraventions cannot benefit from the special procedure.

Additionally, no refunds will be provided for taxes already paid or ITC that was reversed, even if the ITC is now eligible under the retrospective amendments.

12. Amendment of section 17 (w.e.f. 1-11-2024, F.Y. 2024 dated 16-8-2024):

In section 17 of the Central Goods and Services Tax Act, in sub-section (5), in clause (i), for the words and figures "sections 74, 129 and 130", the words and figures "section 74 in respect of any period upto Financial Year 2023-24" shall be substituted.

13. Manner of recovery of credit distributed in excess [Section 21 of the CGST Act, 2017]

Where the Input Service Distributor distributes the credit in contravention of the provisions contained in section 20 resulting in excess distribution of credit to one or more recipients of credit, the excess credit so distributed shall be recovered from such recipients along with interest, and the provisions of section 73 or section 74, as the case may be, shall, mutatis mutandis, apply for determination of amount to be recovered.

Amendment of section 21. (w.e.f 1-11-2024, F.A. 2024, dated 16-8-2024):

In section 21 of the Central Goods and Services Tax Act, after the words and figures "section 73 or section 74", the words, figures and letter "or section 74A" shall be inserted.

14. Clarification on availability of input tax credit in respect of demo vehicles (CBIC Circular No. 231/25/2024-GST dt. 10th September 2024):

Here are **numerical examples** based on the legal framework provided for the availability of input tax credit (ITC) on demo vehicles used by authorized dealers:

Scenario 1: Demo Vehicles Not Capitalized

Facts:

- Dealer A purchases a demo vehicle for ₹10,00,000 (excluding GST) to showcase features and provide test drives to potential customers.
- GST charged by the supplier is ₹1,80,000 (18%).
- Dealer A uses the demo vehicle to promote the sale of similar vehicles.

Legal Framework:

- As per **Section 17(5)(a)** of the CGST Act, ITC is blocked on motor vehicles for transportation of persons (capacity ≤ 13 persons) unless used for:
- Further supply of such motor vehicles.
- Transportation of passengers.
- Training on driving such motor vehicles.
- **Clarification:** Since demo vehicles are used to promote the sale of similar vehicles, they are considered as being used for "further supply of such motor vehicles."

Outcome:

- **ITC Eligibility:** ITC of ₹1,80,000 is **allowed** because the demo vehicle is used for making taxable supplies (sale of similar vehicles).
- **Compliance Notes:** The dealer must ensure the demo vehicle is used exclusively for business purposes and not for personal use.

Scenario 2: Demo Vehicles Capitalized

Facts:

- Dealer B purchases a demo vehicle for ₹12,00,000 (excluding GST) and capitalizes it in the books of accounts.
- GST charged by the supplier is ₹2,16,000 (18%).
- Dealer B uses the demo vehicle for test drives and later sells it after 2 years for ₹8,00,000.

Legal Framework:

1. **Capital Goods Definition (Section 2(19)):** If a vehicle is capitalized and used in the course or furtherance of business, it qualifies as capital goods.
2. **Section 16(3):** ITC is not allowed on the tax component of the cost of capital goods if depreciation is claimed on the tax component under the Income Tax Act.
3. **Section 18(6):** On the sale of capital goods, tax liability is calculated as the higher of:
   - GST on the transaction value (sale price).
   - ITC attributable to the remaining life of the capital good (reduced by 5% per quarter).

Calculations:

1. **ITC on Demo Vehicle:**
   - Dealer B capitalized the vehicle but did not claim depreciation on the GST component. Hence, full ITC of ₹2,16,000 is **available**.
2. **GST Payable on Sale of Demo Vehicle:**
   - **Transaction Value on Sale:** ₹8,00,000.
   - **GST on Sale (18%):** ₹1,44,000.
   - **ITC Reversal Calculation:**
     ITC is reduced by 5% per quarter. Total ITC = ₹2,16,000. Vehicle used for 8 quarters.
     - ITC attributable to remaining life:
     - Tax Payable: Higher of:
     - GST on transaction value = ₹1,44,000.
     - ITC reversal = ₹1,29,600.

     Tax Payable = ₹1,44,000.

Scenario 3: Demo Vehicle with Depreciation on Tax Component

Facts:

- Dealer C purchases a demo vehicle for ₹15,00,000 (excluding GST) and claims depreciation on the tax component under the Income Tax Act.
- GST charged is ₹2,70,000 (18%).

Legal Framework:

- Section 16(3) of the CGST Act prohibits ITC on the tax component of capital goods if depreciation is claimed on the same under the Income Tax Act.

Outcome:

- **ITC Eligibility:** ITC of ₹2,70,000 is **not allowed** as depreciation on the tax component was claimed.

Scenario 4: Sale of Demo Vehicle Without Capitalization

Facts:

- Dealer D purchases a demo vehicle for ₹9,00,000 (excluding GST) and does not capitalize it. GST charged is ₹1,62,000 (18%).
- After 1 year, the demo vehicle is sold for ₹7,00,000 (excluding GST).

Legal Framework:

1. ITC on demo vehicles is allowed as they are used for further supply of similar vehicles.
2. On sale of demo vehicles, GST is payable on the transaction value.

Calculations:

1. **ITC Availed:** ₹1,62,000.
2. **GST Payable on Sale (18% of ₹7,00,000):** ₹1,26,000.

Scenario 4: Dealer Acting as an Agent for the Manufacturer

Facts:

- Dealer A purchases a demo vehicle for ₹12,00,000 (excluding GST) from a vehicle manufacturer to provide test drive facilities for potential customers on behalf of the manufacturer.
- GST charged on the demo vehicle is ₹2,16,000 (18%).
- The dealer is not directly involved in the purchase or sale of vehicles; instead, the sale invoice for the vehicle is issued by the manufacturer directly to the customer.
- After one year or a certain number of kilometers, Dealer A sells the demo vehicle to a customer for ₹8,00,000 (excluding GST), charging applicable GST on the sale.

Legal Framework:

1. **Section 17(5)(a) of the CGST Act:**
   - ITC is not available for motor vehicles used for transporting passengers with a seating capacity ≤13 unless used for:
   - Further supply of such motor vehicles.
   - Transportation of passengers.
   - Training on driving such motor vehicles.
2. **Clarification:**
   - In this scenario, Dealer A is **acting as an agent or service provider** to the manufacturer.
   - For providing facility of vehicle test drive to the potential customers of the vehicle, the dealer purchases demo vehicle from the vehicle manufacturer.
   - Therefore, the demo vehicle is **not used for making "further supply of such motor vehicles"**, and ITC is **blocked under Section 17(5)(a)**.
3. **Implications of Sale:**
   • When the demo vehicle is sold after use, GST must still be charged on the sale value (transaction value). However, ITC remains unavailable to the dealer due to the blockage under Section 17(5)(a).

Calculations:

1. **Input Tax Credit on Demo Vehicle:**
   - GST paid on purchase of the demo vehicle: ₹2,16,000.
   - **ITC Eligibility:** Not allowed as per Section 17(5)(a).
2. **Sale of Demo Vehicle:**
   - Sale Price: ₹8,00,000.
   - GST on Sale (18%): ₹1,44,000.
   - The dealer collects and remits ₹1,44,000 GST to the government.

Outcome:

- **ITC on Demo Vehicle: Not Available.**
- **GST on Sale of Demo Vehicle:** Dealer must charge and pay GST of ₹1,44,000 on the sale of the demo vehicle.

Key Points:

1. Since the dealer acts as an agent/service provider to the manufacturer and does not engage in further supply of motor vehicles on their own account, ITC is **blocked** under Section 17(5)(a).
2. The sale of the demo vehicle is still subject to GST, but ITC on the purchase remains unavailable.

Summary of Scenarios

Scenario	ITC Eligibility
Demo vehicle not capitalized	ITC allowed
Demo vehicle capitalized, no depreciation	ITC allowed
Demo vehicle capitalized, with depreciation	ITC not allowed
Demo vehicle not capitalized, later sold	ITC allowed
Dealer purchases a demo vehicle from a vehicle manufacturer to provide test drive facilities for potential customers on behalf of the manufacturer.	ITC not allowed

Registration under GST

1. GST Notification 13/2024 – Central Tax: Seeks to rescind Notification no. 27/2022-Central Tax dated 26.12.2022:

A new sub-rule (4B) has been inserted to provide that the provisions of sub-rule (4A) shall not apply to those States or Union Territories as may be notified by the Government on the recommendations of the Council.

It has been notified vide Notification No. 27/2022-CT, dated 26.12.2022 that the provisions of sub-rule (4A) of rule 8 shall not apply in all the States and Union territories except the State of Gujarat. Therefore, biometric based Aadhaar authentication and taking of photograph for completion of registration application is applicable only in Gujarat.

GST Notification 13/2024 – Central Tax: Seeks to rescind Notification no. 27/2022-Central Tax dated 26.12.2022. This notification, No. 13/2024-Central Tax, issued on July 10, 2024, by the Central Government, under rule 8(4B) of the Central Goods and Services Tax Rules, 2017, cancels a previous notification (No. 27/2022-Central Tax) from December 26, 2022.

The cancellation is based on recommendations from the GST Council. However, actions taken or not taken before this cancellation remains valid. The new notification takes effect immediately upon its publication in the Official Gazette.

Registration processes requiring biometric-based Aadhaar authentication and photograph-taking will no longer be limited to Gujarat alone.

2. Insertion of second Proviso in Sub-rule (4A), vide NT No. 12/2024 CT Dt. 10-7-2024:

In the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), with effect from a date to be notified, in rule 8, in sub-rule (4A), after the first proviso, the following proviso shall be inserted, vide Notification No. 12/2024 – Central Tax Dated 10th July, 2024, namely: -

"Provided further that every application made under sub-rule (4) by a person, other than a person notified under sub-section (6D) of section 25, who has not opted for authentication of Aadhaar number, shall be followed by taking photograph of the applicant where the applicant is an individual or of such individuals in relation to the applicant as notified under sub-section (6C) of section 25 where the applicant is not an individual, along with the verification of the original copy of the documents uploaded with the application in FORM GST REG-01 at one of the Facilitation Centers notified by the Commissioner for the purpose of this sub-rule and the application shall be deemed to be complete only after successful verification as laid down under this proviso".

Outcome of second Proviso in Sub-rule (4A):

- **Additional Verification for Non-Aadhaar-Authenticated Applicants:**
  - For persons not opting for Aadhaar authentication (excluding those notified under Section 25(6D) of the CGST Act):
- **Process Includes:**
  - Taking a photograph of the applicant (if an individual).
  - Taking photographs of specified individuals (if the applicant is not an individual, as notified under Section 25(6C) of the CGST Act).
  - Verification of the original copy of documents uploaded with FORM GST REG-01 at a Facilitation Center notified by the Commissioner.

- **Completion:** The application shall be deemed complete only after successful verification as laid down under this proviso.

3. Revocation of cancellation of registration Section 30 of the CGST Act, 2017:

As per section 30(1) of the CGST Act, 2017, subject to such conditions as may be prescribed, any registered person, whose registration is cancelled by the proper officer on his own motion, may apply to such officer for revocation of cancellation of the registration in the prescribed manner within **30 days** from the date of service of the cancellation order.

As per section 30(2) of the CGST Act, 2017, the proper officer may, in such manner and within such period as may be prescribed, by order, either revoke cancellation of the registration or reject the application:

Provided that the application for revocation of cancellation of registration shall not be rejected unless the applicant has been given an opportunity of being heard.

w.e.f. 1-11-2024, F.A. 2024 dated 16-8-2024 **Amendment of section 30**.

- In section 30 of the Central Goods and Services Tax Act, in sub-section (2), after the proviso, the following proviso shall be inserted, namely:—

"Provided further that such revocation of cancellation of registration shall be subject to such conditions and restrictions, as may be prescribed.".

As per Section 30(3) of the CGST Act, 2017, the revocation of cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a revocation of cancellation of registration under this Act.

Payment of Tax

1. Amendment of section 49(8) w.e.f. 1-11-2024:

As per section 49(8) of the CGST Act, 2017 every taxable person shall discharge his tax and other dues under this Act or the rules made thereunder in the following order, namely:—

The following order shall be maintained while settling the tax liability:

(a)	First self-assessed tax, and other dues related to returns of previous tax periods;
(b)	Self-assessed tax, and other dues related to the return of the current tax period;
(c)	Any other amount payable under this Act or the rules made thereunder including the demand determined under section 73 or section 74 **("or section 74A" shall be inserted w.e.f. 1-11-2024 F.A. 2024 dated 16-8-2024).**

2. Sub-rule (4B) in rule 86 (Electronic Credit Ledger):

If the registered person deposits the amount of erroneous refund sanctioned to him u/s 54(3) or under rule 96(3) [**in contravention to rule 96(10), omitted w.e.f. 1-11-2024, Notification No. 20/2024 CT dt. 8-10-2024**], along with interest and penalty, if any, through Form GST DRC-03 by debiting the electronic cash ledger either on his own or being pointed out by the officer, then the same shall be re- credited to the electronic credit ledger by an order passed by the proper officer in a newly introduced Form GST PMT-03A.

Categories of refunds where re-credit can be done using FORM GST PMT-03A:

(a) Refund of IGST obtained in contravention of sub-rule (10) of rule 96.
(b) Refund of unutilised ITC on account of export of goods/services without payment of tax.
(c) Refund of unutilised ITC on account of zero-rated supply of goods/services to SEZ developer/Unit without payment of tax.
(d) Refund of unutilised ITC due to inverted tax structure.

Interest under GST

1. Interest is levied only on the portion of tax not deposited into the Electronic Cash Ledger (**ECL) by the due date:**

Rule	Scenario	Period for which interest is payable	Amount on which interest liability has to be calculated
88B(1)	If tax has been belatedly paid through credit balance on account of delayed filing of return, before commencement of proceedings under Section 73 or 74 [or section 74A, inserted w.e.f. 1-11-2024] of the CGST Act [proviso to Section 50(1)] **In the said rules, in rule 88B, after sub-rule (1), the following proviso shall be inserted (w.e.f. 10-7-2024], namely: – —Provided that where any amount has been credited in the Electronic Cash Ledger as per provisions of sub-section (1) of section 49 on or before the due date of filing the said return, but is debited from the said ledger for payment of tax while filing the said return after the due date, the said amount shall not be taken into consideration while calculating such interest if the said amount is lying in the said ledger from the due date till the date of its debit at the time of filing return [vide Notification No. 12/2024 dated 10-7-2024].**	Interest to be paid for the period of delay in filing the said return beyond the due date up to date of filing GSTR-3B	Tax paid by debiting the electronic cash ledger

w.e.f. 10-7-2024, The proviso to Section 50(1) of the CGST Act, effective from July 10, 2024, provides relief to taxpayers regarding interest on delayed tax payments. If a taxpayer deposits the tax amount into their Electronic Cash Ledger (ECL) on or before the due date but files the GSTR-3B return after the due date, interest will not be charged on the amount that was timely deposited in the ECL. Interest will apply only to any tax amount that was not deposited by the due date.

Illustrative Example:

- **Tax Liability for July 2024:** ₹100,000
- **Due Date for GSTR-3B Filing:** August 20, 2024
- **Date of Tax Deposit into ECL:** August 20, 2024
- **Date of GSTR-3B Filing:** August 25, 2024
- **Days of Delay in Filing:** 5 days
- **Interest Rate:** 18% per annum

Scenario Analysis:

1. **Full Tax Amount Deposited on Due Date:**
   - Since the entire tax liability of ₹100,000 was deposited into the ECL on or before the due date (August 20, 2024), and remained there until it was debited at the time of filing the return on August 25, 2024, no interest is payable on this amount.
2. **Partial Tax Amount Deposited on Due Date:**
   - **Amount Deposited on Due Date:** ₹70,000
   - **Remaining Amount Deposited on:** August 22, 2024
   - **Interest Calculation:**
   - Interest applies only to the delayed amount of ₹30,000 for 2 days (from August 21 to August 22).
   - Interest Amount: ₹30,000 × (18% ÷ 365) × 2 = ₹29.59
   - Therefore, an interest of ₹30 (rounded off) is payable due to the delay in depositing ₹30,000.

Key Takeaways:

- Timely depositing the tax amount into the ECL by the due date ensures that no interest is charged, even if the GSTR-3B filing is delayed.
- Interest is levied only on the portion of tax not deposited into the ECL by the due date.

2. Amendment of Section 50(1) of the CGST Act, 2017, Interest on delayed payment of tax-

(1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council:

[Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 [**or section 74A inserted w.e.f. 1-11-2024, F.A. 2024 dt. 16-8-2024**] in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.]

Tax Invoice

1. Invoice by a person liable to pay tax under reverse charge [Section 31(3)(f) of the CGST Act, 2017] a registered person who is liable to pay tax under sub-section (3) or subsection (4) of section 9 shall [w.e.f. 1-11-2024, F.A. 2024 dated 16-8-2024, "**within the period as may be prescribed**" shall be inserted] issue an invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services or both;

2. Invoice by a person liable to pay tax under reverse charge [Section 31(3)(g) of the CGST Act, 2017] a registered person who is liable to pay tax under sub-section (3) or subsection (4) of section 9 shall issue a payment voucher at the time of making payment to the supplier.

w.e.f. 1-11-2024, F.A. 2024, dated 16-8-2024 the following Explanation shall be inserted, namely:–
[Explanation – For the purposes of clause (f), the expression "supplier who is not registered" shall include the supplier who is registered solely for the purpose of deduction of tax under section 51.]

3. As per Rule 36(3) of the CGST Rules, 2017, No input tax credit shall be availed by a registered person in respect of any tax that has been paid in pursuance of any order where any demand has been confirmed on account of any fraud, wilful misstatement or suppression of facts **[under section 74, inserted w.e.f. 8-10-2024, Notification No. 20/2024 CG dt. 8-10-2024].**

4. Time limit for issuance of self-invoice notified to be 30 days from date of receipt of supply – Insertion of Rule 47A (w.e.f. 1-11-2024).:
Notwithstanding anything contained in rule 47, where an invoice referred to in rule 46 is required to be issued under clause (f) of sub-section (3) of section 31 by a registered person, who is liable to pay tax under sub-section (3) or sub-section (4) of section 9, he shall issue the said invoice within a period of **thirty days from the date of receipt of the said supply of goods or services**, or both, as the case may be.".

Also, there cannot be any consolidation of invoices from multiple suppliers. For each relevant supply, a separate self-invoice is to be issued.

Time of supply: In respect of GST payable under Reverse Charge Mechanism(RCM), separate time of supply (ToS) was introduced for supplies received from Registered and Un-registered suppliers through Finance Act (no. 2) of 2024.

For supplies received from unregistered suppliers, the time of supply was prescribed to be earlier of:

a) The date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or
b) the date of issue of invoice by the recipient, in cases where invoice is to be issued by the recipient.

E-way Bill

1. Information to be furnished prior to commencement of movement of goods and generation of e-way bill (Notification No. 12/2024 C.T. dated 10-7-2024):

with effect from a date to be notified, in rule 138, in sub-rule (3), after the third proviso, the following proviso shall be inserted, namely: —

Provided also that an unregistered person required to generate e-way bill in FORM GST EWB-01 in terms of the fourth proviso to sub-rule (1) of Rule 138 (i.e. where handicraft goods are transported from one State or UT to another State or UT by a person who has been exempt from the requirement of obtaining registration under clause (i) or (ii) of section 24, the e-way bill shall be generated by the said person irrespective of the value of the consignment) or an unregistered person opting to generate e-way bill in Form GST EWB-01, on the common portal, shall submit the details electronically on the common portal in FORM GST ENR- 03 either directly or through a Facilitation Centre notified by the Commissioner and, upon validation of the details so furnished, a unique enrolment number shall be generated and communicated to the said person.

Examples for Generating E-Way Bill by Unregistered Persons

Example 1: Transport of Handicraft Goods Across States

- **Scenario**: Mr. Ramesh, a handicraft artisan based in Rajasthan, transports handmade wooden toys worth ₹8,000 to Gujarat for an exhibition.
- **Applicability**:
  - Mr. Ramesh is exempted from GST registration under Section 24 due to the nature of his handicraft goods.
  - As per the fourth proviso of Rule 138(1), Mr. Ramesh must generate an e-way bill regardless of the consignment value.
- **Process**:
  1. Mr. Ramesh submits his details electronically in **FORM GST ENR-03** on the GST portal.
  2. After validation, he receives a **unique enrolment number**.
  3. Using this enrolment number, Mr. Ramesh generates an **e-way bill in FORM GST EWB-01**.
  4. The e-way bill accompanies the transport of goods from Rajasthan to Gujarat.

Example 2: Unregistered Individual Opting to Generate E-Way Bill

- **Scenario**: Ms. Sneha, a freelance interior designer, sells antique furniture worth ₹45,000 to a client in Karnataka. Sneha is unregistered under GST but wishes to generate an e-way bill voluntarily.
- **Applicability**:
- Although Ms. Sneha is unregistered, Rule 138 allows her to opt for generating an e-way bill.
- **Process**:
  1. Ms. Sneha submits her personal and consignment details in **FORM GST ENR-03** on the GST portal.
  2. Once the details are validated, she receives a **unique enrolment number**.
  3. Using this number, she generates an **e-way bill in FORM GST EWB-01**.
  4. The e-way bill ensures the smooth movement of goods across state boundaries without compliance issues.

Accounts and Records under GST

1. Amendment of section 35(6) of the CGST Act, 2017:

Section 35(6) Subject to the provisions of clause (h) of sub-section (5) of section 17, where the registered person fails to account for the goods or services or both in accordance with the provisions of subsection (1), the proper officer shall determine the amount of tax payable on the goods or services or both that are not accounted for, as if such goods or services or both had been supplied by such person and the provisions of section 73 or section 74 [**or section 74A**, inserted w.e.f. 1-11-2024, F.A. 2024 dt. 16-8-2024], as the case may be, shall, mutatis mutandis, apply for determination of such tax.

TDS under GST

1. Fails to furnish Form GSTR-7, recovery may be initiated under section 73 or 74 or 74A:
Amendment of section 51(7) of the Central Goods and Services Tax Act, in sub-section (7), after the words and figures "section 73 or section 74", (the words, figures and letter "**or section 74A"** shall be inserted w.e.f. 1-11-2024, F.A. 2024 Dt. 16-8-2024).

2. Notification No. 23/2024 – Central Tax dated 8th October 2024: This notification waives the late fee for delays in filing **FORM GSTR-7**, applicable from **June 2021 onwards**.

Late Fee Waiver:

Scenario	Late Fee Structure
Late filing of FORM GSTR-7 with TDS	The late fee is capped at ₹25 per day (CGST), with a maximum of ₹1,000 (CGST) per return.
Nil TDS Return (no tax deducted)	Complete waiver of late fee if no tax was deducted at source in the month.

The total late fee payable under Section 47 for failure to file FORM GSTR-7 by the due date is capped at one thousand rupees.

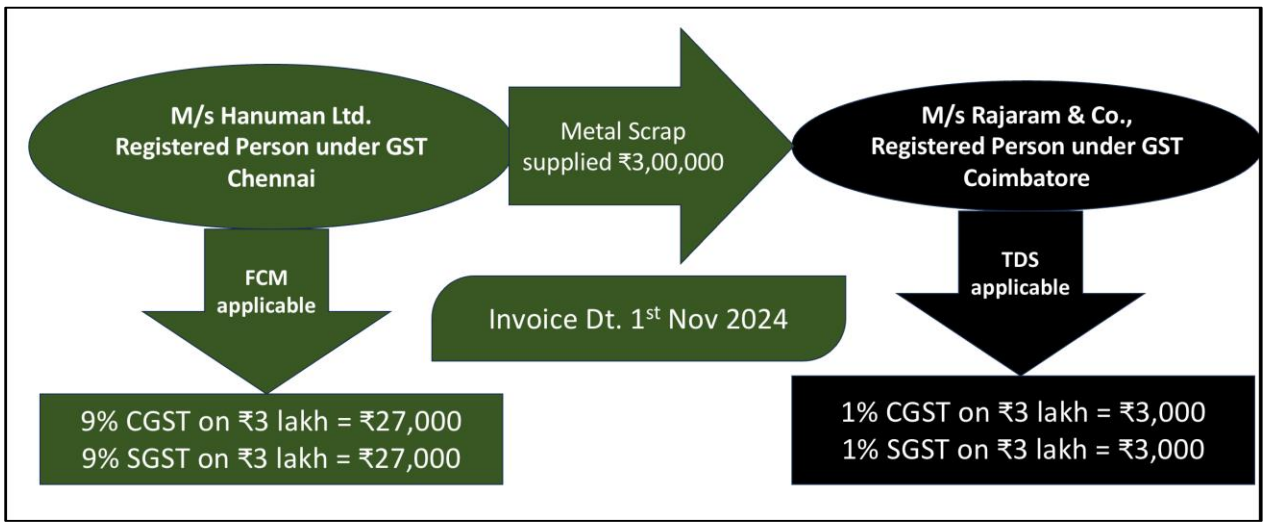
Invoice-wise Details in GSTR-7
In addition to the waiver, the GST Council has recommended that registered persons must provide invoice-wise details of the tax deducted at source (TDS) in FORM GSTR-7. This ensures that there is greater transparency and traceability of TDS amounts deducted by registered persons.

3. TDS on Metal Scrap (w.e.f. 10-10-2024):
Reverse charge mechanism will be applied to the supply of metal scrap from unregistered to registered persons. Suppliers must register once they surpass the threshold limit, while recipients will be responsible for paying tax under RCM [Notification No. 06/2024 – CT (rate) dated 8 October 2024, Notification No. 24/2024 – Central Tax dated 9 October 2024].

TDS @2% applicable on business-to-business (B2B) supply of metal scrap [Notification No. 25/2024 – Central Tax dated 9 October 2024]

This change expands the scope of TDS under Section 51 of the CGST Act, which previously applied mainly to government bodies and public sector.

Example:



Summary:

Supplier	**Recipient**	**GST @18%**	**GST TDS**
Un-registered Person	Un-registered Person	Exempt	Not applicable
Un-registered Person	Registered Person	W.e.f. 10th October 2024, RCM applicable [NT. 6/2024 dt. 8.10.2024]	Not applicable
Registered Person	Un-registered Person	FCM applicable	Not applicable
Registered Person	**Any** Registered Person (Even though not DDO)	FCM applicable	**TDS applicable**

TCS under GST

1. Effective from: 10 July 2024 [Notification No. 15/2024-Central Tax, No. 01/2024- Integrated Tax, No. 01/2024- Union Territory Tax all dated 10 July 2024]

Operator shall collect tax TCS 0.25% of CGST + 0.25% of SGST or 0.50% of IGST of the net value of taxable supplies made through it by other suppliers.

Tax Collected at Source (TCS) under Section 52 of CGST Act, 2017

Particulars	Old Rate (%)	New Rate (%) (Effective 10-07-2024)
TCS under CGST	0.50%	0.25%
TCS under SGST/UTGST	0.50%	0.25%
TCS under IGST	1.00%	0.50%

Services Not Notified for E-commerce TCS:

- Services notified under Section 9(5) of the CGST Act, such as passenger transport services, housekeeping, accommodation services or restaurant services, including those provided by cloud kitchens are excluded from TCS when the operator is already liable to pay tax.

Illustrative Example

Scenario:

1. **E-Commerce Operator (ECO):** Flipkart Ltd.
2. **Supplier:** XYZ Pvt. Ltd. (Regular GST registered supplier)
3. **Buyer:** Mr. A
4. **Nature of Supply:** Sale of goods (taxable supply)
5. **Location of Supplier:** Karnataka
6. **Location of Buyer:** Karnataka (Intra-state supply)
7. **Sale Value:** ₹1,00,000
8. **Applicable TCS Rate (Post 10th July 2024):** 0.5% (0.25% CGST + 0.25% SGST)

Calculation:

- **Taxable Value:** ₹1,00,000
- **TCS Amount:** ₹1,00,000 × 0.5% = ₹500
- **CGST Component:** ₹500 × 0.25% = ₹250
- **SGST Component:** ₹500 × 0.25% = ₹250

Returns under GST

1. GSTR-1Avide CBIC Notification 12/2024 dated 10th July 2024.

Return Form	Particulars	Frequency	Due Date
GSTR-1A vide CBIC Notification 12/2024 dated 10th July 2024.	A taxpayer who needs to amend any supply record furnished in GSTR 1 or need to add any supply record of same tax period, the same can be done through GSTR 1A in the same month after filing of GSTR-1 and before filing of GSTR-3B.	Monthly (whenever is required)	After GSTR-1 but before GSTR-3B of the relevant month.

Key Points on GSTR-1A (Amendments to GSTR-1)

General Overview

- **What is Form GSTR-1A?**
- A form used by taxpayers to amend or add supply records from the same tax period after filing GSTR-1 and before filing GSTR-3B.
- Example: GSTR 1 for the month of August 2024 has been furnished by the taxpayer on 10th of September 2024. Taxpayer committed a mistake in 2 records and missed to report one record in its GSTR 1. Now GSTR 1A shall be opened for him/her on 10th of September or due date of GSTR 1 (i.e. 11th of September) whichever is later. The Taxpayer will be able to amend the incorrect record and shall also be able to add the missed record in Form GSTR 1A. The correct value shall be auto populated in its GSTR 3B.

Availability of GSTR-1A

- **For Monthly Filers:**
  - Open from the later of:
    1. Due date of GSTR-1 (11th of the following month).
    2. Actual date of GSTR-1 filing.
- **For Quarterly Filers:**
  - Open from the later of:
    1. Due date of GSTR-1 (13th of the month following the end of the quarter).
    2. Actual date of GSTR-1 filing.

Filing Guidelines

- **Due Date:**
  - No specific due date; GSTR-1A can be filed until GSTR-3B for the same tax period is filed.
- **Mandatory Filing:**
  - Filing is **optional** and applicable when:
  - Adding missed records.
  - Amending incorrect records reported in GSTR-1.
- **Modes of Filing:**
  - Can be filed online or through GSP.
  - Filing of Nil GSTR-1A is **not available**.

Limitations

- Cannot amend records from previous tax periods; such changes must be made in subsequent GSTR-1 filings.
- Cannot amend recipient GSTIN through GSTR-1A; it must be done in GSTR-1.

Impact on GSTR-3B

- If GSTR-1A is saved but not filed before filing GSTR-3B:
- System will block GSTR-3B filing.
- Taxpayer must either delete, reset, or file the saved GSTR-1A to proceed.

Special Cases

- Debit/Credit Notes:
- Can be added in GSTR-1A.
- Records from IFF (Invoice Furnishing Facility):
- Can be amended in GSTR-1A for the same tax period.

Important Notes

- GSTR-1A can only be filed **once** for a particular tax period, even if GSTR-3B is not filed.
- Amendments to filed GSTR-1A are not allowed.

2. Invoice wise details in Forms GSTR-1:

Amendment to rule 59(4)(a)(ii) of the CGST Rules to reduce the threshold for reporting invoice wise details in Form GSTR-1 for business to consumer (B2C) interstate supplies has been reduced from ₹2,50,000 to ₹1,00,000.

3. Invoice wise details in Forms GSTR-1A:

after rule 59(4), the following sub-rule shall be inserted, namely: – —

(4A) The additional details or the amendments of the details of outward supplies of goods or services or both furnished in FORM GSTR-1A may, as per the requirement of the registered person, include the –

(a) invoice wise details of –
  (i) inter-State and intra-State supplies made to the registered persons; and
  (ii) inter-State supplies with invoice value more than one lakh rupees made to the unregistered persons;

(b) consolidated details of –
  (i) intra-State supplies made to unregistered persons for each rate of tax; and
  (ii) State wise inter-State supplies with invoice value upto one lakh rupees made to unregistered persons for each rate of tax;

(c) debit and credit notes, if any, issued during the month for invoices issued previously.

4. Annual Return for Composition Tax Payer – Form GSTR-4:

A return (GSTR-4) for every financial year (or part of the financial year), on or before 30th day of April following the end of such financial year.

Extension of GSTR-4 Filing Deadline (vide Notification No. 12/2024 Dt. 10-7-2024)

For Financial Year (FY) 2024-25 onwards, the due date for composition taxpayers to file FORM GSTR-4 is extended to June 30 following the end of the financial year.

Example:

Sharma, a composition taxpayer for FY 2024-25, now has until June 30, 2025, to file his GSTR-4.

5. Amendment of section 39(3), w.e.f. 1-11-2024, F.A. 2024 dated 16-8-2024:

- In section 39 of the Central Goods and Services Tax Act, for sub-section (3), the following sub-section shall be substituted, namely: —

"Every registered person required to deduct tax at source under section 51 shall electronically furnish a return for every calendar month of the deductions made during the month in such form and manner and within such time as may be prescribed:

Provided that the said registered person shall furnish a return for every calendar month whether or not any deductions have been made during the said month.".

Amendment in due date of filling GSTR-7:

Return Form	Particulars	Frequency	Due Date
GSTR-7	Return for authorities deducting tax at source (Section 39(3) of the CGST Act, 2017)	Monthly	w.e.f. 1-11-2024, on or before the 10th day of the month succeeding the calendar month (Notification No. 20/2024 CT dt. 8-10-2024)

6. Rule 88D (w.e.f. 04-08-2023): New provision to intimate the difference (by such amount and such percentage, as may be recommended by the Council), of ITC as availed in FORM GSTR 3B vis-à-vis Form GSTR-2B in Part A of FORM GST DRC-01C (New form inserted in the rules) to a registered person and directing him to-

(a) pay an amount equal to the excess input tax credit availed in the said FORM GSTR-3B, along with interest payable under section 50, through FORM GST DRC-03, OR

(b) explain the reasons for the aforesaid difference in input tax credit on the common portal,

Within a period of 7 days.

The differential amount shall be liable to be demanded in terms of section 73/74, [or **section 74A, inserted w.e.f. 1-11-2024] —**

- in case of failure to pay such amount within the specified period or,
- non-submission of reply in Part B of FORM GST DRC-01C or,
- submission of reply which is not found to be acceptable by the Proper Officer.

[Notification No 38/2023-CT, dated 04-08-2023]

Refund under GST

1. Changes to rules 89 and 96 of the CGST Rules regarding refund of additional IGST paid on account of upward price revision of the goods subsequent to export along with clarification on mechanism to apply for refund Effective from 10 July 2024 [Notification No. 12/2024 – Central Tax (clauses 17 and 19), Circular No. 226/20/2024-GST dated 11 July 2024]:

Amendment

- Amendment to rules 89 and 96 of CGST Rules introduce an explicit provision allowing the refund of additional Integrated Goods and Service Tax (IGST) paid on account of the upward revision in the price of goods subsequent to exports, and on which the refund of IGST paid at the time of their export has already been sanctioned as per rule 96 of the CGST Rules. An application should be filed via Form GST RFD-01 before the expiry of two years from relevant date as per Explanation (2)(a) of section 54 of the CGST Act.
- Where such time limit has already lapsed, the refund application is to be filed before the expiry of two years from 10 July 2024.
- Insertion of a provision to produce additional documentary evidence to claim refund.

CBIC Circular No. 226/20/2024-GST dated 11 July 2024 - clarifications

This circular addresses clarifications sought by trade and industry regarding mechanism to claim refund of additional IGST paid on account of upward price revision of the goods subsequent to export.

- The circular clarifies that the GST Network is developing a new category in Form GST RFD-01 for refund applications related to additional IGST paid. Until this feature is available, exporters can claim refunds by filing Form GST RFD-01 under the category 'Any other' with the remark 'Refund of additional IGST paid on account of increase in price subsequent to export of goods'.
- The circular also clarifies that the proper officer will verify adequate disclosures in Forms GSTR-1 and GSTR-3B while processing the refund. The proper officer will scrutinise the application with respect to its completeness and eligibility and proceed to issue a refund sanction order in Form GST RFD 06 and payment order in Form GST RFD-05. The proper officer will also upload a detailed speaking order along with a refund sanction order in Form GST RFD-06.
- With respect to cases of downward revision in the price of goods subsequent to exports when the export has been made with the payment of IGST, the circular notes that the exporter is required to deposit the IGST refund received in proportion to the reduction in the price of the exported goods, along with the applicable interest. Importantly, while granting refund of additional IGST paid on account of upward revision of price of goods subsequent to exports, the proper officer will also verify whether the exporter has deposited the excess refund amount in case of downward revision in price of goods subsequent to exports, during the relevant tax period.

Example to illustrate the recent changes and mechanism for claiming refunds of additional IGST under rules 89 and 96 of the CGST Rules:

Scenario: Upward Price Revision of Exported Goods

1. **Facts**:
    - **Exporter**: XYZ Pvt. Ltd.
        - **Export Details (Original)**:

- Goods exported on 1 April 2023.
- Invoice value: ₹10,00,000.
- IGST paid at the time of export: ₹1,80,000 (at 18%).

- **Upward Revision**:
  - On 15 October 2023, the buyer agrees to revise the price to ₹12,00,000.
  - Additional IGST due: ₹36,000 (on increased value of ₹2,00,000).
- **Refund of IGST**:
  - Original IGST refund of ₹1,80,000 was already sanctioned under Rule 96.

2. **Amendments Introduced**:
   - Refund of the **additional IGST (₹36,000)** paid on account of the upward price revision is now allowed under **Rule 89 and Rule 96**, provided:
   - An application is filed in Form GST RFD-01.
   - The application must be submitted within **two years from the relevant date** (date of payment of additional IGST or realization of increased price).
   - For cases where the time limit has lapsed, the deadline is **10 July 2026** (two years from 10 July 2024).
3. **Steps for Claiming Refund (As Per Circular No. 226/20/2024-GST)**:
   - Until GST Network updates the system:
     1. File **Form GST RFD-01** under the category "Any other."
     2. Add the remark: "Refund of additional IGST paid on account of increase in price subsequent to export of goods."
   - Attach supporting documents:
     - Revised commercial invoice or price amendment agreement.
     - Proof of payment of additional IGST (e.g., challan or GSTR-3B).
     - Shipping Bill and other export documentation.
     - a reconciliation statement, reconciling the value of supplies declared in supplementary invoices, debit notes or credit notes issued along with relevant details of Bank Realisation Certificate or foreign inward remittance certificate issued by Authorised Dealer-I Bank, in a case where the refund is on account of upward revision in price of such goods subsequent to exports;
   - The proper officer will:
     1. Verify disclosures in **GSTR-1/1A** and **GSTR-3B**.
     2. Process the refund and issue:
   - Refund sanction order in **Form GST RFD-06**.
   - Payment order in **Form GST RFD-05**.

Scenario: Downward Price Revision of Exported Goods

1. **Facts**:
   - On 1 January 2024, the buyer revises the price downward to ₹8,00,000.
   - Refund of IGST originally received: ₹1,80,000.
   - Refund to be deposited back: IGST on the reduced value of ₹2,00,000 (₹36,000), with interest.
2. **Requirement**:
   - The exporter must deposit **₹36,000 plus applicable interest** before claiming any future refunds.
   - The proper officer will verify this compliance before processing the refund of additional IGST for any subsequent upward price revisions.

2. Introduction of rule 95B of the CGST Rules for the refund of goods received by canteen stores department Effective from 10 July 2024 [Notification No.12/2024 – Central Tax dated 10 July 2024 clause 18] and CBIC issued Circular for processing of refund applications filed by canteen Stores Department [Circular No. 227/21/2024 dated 11 July 2024]:

Amendment

In furtherance to the Circular No. 60/34/2018 – GST dated 4 September 2018 of the CGST Act

- This notification enables the Canteen Stores Department (CSD) to claim a refund of 50% of the applicable central tax paid on all inward supplies of goods.
- A new form, GST RFD-10A, is introduced for this purpose. The form will be processed in a manner similar to Form GST RFD-01.
- The rule also adds the following conditions to enable the refund –
  - Both the inward and the outward supplies details should be furnished in the respective forms.
  - The name and GSTIN should be mentioned on the tax invoice.
  - Goods must be received by the CSD for the purpose of subsequent supply to the Unit Run Canteens or authorised customers of the CSD.

To enable CSD to file the refund application electronically, a new functionality has been made available on the common portal allowing the CSD to file an application electronically on the common portal.

As per rule 95B of the CGST Rules, the CSD is required to apply for a refund once every quarter. The CSD can also opt to file a refund application for multiple quarters, clubbing multiple financial years, as per their preference.

Here's an **example** illustrating the refund process under Circular No. 227/21/2024-GST for the Canteen Stores Department (CSD):

Scenario: Refund of Tax Paid on Inward Supplies

1. **Facts**:
   - **CSD Location**: XYZ CSD Depot (Kolkata).
   - **Period**: Q1 of FY 2024-25 (April to June 2024).
   - **Details of Inward Supplies**:
     - Goods purchased from registered suppliers for subsequent supply to Unit Run Canteens or authorized customers.
     - Total purchase value: ₹10,00,000.
   - GST paid (18%):
     - Central Tax: ₹90,000.
     - State Tax: ₹90,000.
     - Integrated Tax: ₹1,80,000.
     - Refund eligibility: 50% of GST paid = ₹1,80,000 (50% of ₹3,60,000).

Steps for Claiming Refund

Filing the Refund Application (FORM GST RFD-10A)

1. CSD logs into the common GST portal.
2. Files **FORM GST RFD-10A** for Q1 of FY 2024-25.
3. Uploads necessary documents:
   - Tax invoices for inward supplies from registered suppliers.
   - Undertaking that goods were received for supply to Unit Run Canteens or authorized customers.
   - Declaration confirming no prior refund claim for the same invoices.

4. The system auto-populates:
   - Table in **Sl. No. 7 of FORM GST RFD-10A** based on 50% of taxes in **Sl. No. 6**.
   - CSD can edit the refund amount downward but cannot increase it.

Processing of Refund Application

1. **Validation of GSTIN and Returns**:
   - Proper officer ensures all GSTR-1 and GSTR-3B returns due before the application date are filed.
2. **Verification of Invoices**:
   - Cross-verifies invoices uploaded by CSD with:
   - Supplier's GSTR-1/1A (outward supply).
   - Supplier's GSTR-3B (tax payment).
   - FORM GSTR-2B (auto-populated purchase register for CSD).
   - Ensures no duplicate refund claims for the same invoices.
3. **Reversal of ITC**:
   - Confirms that CSD reversed any input tax credit (ITC) on inward supplies as per **Circular No. 170/02/2022-GST**.

Issuance of Refund Order

1. Upon successful verification, the proper officer:
   - Sanctions the refund of ₹1,80,000.
   - Issues **Refund Order (FORM GST RFD-06)**.
   - Uploads a detailed **speaking order** explaining the decision.
2. Refund is credited electronically to the CSD's bank account.

Special Scenarios

1. **Filing Refund for Multiple Quarters**:
   - CSD chooses to file one refund application for Q1 and Q2 of FY 2024-25.
   - Total purchase value across quarters: ₹20,00,000.
   - Total GST paid: ₹7,20,000.
   - Eligible refund: ₹3,60,000 (50%).
2. **Time Limit for Filing**:
   - Goods received in Q1 (April to June 2024).
   - Last date to file: **30 June 2026** (two years from the last day of the quarter).

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

- **Context of the circular simplified**:
  - Exporters may voluntarily pay Integrated Tax (IGST) and applicable interest when:
  - Goods are not exported within the time prescribed in **Rule 96A(1)(a)**.
  - Payment for export of services is not received within the time prescribed in **Rule 96A(1)(b)**.
- **Key Provisions under Rule 96A(1)**:
  - For export of goods: Tax must be paid within 15 days after 3 months (or an extended period) from the date of invoice, if goods are not exported.
  - For export of services: Tax must be paid within 15 days after 1 year (or an extended period) from the date of invoice, if payment is not received.

Notification No. 12/2024, w.e.f. 10-7-2024, for export of services: tax must be paid within 15 days after the expiry of one year, or the period as allowed under the Foreign Exchange Management Act, 1999 (42 of 1999) including any extension of such period as permitted by the Reserve Bank of India, whichever is later, from the date of issue of the invoice for export, or such further period as may be allowed by the Commissioner, if the payment of such services is not received by the exporter in convertible foreign exchange or in Indian rupees, wherever permitted by the Reserve Bank of India. this timeline applies only for export of services:

- Amendment to rule 96A(1)(b) of the CGST Rules to include the period as allowed under the Foreign Exchange Management Act, 1999 (FEMA) including any extension of such period as permitted by the Reserve Bank of India (RBI) for the determination of receipt of consideration in case of exports made under a bond or letter of undertaking (LUT).

  Here's an **example** to explain the provisions and amendments under Rule 96A(1) concerning the refund of tax for exporters:

Scenario: Exporter Defaults but Later Complies

Context:

ABC Exports, an exporter of services, applies for a refund of unutilized Input Tax Credit (ITC) after initially failing to meet the timeline under Rule 96A(1)(b).

1. **Export Details**:
   - **Date of Invoice**: 1 April 2023.
   - **Export under LUT/Bond**: Services exported without payment of IGST.
   - **Consideration Received**: Payment for the exported services in convertible foreign exchange.
2. **Rule 96A(1)(b) Timeline for Receipt of Payment**:
   - Original Deadline: 31 March 2024 (one year from invoice date).
   - **Extension Granted by RBI** under FEMA: Additional 6 months, making the deadline **30 September 2024**.

Non-Compliance:

- By **15 October 2024** (15 days after the extended timeline expired), ABC Exports has not received payment.
- To comply with Rule 96A(1)(b), ABC Exports:
- **Voluntarily Pays IGST** on the export value along with applicable interest for the delay.

Subsequent Compliance:

- On **15 November 2024**, payment is received in convertible foreign exchange within the further time allowed under FEMA and RBI guidelines.
- ABC Exports applies for a **refund of IGST and interest paid** under the updated provisions.

Steps for Refund Claim

1. **Filing Refund Application**:
   - Application filed in **FORM GST RFD-01** under the appropriate category.
   - ABC Exports includes:
   - Proof of payment of IGST and interest (challans).
   - Proof of receipt of export proceeds (bank realization certificate).
   - Copy of the LUT/Bond under which export was made.
2. **Amendment Impact**:
   - The refund is admissible because the payment was received within the **RBI-allowed extended period under FEMA**, even though it was beyond the original one-year limit.

- Amendment to Rule 96A(1)(b) ensures compliance with FEMA/RBI timelines overrides the strict one-year timeline.

3. **Processing by Proper Officer**:
   - Officer validates:
     - Export details in **GSTR-1**.
     - Receipt of convertible foreign exchange within the extended time frame.
     - IGST and interest payment records.
     - Refund is sanctioned in **FORM GST RFD-06** after verification.

4. Exemption from filing of Annual Return for FY 2023-24 (vide Notification No. 14/2024 – Central Tax 10th July, 2024):

Exempts the registered person whose aggregate turnover in the financial year 2023-24 is up to two crore rupees, from filing annual return for the said financial year.

5. Duty structure

As per Section 54(3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:

Provided that no refund of unutilised input tax credit shall be allowed in cases other than—

(i) zero rated supplies made without payment of tax;

(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:

[Omitted w.e.f. 1-11-2024, F.A. 2024, dated 16-8-2024 - Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:]

Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

6. Section 16. Zero rated supply.-

(1) "zero rated supply" means any of the following supplies of goods or services or both, namely: -

(a) export of goods or services or both; or

(b) supply of goods or services or both [for authorised operations] to a Special Economic Zone developer or a Special Economic Zone unit.

(2) Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.

[(3) A registered person making zero rated supply shall be eligible to claim refund of unutilised input tax credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed:

Provided that the registered person making zero rated supply of goods 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 under section 50 of the Central Goods and Services Tax Act within thirty days after

the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 (42 of 1999.) for receipt of foreign exchange remittances, in such manner as may be prescribed.

(4) The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by notification, specify-

(i) a class of persons who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid [in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder, (inserted w.e.f. 1-11-2024, F.A. 2024, dated 16-8-2024)];

(ii) a class of goods or services [or both, on zero rated supply of which, the supplier may pay integrated tax and claim the refund of tax so paid, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder (inserted w.e.f. 1-11-2024, F.A. 2024, dated 16-8-2024).]

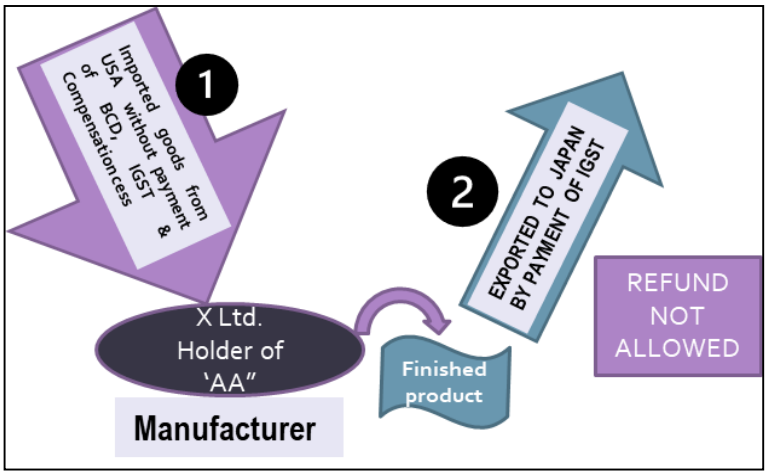
[(5) Notwithstanding anything contained in sub-sections (3) and (4), no refund of unutilised input tax credit on account of zero rated supply of goods or of integrated tax paid on account of zero rated supply of goods shall be allowed where such zero rated supply of goods are subjected to export duty (inserted w.e.f. 1-11-2024, F.A. 2024, dated 16-8-2024).]

7. w.e.f. 8-10-2024, rule 96, sub-rule (10) shall be omitted (vide NT No. 20/2024, dt. 8-10-2024):

Explanation to rule 96(10)(b) inserted [Notification No. 16/2020-CT, dated 23.03.2020]

Rule 96(10)(b) lays down an embargo on the refund claim by a person seeking refund of IGST paid on export of goods/services. The restriction is that such person should not have availed the benefit of exemption from IGST and Compensation Cess, for goods imported by EOU under Notification No. 78/2017-Cus., dated 13.10.2017 or for goods imported under Advance Authorisation (AA)/EPCG under Notification No. 79/2017-Cus., dated 13.10.2017.

An explanation has been inserted to this clause which clarifies that the benefit of the notifications mentioned therein shall not be considered to have been availed only where the registered person has paid IGST and Compensation Cess on inputs and has availed exemption of only Basic Customs Duty (BCD) under the said notifications.



Refund of IGST on exports when inputs were imported without payment of IGST/cess but paid later (vide CBIC Circular No. 233/27/2024-GST dated 10th September, 2024**]:**

1. **Background:**
   - **Rule 96(10) of CGST Rules**: Refund of IGST on exports is restricted if the exporter avails concessional/exemption benefits (e.g., Notifications 78/2017-Customs or 79/2017-Customs) on inputs without paying IGST and compensation cess.
   - Clarification was sought on whether refund of IGST on exports can be regularized if IGST and cess on such inputs are paid later, with interest.
2. **Clarification:**
   - As per Notification No. 16/2020-CT (with retrospective effect from 23.10.2017):
   - If IGST and compensation cess on imported inputs are **subsequently paid with interest** and the Bill of Entry is reassessed by Customs, it will be considered that the exporter has **not availed exemption** under Rule 96(10).
   - Refund of IGST on exports in such cases is **not considered a contravention** of Rule 96(10).
3. **Conclusion:**
   - Exporters who initially imported inputs without paying IGST/cess but later paid IGST/cess with interest can claim IGST refund on exports, provided the Bill of Entry is reassessed by Customs.

8. As per Rule 89(4) of Chapter X of the CGST Rules, 2017 the quantum of input tax credit shall be determined as per the following formula:

$$\text{Refund amount} = \frac{\text{Turnover of zero rated supply of goods + services}}{\text{Adjusted total turnover}} \times \text{Net ITC}$$

Where—

(A) "Refund amount" means the maximum refund that is admissible;

(B) "Net ITC" means input tax credit availed on inputs and input services during the relevant period [other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both, omitted vide Notification No. 20/2024 CT dated 8-10-2024, w.e.f. 8-10-2024];

(C) "Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or LUT**, [other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both, omitted vide Notification No. 20/2024 CT dated 8-10-2024, w.e.f. 8-10-2024];**

(D) "Turnover of zero-rated supply of services" means the value of zero-rated supply of services made without payment of tax under bond or LUT, calculated in the following manner, namely:—
Zero-rated supply of services is the aggregate of the payments received during the relevant period for zero-rated supply of services and zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period;

(E) "Adjusted total turnover" means the sum total of the value of –
(a) the turnover in a State or a Union territory, as defined under section 2(112), excluding the turnover of services; and
(b) the turnover of zero rated supply of services determined in terms of clause D above and non-zero rated supply of services, **[w.e.f. 8-10-2024, excluding the value of exempt supplies other than zero-rated supplies during the relevant period, vide Notification No. 20/2024 CT dt. 8-10-2024].**

[(a) the value of exempt supplies other than zero-rated supplies and

(b) the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both, if any, during the relevant period, omitted vide Notification No. 20/2024 CT dated 8-10-2024, w.e.f. 8-10-2024];

(F) "Relevant period" means the period for which the claim has been filed.

9. Sub-rules (4A) and (4B) of rule 89 shall be omitted w.e.f. 8-10-2024 (vide Notification No. 20/2024 CT dated 8-10-2024);

A new sub-rule (4A) has been inserted in rule 89 of the CGST Rules retrospectively from 23.10.2017.

The new sub-rule (4A) lays down that in the case of supplies received on which the supplier has availed the benefit of Notification No. 48/2017-CT, dated 18.10.2017 (i.e., where supplier has claimed refund of tax paid on deemed exports), refund of input tax credit, availed in respect of other inputs or input services used in making zero-rated supply of goods or services or both, shall be granted.

A new sub-rule (4B) has been inserted in rule 89 of the CGST Rules retrospectively from 23.10.2017.

The new sub-rule (4B) lays down that in the case of supplies received on which the supplier has availed the benefit of Notification No. 40/2017-CT(R), dated 23.10.2017/Notification No. 41/2017-IT(R), dated 23.10.2017 [concessional rate of tax @ 0.1% (0.05% CGST + 0.05% SGST & 0.1% IGST) for supply of goods made to merchant exporters for export] or Notification No. 78/2017-Cus, dated 13.10.2017/Notification No. 79/2017-Cus, dated 13.10.2017 [imports of goods by EOUs/Advance Authorisation/EPCG schemes], or all of them, refund of input tax credit, availed in respect of inputs received under the said notifications for export of goods and the input tax credit availed in respect of other inputs or input services to the extent used in making such export of goods, shall be granted.

[Notification No. 3/2018-CT, dated 23.01.2018].

10. Refund of accumulated ITC of input services and capital goods arising on account of inverted duty structure:

Section 54(3) of the CGST Act provides that refund of any unutilized ITC may be claimed where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies). Further, section 2(59) of the CGST Act defines inputs as any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business. Thus, inputs do not include services or capital goods. Therefore, clearly, the intent of the law is not to allow refund of tax paid on input services or capital goods as part of refund of unutilized input tax credit. Accordingly, in order to align the CGST Rules with the CGST Act, notification No. 26/2018-Central Tax, dated 13.06.2018 was issued wherein it was stated that the term Net ITC, as used in the formula for calculating the maximum refund amount under rule 89(5) of the CGST Rules, shall mean input tax credit availed on inputs during the relevant **period [other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both, omitted w.e.f 8-10-2024, NT 20/2024, dt. 8-10-2024].**

Audit under GST

1. Departmental Audit:

Amendment of Section 65(7) of the CGST Act, 2017 where the audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or section 74 ("or **Section 74A**" shall be inserted w.e.f. 1-11-2024, F.A. 2024, dated 16-8-2024).

2. Special Audit by CA or CMA:

Amendment of Section 66(6) Where the special audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or section 74 ("or Section 74A" shall be inserted w.e.f. 1-11-2024, F.A. 2024, dated 16-8-2024).]

Offences and Penalties under GST

1. w.e.f. 1-10-2024 Insertion of new section 122A. After section 122 of the Central Goods and Services Tax Act, the following section shall be inserted, namely:–

"Section 122A. Penalty for failure to register certain machines used in manufacture of goods as per special procedure.

(1) Notwithstanding anything contained in this Act, where any person, who is engaged in the manufacture of goods in respect of which any special procedure relating to registration of machines has been notified under section 148, acts in contravention of the said special procedure, he shall, in addition to any penalty that is paid or is payable by him under Chapter XV or any other provisions of this Chapter, be liable to pay a penalty equal to an amount of one lakh rupees for every machine not so registered.

(2) In addition to the penalty under sub-section (1), every machine not so registered shall be liable for seizure and confiscation:

Provided that such machine shall not be confiscated where–

(a) the penalty so imposed is paid; and

(b) the registration of such machine is made in accordance with the special procedure within three days of the receipt of communication of the order of penalty." [Notification No. 16/2024–Central Tax | Dated: 6th August, 2024].

Illustrative Example

- **Scenario:**
  - A manufacturer uses 10 machines for producing goods and is required to register these machines as per the special procedure notified under Section 148.
  - Out of these, 3 machines were not registered by the due date.
- **Consequences:**
  - **Penalty:** ₹1,00,000 × 3 machines = ₹3,00,000.
  - **Seizure:** The 3 unregistered machines are liable for seizure and confiscation.
- **Avoiding Confiscation:**
  - If the manufacturer:
    1. Pays the penalty of ₹3,00,000, and
    2. Registers the 3 unregistered machines within 3 days of receiving the penalty order, then confiscation will not apply, and the machines can continue to be used.

2. Amendment of Section 70. Power to summon persons to give evidence and produce documents.-

(1) The proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

w.e.f. 1-11-2024, F.A 2024 dated 16-8-2024, the following sub-section shall be inserted, namely: —

[(1A) All persons summoned under sub-section (1) shall be bound to attend, either in person or by an authorised representative, as such officer may direct, and the person so appearing shall state the truth during examination or make statements or produce such documents and other things as may be required.]

(2) Every such inquiry referred to in sub-section (1) shall be deemed to be a "judicial proceedings" within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860).

3. Amendment of section 122:

- In section 122 of the Central Goods and Services Tax Act, with effect from the 1st day of October, 2023, in subsection (1B), for the words "Any electronic commerce operator who", the words and figures "Any electronic commerce operator, who is liable to collect tax at source under section 52," shall be substituted.

w.e.f. 1st October 2023, Section 122(1B) is inserted to provide that any electronic commerce operator, who is liable to collect tax at source under section 52 (w.r.e.f. 1-10-2023 as per F.A. 2024 dt. 16-08-2024) :

(i) allows a supply of goods or services or both through it by an unregistered person other than a person exempted from registration by a notification issued under this Act to make such supply;

(ii) allows an inter-State supply of goods or services or both through it by a person who is not eligible to make such inter-State supply; or

(iii) fails to furnish the correct details in the statement to be furnished under sub-section (4) of section 52 of any outward supply of goods effected through it by a person exempted from obtaining registration under this Act,

shall be liable to pay a penalty of ten thousand rupees, or an amount equivalent to the amount of tax involved had such supply been made by a registered person other than a person paying tax under section 10, whichever is higher.

4. Power to impose penalty in certain cases Section 127 of the CGST Act, 2017:

Where the proper officer is of the view that a person is liable to a penalty and the same is not covered under any proceedings under section 62 or section 63 or section 64 or section 73 or section 74 [or section 74A inserted w.e.f. 1-11-2024, F.A. 2024, dt. 16-8-2024] or section 129 or section 130, he may issue an order levying such penalty after giving a reasonable opportunity of being heard to such person.

5. New Section 128A. Waiver of interest or penalty or both relating to demands raised under section 73, for certain tax periods (w.e.f 1-11-2024, F.A. 2024, dated 16-8-2024):

- Section 128A allows taxpayers to waive interest and penalties on tax demands raised under Section 73 if the full tax is paid by the prescribed deadline.
- This provision applies to tax periods from 1st July 2017 to 31st March 2020 i.e. FY 2017-18, FY 2018-19, and FY 2019-20.
- Taxpayers must ensure that there are no pending appeals or writ petitions and no erroneous refunds to avail of the waiver.

Notification No. 21/2024 (October 8, 2024):

- On October 8, 2024, the Ministry of Finance, Department of Revenue, issued Notification No. 21/2024 - Central Tax under the CGST Act, 2017. This notification outlines the timelines for registered taxpayers to pay their outstanding tax liabilities as per notices, statements, or orders under Section 128A.
- For registered persons who have received notices, statements, or orders under section 128A(a), (b), or (c), the payment due date is up to March 31, 2025. These clauses refer to the cases where the order is not passed u/s 73(9), 107(11), 108(1), or 113(1).
- In cases where the order is passed or required to be passed by the proper officer in pursuance of the direction of the Appellate Authority, Appellate Tribunal, or a court, the due date for payment is the Date ending on completion of six months from the date of issuance of the order by the proper officer redetermining tax under section 73 of the said Act.

GST Circular No. 238/32/2024 (October 15, 2024):

- On October 15, 2024, the Goods and Services Tax (GST) authorities issued an important circular that provides much-needed clarification on Section 128A of the CGST Act.
- This circular provides important clarifications about the implementation of Section 128A, confirming that taxpayers must file applications using FORM GST SPL-01 or FORM GST SPL-02 on the common portal to avail of the waiver.
- The proper officer shall issue an order in FORM GST SPL-05, accepting the said application, if he is satisfied that the applicant is eligible for a waiver of interest or penalty or both under Section 128A. However, if the proper officer, based on the application and the reply in FORM GST SPL-04 received from the taxpayer, is of the view that the applicant is not eligible for a waiver of interest or penalty or both under Section 128A, he shall issue an order in FORM GST SPL-07, rejecting the said application.
- If the application is rejected, taxpayers may appeal the decision.

GST Advisory (November 8, 2024):

- The advisory from GSTN elaborates on the procedural aspects of the waiver scheme under Section 128A.
- As per the waiver scheme, if a notice or order is issued under Section 73 for the financial years 2017-18, 2018-19, and 2019-20, the taxpayers are required to apply FORM GST SPL-01 or FORM GST SPL-02, respectively on the common portal within three months from notified date, which is 31.03.2025.
- These forms will be available on the common portal tentatively from the first week of January 2025.
- In the meantime, taxpayers can pay the demanded tax amount through the "payment towards demand" facility in case of demand orders and through Form GST DRC-03 in case of notices. However, if payment has already been done through Form GST DRC-03 for any demand order then the taxpayer needs to link the said Form GST DRC 03 with such demand order through Form GST DRC-03A, which is now available on the common portal.

6. Insertion of Rule 164 through Notification 20/2024- Central Tax prescribing procedure and conditions for closure of proceedings under section 128A in respect of demands issued under section 73:

1. A New Amnesty scheme has been notified u/s 128A from 1st November 2024 for certain tax periods in respect of non-evasion cases u/s 73. The waiver would cover the entire interest and penalty under the case.
2. The conditions for opting this scheme would be as follows:
   a) The Demand should pertain to the period from 1st July 2017 to 31st March 2020 (FY 2017-18 to 2019-20)
   b) The demand falls under any of the following categories.
      Clause (a) of Section 128(1) - Where Notice has been issued u/s 73 but adjudication order not yet issued, or
      Clause (b) of Section 128(1) - Adjudication order issued u/s 73 but first appellate order is not yet issued, or
      Clause (c) of Section 128(1) - First appeal order is issued but the order from Tribunal/court has not been issued.
   c) In case of Revision or Appeal by the Department before First Appellate Authority / Appellate Tribunal, the amnesty would be subject to the condition that the person pays the additional tax payable within 3 months of the order of Appellate Authority / Tribunal / Court / Revisional Authority.

d) The entire tax amount as per the relevant demand / notice has been discharged within 31st March 2025 (Notified Date).

e) It would cover cases where notice was issued u/s 74 but was reclassified u/s 73 by Appellate Authority / Tribunal / Court. Here, the due date of payment would be 6 months from the date of issuance of order redetermining tax u/s 73.

f) No refund would be granted for the interest and penalty already paid in the case.

g) This would be only for demand cases and not for erroneous refund.

h) The Appeal or Writ Petition before the Appellate Authority / Tribunal / Court would be withdrawn within the specified due date.

i) Once the proceedings stand concluded upon payment, no appeal can be made against the relevant adjudication / appeal order.

3. A notice or order can cover both demands from 2017-2020 (allowable under 128A) and subsequent periods (not allowable under 128A). Further, the notice / order can cover both demand orders (allowable under 128A) and erroneous refund orders (not allowable under 128A).
4. To avail amnesty scheme, one needs to pay full tax for the portion 'allowable under 128A' and for the portion 'not allowable under 128A'
5. In case of multiple notices/ statements/ orders pertaining to period July 2017 to March 2020, separate applications in FORM GST SPL-01 or FORM GST SPL-02 shall be made w.r.t each of the concerned notice/ statement/ order. (as per Circular 238/32/2024- GST issued on 15-10-2024)
6. W.r.t application under clause (a) – payment shall be made via DRC-03.
7. W.r.t application under clause (b) or (c) - payment shall be made only against the debit entry created in the Part II of the Electronic Liability Register (ELR) by the demand order. (procedure mentioned in para 4 of Circular No. 224/18/2024 -GST dated 11th July 2024 may be referred to)
8. In case where payment of tax demanded in the order has already been made through DRC-03, the procedure prescribed in rule 142(2B) may be followed. The taxpayer is required to file an application in FORM GST DRC-03A, in order to adjust the amount already paid via DRC-03, towards the demand created in the ELR-Part II, before filing the application for waiver under Section 128A in FORM GST SPL-02. (date of payment in DRC-03 will be considered and not date of adjustment using DRC-03A).
9. In case if the tax payable as per the notice/ statement/ order includes the amount demanded due to contravention of provisions of section 16(4), which is however not payable anymore due to the retrospective insertion of section 16(5) & 16(6), the amount of tax payable for eligibility of waiver of interest or penalty or both shall be calculated after deducting the amount, which is not payable anymore in terms of section 16(5) & 16(6).
10. Very Important: Where the taxpayer is deducting the amount of ITC which was denied on account of contravention of section 16(4), but which is now available as per retrospectively inserted provisions of section 16(5) & 16(6) of the CGST Act, he is NOT required to file an application for rectification of the same in terms of the special procedure notified under section 148 vide notification No. 22/2024-Central tax dated 8th October 2024.
11. Only ITC now available as per 16(5) & 16(6) shall be reduced and the tax officer scrutinizing such applications is also required to verify the same.
12. Proper Officer: For SPL-01 – PO will be PO to issue Notice u/s 73 and for SPL-02, PO shall be PO for recovery u/s 79.

13. In case of an appeal by the dept. officer against orders mentioned in clause (b) & (c), the waiver shall be conditional upon payment of the additional tax as determined in such appeal/revision, within 3 months from such order, otherwise Orders issued in SPL- 05/SPL-06 shall become void.
14. If any amount of interest and penalty is payable by the applicant on account of some demand pertaining to the period OTHER than the period mentioned in section 128A(1) or pertaining to demand of erroneous refund, the detail of the same shall be mentioned in GST SPL-05 or FORM GST SPL-06, as the case may be.

    Further, in such cases, an opportunity of personal hearing may be granted to the applicant, before issuance of order in FORM GST SPL-05 or FORM GST SPL-06.
15. The applicant is required to pay the amount of interest or penalty or both mentioned above in GST SPL-05 or GST SPL-06, within a period of 3 months from the date of issuance of the said order in FORM GST SPL-05 or FORM GST SPL-06, as the case may be.
16. In case where the said amount is not paid within the period of 3 months from the date of issuance of the said order in FORM GST SPL- 05 or FORM GST SPL-06, as the case may be, the waiver of interest or penalty or both under section 128A as per the order issued in FORM GST SPL-05 or FORM GST SPL-06, shall become void, as per sub-rule (17) of rule 164.

Demand and Adjudication

1. Guidelines for initiation of recovery proceedings before three months from the date of service of demand order- vide CBIC Instruction Circular No. 01/2024-GST (Dated 30.05.2024)

The CGST Act mandates that after the issue of demand notice, recovery proceedings should be initiated by the proper officer if an assessee fails to pay the due amount within three months from the date of the order as it is so interpreted from the act. In exceptional cases, to protect revenue interests, the proper officer may recover the dues in less than three months, for reasons to be recorded in writing. If the assessee does not pay within this period or within three months, the proper officer may proceed with recovery under Section 79(1) of the CGST Act.

CBIC had observed instances where some field formations initiated recovery before the three-month period without the necessary written justification. To ensure uniform implementation of the law, the Board clarified that, according to Circular No. 3/3/2017-GST dated July 5, 2017, the jurisdictional Deputy or Assistant Commissioner of Central Tax is responsible for recovery under Section 79 of the Act. For early recovery, the Deputy or Assistant Commissioner must place the matter before the jurisdictional Principal Commissioner/Commissioner of Central Tax with reasons. The Principal Commissioner/Commissioner must then record written reasons for requiring early payment and issue directions accordingly, considering the taxable person's financial health and business status. These directions should not be issued mechanically but only when necessary to safeguard revenue interests due to specific circumstances based on credible evidence. This is in line with the board's intention to balance the interests of revenue with the ease of doing business Therefore, this circular will be helpful for the cases where the department has arbitrarily initiated recovery proceedings in pursuance of the demand order before giving statutory period of three months.

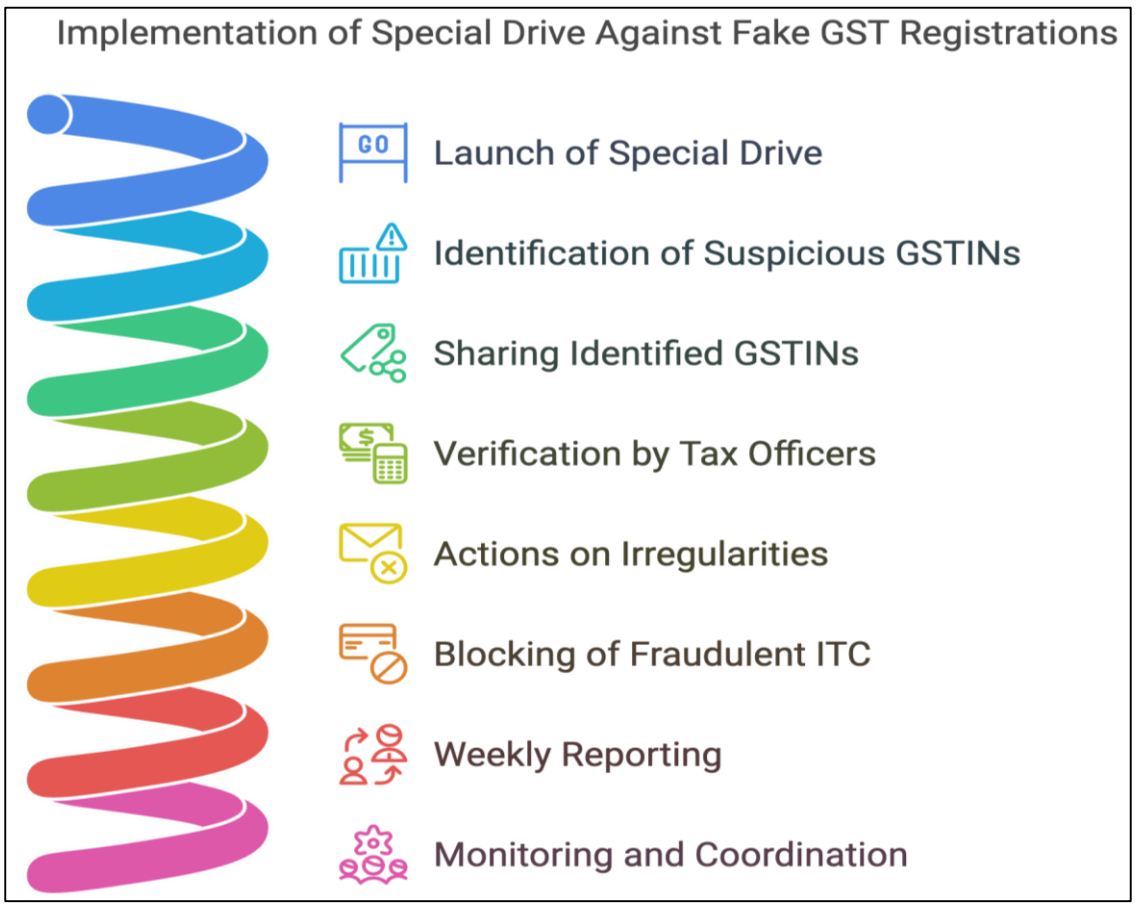
Practical Example:

1. **Scenario**:
   - A taxpayer receives a demand order on **March 1, 2024**, confirming a GST liability of ₹5,00,000.
   - The three-month statutory appeal period ends on **May 31, 2024**.
2. **Standard Case**:
   - The taxpayer does not appeal and does not pay by May 31, 2024.
   - Recovery proceedings begin on **June 1, 2024**, as per the standard rule.
3. **Exceptional Case**:
   - The proper officer finds evidence that the taxpayer is liquidating assets to evade payment.
   - The **Deputy Commissioner** presents this case to the **Principal Commissioner**, who records written reasons for initiating early recovery (e.g., on April 15, 2024).
   - Recovery proceedings are approved and begin before May 31, 2024, to protect revenue.

This circular ensures that recovery proceedings are conducted lawfully, with proper justification and in a taxpayer-friendly manner.

2. CBIC Launches Second All-India Drive Against Fake GST Registrations;

CBIC's Instruction No. 02/2024-GST (dated 12.08.2024) initiates a Special All-India Drive (August 16 to October 15, 2024) to detect and act against fake GSTINs. Building on the 2023 drive, this initiative focuses on safeguarding GST integrity, verifying suspicious registrations, and preventing revenue loss by ensuring only legitimate entities remain registered.



3. CBIC Instruction No. 03/2024-GST Dated 14th August 2024:

Application of Para 2(g) of Instruction No. 01/2023-24-GST (Inv.) Dated 30-03-2024 in Audit Matters

Objective:

The CBIC has directed that **Para 2(g)** of **Instruction No. 01/2023-24-GST (Inv.)** (aimed at ensuring ease of doing business) be applied in audit matters by CGST Audit (Pr.) Commissioners.

Key Points of Para 2(g):

1. **Scenarios Covered:**
   - When a CGST investigation or audit involves issues arising from:
   - Interpretation of the **CGST Act**, Rules, notifications, or circulars.
   - A **prevalent trade practice** in a sector/industry, leading to multiple interpretations and potential litigation or changes in practice.
   - Typically pertains to disputes over **non-payment or short payment of tax**.
2. **Procedure for Reference:**
   - The Zonal **(Pr.) Chief Commissioner** is required to:
   - Make a **self-contained reference** to the Board's **GST Policy Wing** or **Tax Research Unit (TRU)** for clarification.
   - Ensure this reference is made **before concluding the investigation** and, if feasible, well in advance of issuing a show cause notice (SCN).
   - Such references may also help in **ensuring uniformity** and **avoiding litigation** if the matter is presented to the GST Council.

Directive for Audit Proceedings:

1. **Audit Context:**
   - The above procedure applies when:
   - An issue under audit involves **interpretational disputes** or trade practices similar to those described in Para 2(g).
   - This includes **ongoing audit proceedings** where such scenarios arise.
2. **Responsibilities of CGST Audit (Pr.) Commissioner:**
   - Identify issues described in Para 2(g) during the audit process.
   - Notify the Zonal (Pr.) Chief Commissioner to initiate a reference to the **GST Policy Wing** or **TRU**.
3. **Objective During Audit:**
   - Facilitate **uniform interpretation** of GST provisions.
   - Reduce avoidable litigation and promote **ease of doing business**.

4. **Amendment in** rule 142 with effect from the 1st day of November, 2024, wherever section 73 or section 74 appears read as section 73 or section 74 or section 74A (vide Notification No. 20/2024 dated 8-10-2024).

5. **Procedures regarding amounts payable in respect of notice or order under the CGST Act Effective from: 10 July 2024 [Notification No. 12/2024 – Central Tax dated 10 July 2024]:**

(i) In rule 142 (2), for the words, letters and figures "he shall inform the proper officer of such payment in FORM GST DRC-03 and the proper officer shall issue an acknowledgement, accepting the payment made by the said person in FORM GST DRC– 04", the words, letters and figures "he shall inform the proper officer of such payment in FORM GST DRC-03 and an acknowledgement, in FORM GST DRC– 04 shall be made available to the person through the common portal electronically." shall be substituted;

(ii) In rule 142(2A), where the person referred to in sub-rule (1A) has made partial payment of the amount communicated to him or desires to file any submissions against the proposed liability, he may make such submission in Part B of Form GST DRC-01A [w.e.f. 10-7-2024, ", and thereafter the proper officer may issue an intimation in Part-C of FORM GST DRC-01A, accepting the payment or the submissions or both, as the case may be, made by the said person" shall be inserted];

(iii) New sub-rule 2B inserted in Rule 142:

Where an amount of tax, interest, penalty or any other amount payable by a person under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, has been paid by the said person through an intimation in FORM GST DRC-03 under sub-rule (2), instead of crediting the said amount in the electronic liability register in FORM GST PMT –01 against the debit entry created for the said demand, the said person may file an application in FORM GST DRC-03A electronically on the common portal, and the amount so paid and intimated through FORM GST DRC-03 shall be credited in Electronic Liability Register in FORM GST PMT –01 against the debit entry created for the said demand, as if the said payment was made towards the said demand on the date of such intimation made through FORM GST DRC-03:

Provided that where an order in FORM GST DRC-05 has been issued in terms of sub-rule (3) concluding the proceedings, in respect of the payment of an amount in FORM GST DRC-03, an application in FORM GST DRC-03A cannot be filed by the said person in respect of the said payment.

Example: Application of Sub-Rule 2B of Rule 142 under CGST Rules

Scenario:

M/s ABC Pvt. Ltd., a taxpayer under GST, was issued a show cause notice under Section 73 of the CGST Act, 2017, for short payment of tax amounting to ₹5,00,000. To settle the demand and avoid further penalties, the company voluntarily deposited ₹5,00,000 through **FORM GST DRC-03** on 15th December 2024, without waiting for an official order to be issued.

Later, the department issued a demand order on 20th December 2024, creating a debit entry in the **Electronic Liability Register (FORM GST PMT-01)**. However, the tax amount already paid by M/s ABC Pvt. Ltd. was not automatically adjusted against this debit entry.

Steps Taken by M/s ABC Pvt. Ltd.:

1. To adjust the ₹5,00,000 already paid through **FORM GST DRC-03** against the demand reflected in **FORM GST PMT-01**, M/s ABC Pvt. Ltd. filed an application electronically in **FORM GST DRC-03A** on the GST portal.
2. This application requested that the previously paid amount be credited in the **Electronic Liability Register (PMT-01)** against the debit created for the demand.

Outcome:

- Upon submission of FORM GST DRC-03A, the GST portal verified and credited the amount of ₹5,00,000 already paid in **FORM GST DRC-03** to the **Electronic Liability Register (PMT-01)** as if the payment was made on the date of intimation (15th December 2024).
- M/s ABC Pvt. Ltd. avoided making duplicate payments and complied with the provisions.

Important Note (Proviso to Sub-Rule 2B):

If the tax officer had issued **FORM GST DRC-05** (concluding the proceedings after payment via FORM GST DRC-03), M/s ABC Pvt. Ltd. **could not file FORM GST DRC-03A** for the said payment. Thus, FORM GST DRC-03A is only applicable when proceedings are still ongoing, and no conclusion order has been issued.

6. Rule 142(3) Revised w.e.f. 1-11-2024 (vide Notification No. 20/2024 C.T. Dated 8-10-2024]

"Where the person chargeable with tax makes payment of tax and interest under sub-section (8) of section 73 or under clause (ii) of sub-section (8) of section 74A, as the case may be, or tax, interest and penalty under sub-section (8) of section 74 or under clause (ii) of sub-section (9) of section 74A, as the case may be, within the period specified therein, or where the person concerned makes payment of the amount referred to in sub-section (1) of section 129 within seven days of the notice issued under subsection (3) of that Section but before the issuance of order under the said sub-section (3), he shall intimate the proper officer of such payment in FORM GST DRC-03 and the proper officer shall issue an intimation in FORM GST DRC-05 concluding the proceedings in respect of the said notice.";

Example: Detention and Payment of Penalty Under Section 129

Scenario:

M/s DEF Traders is transporting taxable goods worth ₹10,00,000 from Maharashtra to Gujarat. During transit, the vehicle is intercepted by GST officers, and the consignment is detained due to the absence of a valid **e-way bill**.

Details of the Case:

1. **Goods Value**: ₹10,00,000
2. **Applicable GST Rate**: 18%
   - **Tax Payable on Goods** = ₹10,00,000 × 18% = ₹1,80,000
3. **Penalty** (as per Section 129):

- If **owner comes forward**: **200% of the tax payable**
- If **owner does not come forward**: **Higher of 50% of the value of goods or 200% of the tax payable**

Case 1: Owner Comes Forward

1. **Penalty Calculation**:
   - **200% of the tax payable** = 200% × ₹1,80,000 = ₹3,60,000
2. **Total Amount Payable**:
   - Penalty: ₹3,60,000
3. **Steps Taken by M/s DEF Traders**:
   - M/s DEF Traders makes the payment of ₹3,60,000 through **FORM GST DRC-03** within **7 days** of the notice issued in **FORM GST MOV-07**.
   - They intimate the proper officer about the payment by filing **FORM GST DRC-03**.
   - Upon verification, the officer issues **FORM GST MOV-05** (release of goods) and **FORM GST DRC-05** (concluding proceedings).
4. **Outcome**:
   - Goods and vehicle are released promptly.
   - Proceedings are concluded without further action.

7. Amendment of section 73:

Determination of tax [**w.e.f. 1-11-2024, F.A. 2024, dated 16-8-2024,** pertaining to the period upto Financial Year 2023-24 shall be inserted], not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful-misstatement or suppression of facts.

After sub-section (11) of section 73, the following sub-section shall be inserted (**w.e.f. 1-11-2024, F.A. 2024, dated 16-8-2024)**, namely:—

"Section 73(12) The provisions of this section shall be applicable for determination of tax pertaining to the period upto Financial Year 2023-24.".

8. Amendment of section 74:

Section 74. Determination of tax [**w.e.f. 1-11-2024, F.A. 2024, dated 16-8-2024,** pertaining to the period upto Financial Year 2023-24] not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any willful-misstatement or suppression of facts.-

(ii) after sub-section (11) and before Explanation 1, the following sub-section shall be inserted **w.e.f. 1-11-2024, F.A. 2024, dated 16-8-2024,**, namely:–

"section 74(12) The provisions of this section shall be applicable for determination of tax pertaining to the period upto Financial Year 2023-24.";

9. For the purpose of section 73 or 74 the Explanation 2 shall be omitted [w.e.f. 1-11-2024, F.A. 2024, dated 16-8-2024]:-

Explanation 2.—For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.

10. Merging of 73 and 74 into 74A and consequential amendments (w.e.f. 1-11-2024, vide Notification No. 20/2024, dt. 8-10-2024):

a) A common section 74A has been inserted for all demand and recovery provisions in lieu of Section 73 and 74 from Financial Year 2024-25.

b) Common time limit for all evasion and non-evasion cases has been prescribed to be 42 months from the due date for furnishing of annual return for the relevant FY.

c) The time limit for passing of order would be 12 months from the date of issue of notice. Where the Commissioner or any officer not below the rank of JC records the reasons for delay in writing before the expiry, the said period can be extended by a further 6 months.

d) The time limit for reduced penalty for all cases has been increased from 30 days of notice /order to 60 days of notice / order

e) Consequential amendments for insertion of 74A in the Rules wherever required has been carried out. (in place of section 73 & 74).

11. Insertion of new section 74A (w.e.f. 1-11-2024, F.A. 2024, dated 16-8-2024.)

After section 74 of the Central Goods and Services Tax Act, the following section shall be inserted, namely:-

"74A. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason pertaining to Financial Year 2024-25 onwards.

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder:

Provided that no notice shall be issued, if the tax which has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised in a financial year is less than one thousand rupees.

(2) The proper officer shall issue the notice under subsection (1) within forty-two months from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within forty- two months from the date of erroneous refund.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under subsection (1), on the person chargeable with tax.

(4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The penalty in case where any tax which has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised,—

(i) for any reason, other than the reason of fraud or any wilful- misstatement or suppression of facts to evade tax, shall be equivalent to ten per cent. of tax due from such person or ten thousand rupees, whichever is higher;

(ii) for the reason of fraud or any wilful-misstatement or suppression of facts to evade tax shall be equivalent to the tax due from such person.

(6) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

(7) The proper officer shall issue the order under subsection (6) within twelve months from the date of issuance of notice specified in sub-section (2):

Provided that where the proper officer is not able to issue the order within the specified period, the Commissioner, or an officer authorised by the Commissioner senior in rank to the proper officer but not below the rank of Joint Commissioner of Central Tax, may, having regard to the reasons for delay in issuance of the order under sub-section (6), to be recorded in writing, before the expiry of the specified period, extend the said period further by a maximum of six months.

(8) The person chargeable with tax where any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, may, —

(i) before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment, and the proper officer, on receipt of such information shall not serve any notice under sub-section (1) or the statement under sub-section (3), as the case may be, in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder;

(ii) pay the said tax along with interest payable under section 50 within sixty days of issue of show cause notice, and on doing so, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The person chargeable with tax, where any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, may,—

(i) before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment, and the proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder;

(ii) pay the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent. of such tax within sixty days of issue of the notice, and on doing so, all proceedings in respect of the said notice shall be deemed to be concluded;

(iii) pay the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within sixty days of communication of the order, and ondoing so, all proceedings in respect of the said notice shall be deemed to be concluded.

(10) Where the proper officer is of the opinion that the amount paid under clause (i) of sub-section (8) or clause (i) of sub-section (9) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in subsection (1) in respect of such amount which falls short of the amount actually payable.

(11) Notwithstanding anything contained in clause (i) or clause (ii) of sub-section (8), penalty under clause (i) of subsection (5) shall be payable where any amount of self assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax.

(12) The provisions of this section shall be applicable for determination of tax pertaining to the Financial Year 2024- 25 onwards.

Explanation 1: For the purposes of this section,—

(i) the expression "all proceedings in respect of the said notice" shall not include proceedings under section 132;

(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under this section, the proceedings against all the persons liable to pay penalty under sections 122 and 125 are deemed to be concluded.

Explanation 2: For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.

1. Key Highlights of Section 74A and Section 50

Section 74A (Effective 1-11-2024)

This new section consolidates and simplifies the process of determining tax liabilities, including cases of:

- Tax not paid or short paid,
- Erroneous refund,
- Input Tax Credit (ITC) wrongly availed or utilized.

Key Features:

1. **Uniform Time Limits**:
   - **Notice Issuance**: Within **42 months** from the due date of furnishing the annual return or from the date of erroneous refund.
   - **Order Issuance**: Within **12 months** from the date of notice, extendable by **6 months**.
2. **Penalty Provisions**:
   - **Without Fraud**: Higher of **10% of tax due** or **₹10,000**.
   - **With Fraud**: Penalty escalates based on the stage of payment:
     - **15% of tax** (voluntary payment before notice).
     - **25% of tax** (payment within 60 days of notice).
     - **50% of tax** (payment within 60 days of order).

Section 50 (Interest on Delayed Payment)

1. **Interest Rates**:
   - **Delayed Payment of Tax**: 18% per annum.
   - **Wrongful ITC Utilization**: 24% per annum.
2. **Clarification on Electronic Cash Ledger (ECL)**:
   - Interest is payable **only on the portion of tax that is not available in the ECL on or before the due date**.

2. Detailed Practical Examples

Example 1: Non-Fraudulent Case (Short Payment of Tax)

Scenario:

- **Taxpayer**: XYZ Pvt. Ltd.
- **Tax Period**: May 2025.
- **Tax Liability**: ₹5,00,000.
- **Tax Paid**: ₹4,50,000 (short payment of ₹50,000).
- **Due Date for GSTR-3B**: June 20, 2025.

- **Actual Payment Date**: August 10, 2025.
- **Notice Issued**: None (voluntary payment before detection).

Step-by-Step Process:

1. **Interest Calculation**:
   - **Shortfall**: ₹50,000.
   - **Interest Rate**: 18% per annum.
   - **Delay**: From **June 21, 2025** to **August 10, 2025** = **51 days**.
   - **Interest**:
     ₹50,000 × 18% × (51 ÷ 365) = ₹1,258.90.
2. **Penalty**:
   - Since the taxpayer voluntarily paid the shortfall along with interest **before any notice was issued**, no penalty is applicable as per **Section 74A(8)(i)**.

Final Payment Breakdown:

- **Tax**: ₹50,000.
- **Interest**: ₹1,258.90.
- **Penalty**: Nil.

If Notice Was Issued:

If the notice had been issued:

- Taxpayer must pay ₹50,000 (tax) + ₹1,258.90 (interest) within **60 days**.
- **No penalty** would still apply if payment is made within this period under **Section 74A(8)(ii) (i.e.** within sixty days of issue of show cause notice).

Example 2: Fraudulent Case (Wrongful ITC Utilization)

Scenario:

- **Taxpayer**: ABC Ltd.
- **Financial Year**: 2024-25.
- **Wrongful ITC Claimed**: ₹3,00,000 using fake invoices.
- **Detection Date**: September 15, 2026.

Step-by-Step Process:

1. **Interest Calculation**:
   - **Wrongful ITC**: ₹3,00,000.
   - **Interest Rate**: 24% per annum.
   - **Period**: From **April 1, 2024**, to **September 15, 2026** = **898 days**.
   - **Interest**:
     ₹3,00,000 × 24% × (898 ÷ 365) = ₹1,77,480.
2. **Penalty**:
   - Since the case involves fraud, the penalty depends on the stage of payment:
   - **Before Notice Issuance (Subsection 9(i))**:
   - Penalty = 15% of ₹3,00,000 = ₹45,000.
   - **Within 60 Days of Notice (Subsection 9(ii))**:
   - Penalty = 25% of ₹3,00,000 = ₹75,000.
   - **Post-Order (Subsection 9(iii))**:
   - Penalty = 50% of ₹3,00,000 = ₹1,50,000.

Final Payment Scenarios:

1. **Voluntary Payment Before Notice**:
   - Tax: ₹3,00,000.
   - Interest: ₹1,77,480.
   - Penalty: ₹45,000.
   - **Total**: ₹5,22,480.
2. **Payment Within 60 Days of Notice**:
   - Tax: ₹3,00,000.
   - Interest: ₹1,77,480.
   - Penalty: ₹75,000.
   - **Total**: ₹5,52,480.
3. **Post-Order Payment**:
   - Tax: ₹3,00,000.
   - Interest: ₹1,77,480.
   - Penalty: ₹1,50,000.
   - **Total**: ₹6,27,480.

3. Summary of Compliance Scenarios

Type of Case	Interest Rate	Penalty Before Notice	Penalty Within 60 Days of Notice	Penalty After Order
Non-Fraudulent	18%	Nil	Nil	10% of Tax or ₹10,000 (whichever is higher)
Fraudulent	24%	15% of Tax	25% of Tax	50% of Tax

4. Key Learnings

1. **Timely Compliance Reduces Costs**:
   - Voluntary payment avoids penalties entirely in non-fraudulent cases and minimizes penalties in fraudulent cases.
2. **Awareness of Time Limits**:
   - Notice must be issued within **42 months**, and orders must be issued within **12 months of the notice**, extendable by **6 months**.
3. **Proper ITC Utilization**:
   - Avoid wrongful ITC claims as they attract **higher interest (24%)** and **steep penalties (up to 50% of tax due)** in cases of fraud.
4. **Electronic Cash Ledger (ECL)**:
   - Maintain sufficient balance in ECL to minimize interest liabilities on late tax payments.

12. General provisions relating to determination of tax [Section 75 of the CGST Act, 2017]

1) **Period of Stay**: Period of stay on issuance of SCN ordered by Court or Tribunal to be excluded for determining limitation specified in section 73(2) and section 73(10) or section 74(2) and section 74(10)(i.e. 3 years or 5 years) [or section 74A(2) and section 74A(7) inserted w.e.f. 1-11-2024, F.A. 2024 dated 16-8-2024].

2) **Deemed Notice:** Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under sub-section (1) of section 74 is not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against

the person to whom the notice was issued, the proper officer shall determine the tax payable by such person, deeming as if the notice were issued under sub-section (1) of section 73.

Amendment: after sub-section (2), the following sub-section shall be inserted w.e.f. 1-11-2024, F.A. 2024 dated 16-8-2024, namely: —

"(2A) Where any Appellate Authority or Appellate Tribunal or court concludes that the penalty under clause (ii) of sub-section (5) of section 74A is not sustainable for the reason that the charges of fraud or any wilful misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the penalty shall be payable by such person, under clause (i) of sub-section (5) of section 74A.";

3) **Order issued in pursuance of the Court:** Where any order is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court, such order shall be issued within **two years** from the date of communication of the said direction.

4) **Opportunity of hearing**: An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.

5) **Adjournment not more than 3 times**: The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing:

Provided that no such adjournment shall be granted for more than **three times** to a person during the proceedings.

6) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

7) **Order should not be passed more than the demand mentioned in SCN**: The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice.

8) **Court findings final:** Where the Appellate Authority or Appellate Tribunal or court modifies the amount of tax determined by the proper officer, the amount of interest and penalty shall stand modified accordingly, taking into account the amount of tax so modified.

9) **Interest mandatory:** The interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability.

10) **Time barred Orders:** The adjudication proceedings shall be deemed to be concluded, if the order is not issued within three years as provided for in sub-section (10) of section 73 or within five years as provided for in sub-section (10) of section 74 [or in sub-section (7) of section 74A inserted w.e.f. 1-11-2024, F.A. 2024 dated 16-8-2024].

11) An issue on which the Appellate Authority or the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the Appellate Tribunal or the High Court or the Supreme Court against such decision of the Appellate Authority or the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Authority and that of the Appellate Tribunal or the date of decision of the Appellate Tribunal and that of the High Court or the date of the decision of the High Court and that of the Supreme Court shall be excluded in computing the period referred to in sub-section (10) of section 73 or sub-section (10) of section 74 [or in sub-section (7) of section 74A inserted w.e.f. 1-11-2024, F.A. 2024 dated 16-8-2024] where proceedings are initiated by way of issue of a show cause notice under the said sections.

12) Notwithstanding anything contained in section 73 or section 74, [or in sub-section (7) of section 74A inserted w.e.f. 1-11-2024, F.A. 2024 dated 16-8-2024] where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79 (i.e. recovery of tax from various modes).

13) Where any penalty is imposed under section 73 or section 74, [or in sub-section (7) of section 74A inserted w.e.f. 1-11-2024, F.A. 2024 dated 16-8-2024] no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.

13. Summary of the CBIC Instruction No. 04/2024-GST (CBIC) dated 04-10-2024, has announced systemic revisions to ease the mapping and de-mapping of officers on the GSTN portal.:

1. **Purpose:**
   - Streamline mapping and de-mapping of GST officers on the GSTN portal to improve efficiency, reduce errors, and prevent delays in assessments, audits, and compliance tasks.
2. **Key Issues:**
   - Delayed de-mapping of officers after transfers led to errors, including fraudulent GST refunds.
   - Mismatches between officer postings on the portal and actual jurisdictions disrupted workflow and compliance processes.
3. **Recommendations by Directorate General of Vigilance (DGoV):**
   - Officers must be promptly de-mapped from their positions on the GSTN portal after completing GFR-33.

     Note: The Directorate General of Vigilance (DGoV) reported cases where officers who were not promptly de-mapped from the GSTN portal after being relieved from their duties engaged in fraudulent activities, including the sanctioning of illegal GST refunds.
   - Supervisory officers (Joint/Additional Commissioners) should monitor the process, ensuring compliance.
   - Compliance reports should be submitted to jurisdictional Commissioners within a set timeframe.
4. **Action Required:**
   - Principal Commissioners/Commissioners must ensure strict adherence to these instructions and assign clear accountability for mapping and de-mapping officers on the GSTN portal.

These measures aim to enhance transparency, prevent misuse, and improve GST administration efficiency.

14. Rule 121: Recovery of credit wrongly availed:

The amount credited under sub-rule (3) of rule 117 [i.e. transitional provisions] may be verified and [proceedings under section 73 or section 74 or section 74A, as the case may be, inserted w.e.f. 1-11-2024, NT No. 20/2024, dated 8-10-2024] shall be initiated in respect of any credit wrongly availed, whether wholly or partly.

Assessment

1. Amendment of section 61 (Scrutiny of Returns). - In section 61 of the Central Goods and Services Tax Act, in sub-section (3), after the words and figures "section 73
or section 74", the words, figures and letter "or section 74A" shall be inserted.

- In case no satisfactory explanation is furnished by the registered person in FORM GST ASMT-11 within a period of thirty days of being informed by the proper officer or such further period as may be permitted by him or where the registered person, after accepting the discrepancies, fails to pay the tax, interest and any other amount arising from such discrepancies, the proper officer, may initiate appropriate action including those under section 65 or section 66 or section 67, or proceed to determine the tax and other dues under section 73 or section 74 (or section 74A shall be inserted w.e.f. 1-11-2024, F.A. 2024 dated 16-8-2024).

2. Amendment of Section 62. Assessment of non-filers of returns.-

(1) Notwithstanding anything to the contrary contained in section 73 or section 74 [or section 74A inserted w.e.f. 1-11-2024, F.A. 2024 Dt. 16-8-2024], where a registered person fails to furnish the return under section 39 or section 45, even after the service of a notice under section 46, 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 and issue an assessment order within a period of five 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.

3. Amendment of Section 63. Assessment of unregistered persons.-

Notwithstanding anything to the contrary contained in section 73 or section 74 [or section 74A inserted w.e.f. 1-11-2024, F.A. 2024 Dt. 16-8-2024] where a taxable person fails to obtain registration even though liable to do so or whose registration has been cancelled under sub-section (2) of section 29 but who was liable to pay tax, the proper officer may proceed to assess the tax liability of such taxable person to the best of his judgment for the relevant tax periods and issue an assessment order within a period of five 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:

Provided that no such assessment order shall be passed without giving the person an opportunity of being heard.

4. Amendment of Section 64. Summary assessment in certain special cases. –

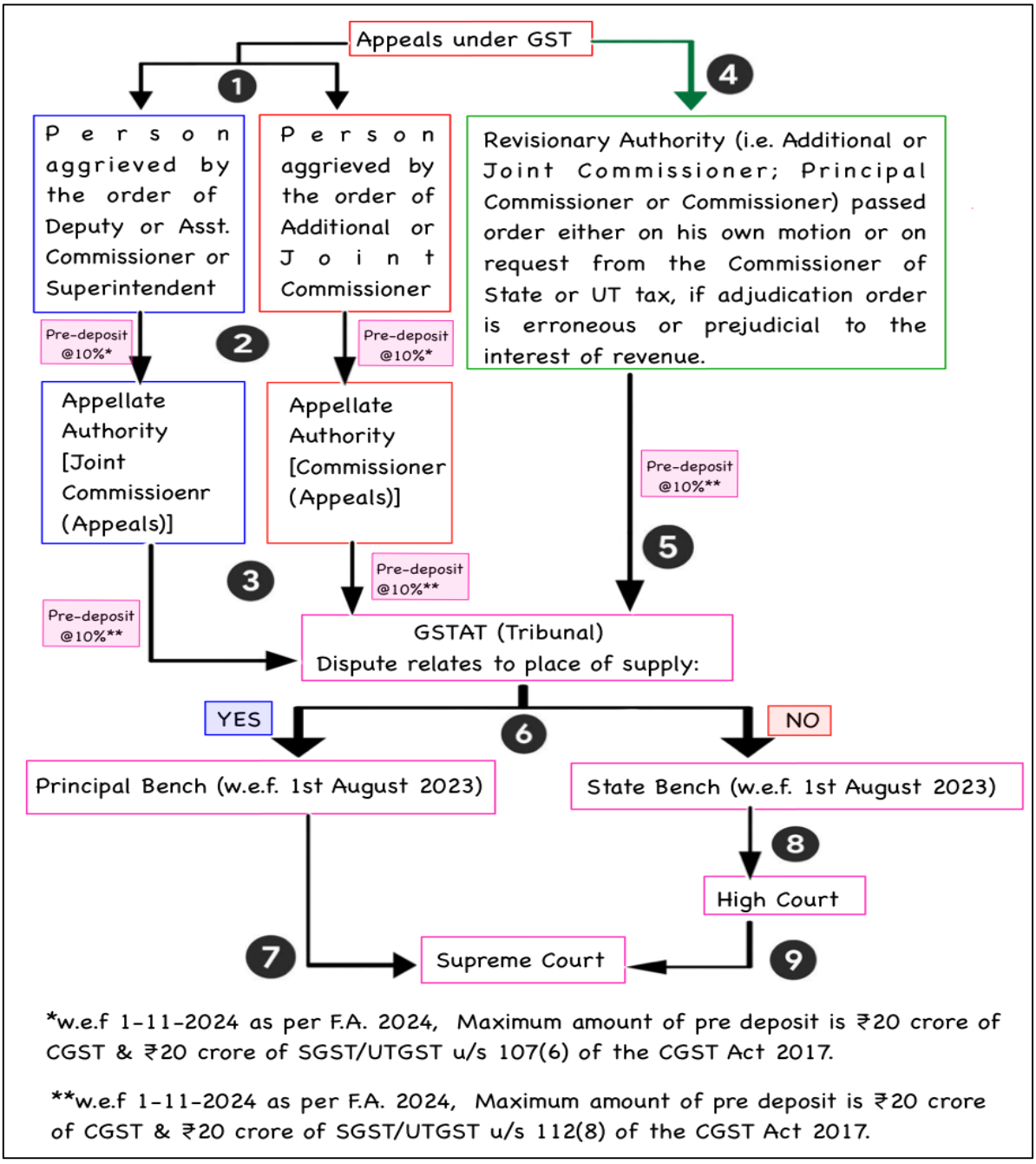
(1) The proper officer may, on any evidence showing a tax liability of a person coming to his notice, with the previous permission of Additional Commissioner or Joint Commissioner, proceed to assess the tax liability of such person to protect the interest of revenue and issue an assessment order, if he has sufficient grounds to believe that any delay in doing so may adversely affect the interest of revenue:

Provided that where the taxable person to whom the liability pertains is not ascertainable and such liability pertains to supply of goods, the person in charge of such goods shall be deemed to be the taxable person liable to be assessed and liable to pay tax and any other amount due under this section.

(2) On an application made by the taxable person within thirty days from the date of receipt of order passed under sub-section (1) or on his own motion, if the Additional Commissioner or Joint Commissioner considers that such order is erroneous, he may withdraw such order and follow the procedure laid down in section 73 or section 74 [or section 74A inserted w.e.f. 1-11-2024, F.A. 2024 Dt. 16-8-2024.]

Appeals and Revisions under GST

1. Hierarchy of appeals under GST



2. Mandatory pre-deposit for entertaining appeal

As per section 107(6) of the CGST Act, 2017 No appeal shall be filed under sub-section (1) of Section 107 i.e. Appeals to Appellate Authority ('AA'), unless the appellant has paid—

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and

(b) a sum equal to **10%** of the remaining amount of tax in dispute arising from the said order, (w.e.f. 1-2-2019 subject to a maximum of ₹25 crore (₹20 crore, w.e.f. 1-11-2024 as per F.A. 2024) in relation to which the appeal has been filed.

3. As per section 112(8) of the CGST Act, 2017

No appeal shall be filed under sub-section (1) of Section 112 i.e. Appeals to Appellate Tribunal, unless the appellant has paid—

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and

(b) a sum equal to 20% (10% w.e.f. 1-11-2024 as per Finance Act, 2024) of the remaining amount of tax in dispute, in addition to the amount paid under sub-section (6) of section 107, arising from the said order, (w.e.f. 1-2-2019 subject to a maximum of ₹50 crore (w.e.f. 1-11-2024 as per F.A. 2024, ₹20 crore) in relation to which the appeal has been filed.

With effect from 01.02.2019, section 20 of the IGST Act has also been amended vide the IGST (Amendment) Act, 2018 to provide that where the appeal is to be filed before the Appellate Authority or the Appellate Tribunal, the maximum amount payable shall be ₹50 crore and ₹100 crore rupees (**w.e.f. 1-11-2024 as per F.A. 2024, maximum amount of ₹40 crore shall be payable for each appeal to be filed before the Appellate Authority or the Appellate Tribunal**.) respectively. Section 20 of the IGST Act specifies the provisions of the CGST Act which are applicable in case of IGST Act as well.

4. Amendment of Section 107(11): The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against but shall not refer the case back to the adjudicating authority that passed the said decision or order:

Provided that an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order:

Provided further that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73 or section 74 [**or section 74A** shall be inserted w.e.f. 1-11-2024, F.A 2024 dated 16-8-2024].

5. Section 109 – Constitution of Appellate Tribunal and Benches thereof

(1) The Government shall, on the recommendations of the Council, by notification, establish with effect from such date as may be specified therein, an Appellate Tribunal known as the Goods and Services Tax Appellate Tribunal for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority [the words, "or for conducting an examination or adjudicating the cases referred to in sub-section (2) of section 171, if so notified under the said section" shall be inserted w.e.f. 27-9-2024, F.A. 2024, dated 16-8-2024];

(2) The jurisdiction, powers and authority conferred on the Appellate Tribunal shall be exercised by the Principal Bench and the State Benches constituted under sub-section (3) and sub-section (4).

(3) The Government shall, by notification, constitute a Principal Bench of the Appellate Tribunal at New Delhi which shall consist of the President, a judicial Member, a Technical member (Centre) and a Technical Member (State).

(4) On the request of the State, the Government may, by notification, constitute such number of State Benches at such places and with such jurisdiction as may be recommended by the Council, which shall consist of two Judicial Members, a Technical Member (Centre) and a Technical Member (State).

(5) The Principal Bench and the State Bench shall hear appeals against the orders passed by the Appellate Authority or the Revisional Authority:

Provided that the cases in which any one of the issues involved relates to the place of supply, shall be heard only by the Principal Bench.

Amendment in sub-section (5), after the proviso, the following provisos shall be inserted w.e.f. 27-9-2024, F.A. 2024, dated 16-8-2024], namely:—

"Provided further that the matters referred to in subsection (2) of section 171 shall be examined or adjudicated only by the Principal Bench:

Provided also that the Government may, on the recommendations of the Council, notify other cases or class of cases which shall be heard only by the Principal Bench.";

(6) The President shall, from time to time, by a general or special order, distribute the business of the Appellate Tribunal among the Benches and may transfer cases from one Bench to another.

Amendment in sub-section (6), for the words "The President", the words, brackets and figure "Subject to the provisions of subsection (5), the President" shall be substituted w.e.f. 27-9-2024, F.A. 2024, dated 16-8-2024.

(7) 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.

(8) Appeals, where the tax or input tax credit involved or the amount of fine, fee or penalty determined in any order appealed against, does not exceed fifty lakh rupees and which does not involve any question of law may, with the approval of the President, and subject to such conditions as may be prescribed on the recommendations of the Council, be heard by a single Member, and in all other cases, shall be heard together by one Judicial Member and one Technical Member.

(9) If, after hearing the case, the Members differ in their opinion on any point or points, such Member shall state the point or points on which they differ, and the President shall refer such case for hearing,-

(a)where the appeal was originally heard by Members of a State Bench, to another Member of a State Bench within the State or, where no such other State Bench is available within the State, to a Member of a State Bench in another State;

(b)where the appeal was originally heard by Members of the Principal Bench, to another Member from the Principal Bench or, where no such other Member is available, to a Member of any State Bench, and such point or points shall be decided according to the majority opinion including the opinion of the Members who first heard the case.

(10) The Government may, in consultation with the President, for the administrative efficiency, transfer Members from one Bench to another Bench:

Provided that 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 the State Government.

(11) No act or proceedings of the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of the existence of any vacancy or defect in the constitution of the Appellate Tribunal.".

6. Section 112. Appeals to Appellate Tribunal:-

(1) Any person aggrieved by an order passed against him under section 107 or section 108 of this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to the Appellate Tribunal against such order within three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal [or the date, as may

be notified by the Government, on the recommendations of the Council, for filing appeal before the Appellate Tribunal under this Act, whichever is later inserted w.e.f. 1-8-2024, F.A. 2024 dt. 16-8-2024.]

(2) The Appellate Tribunal may, in its discretion, refuse to admit any such appeal where the tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined by such order, does not exceed fifty thousand rupees.

(3) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or Commissioner of Union territory tax, call for and examine the record of any order passed by the Appellate Authority or the Revisional Authority under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act for the purpose of satisfying himself as to the legality or propriety of the said order and may, by order, direct any officer subordinate to him to apply to the Appellate Tribunal within six months from the date on which the said order has been passed [or the date, as may be notified by the Government, on the recommendations of the Council, for the purpose of filing application before the Appellate Tribunal under this Act, whichever is later inserted w.e.f. 1-8-2024, F.A. 2024 dt. 16-8-2024], for determination of such points arising out of the said order as may be specified by the Commissioner in his order.

(4) Where in pursuance of an order under sub-section (3) the authorised officer makes an application to the Appellate Tribunal, such application shall be dealt with by the Appellate Tribunal as if it were an appeal made against the order under sub-section (11) of section 107 or under sub-section (1) of section 108 and the provisions of this Act shall apply to such application, as they apply in relation to appeals filed under sub-section (1).

(5) On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, within forty-five days of the receipt of notice, a memorandum of cross-objections, verified in the prescribed manner, against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal, as if it were an appeal presented within the time specified in sub-section (1).

(6) The Appellate Tribunal may admit an appeal within three months after the expiry of the period referred to in sub-section (1) [or permit the filing of an application within three months after the expiry of the period referred to in sub-section (3) inserted w.e.f. 1-8-2024, F.A. 2024 dt. 16-8-2024], or permit the filing of a memorandum of cross- objections within forty-five days after the expiry of the period referred to in sub-section (5) if it is satisfied that there was sufficient cause for not presenting it within that period.

(7) An appeal to the Appellate Tribunal shall be in such form, verified in such manner and shall be accompanied by such fee, as may be prescribed.

(8) No appeal shall be filed under sub-section (1), unless the appellant has paid-

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and

(b) a sum equal to [ten per cent inserted w.e.f. 1-11-2024, F.A. 2024 dt. 16-8-2024]. of the remaining amount of tax in dispute, in addition to the amount paid under sub-section (6) of section 107, arising from the said order, [subject to a maximum of twenty crore rupees inserted w.e.f. 1-11-2024, F.A. 2024 dt. 16-8-2024], in relation to which the appeal has been filed.

(9) Where the appellant has paid the amount as per sub-section (8), the recovery proceedings for the balance amount shall be deemed to be stayed till the disposal of the appeal.

(10) Every application made before the Appellate Tribunal,-
(a) in an appeal for rectification of error or for any other purpose; or
(b) for restoration of an appeal or an application,
shall be accompanied by such fees as may be prescribed.

7. NOTIFICATION No. 18/2024 – Central Tax: The notification derives its authority from Section 171(2), Section 109(1), and the second proviso of Section 109(5) of the CGST Act, 2017. It empowers the Principal Bench of the Appellate Tribunal, which is constituted under Section 109(3) of the Act, to oversee compliance with anti-profiteering provisions. This notification will come into effect on **October 1, 2024.**
The Tribunal is tasked with examining whether:

- The input tax credits availed by registered persons (taxpayers) have been used to reduce the cost of goods or services provided.
- The benefits of any tax rate reduction have been passed on to consumers by lowering the prices of goods or services.

8. Reduction of Government Litigation – fixing monetary limits for filing appeals or applications by the Department before GSTAT, High Courts and Supreme Court (vide CBIC Circular No. 207/1/2024-GST dated 26th June 2024):

The Board, on recommendations of the GST Council, fixes the following monetary limits below which appeal or application or Special Leave Petition, as the case may be, shall not be filed by the Central Tax Officers before GSTAT, High Court and Supreme Court under the provisions of CGST Act, subject to few exclusions.

Appellate Forum	Monetary Limit (amount involved in ₹)
GSTAT	20,00,000/-
High Court	1,00,00,000/-
Supreme Court	2,00,00,000/-

While determining whether a case falls within the above monetary limits or not, the following principles are to be considered:

i. Where the dispute pertains to demand of tax (with or without penalty and/or interest), the aggregate of the amount of tax in dispute (including CGST, SGST/UTGST, IGST and Compensation Cess) only shall be considered while applying the monetary limit for filing appeal.
ii. Where the dispute pertains to demand of interest only, the amount of interest shall be considered for applying the monetary limit for filing appeal.
iii. Where the dispute pertains to imposition of penalty only, the amount of penalty shall be considered for applying the monetary limit for filing appeal.
iv. Where the dispute pertains to imposition of late fee only, the amount of late fee shall be considered for applying the monetary limit for filing appeal.

v. Where the dispute pertains to demand of interest, penalty and/or late fee (without involving any disputed tax amount), the aggregate of amount of interest, penalty and late fee shall be considered for applying the monetary limit for filing appeal.

vi. Where the dispute pertains to erroneous refund, the amount of refund in dispute (including CGST, SGST/UTGST, IGST and Compensation Cess) shall be considered for deciding whether appeal needs to be filed or not.

vii. Monetary limit shall be applied on the disputed amount of tax/interest/penalty/late fee, as the case may be, in respect of which appeal or application is contemplated to be filed in a case.

viii. In a composite order which disposes more than one appeal/demand notice, the monetary limits shall be applicable on the total amount of tax/interest/penalty/late fee, as the case may be, and not on the amount involved in individual appeal or demand notice.

However, these limits will not be applicable in the following cases:

1. Where any provision of the CGST Act or SGST/UTGST Act or IGST Act or GST (Compensation to States) Act has been held to be ultra vires to the Constitution of India; or
2. Where any Rules or regulations made under CGST Act or SGST/UTGST Act or IGST Act or GST (Compensation to States) Act have been held to be ultra vires the parent Act; or
3. Where any order, notification, instruction, or circular issued by the Government or the Board has been held to be ultra vires of the CGST Act or SGST/UTGST Act or IGST Act or GST (Compensation to States) Actor the Rules made thereunder; or
4. Where the matter is related to –
   a) Valuation of goods or services
   b) Classification of goods or services
   c) Refunds
   d) Place of Supply
   e) Any other issue
5. Which is recurring in nature and/or involves interpretation of the provisions of the Act /the Rules/ notification/circular/order/instruction etc; or
6. Where strictures/adverse comments have been passed and/or cost has been imposed against the Government/Department or their officers; or
7. Any other case or class of cases, where in the opinion of the Board, it is necessary to contest in the interest of justice or revenue.

Examples Applying Monetary Limits for Appeals under GST Law

Example 1: Appeal to GSTAT

- **Dispute**: A taxpayer is assessed an additional GST liability of ₹18,00,000 (₹12,00,000 tax + ₹3,00,000 interest + ₹3,00,000 penalty).
- **Monetary Limit for GSTAT**: ₹20,00,000.
- **Action**:
  - The **total disputed amount is ₹18,00,000**, which is below the monetary limit for GSTAT appeals.
  - **Decision**: The Central Tax Officer **cannot file an appeal** before GSTAT.

Example 2: Composite Order

- **Dispute**: A composite order covers multiple demand notices:
- **Demand Notice 1**: ₹10,00,000 (tax)
- **Demand Notice 2**: ₹25,00,000 (tax)
- **Demand Notice 3**: ₹5,00,000 (interest and penalty).
- **Total Disputed Amount**: ₹40,00,000.
- **Monetary Limit for GSTAT**: ₹20,00,000.
- **Action**:
    - Since the **aggregate amount exceeds ₹20,00,000**, an appeal **can be filed** before GSTAT.

Example 3: Appeal to High Court

- **Dispute**: A refund of ₹85,00,000 is claimed by a taxpayer but rejected by the Department.
- **Monetary Limit for High Court**: ₹1,00,00,000.
- **Action**:
    - The disputed refund amount is **₹85,00,000**, which is below the monetary threshold for High Court appeals.
    - **Decision**: The Department **cannot file an appeal** before the High Court.

Example 4: Exclusions – Valuation of Goods

- **Dispute**: A taxpayer disputes the valuation of imported goods, which impacts GST liability of ₹15,00,000.
- **Monetary Limit for GSTAT**: ₹20,00,000.
- **Exclusion**: Valuation disputes are excluded from the monetary threshold.
- **Action**:
    - Despite the amount being below ₹20,00,000, the Department **may file an appeal** to GSTAT due to the exclusion for valuation issues.

Example 5: Adverse Court Comments

- **Dispute**: A High Court order involving a GST liability of ₹75,00,000 includes **adverse remarks** against the Department.
- **Monetary Limit for High Court**: ₹1,00,00,000.
- **Exclusion**: Cases involving adverse comments against the Department are excluded from monetary limits.
- **Action**:
    - The Department **may file an appeal** to the Supreme Court to contest the adverse remarks, even though the disputed amount is below ₹2,00,00,000.

9. Rule 110: Appeal to the Appellate Tribunal [w.e.f. 10 July 2024 [Notification No. 12/2024 – Central Tax dated 10 July 2024]:

- **Filing of Appeals:**
    - Appeals to the Appellate Tribunal under **Section 112(1)** must be filed electronically in **FORM GST APL-05**, with relevant documents.
    - **Provisional acknowledgment** is issued immediately upon filing.

- Manual filing is allowed only if approved by the **Registrar** via a special or general order, with similar acknowledgment provisions.
- **Memorandum of Cross-Objections:**
  - Cross-objections under **Section 112(5)** must be filed electronically in **FORM GST APL-06**.
  - Manual filing of cross-objections is permitted if allowed by the **Registrar**, with applicable conditions.
- **Signing Requirements:**
  - Appeals (FORM GST APL-05) and memorandums of cross-objections (FORM GST APL-06) must be **signed** as per the procedure specified in **Rule 26**:
    1. **Digital Signature Certificate (DSC):** Mandatory for companies and LLPs.
    2. **Electronic Verification Code (EVC):** Permitted for individuals and proprietorships.

If appeals or cross-objections are submitted without valid signatures (digital or electronic), they will be considered incomplete and **not processed further** until rectified.

- **Acknowledgment and Filing Date:**
  - If the order appealed against is uploaded on the portal, a **final acknowledgment (FORM GST APL-02)** is issued after verifying documents and removing defects.
  - The **provisional acknowledgment date** is considered the date of filing the appeal.
  - If the order is not uploaded, a **self-certified copy** must be submitted or uploaded within **7 days**.
  - Submission beyond 7 days results in the **date of submission** being treated as the filing date.
- **Fee Structure:**
  - **₹1,000 for every ₹1 lakh** of disputed tax or ITC, subject to:
  - Minimum Fee: **₹5,000**.
  - Maximum Fee: **₹25,000**.
  - Flat fee of **₹5,000** for appeals involving no tax, interest, fine, or penalty.
- **No Fee for Rectification Applications:**
  - No fee is required for applications seeking rectification of errors under **Section 112(10)**.
- **Filing Completion:**
  - Appeals are considered officially **filed** only when the **final acknowledgment (FORM GST APL-02)** is issued.

Examples for Rule 110: Appeal to the Appellate Tribunal

Example 1: Filing an Appeal Electronically

- **Scenario:**
  - ABC Pvt. Ltd. disagrees with a GST demand order of ₹35,00,000 and decides to appeal to the Appellate Tribunal.
- **Steps Taken by ABC Pvt. Ltd.:**
  1. ABC logs into the GST portal and files **FORM GST APL-05** electronically.
  2. The form is digitally signed using the **company's DSC**, ensuring compliance with Rule 26.
  3. A **provisional acknowledgment** is issued immediately upon submission.
  4. Since the appellate order is already uploaded on the GST portal, no additional documents are required.
  5. After verification, a **final acknowledgment (FORM GST APL-02)** is issued, confirming the appeal is officially filed.
  6. **Fee Paid:** ₹25,000 (₹1,000 for every ₹1,00,000 of disputed tax, capped at ₹25,000).

Example 2: Filing an Appeal Manually with Registrar Approval

- **Scenario:**
  - DEF Ltd. faces technical issues and cannot file an appeal electronically against a tax demand order of ₹8,00,000. The company requests permission from the Registrar for manual filing.
- **Steps Taken by DEF Ltd.:**
  1. DEF submits **FORM GST APL-05** manually with the required documents, ensuring the form is **physically signed by the authorized person**.
  2. The **Registrar approves** manual filing and issues a **provisional acknowledgment**.
  3. After verifying the documents, a **final acknowledgment (FORM GST APL-02)** is issued, confirming the appeal is filed.
  4. **Fee Paid:** ₹8,000 (₹1,000 per ₹1,00,000 of disputed tax).

Example 3: Filing a Memorandum of Cross-Objections

- **Scenario:**
  - XYZ Ltd. receives an appeal filed by the GST Department challenging the appellate authority's decision. XYZ wishes to file a cross-objection.
- **Steps Taken by XYZ Ltd.:**
  1. XYZ files **FORM GST APL-06** electronically on the GST portal, signing it with the company's **DSC**.
  2. A **provisional acknowledgment** is issued immediately upon submission.
  3. The **Registrar verifies** the documents and issues a **final acknowledgment**, confirming that the cross-objection is filed.
  4. **Fee Paid:** ₹5,000 (minimum fee, Provided that the fees for filing of an appeal in respect of an order not involving any demand of tax, interest, fine, fee or penalty shall be five thousand rupees).

Example 4: Submission of Self-Certified Copy Due to Non-Uploaded Order

- **Scenario:**
  - PQR Traders files an appeal for ₹12,00,000 against an order that is **not uploaded on the GST portal**. The appeal is filed electronically on **10th August 2024**.
- **Steps Taken by PQR Traders:**
  1. On **10th August 2024**, PQR submits **FORM GST APL-05** electronically on the GST portal, signing it using the **proprietor's EVC**.
  2. A **provisional acknowledgment** is issued immediately on **10th August 2024**.
  3. Since the order is not uploaded on the GST portal, PQR is required to submit a **self-certified copy** of the order within **7 days**.
  4. PQR submits the self-certified copy on **15th August 2024**.
  5. After verification, a **final acknowledgment (FORM GST APL-02)** is issued on **16th August 2024**.
  6. **Date of Filing of Appeal: 10th August 2024** (as the self-certified copy was submitted within 7 days).
  7. **Fee Paid:** ₹12,000 (₹1,000 per ₹1,00,000 of disputed tax).

Example 5: Delayed Submission of Self-Certified Copy

- **Scenario:**
  - MNO Pvt. Ltd. files an appeal for ₹5,00,000 against a GST demand order. The appellate order is **not uploaded on the GST portal**, and MNO delays submitting the self-certified copy by **10 days**. The appeal is initially filed on **10th August 2024**.
- **Steps Taken by MNO Pvt. Ltd.:**
  1. On **10th August 2024**, MNO files **FORM GST APL-05** electronically on the GST portal, signing it with the **company's DSC**.
  2. A **provisional acknowledgment** is issued immediately on **10th August 2024**.
  3. The self-certified copy of the order is submitted on **20th August 2024**, which is beyond the 7-day deadline.
  4. After verification, a **final acknowledgment (FORM GST APL-02)** is issued on **21st August 2024**.
  5. **Date of Filing of Appeal: 20th August 2024** (as the self-certified copy was submitted after 7 days).
  6. **Fee Paid:** ₹5,000 (minimum fee).

Example 6: Filing an Appeal with No Tax Dispute

- **Scenario:**
  - GHI Enterprises contests a late fee of ₹1,500 imposed by the appellate authority.
- **Steps Taken by GHI Enterprises:**
  1. GHI files **FORM GST APL-05** electronically using the **proprietor's EVC**.
  2. A **provisional acknowledgment** is issued immediately.
  3. After verification, a **final acknowledgment** is issued.
  4. Since the dispute involves no tax, a **flat fee of ₹5,000** is paid.

Example 7: Rectification Applications (No Fee Required)

- **Scenario:**
  - DEF Enterprises identifies a typographical error in the demand order issued by the Appellate Tribunal and applies for rectification.
- **Steps Taken by DEF Enterprises:**
  1. DEF files a rectification application electronically under **Section 112(10)**.
  2. The application is signed using the company's **DSC**.
  3. No fee is charged for filing the rectification application.
  4. The tribunal corrects the error and issues a revised order.

10. Rule 111: Application to the Appellate Tribunal by the Department [w.e.f. 10 July 2024 [Notification No. 12/2024 – Central Tax dated 10 July 2024]:

1. Filing of Applications

- Applications to the Appellate Tribunal under **Section 112(3)** must be filed electronically using **FORM GST APL-07**, along with relevant documents.
- **Provisional acknowledgment** is issued immediately upon filing electronically.
- Manual filing of applications is permitted only if the **Registrar** allows it through a special or general order, subject to conditions and restrictions.

2. **Filing of Memorandum of Cross-Objections**
   - Memorandums of cross-objections under **Section 112(5)** must be filed electronically in **FORM GST APL-06**.
   - Manual filing of cross-objections is permitted if allowed by the **Registrar** under a special or general order.
3. **Signing Requirements**
   - Applications and memorandums of cross-objections must be **signed** as per the procedure specified in **Rule 26** of the CGST Rules:
     - **Digital Signature Certificate (DSC):** Required for companies and LLPs.
     - **Electronic Verification Code (EVC):** Allowed for individuals and proprietorships.
4. **Acknowledgment and Filing Date**
   - If the order appealed against is uploaded on the GST portal:
     - A **final acknowledgment (FORM GST APL-02)** is issued after rectifying any defects.
     - The **date of the provisional acknowledgment** is considered the **date of filing the application**.
   - If the order is not uploaded on the GST portal:
     - The appellant must submit or upload a **self-certified copy** of the order within **7 days** of filing **FORM GST APL-07**.
     - Submission beyond **7 days** will result in the **date of submission** being treated as the **date of filing the application**.
5. **Explanation**
   - **Explanation 1:** The application is considered officially filed only after the issuance of the **final acknowledgment (FORM GST APL-02)**.
     - **Explanation 2:** For Rules 110 and 111:
       - The term **Registrar** includes:
       - Registrar.
       - Joint Registrar.
       - Deputy Registrar.
       - Assistant Registrar.
       - Appointed by the Government for these purposes.

Example 1: Filing an Application Electronically by GST Department

- **Scenario:**
  - The GST Department disagrees with an appellate authority's order favoring XYZ Pvt. Ltd., in a case involving a GST demand of ₹25,00,000. The department decides to file an application with the Appellate Tribunal.
- **Steps Taken by GST Department:**
  1. The authorized officer of the GST Department logs into the GST portal and files **FORM GST APL-07** electronically, attaching the appellate order and supporting documents.
  2. The application is signed using the **DSC of the authorized officer**, as required by **Rule 26**.
  3. A **provisional acknowledgment** is issued immediately on **1st September 2024**.
  4. Since the appellate order is already uploaded on the GST portal, no additional documents are required. A **final acknowledgment (FORM GST APL-02)** is issued on **3rd September 2024**, confirming the application is officially filed.

5. **Date of Filing: 1st September 2024** (provisional acknowledgment date).
6. **Fee Paid:** nil (no fee is required to pay for departmental appeal).

Example 2: Delayed Submission of Self-Certified Copy

- **Scenario:**
  - The GST Department files an application for ₹10,00,000 upon directions issued by the Revisionary Authority. The appellate order is not uploaded on the GST portal, and the department delays submitting the self-certified copy by **10 days**.
- **Steps Taken by GST Department:**
  1. The authorized officer files **FORM GST APL-07** electronically on **1st November 2024**, receiving a **provisional acknowledgment** immediately.
  2. The department submits the **self-certified copy** of the order on **11th November 2024**, which exceeds the 7-day deadline.
  3. The **date of submission (11th November 2024)** is treated as the **date of filing the application**.
  4. After verification, a **final acknowledgment (FORM GST APL-02)** is issued on **13th November 2024**.
  5. **Date of Filing: 11th November 2024**.

11. Rule 113A Withdrawal of Appeal or Application filed before the Appellate Tribunal [w.e.f. 10 July 2024 [Notification No. 12/2024 – Central Tax dated 10 July 2024]:

The appellant may, at any time before the issuance of the order under sub-section (1) of section 113, in respect of any appeal filed in FORM GST APL-05 or any application filed in FORM GST APL-07, file an application for withdrawal of the said appeal or the application, as the case may be, by filing an application in FORM GST APL-05/07W:

Provided that where the final acknowledgment in FORM GST APL-02 has been issued, the withdrawal of the said appeal or the application, as the case may be, would be subject to the approval of the Appellate Tribunal and such application for withdrawal of the appeal or application, shall be decided by the Appellate Tribunal within **fifteen days** of filing of such application:

Provided further that any fresh appeal or application, as the case may be, filed by the appellant pursuant to such withdrawal shall be filed within the time limit specified in sub-section (1) or subsection (3) of section 112, as the case may be.

Here are **professional examples** illustrating the provisions under **Rule 113A: Withdrawal of Appeal or Application filed before the Appellate Tribunal**:

Example 1: Withdrawal of Appeal Before Issuance of Final Acknowledgment

- **Scenario:**
  - ABC Pvt. Ltd. files an appeal in **FORM GST APL-05** against a GST demand of ₹10,00,000. Before the Appellate Tribunal issues its final acknowledgment (FORM GST APL-02), ABC decides to withdraw the appeal due to an amicable settlement with the tax authorities.
- **Steps Taken by ABC Pvt. Ltd.:**
  1. ABC files a withdrawal application in **FORM GST APL-05W** on **10th October 2024**, stating the reasons for withdrawal.
  2. Since the **final acknowledgment (FORM GST APL-02)** has not been issued, the appeal is withdrawn automatically without requiring approval from the Appellate Tribunal.
  3. ABC is free to resolve the matter directly with the tax authorities or file a fresh appeal later, if needed.

Example 2: Withdrawal of Application After Issuance of Final Acknowledgment

- **Scenario:**
  - The GST Department files an application in **FORM GST APL-07** against DEF Enterprises, disputing a GST refund order of ₹5,00,000. The **final acknowledgment (FORM GST APL-02)** is issued on **1st November 2024**. Before the Appellate Tribunal issues its final order, the department decides to withdraw the application.
- **Steps Taken by GST Department:**
  1. The authorized officer files a withdrawal application in **FORM GST APL-07W** on **10th November 2024**, explaining the decision to withdraw the application.
  2. Since the **final acknowledgment** has already been issued, the withdrawal request requires **approval from the Appellate Tribunal**.
  3. The Appellate Tribunal reviews the request and approves the withdrawal on **20th November 2024** (within the 15-day decision timeline).
  4. The application is officially withdrawn, and the department may file a fresh application within the prescribed timelines, if necessary.

Example 3: Filing a Fresh Appeal After Withdrawal

- **Scenario:**
  - GHI Ltd. files an appeal in **FORM GST APL-05** against a penalty of ₹2,00,000. After filing, GHI realizes that critical documents were missing, making the case weak. GHI decides to withdraw the appeal and re-file it with the correct documentation.
- **Steps Taken by GHI Ltd.:**
  1. GHI files a withdrawal application in **FORM GST APL-05W** on **15th December 2024**, citing missing documents as the reason.
  2. The withdrawal is approved by the Appellate Tribunal since the **final acknowledgment (FORM GST APL-02)** was issued earlier.
  3. GHI re-files the appeal in **FORM GST APL-05** on **20th December 2024**, ensuring all documents are attached.
  4. The fresh appeal is filed within the **time limit specified in Section 112(1)**.

Example 4: Withdrawal Beyond the Time Limits for Fresh Filing

- **Scenario:**
  - JKL Enterprises files an appeal in **FORM GST APL-05** on **1st October 2024**. After the issuance of the final acknowledgment (FORM GST APL-02), JKL decides to withdraw the appeal on **15th October 2024** due to internal strategy changes. However, JKL misses the deadline to file a fresh appeal.
- **Steps Taken by JKL Enterprises:**
  1. JKL files a withdrawal application in **FORM GST APL-05W**, which is approved by the Appellate Tribunal on **20th October 2024**.
  2. Due to internal delays, JKL fails to file a fresh appeal within the time limits prescribed under **Section 112(1)**.
  3. As a result, the right to appeal is forfeited, and the original appellate authority's order remains binding.

12. Circular No. 224/18/2024-GST, issued by the Central Board of Indirect Taxes and Customs (CBIC) on July 11, 2024, provides guidelines for the recovery of outstanding dues in cases where the first appellate authority has confirmed a demand, but the GST Appellate Tribunal is not yet operational:

Key Provisions of the Circular:

1. **Inability to File Appeals:**
   - Taxpayers cannot currently file appeals against orders from the first appellate authority under Section 112 of the CGST Act due to the non-constitution of the GST Appellate Tribunal.
2. **Recovery Proceedings:**
   - Section 78 of the CGST Act mandates the initiation of recovery proceedings if the amount specified in an order is not paid within three months from the date of service of the order.
3. **Stay on Recovery:**
   - Filing an appeal with the requisite pre-deposit under Section 112(8) stays recovery proceedings for the remaining amount until the appeal is resolved, as per Section 112(9).
   - Due to the Tribunal's non-operation, taxpayers cannot file such appeals or make the associated pre-deposits, leading to uncertainty regarding the stay on recovery proceedings.
4. **Payment of Pre-Deposit Amount:**
   - Taxpayers intending to appeal can make a payment equivalent to the pre-deposit amount required under Section 112(8).
   - This payment can be made through the GST portal by navigating to **Services >> Ledgers >> Payment towards demand**.
   - The payment will be reflected in the Electronic Liability Register (ELL) Part-II, where the taxpayer can select the relevant outstanding demand order.
   - The deposited amount will be mapped against the selected order, reducing the outstanding demand accordingly.
5. **Effect of Pre-Deposit Payment:**
   - Once the pre-deposit amount is paid and mapped to the specific demand, recovery proceedings for the remaining balance should be **deferred** until the Appellate Tribunal becomes operational and the taxpayer can formally file an appeal.
6. **Adjustment of Inadvertent Payments:**
   - If a taxpayer has inadvertently paid an amount intended for the demand through **FORM GST DRC-03** under the 'voluntary' or 'others' category, this amount can be adjusted against the pre-deposit required for filing an appeal before the appellate authority under Section 107 or the Appellate Tribunal under Section 112.

Practical Examples Illustrating the Circular:

Example 1: Payment of Pre-Deposit to Defer Recovery Proceedings

- **Scenario:**
  - XYZ Pvt. Ltd. received an order from the first appellate authority confirming a GST demand of ₹10,00,000.
  - The company intends to appeal to the GST Appellate Tribunal, but it is currently non-operational.
  - To prevent recovery proceedings, XYZ decides to make a pre-deposit payment.

- **Steps Taken by XYZ Pvt. Ltd.:**
  1. **Access the GST Portal:**
     - Log in to the GST portal.
     - Navigate to **Services >> Ledgers >> Payment towards demand**.
  2. **Make the Pre-Deposit Payment:**
     - In the **Electronic Liability Register (ELL) Part-II**, select the relevant outstanding demand order.
     - Calculate the pre-deposit amount:
       - As per Section 112(8), the pre-deposit required is 10% (w.e.f. 1-11-2024 as per Finance Act, 2024) of the disputed tax amount.
       - For a demand of ₹10,00,000, the pre-deposit would be ₹1,00,000.
       - Make a payment of ₹1,00,000, which gets mapped against the selected order, reducing the outstanding demand accordingly.
  3. **Outcome:**
     - With the pre-deposit payment made and mapped, recovery proceedings for the remaining ₹9,00,000 are deferred until the Appellate Tribunal becomes operational and XYZ can formally file an appeal.

Example 2: Adjustment of Inadvertent Payment Made Through FORM GST DRC-03

- **Scenario:**
  - ABC Enterprises intended to pay a pre-deposit for an upcoming appeal but inadvertently made a payment of ₹1,50,000 through **FORM GST DRC-03** under the 'voluntary' category.
  - ABC wishes to adjust this payment against the pre-deposit required for filing an appeal once the Appellate Tribunal is operational.
- **Steps Taken by ABC Enterprises:**
  1. **Await FORM GST DRC-03A Availability:**
     - Currently, the functionality for **FORM GST DRC-03A** is not available on the GST portal.
     - ABC should monitor updates for when this form becomes available.
  2. **Intimate the Proper Officer:**
     - In the interim, ABC should inform the jurisdictional proper officer about the inadvertent payment and express the intent to adjust it against the pre-deposit for the anticipated appeal.
  3. **File FORM GST DRC-03A (Once Available):**
     - Upon the availability of **FORM GST DRC-03A** on the portal, ABC should:
     - File the form electronically, indicating the details of the payment made through **FORM GST DRC-03**.
     - Request the adjustment of the ₹1,50,000 against the pre-deposit required for the appeal.
  4. **Outcome:**
     - The amount paid inadvertently will be treated as if it was paid towards the demand on the date of intimation through **FORM GST DRC-03A**.
     - This adjustment will be considered as the pre-deposit required under Section 112(8)

Advance Ruling

1. Advance ruling to be void [Section 104 of CGST Act, 2017]

(1) Where the Authority or the Appellate Authority finds that advance ruling pronounced by it under sub-section (4) of section 98 or under sub-section (1) of section 101 has been obtained by the applicant or the appellant by

- **fraud or**
- **suppression of material facts or**
- **misrepresentation of facts,**

it may, by order, declare **such ruling to be void ab-initio** and thereupon all the provisions of this Act or the rules made there under shall apply to the applicant or the appellant as if such advance ruling had never been made (but excluding the period when advance ruling was given and upto the period when the order declaring it to be void is issued).

Provided that no order shall be passed under this sub-section unless an opportunity of being heard has been given to the applicant or the appellant.

Explanation.
-The period beginning with the date of such advance ruling and ending with the date of order under this sub-section shall be excluded while computing the period specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74 **[or sub-sections (2) and (7) of section 74A** shall be inserted w.e.f. 1-11-2024, F.A. 2024 dated 16-8-2024].

Anti-Profiteering

1. Amendment of section 171(2): the following proviso and Explanation shall be inserted [w.e.f. 27-9-2024, F.A.2024, dated 16-8-2024], namely: —
'Provided that the Government may by notification, on the recommendations of the Council, specify the date from which the said Authority shall not accept any request for examination as to whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

Explanation 1.—For the purposes of this sub-section, "request for examination" shall mean the written application filed by an applicant requesting for examination as to whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.';

Explanation 2.—For the purposes of this section, the expression "Authority" shall include the "Appellate Tribunal".

NOTIFICATION No. 18/2024 – Central Tax: The notification derives its authority from Section 171(2), Section 109(1), and the second proviso of Section 109(5) of the CGST Act, 2017. It empowers the Principal Bench of the Appellate Tribunal, which is constituted under Section 109(3) of the Act, to oversee compliance with anti-profiteering provisions. This notification will come into effect on October 1, 2024.
The Tribunal is tasked with examining whether:

- The input tax credits availed by registered persons (taxpayers) have been used to reduce the cost of goods or services provided.
- The benefits of any tax rate reduction have been passed on to consumers by lowering the prices of goods or services.

Notification No. 19/2024 – Central Tax: the Central Government, on the recommendations of the Goods and Services Tax Council, hereby appoints the 1st day of April, 2025 as the date from which the Authority referred to in the said section shall not accept any request for examination as to whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by that registered person.

Customs Law

Basic Concepts

1. Exported goods may come back for repairs and re-export

Sometimes exported goods come back for repairs into India, in such situation the re-imported goods can avail exemption from paying duty subject to satisfaction of some conditions.

Conditions:

- The re-importation is for repairs or reconditioning only
- The time limit for re-import should be within 3 years from the date of export Notification 39/2024 Customs dt. 23rd July 2024, w.e.f. 24-7-2024, increases the time-period for duty-free re-import of goods exported under warranty from 3 years to 5 years, further extendable by 2 years. In case of export to Nepal, such time limit is 10 years.
- The time limit for re-export is 6 months from the date of import [**Notification 38/2024 Customs** dt. 23rd July 2024, w.e.f. 24-7-2024, The duration for re-exportation of articles imported for repairs has been increased from 6 months to 1 year]. (extended upto 12 months).
- The importer at the time of importation executes a Bond.
- The re-importation is for reprocessing, refining or re-making then the time limit for re-importation should be within 1 year from the date of exportation.

Baggage Duty

2. Import of Samples

In the International trade it is considered often necessary that samples of the goods manufactured in one country be sent to another country for being shown or demonstrated for Customer appreciation. There are duty free imports of genuine commercial samples into the country for smooth flow of trade.

The commercial samples are basically specimens of goods that may be imported by the traders or representatives of manufacturers. However, goods which are prohibited under Foreign Trade (Development and Regulation) Act, 1992 are not allowed to be imported as samples (i.e. wild animals, wild birds and parts of wild animals, arms and ammunitions and so on).

Samples can be imported by the traders, industry, individuals, research institutes and so on. These samples can also be brought by the persons as part of their personal baggage or through port or in courier.

The current limit of `1 lakh per annum for duty free import of samples in terms of NT 154/94-Customs, dated 13.7.1994 is enhanced to **`3 lakh per** annum (w.e.f. 24-7-2024, vide Notification No. 29/2024-Customs dated 23-7-2024).

Foreign Trade Policy

1. Notification No. 50/2024-Customs (N.T.), dated 19th July 2024, extends the **Remission of Duties and Taxes on Exported Products (RoDTEP)** scheme to include exports by units located in **Special Economic Zones (SEZs)**. This amendment modifies the earlier Notification No. 24/2023-Customs (N.T.), dated 1st April 2023, to broaden the scope of RoDTEP benefits.

Before the Amendment:

- An SEZ unit exporting goods was not eligible for RoDTEP benefits.

After the Amendment:

- The same SEZ unit, exporting goods with shipping bills presented on or after 1st July 2024, can now claim RoDTEP benefits, reducing their overall tax burden and enhancing export profitability.