



# SUPPLEMENTARY\_PAPER\_19\_FOR\_JUNE\_2023 TERM OF EXAMINATION\_SYLLABUS\_2022

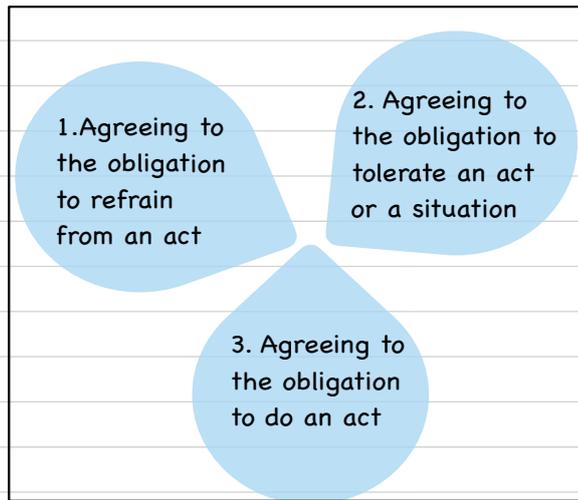
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## Goods and Services Tax

## Scope of Supply

Para (e) of Schedule II of CGST Act, 2017, Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; specifically declared to be a supply of service:

The said expression has following three limbs:  
(CBIC Circular No. 178/10/2022 GST Dt. 03.08.2022)



Situation	Examples
1. Agreeing to the obligation to refrain from an act	<p>1. Non-compete agreements, where one party agrees not to compete with the other party in a product, service or geographical area against a consideration paid by the other party.</p> <p>2. A builder refraining from constructing more than a certain number of floors, even though permitted to do so by the municipal authorities, against a compensation paid by the neighbouring housing project, which wants to protect its sunlight, or</p> <p>3. An industrial unit refraining from manufacturing activity during certain hours against an agreed compensation paid by a neighbouring school, which wants to avoid noise during those hours.</p>



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## Scope of Supply

Situation	Examples
2. Agreeing to the obligation to tolerate an act or a situation	<p>1. A shopkeeper allowing a hawker to operate from the common pavement in front of his shop against a monthly payment by the hawker, or</p> <p>2. An Residential Welfare Association (RWA) tolerating the use of loud speakers for early morning prayers by a school located in the colony subject to the school paying an agreed sum to the RWA as compensation.</p>
3. Agreeing to the obligation to do an act	<p>An industrial unit agrees to install equipment for zero emission/discharge at the behest of the RWA of a neighbouring residential complex against a consideration paid by such RWA, even though the emission/discharge from the industrial unit was within permissible limits and there was no legal obligation upon the industrial unit to do so.</p>

Issue	Clarification
1. Liquidated damages:	<p>1. Where the amount paid as 'liquidated damages' is an amount paid only to compensate for injury, loss or damage suffered by the aggrieved party due to breach of the contract and there is <b>no agreement, express or implied</b>, by the aggrieved party receiving the liquidated damages, to refrain from or tolerate an act or to do anything for the party paying the liquidated damages, in such cases liquidated damages are mere a flow of money from the party who causes breach of the contract to the party who suffers loss or damage due to such breach. Such payments do not constitute consideration for a supply and are not taxable.</p>



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## Scope of Supply

	<p>2. Amounts paid for acceptance of late payment, early termination of lease or for pre-payment of loan or the amounts forfeited on cancellation of service by the customer as contemplated by the contract as part of commercial terms agreed to by the parties, constitute consideration for the supply of a facility, namely, of acceptance of late payment, early termination of a lease agreement, of pre-payment of loan and of making arrangements for the intended supply by the tour operator respectively.</p> <p>Therefore, such payments, even though referred to as fine or penalty, are actually payments that amount to consideration for supply, and are subject to GST, in cases where the principal supply is taxable. Since these supplies are ancillary to the principal supply for which the contract is signed, they shall be eligible to be assessed as the principal supply. Hence, such payments will not be taxable if the principal supply is exempt.</p>
2. Compensation for cancellation of coal blocks	<p>There was no contract/ agreement between the prior allottees and the Government that the previous allottees shall agree to or tolerate cancellation of the coal blocks allocated to them if the Government pays compensation to them. The compensation was given to them for such cancellation, not under a contract between the allottees and the Government, but under the provisions of the statute and in pursuance of the Supreme Court Order. Therefore, the compensation paid for cancellation of coal blocks pursuant to the order of the Supreme Court in the above case was not taxable.</p>



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## Scope of Supply

3. Cheque dishonour fine/ penalty	The fine or penalty that the supplier or a banker imposes, for dishonour of a cheque, is a penalty imposed not for tolerating the act or situation but a fine, or penalty imposed for not tolerating, penalizing and thereby deterring and discouraging such an act or situation. Therefore, cheque dishonor fine or penalty is not a consideration for any service and not taxable.
4. Penalty imposed for violation of laws	Penalties imposed for violation of laws cannot be regarded as consideration charged by Government or a Local Authority for tolerating violation of laws.  Fines and penalty chargeable by Government or a local authority imposed for violation of a statute, bye-laws, rules or regulations are not leviable to GST.
5. Forfeiture of salary or payment of bond amount in the event of the employee leaving the employment before the minimum agreed period.	The employee does not get anything in return from the employer against payment of such amounts. Therefore, such amounts recovered by the employer are not taxable as consideration for the service of agreeing to tolerate an act or a situation.
6. Late payment surcharge or fee	The facility of accepting late payments with interest or late payment fee, fine or penalty is a facility granted by supplier naturally bundled with the main supply. Since it is ancillary to and naturally bundled with the principal supply it should be assessed at the same rate as the principal supply.



# SUPPLEMENTARY PAPER 19 FOR JUNE 2023 TERM OF EXAMINATION SYLLABUS 2022

## Scope of Supply

<p>7. Fixed Capacity charges for Power</p>	<p>The minimum fixed charges/capacity charges and the variable/energy charges are charged for sale of electricity and are not taxable as electricity is exempt from GST. Power purchase agreements which ensure assured supply of power to State Electricity Boards/DISCOMS are ancillary arrangements, the contract is essentially for supply of electricity.</p>
<p>8. Cancellation charges</p>	<p>For example, cancellation charges of railway tickets for a class would attract GST at the same rate as applicable to the class of travel.</p> <p>The amount forfeited in the case of non-refundable ticket for air travel or security deposit, or earnest money forfeited in case of the customer failing to avail the travel, tour operator or hotel accommodation service or such other intended supplies should be assessed at the same rate as applicable to the service contract, say air transport or tour operator service, or other such services.</p> <p>However, forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer or such forfeiture by Government or local authority in the event of a successful bidder failing to act after winning the bid for allotment of natural resources, is a mere flow of money, as the buyer or the successful bidder does not get anything in return for such forfeiture of earnest money. Such payments being merely flow of money are not a consideration for any supply and are not taxable.</p>

## Scope of Supply

Question: Whether various perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are liable for GST?	Answer: Perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST (CBIC Circular No. 172/04/2022 GSTdt. 6th July 2022).
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### 5. Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.



#### CBIC Circular No. 177/09/2022 TRU dt 03.08.2022:

It has been clarified that sale of a land after some development such as levelling, laying down of drainage lines, water lines, electricity lines, etc., is also a sale of land and is covered by Sr. No. 5 of Schedule III and thus, does not attract GST.

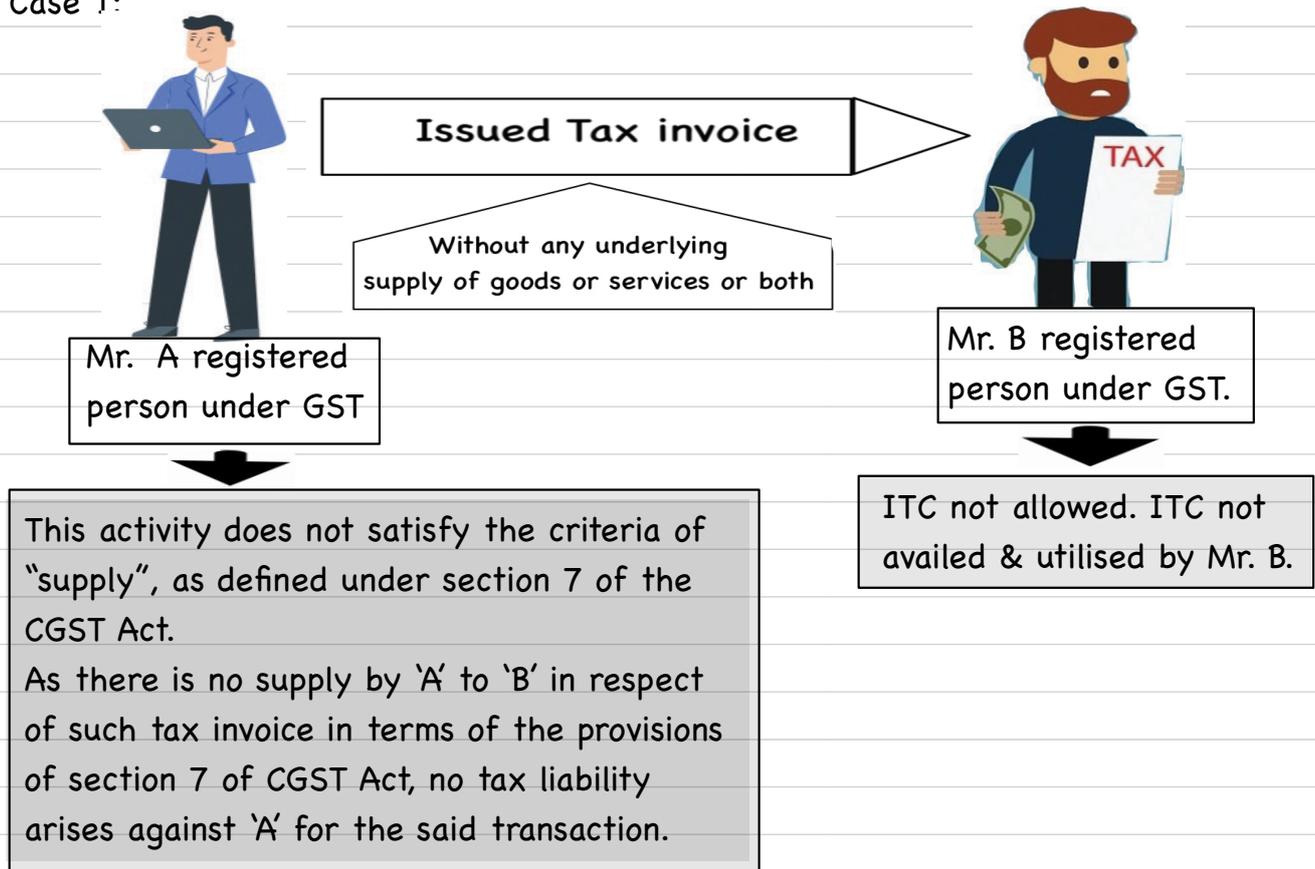
However, it may be noted that any service provided for development of land, like levelling, laying of drainage lines (as may be received by developers) shall attract GST at applicable rate for such services.

## Scope of Supply

A circular has been issued clarifying various issues relating to applicability of demand and penalty provisions under the CGST Act, 2017 in respect of transactions involving fake invoices:

[Circular No. 171/03/2022-GST dt. 6th July, 2022]

Case 1:



## Composite and Mixed Supplies

### GST on 'pre-packaged and labelled' goods w.e.f. 18-07-2022:

For the purposes of GST, the expression 'pre-packaged and labelled' means a 'pre-packaged commodity' as defined in Clause (l) of section 2 of the Legal Metrology Act reads as below:

"pre-packaged commodity" means a commodity which without the purchaser being present is placed in a package of whatever nature, whether sealed or not, so that the product contained therein has a pre-determined quantity.

Thus, supply of such specified commodity having the following two attributes would attract GST:

- i. It is pre-packaged; and
- ii. It is required to bear the declarations under the provisions of the Legal Metrology Act, 2009 (1 of 2010) and the rules made thereunder.

However, if such specified commodities are supplied in a package that do not require declaration(s)/compliance(s) under the Legal Metrology Act, 2009 (1 of 2010), and the rules made thereunder, the same would not be treated as pre-packaged and labelled for the purposes of GST levy.

For example, items like pulses, cereals like rice, wheat, and flour (aata), etc., earlier attracted GST at the rate of 5% when branded and packed in unit container. With effect from 18.7.2022, these items would attract GST when "pre-packaged and labelled". Additionally, certain other items such as Curd, Lassi, puffed rice etc. when "prepackaged and labelled" would attract GST at the rate of 5% with effect from the 18th July, 2022.



In the context of food items (such as pulses, cereals like rice, wheat, flour etc), the supply of specified pre-packaged food articles would fall within the purview of the definition of 'pre-packaged commodity' under the Legal Metrology Act, 2009, and the rules made thereunder, if such pre-packaged and labelled packages contained a quantity upto 25 kilogram [or 25 litre] in terms of rule 3(a) of Legal Metrology (Packaged Commodities) Rules, 2011, subject to other exclusions provided in the Act and the Rules made thereunder.



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## Composite and Mixed Supplies

### GST on 'pre-packaged and labelled' goods w.e.f. 18-07-2022:

For such commodities (food items- pulses, cereals, flour, etc.), rule 3 (a) of Chapter-II of Legal Metrology (Packaged Commodities) Rules, 2011, prescribes that package of commodities containing quantity of more than 25 kg or 25 litre do not require a declaration to be made under rule 6 thereof. Accordingly, GST would apply on such specified goods where the pre-packaged commodity is supplied in packages containing quantity of less than or equal to 25 kilograms.

Example: Supply of pre-packed atta meant for retail sale to ultimate consumer of 25 Kg shall be liable to GST. However, supply of such a 30 Kg pack thereof shall be exempt from levy of GST. Thus, it is clarified that a **single package** of these items [cereals, pulses, flour etc.] containing a quantity of more than 25 Kg/25 litres would not fall in the category of pre- packaged and labelled commodity for the purposes of GST and would therefore not attract GST.

Q1. Whether GST would apply to a package that contains multiple retail packages. For example, a package containing 10 retail packs of flour of 10 Kg each?

Answer: Yes, if several packages intended for retail sale to ultimate consumer, say 10 packages of 10 Kg each, are sold in a larger pack, then GST would apply to such supply. Such package may be sold by a manufacturer through distributor. These individual packs of 10 Kg each are meant for eventual sale to retail consumer. However, a package of say rice containing 50 Kg (in one individual package) would not be considered a pre-packaged and labelled commodity for the purposes of GST levy, even if rule 24 of Legal Metrology (Packaged Commodities) Rules, 2011, mandates certain declarations to be made on such wholesale package.

Q2. Whether tax is payable if such goods are purchased in packages of up to 25 kg/25liters by a retailer, but the retailer sells it in loose quantities in his shop for any reason?

Answer: GST applies when such goods are sold in pre-packaged and labelled packs. Therefore, GST would apply when prepackaged and labelled package is sold by a distributor/ manufacturer to such retailer. However, if for any reason, retailer supplies the item in loose quantity from such package, such supply by retailer is not a supply of packaged commodity for the purpose of GST levy.



# SUPPLEMENTARY PAPER 19 FOR JUNE 2023 TERM OF EXAMINATION SYLLABUS 2022

## Composite and Mixed Supplies

### GST on 'pre-packaged and labelled' goods w.e.f. 18-07-2022:

Q3. Whether tax is payable if such packaged commodities are supplied for consumption by industrial consumers or institutional consumers?

Answer: Supply of packaged commodity for consumption by industrial consumer or institutional consumer is excluded from the purview of the Legal Metrology Act by virtue of rule 3 (c) of Chapter-II of Legal Metrology (Packaged Commodities) Rules, 2011. Therefore, if supplied in such manner as to attract exclusion provided under the said rule 3(c), it will not be considered as pre-packaged and labelled for the purposes of GST levy.

Example: Pluses/rice is supplied to an industrial consumers or institutional consumers, tax at the rate of 5% will not be charged on same.

As per Legal Metrology Act: "industrial consumer" means the consumer who buys packaged commodities directly from the manufacturer or from an importer or from wholesale dealer for use by that industry and the package shall have declaration 'not for retail sale';

"institutional consumer" means the institution which buys packaged commodities bearing a declaration 'not for retail sale', directly from the manufacturer or from an importer or from wholesale dealer for use by that institution and not for commercial or trade purposes;

Hence, exemption w.r.t sale made to industrial consumer shall be available only if: It is a prepackaged commodity Bought directly from manufacturer or from an importer or from wholesale dealer Package shall have a declaration - not for retail sale Vic-a-vic exemption w.r.t sale made to institutional consumer shall be available only if: It is a packaged commodity Package shall have a declaration - not for retail sale Bought directly from manufacturer or from an importer or from wholesale dealer used by that institution and not for commercial or trade purposes;

Q4. 'X' is a rice miller who sells packages containing 20 kg rice but not making the required declaration under legal metrology Act and the Rules made thereunder (although the said Act and the rules requires him/her to make a declaration), would it still be considered as pre-packaged and labelled and therefore be liable to GST?

Answer: Yes, such packages would be considered as pre-packaged and labelled commodity for the purposes of GST as it requires making a declaration under the Legal Metrology (Packaged Commodities) Rules, 2011 (rule 6 thereof). Hence, miller 'X' would be required to pay GST on supply of such package(s).

## Composite and Mixed Supplies

Circular No. 164/20/2021-GST dt. 06.10.2021 has clarified that ice-cream parlours do not have the character of restaurants as they sell already manufactured ice-creams. Hence ice cream sold by such parlours or outlets attracts GST @ 18% with ITC (and not 5% without ITC).

A per CBIC Circular No. 177/09/2022-TRU dt. 03.08.2022, the activity of selling of space for advertisement in souvenirs published in the form of books by different institutions/organizations like educational institutions, social, cultural and religious organizations including clubs etc., is eligible for concessional rate of 5%.

**Circular No. 177/09/2022-TRU dt. 03.08.2022**, Taxability and applicable rate of GST on transport of minerals from mining pit head to railway siding, beneficiation plant etc., by vehicles deployed with driver for a specific duration of time. Such services are nothing but "rental services of transport vehicles with operator".

Usually in such cases the vehicles such as tippers, dumpers, loader, trucks etc., are given on hire to the mining lease operator. Expenses for fuel are generally borne by the recipient of service.

It has been clarified that renting of trucks and other freight vehicles with driver for a period of time is a service of renting of transport vehicles with operator falling under Heading 9966 and not service of transportation of goods by road. This being so, it is not eligible for exemption under Sl. No. 18 of notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 (i.e. transport of goods by road). On such rental services of goods carriages where the cost of fuel is included in the consideration charged from the recipient of service, GST rate has been reduced from 18% to 12% with effect from 18.07.2022. Prior to 18.07.2022, it attracted GST at the rate of 18%.

Circular No. 177/09/2022 TRU Dt 3.7.2022, It has been clarified that a contract of the nature described here for construction, installation and commissioning of a dairy plant constitutes a composite supply of works contract.

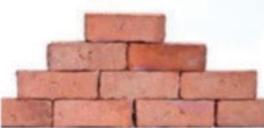
GST prior to 18.7.2022 is 12%.

GST w.e.f. 18.7.2022 is 18%



### Dairy Plant

## Composition Scheme

S. No.	Tariff item, sub-heading, or heading or Chapter	Description
1	2105 00 00 	Ice cream and other edible ice, whether or not containing cocoa.
2	2106 90 20 	Pan masala
3	24 	All goods, i.e. Tobacco and manufactured tobacco substitutes
4	2202 10 10 	w.e.f. 1-10-2019 AERATED WATER
5	6815 	w.e.f. 1-4-2022 NT No. 14/2019 dated 7.3.2019 Fly ash bricks or fly ash aggregate with 90% or fly ash content; Fly ash blocks
6	6901 00 10 	w.e.f. 1-4-2022 NT No. 14/2019 dated 7.3.2019 Bricks of fossil meals or similar siliceous earths
7	6904 10 00 	w.e.f. 1-4-2022 NT No. 14/2019 dated 7.3.2019 Building Bricks
8	6905 10 00 	w.e.f. 1-4-2022 NT No. 14/2019 dated 7.3.2019 Earthen or roofing tiles



# SUPPLEMENTARY PAPER 19 FOR JUNE 2023 TERM OF EXAMINATION SYLLABUS 2022

## Composition Scheme

### Goods not eligible for Composition Scheme:

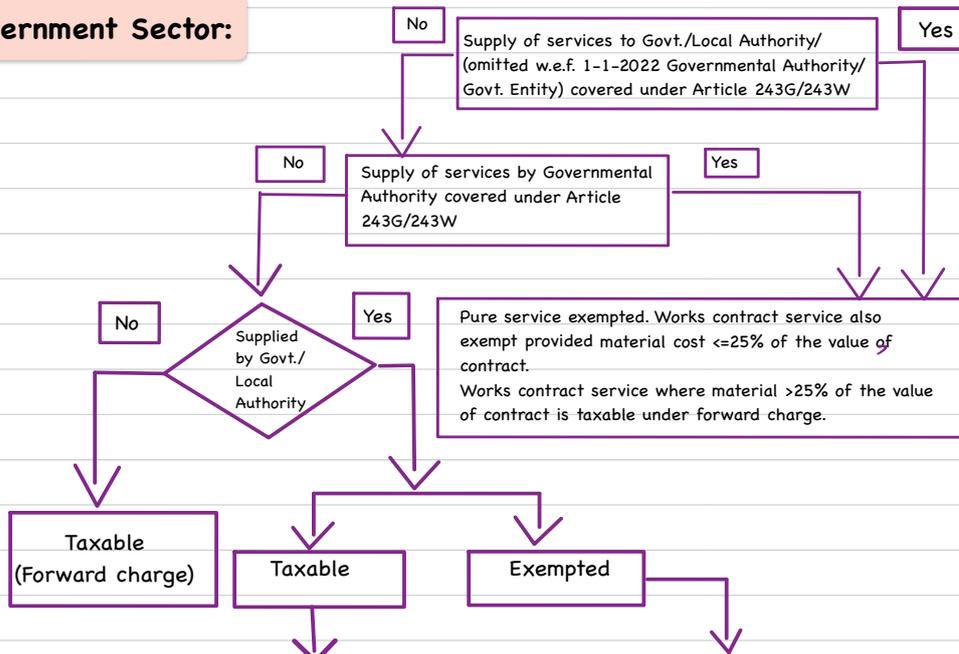
a registered person making supplies of the following goods is also not eligible to pay concessional tax under the said notification (i.e. in the case of **Gulab Singh Chauhan** (GST AAR Madhya Pradesh) held that preparation of Gutka in the Pan Shop is akin to manufacture on account of the process of preparation being that of mixing of different bought out ingredients and the resultant product having a distinct name and use. Thus the preparation of Gutka at the Pan Shop for sale is covered in the Second Proviso of Notification No. 14/2019 CT. In the Table given in Notification No. 14/2019 CT both Pan Masala and goods covered under Chapter 24 are listed as goods for which composition cannot be obtained.



# SUPPLEMENTARY PAPER 19 FOR JUNE 2023 TERM OF EXAMINATION SYLLABUS 2022

## Exemptions under GST

### 2. Government Sector:



#### forward charge:

(a) services by the Department of Posts (omitted w.e.f. 18-07-2022 by way of—

- a. speed post,
- b. express parcel post,
- c. life insurance, and
- d. agency services

provided to a person other than the Central Government, State Government, Union territory);

- (b) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
- (c) transport of goods or passengers;

(d) Renting of immovable (commercial) property to un-registered person.

#### Reverse Charge:

1. Renting of immovable (commercial) property to registered person.

2. Any service, (other than services covered under Forward Charge and other than Exempted) provided to business entities.

Services supplied to

1. a business entity with an aggregate turnover of upto ₹40 lakh / ₹20 lakh / ₹10 lakh (other than Forward charge)
2. another Central Government, State Government, Union territory or local authority (other than Forward charge)
3. where the consideration for supply of services does not exceed ₹5,000 (other than Forward charge):

Provided further that in case where continuous supply of service, the exemption shall apply only where the consideration charged for such service does not exceed ₹5,000 in a financial year.

4. Services provided to operate as a telecom service provider or use radio frequency spectrum during the period prior to the 1st April 2016, on payment of licence fee or spectrum user charges, as the case may be.

5. Services provided by way of—

- a) registration required under any law for the time being in force;
- b) testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, including fire license, required under any law for the time being in force

6. by way of issuance of passport, visa, driving licence, birth certificate or death certificate.

7. Services by way of granting National Permit to a goods carriage to operate through-out India / continuous States (new exemption inserted w.e.f. 1-10-2021)

8. by way of tolerating non-performance of a contract

9. by way of assignment of right to use natural resources to an individual farmer for cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products.

10. by way of assignment of right to use any natural resource where such right to use was assigned before the 1st April 2016:

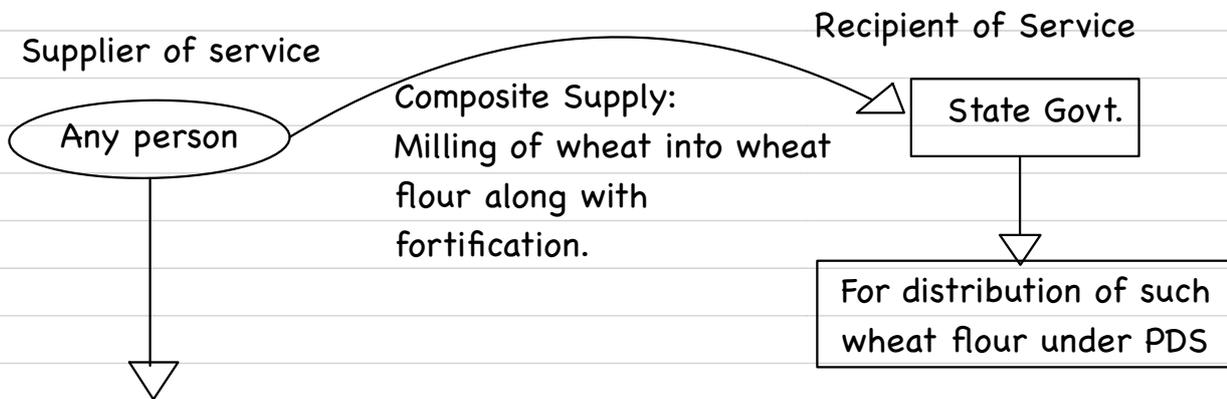
Provided that the exemption shall apply only to tax payable on one time charge payable, in full upfront or in instalments, for assignment of right to use such natural resource.

11. Merchant Overtime charges.

12. W.e.f. 18-07-2022, Services by the Department of Posts by way of post card, inland letter, book post and ordinary post (envelopes weighing less than 10 grams).

**Exemptions under GST**

Clarification regarding applicability of GST on milling of wheat into flour or paddy into rice for distribution by State Governments under Public Distribution System (PDS):



Entry 3A read with entry 28, milling of wheat and fortification hereof by miller, or of paddy into rice, provided that value of goods supplied in such composite supply (goods used for fortification, packing material etc) does not exceed 25% of the value of composite supply then qualify for exemption. This mater will be decided on case to case basis.

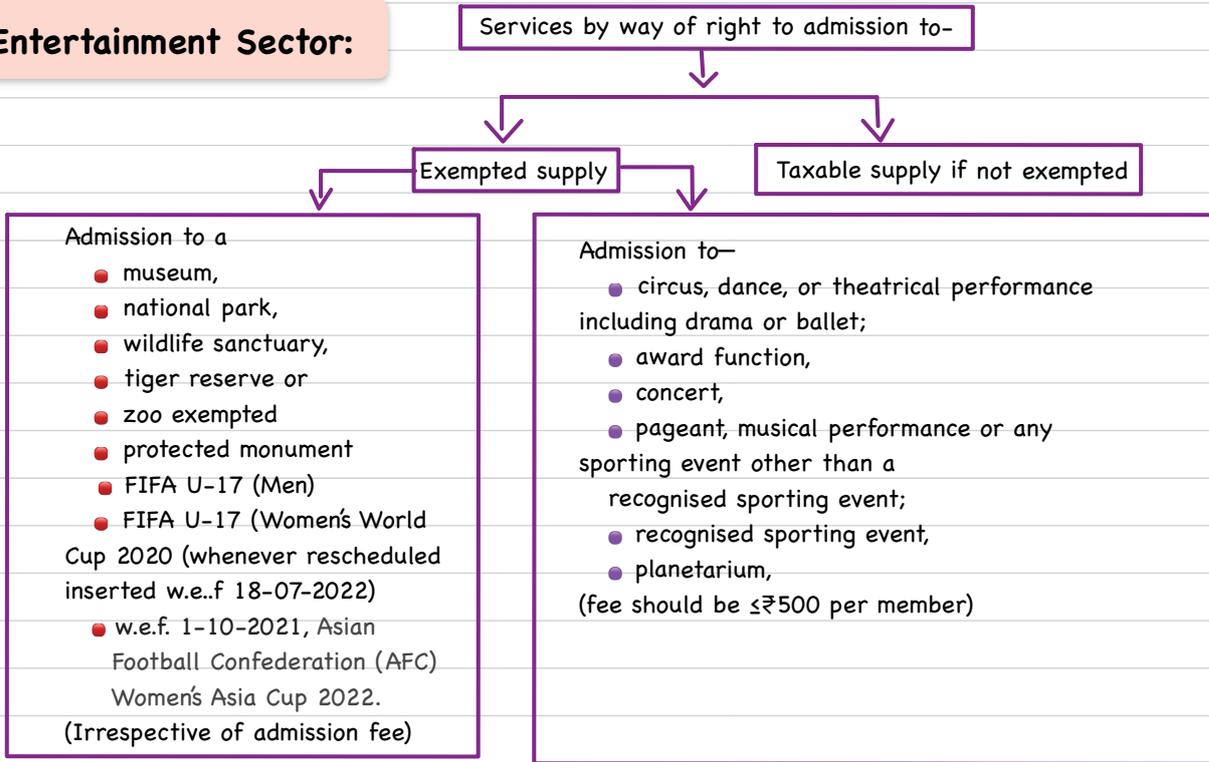
Circular No. 153/09/2021 GST dated 17.06.2021)

**Applicability of GST on sanitation and conservancy services supplied to Army and other Central and State Government department:**

Circular No. 177/09/2022-TRU dt. 03.08.2022, It has been clarified that if such services are procured by Indian Army or any other Government Ministry/ Department which does not perform any functions listed in the 11th and 12th Schedule of the Constitution, in the manner as a local authority does for the general public, the same are not eligible for exemption under Sl. No. 3 and 3A of Notification No. 12/2017-CT(R) dated 28.06.2017.

## Exemptions under GST

### 4. Entertainment Sector:



#### 4.2 Services by way of training or coaching in

(a) recreational activities relating to— arts or culture, (by an individual inserted w.e.f 18-07-2022), or

(b) sports by charitable entities registered under section 12AA or 12AB (inserted w.e.f. 1-10-2021) of the Income-tax Act.

The benefit is available to coaching or training relating to all forms of dance, music, painting, sculpture making, theatre and sports etc.

#### **CBIC Circular No. 177/09/2022 TRU dt. 03.08.2022:**

It has been clarified that services provided by the guest anchors invited by the TV channels for participating in their shows in lieu of honorarium, attracts GST liability. However, guest anchors whose aggregate turnover in a financial year does not exceed Rs 20 lakhs (Rs 10 lakhs in case of special category states) shall not be liable to take registration and pay GST.



## Exemptions under GST

### 5. Transportation of Passengers Sector:

Passengers embarking (inserted w.e.f. 18-07-2022, by air in economy class) from or terminating in an airport located in the state of

1. Arunachal Pradesh
2. Assam
3. Manipur
4. Meghalaya
5. Mizoram
6. Nagaland
7. Sikkim
8. Tripura or
9. Bagdogra located in West Bengal are exempted from GST.



In case of taxable services:

Transportation of passengers by Air	GST Rate	Input Tax Credit		
		Inputs	Capital goods	Input services
Economic class	5%	Not allowed.	Not allowed.	Allowed
Business class	12%	Allowed.	Allowed.	Allowed

Question: Whether hiring of vehicles by firms for transportation of their employees to and from work is exempt under Sr. No. 15(b) of Notification No. 12/2017-CT(R) transport of passengers by non-air conditioned contract carriage?

Answer: Sr. No. 15(b) of Notification No. 12/2017-CT(R) dated 28.06.2017 exempts "transport of passengers, with or without accompanied belongings, by non-air conditioned contract carriage, other than radio taxi, excluding tourism, conducted tour, charter or hire.

It is clarified that 'charter or hire' excluded from the above exemption entry is charter or hire of a motor vehicle for a period of time, where the renter defines how and when the vehicles will be operated, determining schedules, routes and other operational considerations.

Thus, the said exemption would apply to passenger transportation services by non-air conditioned contract carriage falling under Heading 9964 where according to explanatory notes, transportation takes place over pre-determined route on a pre-determined schedule. The exemption shall not be applicable where contract carriage is hired for a period of time, during which the contract carriage is at the disposal of the service recipient and the recipient is thus free to decide the manner of usage (route and schedule) subject to conditions of agreement entered into with the service provider (vide Circular No. 177/09/2022 TRU dt 03.08.2022).

## Exemptions under GST

### **GST on tickets of private ferry used for passenger transportation:**

It has been clarified that this exemption would apply to tickets purchased for transportation from one point to another irrespective of whether the ferry is owned or operated by a private sector enterprise or by a PSU/government. It has been further clarified that the expression 'public transport' used in the exemption notification only means that the transport should be open to public; it can be privately or publicly owned. Only exclusion is on transportation which is predominantly for tourism, such as services which may combine with transportation, sightseeing, food and beverages, music, accommodation such as in shikara, cruise etc. (vide Circular No. 177/09/2022 TRU Dt 03.08.2022).



## Exemptions under GST

### 6. Tour and Travel Sector:

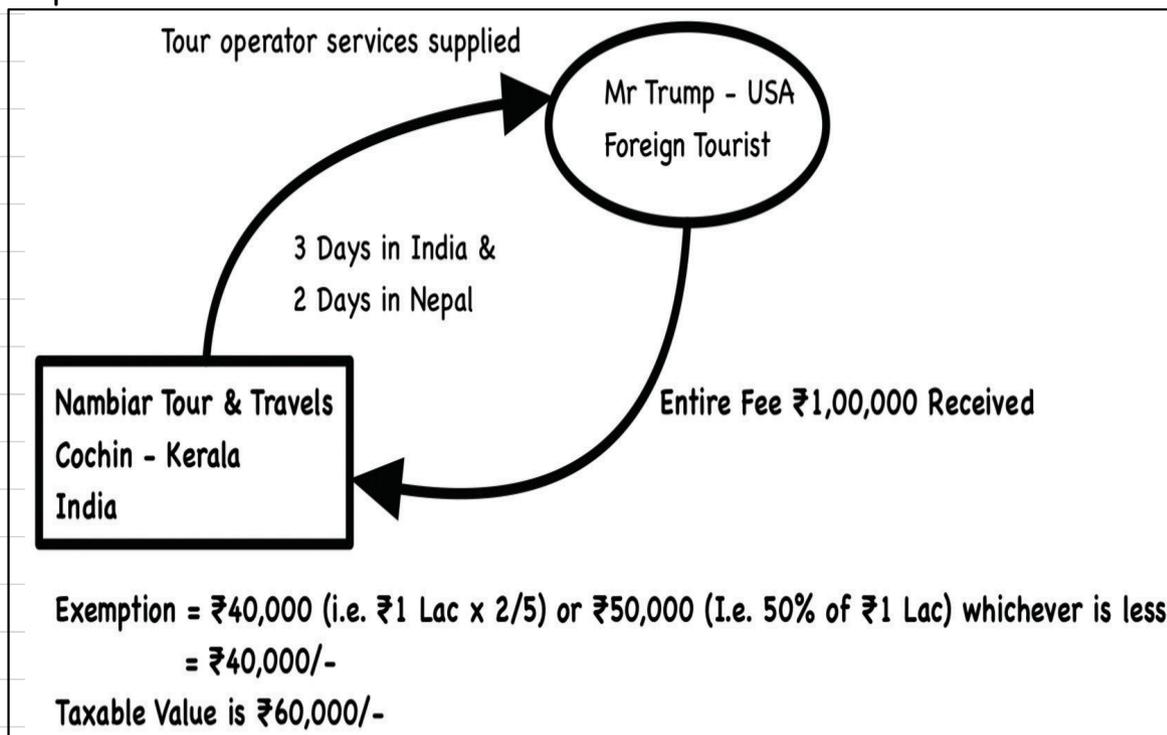
6.3 w.e.f. 18-07-2022, Tour operator service, which is performed partly in India and partly outside India, supplied by a tour operator to a foreign tourist, to the extent of the value of the tour operator service which is performed outside India is exempted from GST:

Provided that value of the tour operator service performed outside India shall be such proportion of the total consideration charged for the entire tour which is equal to the proportion which the number of days for which the tour is performed outside India has to the total number of days comprising the tour, or 50% of the total consideration charged for the entire tour, **whichever is less:**

Provided further that in making the above calculations, any duration of time equal to or exceeding 12 hours shall be considered as one full day and any duration of time less than 12 hours shall be taken as half a day.

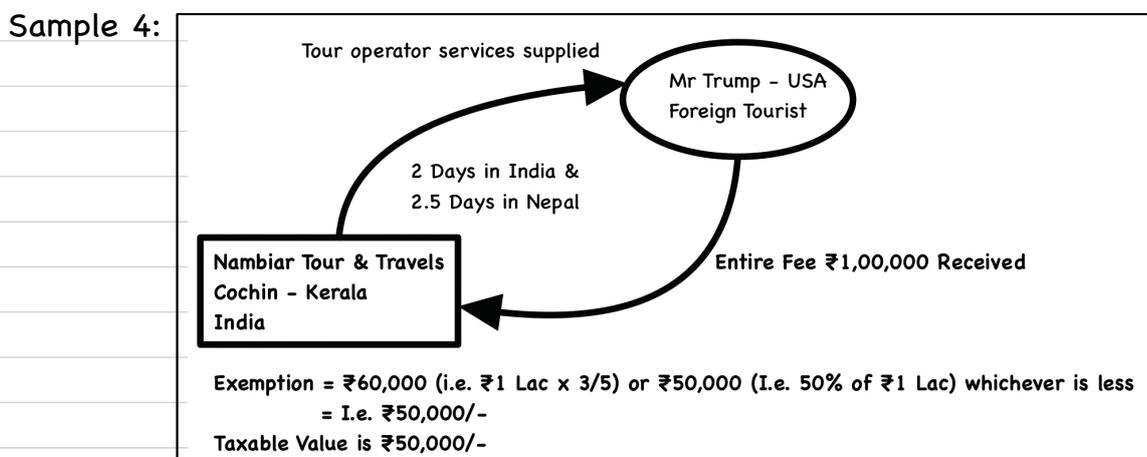
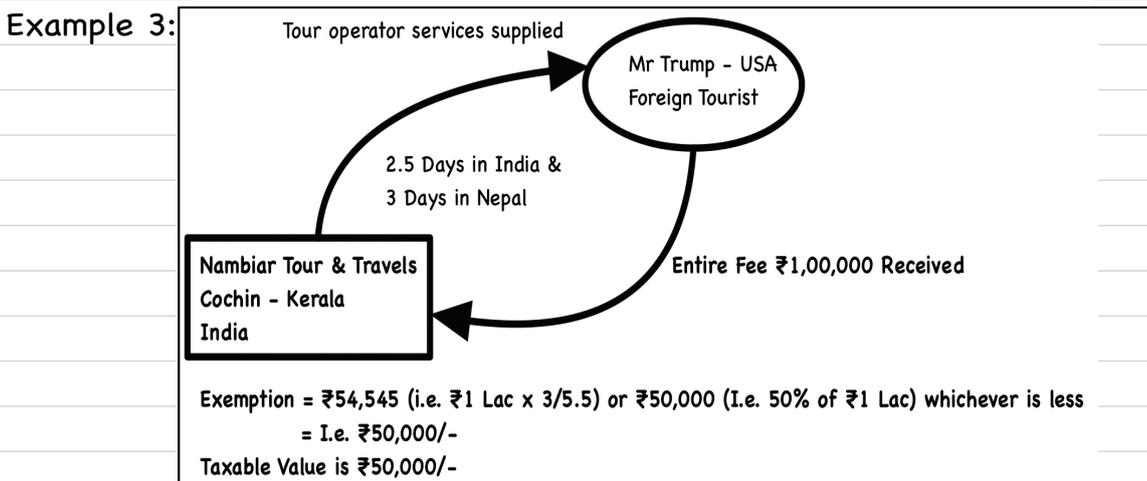
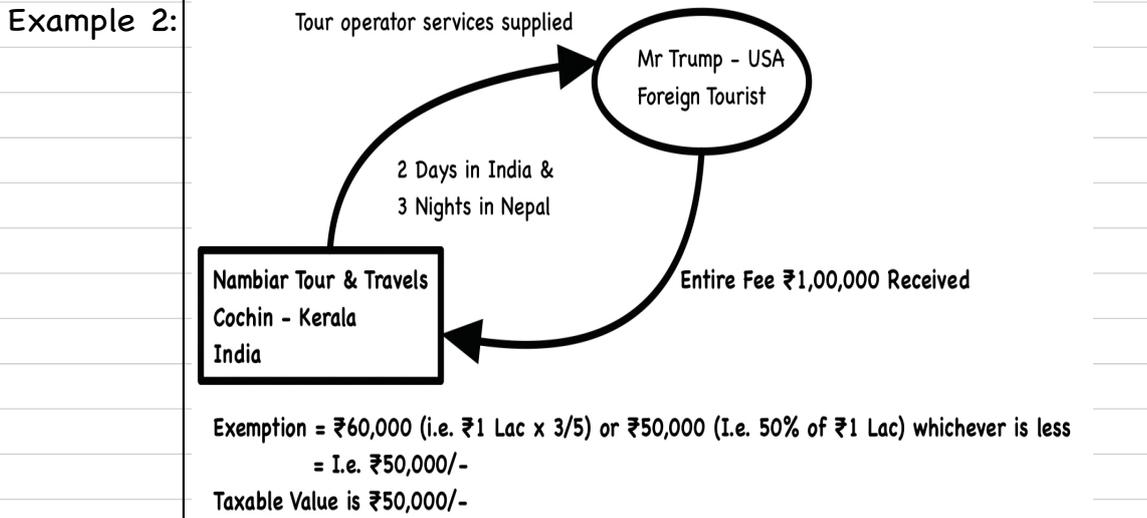
Explanation. - "foreign tourist" means a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purposes.

#### Example 1:



### Exemptions under GST

#### 6. Tour and Travel Sector:



**Note:**

1. The days of 2.5 had been rounded off to 3 since any duration of time equal to or exceeding 12 hours shall be considered as one full day.
2. The above amendment in exemption is a encouraging move from the Government to reduce the undue burden of tax on the industry.

## Exemptions under GST

### 7. Transportation of Goods Sector:

#### ● Transportation of goods by rail and vessel:

(a) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap;

(b) defence or military equipments;

(c) newspaper or magazines registered with the Registrar of Newspapers;

(d) railway equipment's or materials; → Omitted w.e.f 18-07-2022.

(e) agricultural produce;

(f) milk, salt and food grain including flours, pulses and rice; and

(g) organic manure  
are exempted from GST

GST rate is 5%. However, ITC on input services only allowed.



◆ Services provided by a **goods transport agency**, by way of transport in a goods carriage of -

(a) agricultural produce;

(b) goods, where consideration charged for the transportation of goods on a consignment transported in a single carriage does not exceed ₹1,500;

(c) goods, where consideration charged for transportation of all such goods for a single consignee does not exceed ₹750;

(d) milk, salt and food grain including flour, pulses and rice;

(e) organic manure;

Omitted w.e.f 18-07-2022.

(f) newspaper or magazines registered with the Registrar of Newspapers;

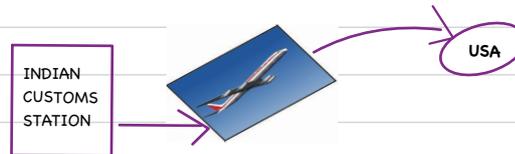
(g) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or

(h) defence or military equipments.  
are exempted from GST.



## Exemptions under GST

◆ Service by way of **transportation of goods by an aircraft** from customs station of clearance in India to a place outside India is exempted supply of service. W.e.f. 01-10-2022 taxable supply.



(THIS EXEMPTION VALID UPTO 30th September 2022). W.e.f. 01-10-2022 taxable supply.

◆ Services by way of **transportation of goods by a vessel** from customs station of clearance in India to a place outside India is exempted supply of service. W.e.f. 01-10-2022 taxable supply.



(THIS EXEMPTION VALID UPTO 30th September 2022)  
W.e.f. 01-10-2022 taxable supply

## Exemptions under GST

### 8. Hiring or Leasing Sector:

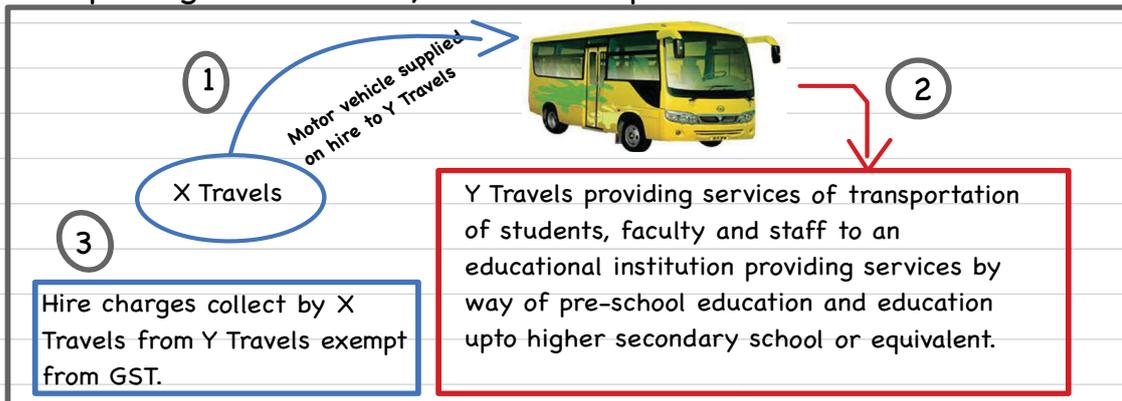
(a) services by way of giving on hire to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers;



(b) Services by way of giving on hire to a goods transport agency, a means of transportation of goods.



(c) motor vehicle for transport of students, faculty and staff, to a person providing services of transportation of students, faculty and staff to an educational institution providing services by way of pre-school education and education upto higher secondary school or equivalent.



(d) Services by way of giving on hire to a local authority, an Electrically operated vehicle (EOV) meant to carry more than 12 passengers;



EOV means vehicle falling under Chapter 87 in the First Schedule to the Customs Tariff Act, 1975 which is run solely on electrical energy derived from an external source or from one/more electrical batteries fitted to such road vehicle.

In case of (a) and (d) above, it is clarified that the expression 'giving on hire' here includes renting of vehicles. Accordingly, where the said vehicle are rented or giving on hire to State Transport Undertaking or Local Authorities, Said services are eligible for above exemption.

(Circular No. 164/29/2021 GST dt. 06-10-2021)

## Exemptions under GST

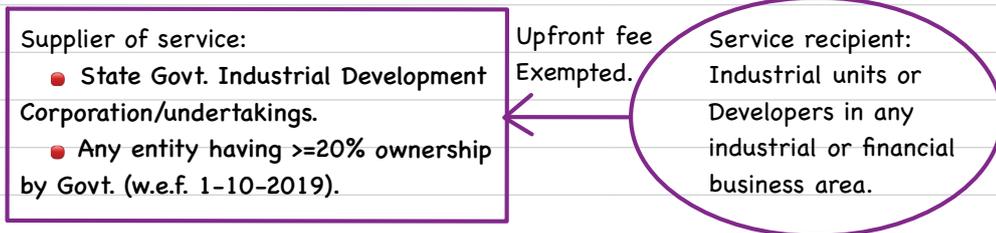
(g) Services by way of renting of residential dwelling for use as residence is also exempt from GST w.e.f. 18-07-2022 except where the residential dwelling is rented to a registered person.



Nature of supply	Supplier	Recipient	GST w.e.f. 18-07-2022
Renting of residential dwelling for use as residence	Registered/	Registered	RCM applicable
	Unregistered	Unregistered	Exempted

(h) Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purpose, heaving "value of supply" of a unit accommodation per day per unit ≤ ₹1,000/- omitted w.e.f 18-07-2022.

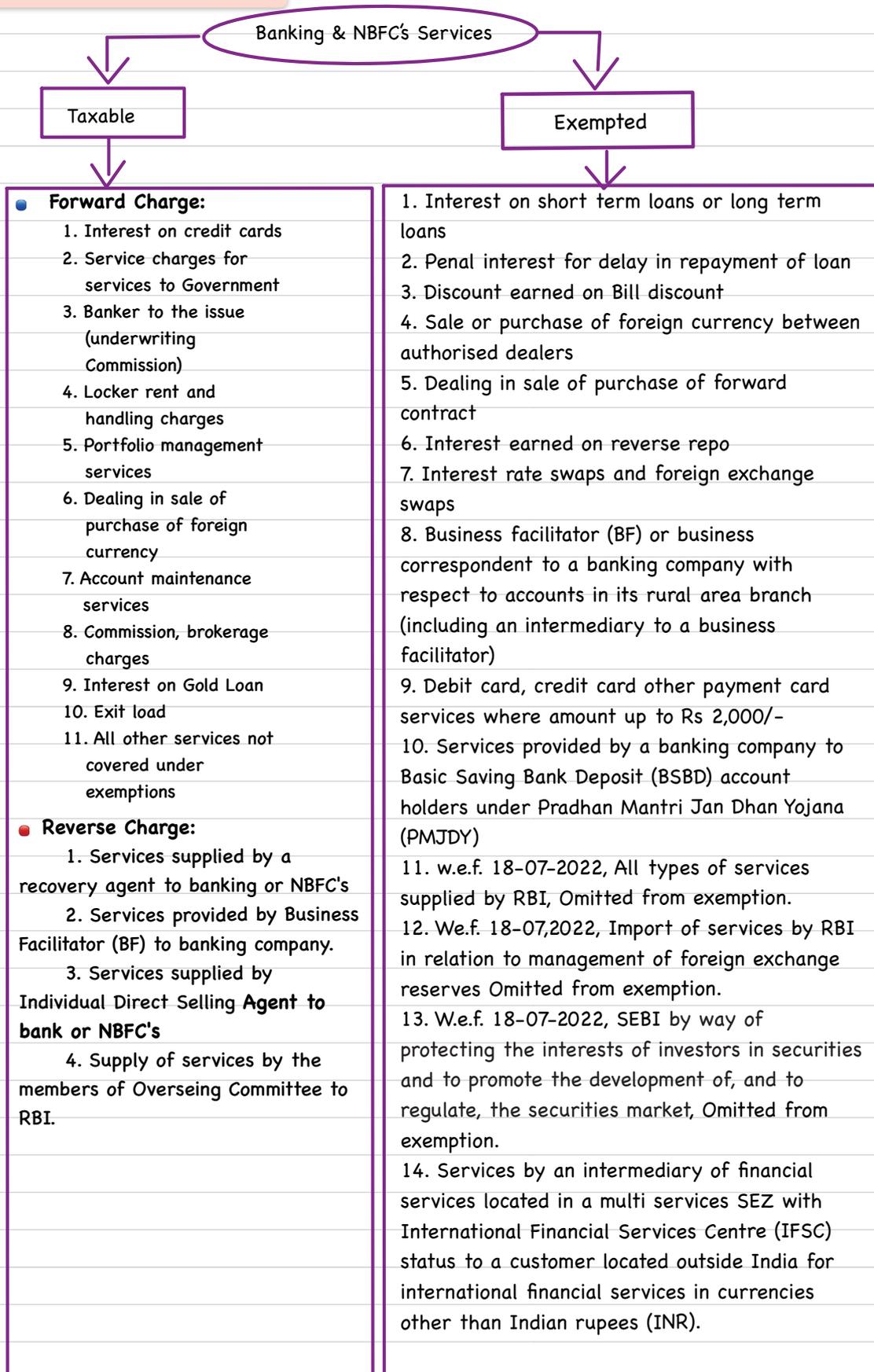
(i) Upfront Fee in Long Term Lease exempted from GST:



As per CBIC Circular No. 177/09/2022 TRU Dt 3.8.2022, It has been clarified that location charges or preferential location charges (PLC) paid upfront in addition to the lease premium for long term lease of land constitute part of upfront amount charged for long term lease of land eligible for exemption.

## Exemptions under GST

### 9. Banking & NBFC Sector

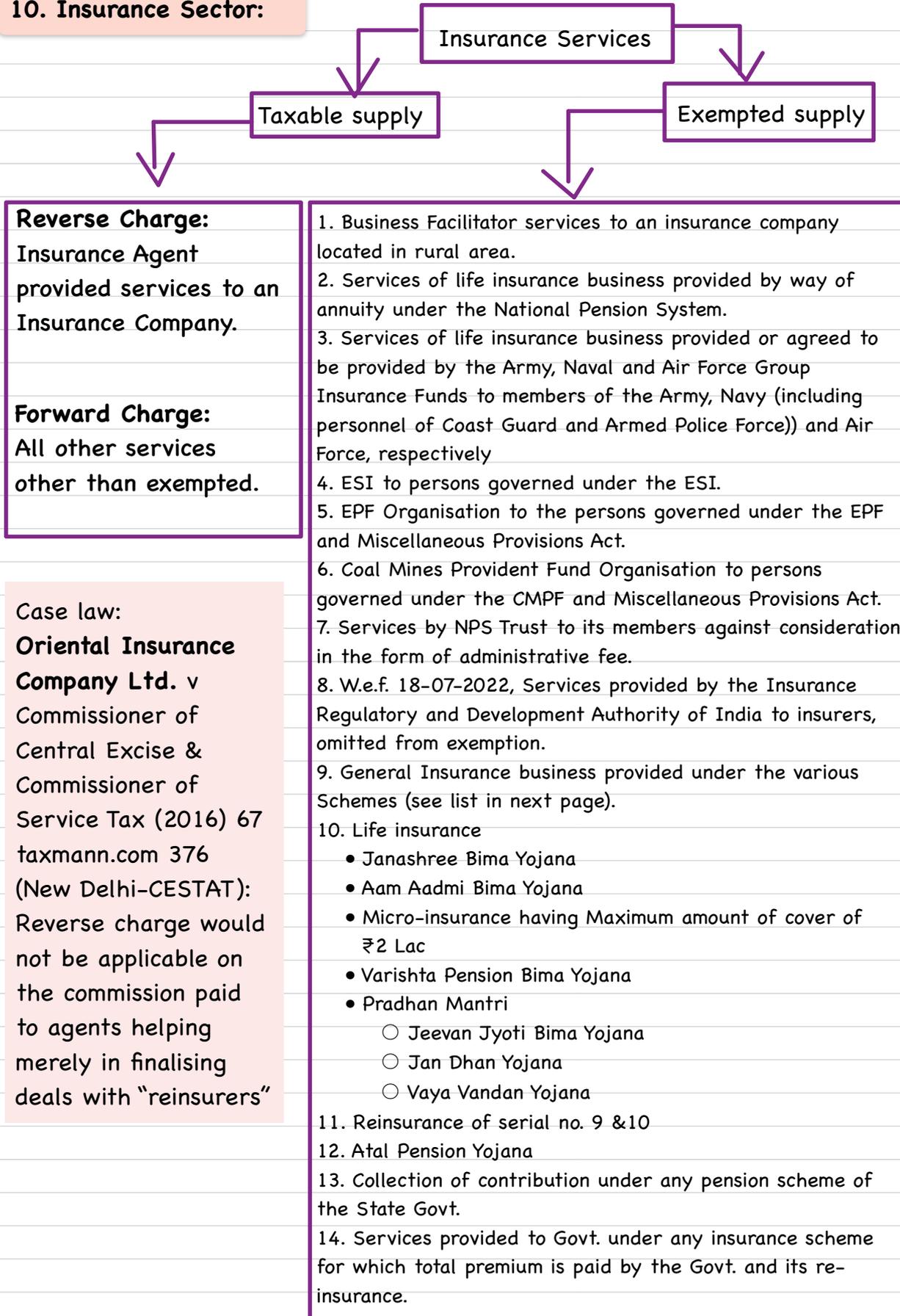




# SUPPLEMENTARY PAPER 19 FOR JUNE 2023 TERM OF EXAMINATION SYLLABUS 2022

## Exemptions under GST

### 10. Insurance Sector:



Case law:  
**Oriental Insurance Company Ltd. v Commissioner of Central Excise & Commissioner of Service Tax (2016) 67 taxmann.com 376 (New Delhi-CESTAT):**  
Reverse charge would not be applicable on the commission paid to agents helping merely in finalising deals with "reinsurers"

1. Business Facilitator services to an insurance company located in rural area.
2. Services of life insurance business provided by way of annuity under the National Pension System.
3. Services of life insurance business provided or agreed to be provided by the Army, Naval and Air Force Group Insurance Funds to members of the Army, Navy (including personnel of Coast Guard and Armed Police Force)) and Air Force, respectively
4. ESI to persons governed under the ESI.
5. EPF Organisation to the persons governed under the EPF and Miscellaneous Provisions Act.
6. Coal Mines Provident Fund Organisation to persons governed under the CMPF and Miscellaneous Provisions Act.
7. Services by NPS Trust to its members against consideration in the form of administrative fee.
8. W.e.f. 18-07-2022, Services provided by the Insurance Regulatory and Development Authority of India to insurers, omitted from exemption.
9. General Insurance business provided under the various Schemes (see list in next page).
10. Life insurance
  - Janashree Bima Yojana
  - Aam Aadmi Bima Yojana
  - Micro-insurance having Maximum amount of cover of ₹2 Lac
  - Varishta Pension Bima Yojana
  - Pradhan Mantri
    - Jeevan Jyoti Bima Yojana
    - Jan Dhan Yojana
    - Vaya Vandan Yojana
11. Reinsurance of serial no. 9 &10
12. Atal Pension Yojana
13. Collection of contribution under any pension scheme of the State Govt.
14. Services provided to Govt. under any insurance scheme for which total premium is paid by the Govt. and its re-insurance.

## Exemptions under GST

### 11. Agriculture Sector:

- w.e.f. 18-07-2022 Services provided by way of storage or warehousing of cereals, pulses fruits and vegetables are exempted from GST.

Cereals &  
Pulses

Fruits

Vegetables



- Processed products such as tea (i.e. black tea, white tea etc.), processed coffee beans or powder, pulses (de-husked or split), jaggery, processed spices, processed dry fruits & cashew nuts etc. fall outside the definition of agricultural produce given in Notification No. 11/2017-CT(R) and 12/2017-CT(R) and therefore the exemption from GST is not available to their loading, packing. However, w.e.f 18-7-2022 exemption is also not available to their storage & warehousing except cereals & pulses, fruits & vegetables).

- w.e.f. 18-07-2022 Exemption omitted: Services by way of fumigation in a warehouse of agricultural produce is exempt from GST.



- W.e.f. 18-7-2022, storage or warehousing of cotton in ginned and or baled form exemption withdrawn.

## Exemptions under GST

### 12. Education Sector:

**As per CBIC vide the Circular No. 177/09/2022-TRU dt. 03.08.2022:**

The amount or fee charged for admission or entrance, or amount charged for application fee for entrance, or the fee charged from prospective students for issuance of eligibility certificate to them in the process of their entrance/ admission to the educational institution is exempt under entry no 66 of Notification No. 12/2017-CT(R) dt. 28.06.2017. Further, services supplied by an educational institution by way of issuance of migration certificate to the leaving or ex-students are also exempt under Sl. No. 66 of Notification No. 12/2017-CT(R) dated 28.06.2017.

An Anganwadi, inter alia, provides pre-school non-formal education. Hence, anganwadi is covered by the definition of educational institution (as per-school) Serving of food to anganwadi shall also be covered by said exemption, whether sponsored by government or through donation from corporates. (CBIC Circular No. 149/05/2021 GST dated 17-06-2021)

Clarification regarding taxability of various services by Central and State Boards such as National Board of Examination (NBE). Central and State Educational Boards are treated as educational institution for the limited purpose of providing services by way of conduct of examination, including entrance examination, to the students.

Supplier	Recipient	Nature of supply	Clarification
Central or State Boards (including the boards such as NBE)	Students	Examination including entrance examination	Exempt from GST

Supplier	Recipient	Clarification
Any person	Central or State Boards (including the boards such as NBE)	Admission to, or conduct of examination, such as online testing service, result publication, printing of notification for examination, admit card and question papers etc when provided to such board exempt from GST.

Note: GST is applicable to other services provided by such Boards, namely of providing accreditation to an institution or to a professional (accreditation fee or registration fee such as fee for Foreign Medical Graduate Examination screening test).

**Exemptions under GST**

**12. Education Sector:**



Free coaching services provided by coaching institutions under NGOs under the central scheme of "Scholarships for students with Disabilities" where total expenditure (now it is read as 75% or more of the total expenditure) is borne by the Government to coaching institutions by way of grant in aid is covered under 72 and hence is exempt from GST.

(Circular No. 164/20/2021 GST dt. 06.10.2021)

## Exemptions under GST

### 13. Healthcare Sector:

● Specified services provided by Cord Blood Banks have been exempted from levy. This exemption omitted w.e.f. 18-07-2022: "Services provided by cord blood banks by way of preservation of stem cells or any other service in relation to such preservation".



● Recognised system of Medicines:

Services in Recognised System of Medicines are exempted:

- |                |   |
|----------------|---|
| 1. Allopathy   | ◆ Nursing staff,<br>◆ Physiotherapists,<br>◆ Technicians,<br>◆ Lab assistants,<br>◆ Ambulance services<br>◆ Diagnosis service<br>also exempted. |
| 2. Yoga        |   |
| 3. Naturopathy |   |
| 4. Ayurveda    |   |
| 5. Homoeopathy |   |
| 6. Siddha      |   |
| 7. Unani       |   |

**Taxable Services:**

- Pranik healing treatment
- Acupressure treatment
- Acupuncture treatment
- Reiki treatment
- Colour Therapy

Hair transplant or cosmetic or plastic surgery, (except when undertaken due to congenital defects, developmental abnormalities, injury) are taxable services.

● This exemption omitted w.e.f. 18-07-2022. Services provided by operators of the common Bio-medical Waste Treatment Facility to a clinical establishment by way of treatment or disposal of bio-medical waste or the processes incidental thereto exempt from GST.



● Exempted supply: Veterinary clinic in relation to health care of animals or birds.



**Example:** Clean and Green Pvt. Ltd. provided the bio-medical waste treatment facility to a veterinary clinic and a clinical establishment in January 2023 is a taxable supply of service, if so, GST will be levied?

**Answer:** It is taxable supply of service.

Scope of the exemption under entry 75 is restricted to services provided by operators of the common Bio-medical Waste Treatment Facility to a clinical establishment and not to veterinary clinic. Exemption under entry 75 is omitted w.e.f. 18-07-2022. As a result Bio-medical waste treatment facility to a clinal establishment is also taxable w.e.f 18-07-2022.

## Exemptions under GST

W.e.f 18-07-2022, Services by way of-

(a) health care services by a clinical establishment, an authorised medical practitioner or para-medics are exempt from GST;

Provided that nothing in this entry shall apply to the services provided by a clinical establishment by way of providing room [other than Intensive Care Unit (ICU)/Critical Care Unit (CCU)/Intensive Cardiac Care Unit (ICCU)/Neonatal Intensive Care Unit (NICU)] having room charges exceeding ₹5,000 per day to a person receiving health care services.;

Room rent (excluding ICU) exceeding ₹5,000 per day per patient charged by a hospital shall be taxed to the extent of amount charged for the room at 5% GST without ITC.

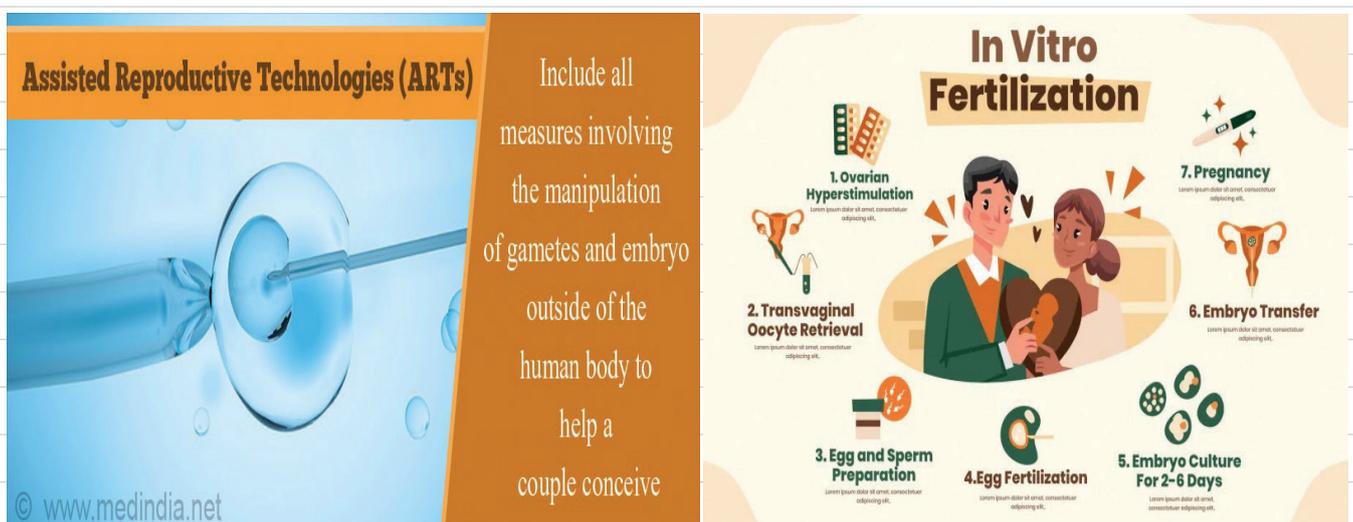
This means:

- ✓ No GST will be applicable if the room rent is  $\leq$  ₹5,000
- ✓ Intensive Care Unit (ICU) rooms will be exempt from 5% GST

### Circular No. 177/09/2022-TRU dt. 03.08.2022:

Services in form of Assisted Reproductive Technology (ART)/ In vitro fertilization (IVF) exempt from GST.

Health care services provided by a clinical establishment, an authorized medical practitioner or paramedics are exempt under Sl. No. 74 of notification No. 12/2017-Central Tax (Rate) dated 28.06. 2017. It has been clarified that abnormality/disease/ailment of infertility is treated using ART procedure such as IVF and accordingly services by way of IVF are also covered under the definition of health care services for the purpose of exemption notification.



**Assisted Reproductive Technologies (ARTs)**

Include all measures involving the manipulation of gametes and embryo outside of the human body to help a couple conceive

**In Vitro Fertilization**

1. Ovarian Hyperstimulation
2. Transvaginal Oocyte Retrieval
3. Egg and Sperm Preparation
4. Egg Fertilization
5. Embryo Culture For 2-6 Days
6. Embryo Transfer
7. Pregnancy

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## Exemptions under GST

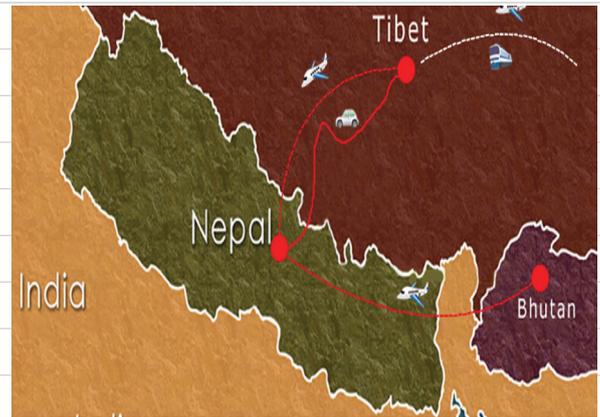
### 18. Other Sector Services:

- Supply of services associated with transit cargo to Nepal and Bhutan (landlocked countries) have been exempted from GST.

The government of India has removed the goods and services tax on services provided by Indian service providers for transit cargo such as

- ◆ transportation,
- ◆ insurance,
- ◆ shipment,
- ◆ container freight station and cargo

handling charges, among others considering these services provided by the Indian service providers as 'service export'.



Circular No. 177/09/2022 TRU dt 03.08.202, It has been clarified that exemption under Sl. No. 9B of the exemption notification shall cover services associated with transit cargo both to and from Nepal and Bhutan.

- Exempted Supply: Service by way of access to a road or a bridge on payment of toll charges (including Annuity).

As per CBIC Circular No. 177/09/2022 TRU dt. 03.08.2022: additional toll fees collected in the form of higher toll charges from vehicles not having fastag is exempt from GST. Overloading charges collected at toll plazas in the form of higher toll also exempt from GST.

It is important to note that entry 23A exempts the access to road or bridge on payment of of annuity, but does not cover construction of road services. Thus, it is clarified that entry 23A does not exempt GST on the annuity (deferred payments) paid for construction of roads.

## Exemptions under GST

- w.e.f 18-07-2022, omitted from Exempted Supply:

Services by way of

- licensing,
- registration and
- analysis or testing



of food samples supplied by the Food Safety and Standards Authority of India (FSSAI) to Food Business Operators.

- w.e.f 18-07-2022, omitted from Exempted Supply: Services provided by the Goods and Services Tax Network to the Central Government or State Governments or Union territories for implementation of Goods and Services Tax

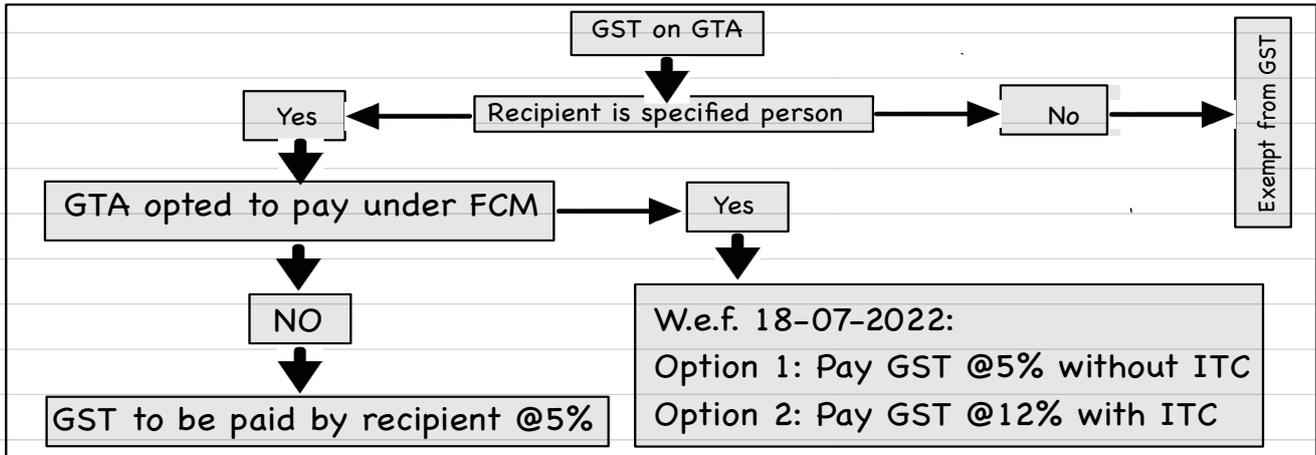


- w.e.f. 18-07-2022 Exemption omitted: Services by way of slaughtering services.



## Reverse Charge Mechanism

### 1. Goods Transport Agency (GTA) Services:



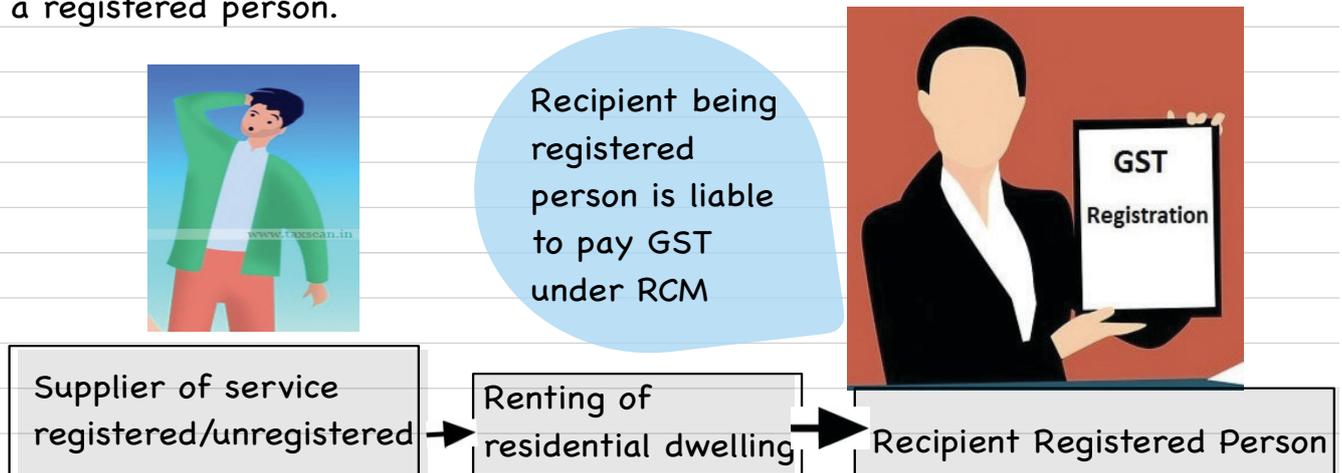
The option by GTA to pay GST under Forward Charge Mechanism (FCM) on the services supplied by it during a Financial Year shall be exercised by making a declaration in Annexure V on or before the 15th March of the preceding Financial Year. However, for the Financial Year 2022-2023 option shall be exercised on or before the 16th August 2022.

The option once chosen would be valid for a financial year and a GTA cannot shift to a different option in a same financial year.

◆ Specified person includes:

1. Factory registered under the Factories Act, 1948;
2. A society registered under the Societies Registration Act, 1860 or under any other law
3. A co-operative society established under any law;
4. A GST registered person
5. A body corporate established by or under any law; or
6. A partnership firm whether registered or not (including AOP)
7. Casual taxable person

2. W.e.f. 18-07-2022, Service by way of renting of residential dwelling to a registered person.



## Reverse Charge Mechanism

### 3. Renting of a motor vehicle:

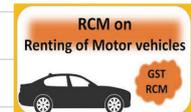
Renting of Motor vehicle designed to carry passengers and cost of fuel is included in the consideration.

**Supplier of service:**

Any person other than a body corporate and **does not issue an invoice charging CGST 6% + SGST/UTGST 6%.**

**Recipient of service:**

Any body corporate located in the taxable territory. Recipient is liable to pay GST under RCM.



Question: When services are provided by a non-body corporate to a body corporate by way of renting of any motor vehicle for transport of passengers, whether RCM is applicable on service of transportation of passengers (Heading 9964) or on renting of motor vehicle designed to carry passengers (Heading 9966)?

Answer: As per CBIC Circular No. 177/09/2022 TRU dt 03.08.2022, It has been clarified that where the body corporate hires the motor vehicle (for transport of employees etc.) for a period of time, during which the motor vehicle shall be at the disposal of the body corporate, the service would fall under Heading 9966, and the body corporate shall be liable to pay GST on the same under RCM. It may be seen that reverse charge thus would apply on act of renting of vehicles by body corporate and in such a case, it is for the body corporate to use in the manner as it likes subject to agreement with the person providing vehicle on rent.

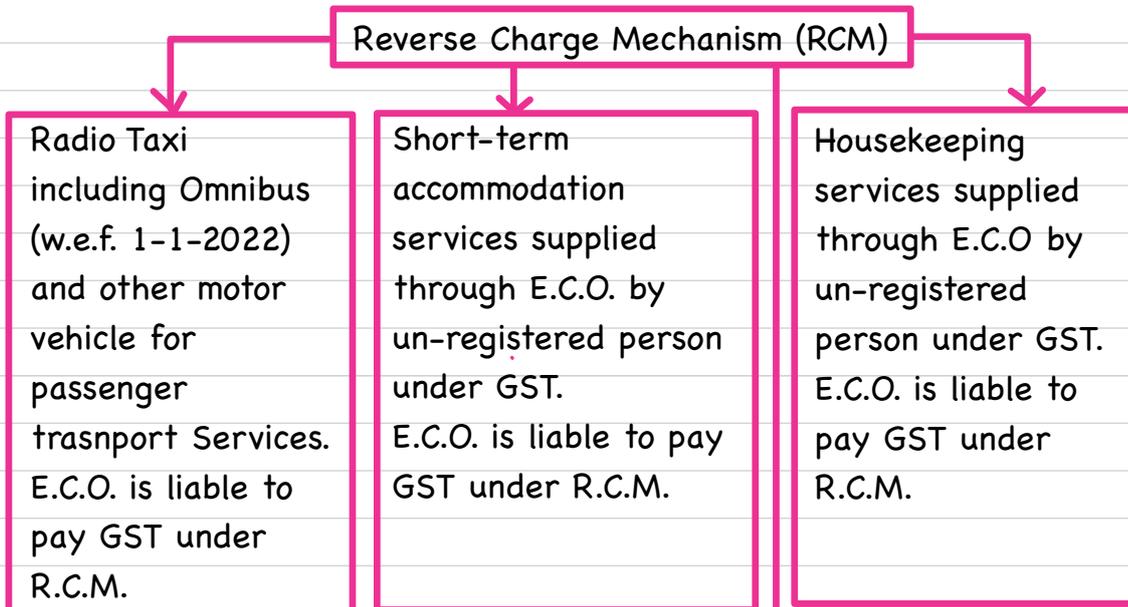
However, where the body corporate avails the passenger transport service for specific journeys or voyages and does not take vehicle on rent for any particular period of time, the service would fall under Heading 9964 and the body corporate shall not be liable to pay GST on the same under RCM.



# SUPPLEMENTARY PAPER 19 FOR JUNE 2023 TERM OF EXAMINATION SYLLABUS 2022

## Reverse Charge Mechanism

◆ Supplies made through Electronic Commerce Operator (ECO), Sec 9(5) of CGST Act, 2017 or Sec 5(5) of IGST Act, 2017:



W.e.f. 1-1-2022 Restaurant Services (i.e. Cloud Kitchen): supply of restaurant services other than the services supplied by restaurant, eating joints etc. located at specified premises through E.C.O., then E.C.O is liable to pay GST under R.C.M.

Specified premises means premises providing hotel accommodation services having declared tariff of any unit accommodation  $\geq ₹7,500/-$  per unit per day.

Note: Restaurant is supplying services through E-COM only, he is not required to get registered under GST. In case, he is already registered, he may continue with such registration or get them de-registered under GST.

### Reverse Charge Mechanism

GST on service supplied by restaurants through e-commerce operators (CBIC Circular No. 167/23/2021-GST Dated 17th December 2021):

1. U/s 9(5) of the CGST Act, 2017 E.C.O. is not required to collect TCS.
2. As E.C.Os are already registered under GST and hence no separate registration is required to pay tax on restaurant services u/s 9(5).



3. ECOs will be liable to pay GST on any restaurant service supplied through them including by an unregistered person.

4. ECO would be eligible to ITC as before. Accordingly, it is clarified that ECO shall not be required to reverse ITC on account of restaurant services on which it pays GST in terms of section 9(5) of the Act. It may also be noted that on restaurant service, ECO shall pay the entire GST liability in cash.

5. The invoice in respect of restaurant service supplied through ECO under section 9(5) will be issued by ECO.

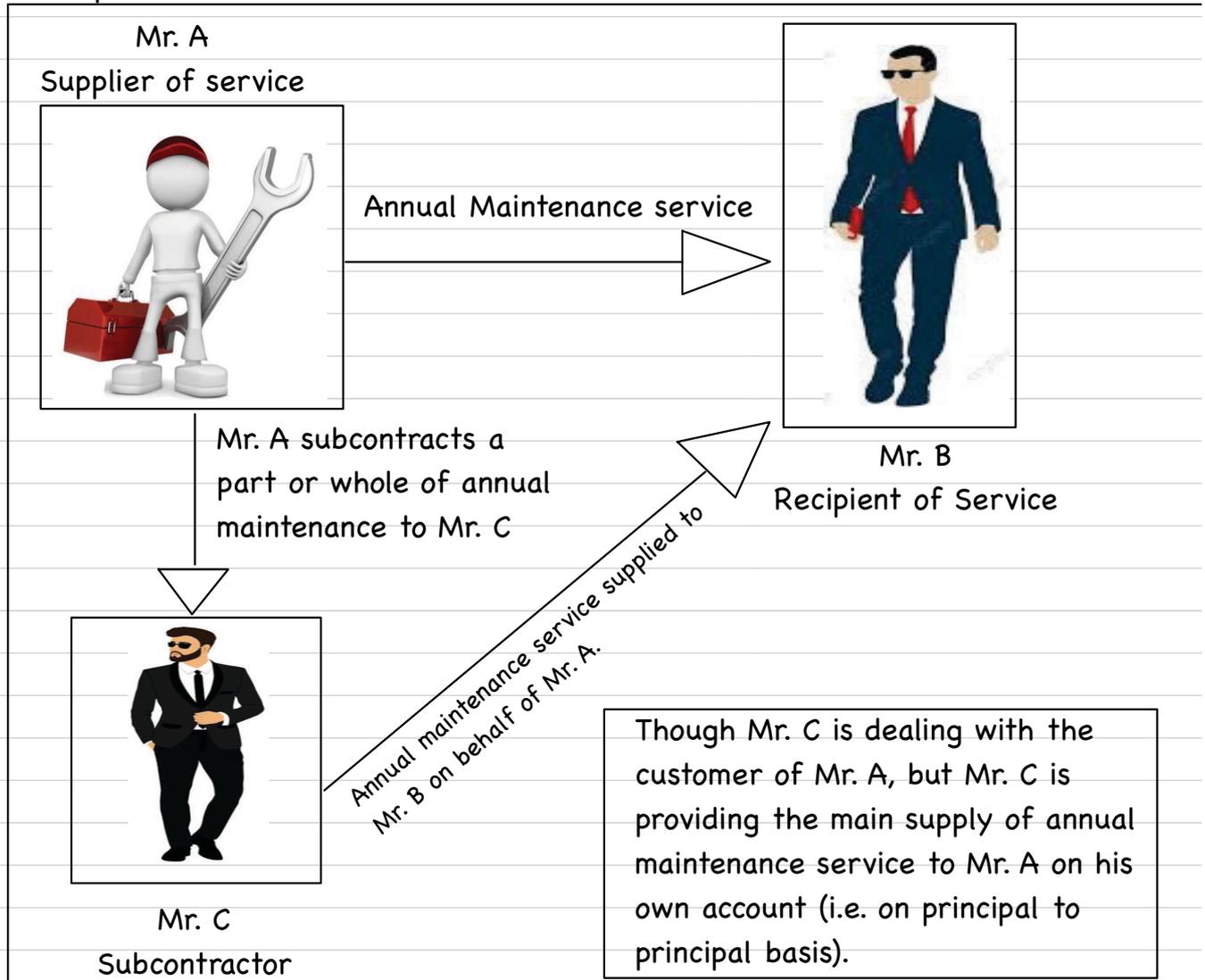
### Place of Supply

#### Clarification regarding scope of Intermediary:

(Circular No. 159/15/2021 GST dated 02.06.2021)

Intermediary has been defined under section 2(13) of IGST Act, 2017, as “intermediary means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account”.

#### Example 1:



In this case, Mr. A is providing supply of annual maintenance service to Mr. B, whereas Mr. C is supplying the same service to Mr. A. Thus, supply of service by Mr. C will not be considered as an intermediary.

### Place of Supply

Example 2:

Mr. C helps Mr. A in selling the machine by identifying client Mr. B who wants to buy this machine and helps in finalising the contract of supply of machine by Mr. A to Mr. B

In this arrangement, Mr. C is providing the ancillary supply of arranging or facilitating the main supply of machinery between Mr. A and Mr. B and therefore, Mr. C is an intermediary and is providing intermediary service to Mr. A.

Example 3:

M/s A Ltd. Supplier of Service

M/s B Ltd. recipient of Service

M/s A Ltd outsources the task of design and development of a particular module of the software to M/s C Ltd. for which M/s C Ltd. may have to interact with M/s B Ltd. to know their specific requirements.

M/s C Ltd.

In this case, M/s C Ltd. is providing main supply of service of design and development of software to M/s A Ltd. and thus, M/s C Ltd is not an intermediary in this case.

### Place of Supply

Example 4:

M/s P Inc. (Insurance Company outside India)

Approaches for arranging insurance claims processing service from other service providers in India.



Miss. Queen  
(Located in India)



Miss. Queen charges M/s P Inc., a commission or service charges of 1% of the contract value of insurance claims processing service provided by Mr. King to M/s P Inc.

Miss Queen contracts Mr. King and arranges supply of insurance claims processing services by Mr. King to M/s P Inc.

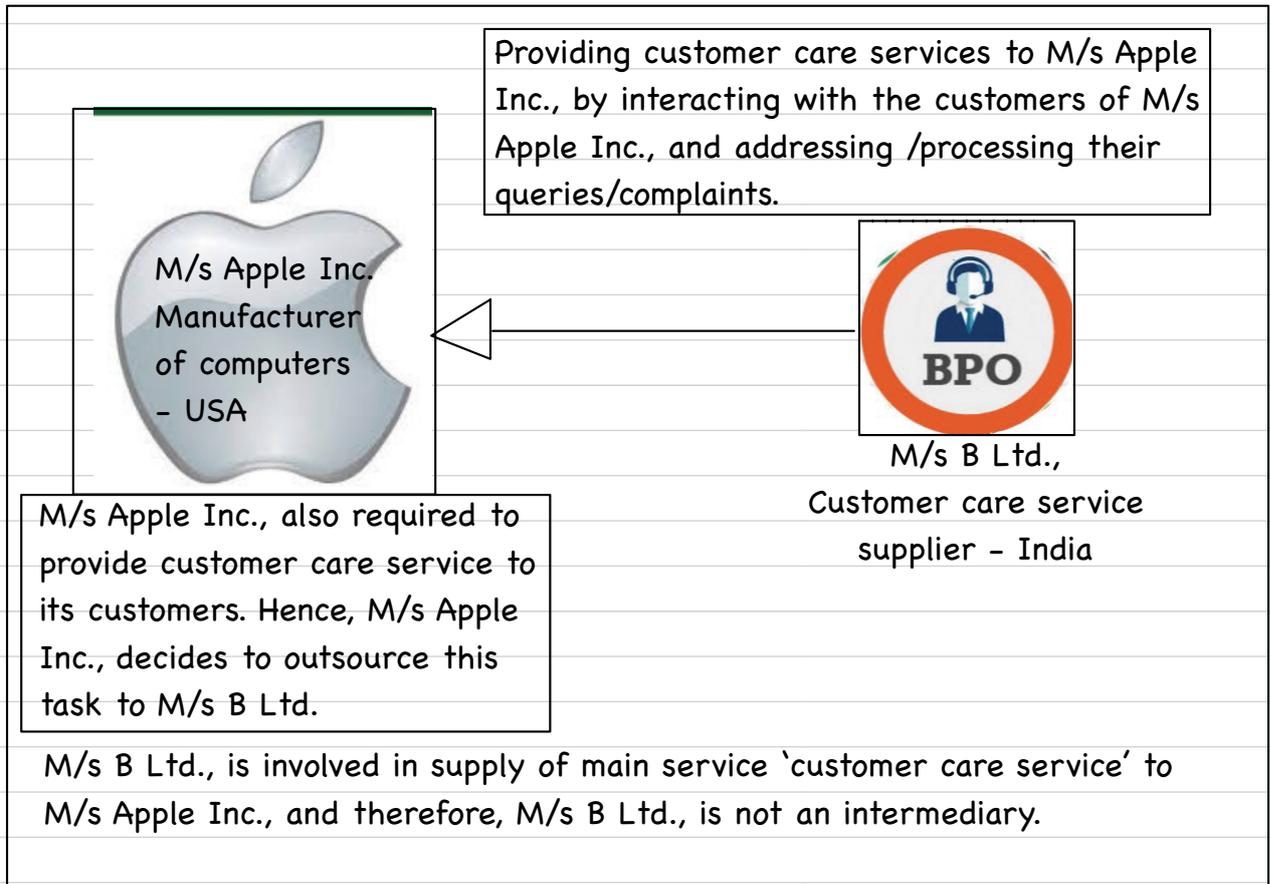


Mr. King  
(Supplier of insurance  
claims processing service)

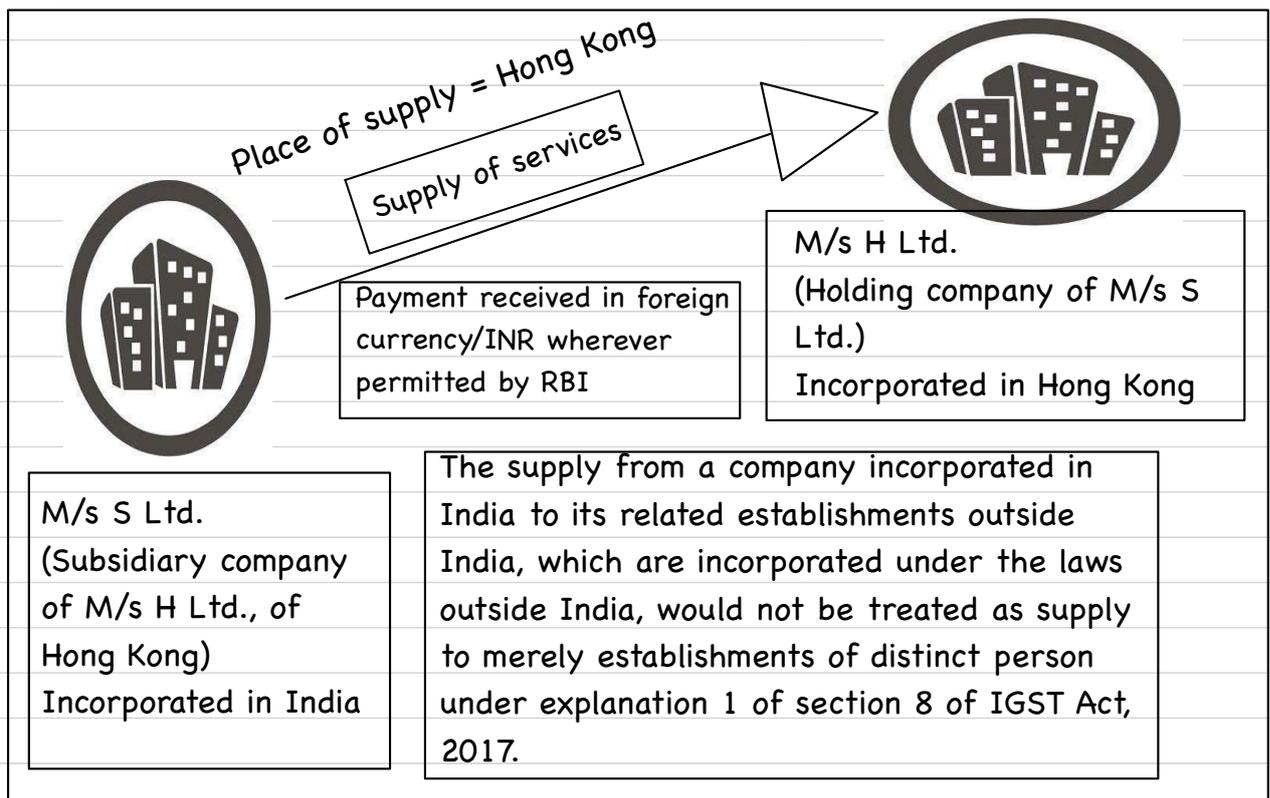
In such case, main supply of insurance claims processing service is between M/s P Inc., and Mr. King, while Miss Queen is merely arranging or facilitating the supply of services between M/s P Inc., and Mr. King, and not herself providing the main supply of service. Accordingly, in this case, Miss. Queen acts as an intermediary as per definition of section 2(13) of the IGST Act, 2017.

## Place of Supply

Example 5:



### Export of Service (Circular No. 161/17/2021 GST dt. 20.09.2021):

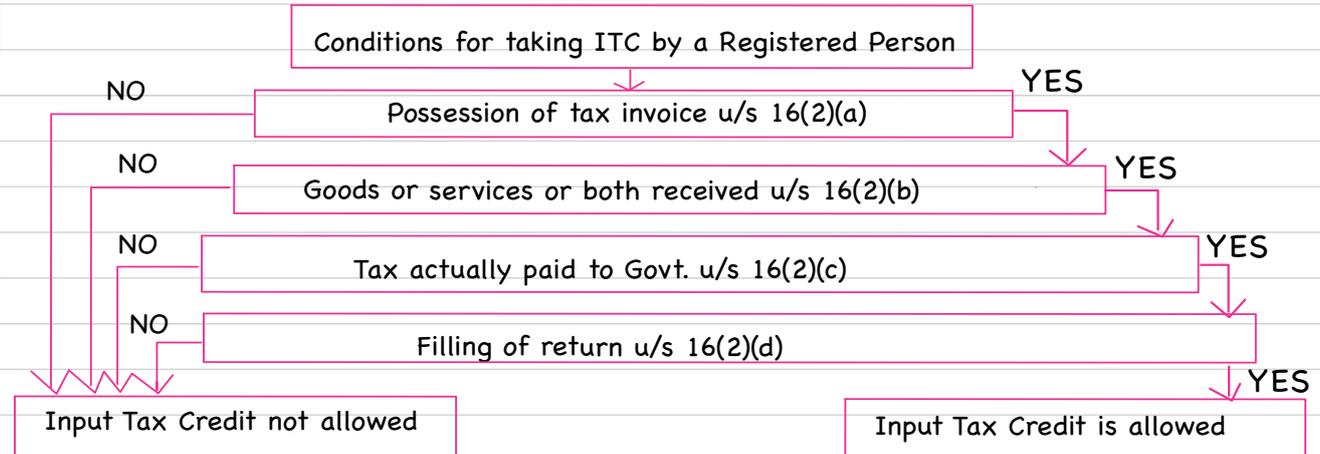




# SUPPLEMENTARY PAPER 19 FOR JUNE 2023 TERM OF EXAMINATION SYLLABUS 2022

## INPUT TAX CREDIT

### ◆ Sec. 16(1) of CGST Act, 2017:



### Explanation to Sec 16(2)(b):

- (i) Deemed receipt of goods (i.e. in case of bill to ship to model)
- (ii) Deemed receipt of services where the services are provided by the supplier to any person on the direction of and on account of such registered person.

### 1st proviso to Sec 16(2):

Goods received in lots ITC available only on receipt of **last lot/instalment**.

### 2nd Proviso to Sec 16(2):

Payment for the invoice to be made **within 180 days** from the date of issue of invoice by the supplier.

### 3rd proviso to Sec 16(2):

The recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable there on.

### Deemed to have been paid:

- (a) Activities covered under Schedule I
- (b) Value of supplies on account of any amount added in accordance with Sec 15(2)(b) of CGST Act, 2017

Amendment as per Finance Act, 2021 (w.e.f. 1-1-2022): In section 16 of the Central Goods and Services Tax Act, in sub-section (2), after clause (a), the following clause shall be inserted, namely:-

(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;



# SUPPLEMENTARY PAPER 19 FOR JUNE 2023 TERM OF EXAMINATION SYLLABUS 2022

## INPUT TAX CREDIT

**W.e.f. 1-10-2022, new clause (ba) inserted in Section 16(2) of CGST Act, 2017:**

“The details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted”.

As per this amended provision, the registered person would be eligible to claim the ITC only when the details of invoices/debit notes made available to him electronically on the GSTN Portal are not restricted in the auto-generated statement referred to as GSTR-2B.

This means that details of invoices/debit note communicated to the taxpayer in GSTR-2B as per section 38, should not be restricted from claiming ITC.

### **‘Communication of details of inward supplies and Input Tax Credit’:**

As per provisions of section 38(2) notified vide notification 18/2022 – Central Tax dated 28-09-2022 effected from 01-10-2022, the details furnished by the supplier in GSTR 1 shall be communicated to the taxpayer in an auto-generated statement GSTR 2B. This statement shall consist of 2 parts.

One Part shall state eligible Input Tax Credit which the Recipient can avail and utilize.

The Second Part shall provide details of such supplies in respect of which Input Tax Credit cannot be availed by the Recipient wholly or partly as may be prescribed.

The above section introduces a completely new mechanism under which the auto-generated GSTR 2B shall itself decide and provide the list of Invoices or Debit notes on which ITC can be claimed by the taxpayer.

As a result recipient shall have not to do any work on to locate the supplier whose supply shall not be eligible for the purpose of input tax credit as per section 38.

**Question:** Whether it is mandatory to claim ITC as per GSTR-2B generated under Section 38?

**Answer:** Yes. As per the newly inserted clause (ba) in section 16(2), it provides mandatory condition that ITC claimed by recipient should not be restricted under section 38. Hence ITC restricted or in-eligible as per GSTR 2B cannot be claimed as per clause (ba) of section 16(2).



# SUPPLEMENTARY\_PAPER\_19\_FOR\_JUNE\_2023 TERM OF EXAMINATION\_SYLLABUS\_2022

## INPUT TAX CREDIT

New clause (ba) inserted in Sec 16(2) – Additional condition for claiming ITC by buyer that ITC can be claimed only if that ITC has not been restricted in auto generated statement -GSTR-2B u/s 38 of CGST Act, 2017.

The Second Part shall provide details of such supplies in respect of which Input Tax Credit cannot be availed by the Recipient wholly or partly as may be prescribed.

Restrictions imposed under section 38 of CGST Act, 2017 for which ITC can't be availed are as follows:

1. Related to suppliers who have taken new registration for such period as may be prescribed.
2. Related to suppliers who have defaulted in payment of tax and default continues for such period as may be prescribed.
3. Related to suppliers who have declared output tax liability more in GSTR-1 but paid tax less in GSTR-3B.
4. ITC claimed more than ITC auto-populated in GSTR-2B
5. ITC claimed in violation of conditions prescribed in Section 49 (12)- Maximum proportion of output tax liability which may discharged through electronic credit ledger.

### **W.e.f. 01-10-2022, amendment in rule 36 (Documentary requirements and conditions for claiming input tax credit) -**

Pursuant to the amendment made in section 38 w.e.f. 01-10-2022, with regard to removal of Form GSTR-2 and doing away with two-way communication process, rule 36 has been amended to remove the reference to Form GSTR-2 therefrom - Rule 36(2).

Rule 36(4)(b), Further, it has been provided that the details of input tax credit in respect of invoices or debit notes shall be communicated in Form GSTR-2B.



# SUPPLEMENTARY PAPER 19 FOR JUNE 2023 TERM OF EXAMINATION SYLLABUS 2022

## INPUT TAX CREDIT

**W.e.f 01-10-2022, Amendment in rule 37, Reversal of input tax credit in case of non-payment of consideration within 180 days:** vide Notification No. 19/2022-CT dated 28.09.2022) whereby sub-rule (1) and (2) have been substituted [and sub-rule (3) has been omitted] as below -

Rule 37 (1) A registered person, who has availed of input tax credit on any inward supply of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, but fails to pay to the supplier thereof, the amount towards the value of such supply along with the tax payable thereon, within the time limit specified in the second proviso to sub-section(2) of section 16, shall pay an amount equal to the input tax credit availed in respect of such supply along with interest payable thereon under section 50, while furnishing the return in FORM GSTR-3B for the tax period immediately following the period of 180 (one hundred and eighty) days from the date of the issue of the invoice:

Provided that the value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16:

Provided further that the value of supplies on account of any amount added in accordance with the provisions of clause (b) of sub-section (2) of section 15 shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.;

Rule 37(2) Where the said registered person subsequently makes the payment of the amount towards the value of such supply along with tax payable thereon to the supplier thereof, he shall be entitled to re-avail the input tax credit referred to in sub-rule (1).

Rule 37(3) OMITTED. Sub-rule (3) providing for payment of interest has been omitted since the same as now been incorporated in sub-rule (1).

Rule 37(4) The time limit specified in sub-section (4) of section 16 shall not apply to a claim for re-availing of any credit, in accordance with the provisions of the Act or the provisions of this Chapter, that had been reversed earlier.



# SUPPLEMENTARY\_PAPER\_19\_FOR\_JUNE\_2023 TERM OF EXAMINATION\_SYLLABUS\_2022

## INPUT TAX CREDIT

**Example:** if 180 days expires on 06.10.2022, the tax period following the said period is November 2022 and hence the reversal should be made in the GSTR-3B return for the month of November 2022, which would be filed on 20th December 2022. But nothing prevents the taxpayer to reverse the same in the GSTR-3B return for the month of October 2022 itself, which would be filed on 20th November 2022, so that the interest liability could be reduced further.

### INPUT TAX CREDIT



#### Sec 16(4) of the CGST Act, 2017:

W.e.f. 01-10-2022, A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the 30th November following the end of financial year to which such invoice or debit note pertains (prior to 01-10-2022 due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains) or furnishing of the relevant annual return, whichever is earlier.

The words were "invoice relating to such" has been omitted w.e.f. 1-1-2021) It means the recipient can avail ITC of GST paid through debit note, even if the supply pertains to previous financial years.

Time limit to avail the input tax credit:

(a) 30th November of the following financial year

OR

(b) Filing of annual return

Whichever is earlier



Similarly. W.e.f 01-10-2022, the time limit of 20th October prescribed in section 34 for declaring detail of a Credit Note pertaining to any supply made in preceding FY is also revised and allowed upto 30th November or furnishing of Annual Return, whichever is earlier.

The time limit under Sec 16(4) does not apply to claim for **re-availing** of credit that had been reversed earlier.



#### **Date of issuance of debit note to determine the relevant financial year for the purpose of section 16(4) of the CGST Act, 2017:**

(Circular No. 160/16/2021 GST dt. 20.09.2021)

For example, a debit note dated 17th July 2022 is issued in respect of the original invoice dated 16th March 2022. As the invoice pertains to Financial Year 2021-22, the relevant financial year for a availment of ITC in respect of the said invoice in terms of section 16(4) shall be Financial Year 2021-22.

However, as the debit note has been issued in Financial Year 2022-23, the relevant financial year for availment of ITC in respect of the said debit note shall be Financial Year 2022-23 in terms of amended provision of section 16(4) of the CGST Act, 2017.

### INPUT TAX CREDIT



#### Restrictions on utilisation of ITC [Rule 86A]:

A new rule 86A has been inserted in the CGST Rules to empower the Commissioner/ an officer (not below the rank of an Assistant Commissioner) authorised by him, to impose restrictions on utilization of ITC available in the electronic credit ledger if he has reasons to believe that such ITC has been fraudulently availed or is ineligible.

The restrictions can be imposed in the following circumstances:

- (i) ITC has been availed on the basis of tax invoices/valid documents -
  - issued by a **non-existent supplier** or by a person not conducting any business from the registered place of business; or
  - **without** receipt of goods or services or both; or
  - the tax in relation to which has **not been paid** to the Government
- (ii) Registered person availing ITC has been **found non-existent** or not to be conducting any business from the registered place of business; or
- (iii) Registered person availing ITC is **not in possession** of tax invoice/valid document.

If the ITC is so availed, the restrictions can be imposed by not allowing such ITC to be used for discharging any liability under section 49 or not allowing refund of any unutilised amount of such ITC. Such restrictions can be imposed for a period **up to 1 year** from the date of imposing such restrictions. However, the Commissioner/ officer authorised by him, can withdraw such restriction if he is satisfied that conditions for imposing the restrictions no longer exist.



#### Disallowing debit of electronic credit ledger - Rule 86A:

CBIC Guidelines:

1. The Commissioner or an officer authorised by him, not below the rank of Assit. Comm. must "form an opinion" for disallowing debit of an amount from E-Credit Ledger where such disallowance is necessary for restricting him from utilizing / passing on fraudulently availed or ineligible ITC to protect the interest of revenue.
2. Disallowing debit of amount only after careful examination of all the facts of the case.

3.	Total amount of ineligible fraudulently availed ITC	Officer authorized to disallow debit of amount from electronic credit ledger under rule 86A
	≤ ₹1 crore	Deputy / Assistant Commissioner
	> ₹1 crore ≤ ₹5 crore	Additional / Joint Commissioner
	> ₹5 crore	Principal Comm. / Commissioner

### INPUT TAX CREDIT

4. During audit u/s 65 or 66 it is noticed that any ITC has been fraudulently availed or is ineligible as per the grounds mentioned in rule 86A, the concerned Commissioner/Principal Comm of CGST Audit Commissionerate may refer the same to the jurisdictional CGST Commissioner for examination of the matter for exercise of power under rule 86A.

#### Procedure for disallowance

ITC fraudulently availed or ineligible ITC availed by the registered person shall be prima facie ascertained based on material evidence available or gathered on record. The "reasons to believe" shall be duly recorded by the concerned officer in writing on file before, he proceeds to disallow.

The amount disallowed for debit from e-credit ledger should not be more than the amount of ITC which is believed to have been fraudulently availed or is ineligible.

The action to disallow such debit from e-credit ledger shall be informed on the portal to the concerned registered person.

Allowing debit of disallowed/restricted credit under rule 86A(2):

- i. Concerned Officer either on his own or based on the submissions made by the taxpayer with material evidence, may examine the matter afresh and being satisfied either partially or fully, may allow the use of the credit so disallowed/restricted, up to the extent of eligibility.
- ii. Reasons for allowing the debit of e-credit ledger, shall be duly recorded on file in writing, before allowing such debit.
- iii. Upon expiry of 1 year from the dt. of restriction, the registered person shall be able to debit ITC so disallowed, subject to any other action that may be taken against such person.
- iv. In all above such cases the investigation and adjudication are completed at the earliest, well within the period of restriction, so that the due liability arising out of the same can be recovered.



# SUPPLEMENTARY PAPER 19 FOR JUNE 2023

## TERM OF EXAMINATION SYLLABUS 2022

### INPUT TAX CREDIT

#### Restriction on use of amount available in Electronic Credit Ledger Rule 86B of the CGST Rules, 2017:

w.e.f. 1-1-2021, New Rule 86B has been inserted which restricts the use of credit available in Electronic Credit Ledger. The said rule restricts the use of Input Tax Credit by more than 99% against output tax liability. This restriction is applicable for taxpayers whose taxable supply other than exempt supply and zero-rated supply exceeds ₹50 lakhs in a month.

**Example:** The total value of inter-State supply of Shiva & Sons for the month of March 2021 is of ₹100 lakh. Said supply is taxable @ 18% IGST. Thus, total output tax liability of Shiva & Sons is ₹18 lakh. Amount available in electronic credit ledger is ₹20 lakh (IGST).

In terms of restriction imposed by rule 86B, Shiva & Sons can discharge @99% of its output tax liability, i.e. ₹17,82,000 (99% of ₹18,00,000) from the amount available in electronic credit ledger. However, it has to mandatorily discharge the balance 1% of the output tax liability i.e. ₹18,000 (1% of ₹18,00,000) through electronic cash ledger only.

Further, the said rule is **not applicable** in the following cases:-

- The taxpayer (proprietor/ Karta/ managing director/ partner/Whole Time Director/ Members of the managing committee of Association/Board of Trustees) have paid income tax exceeding ₹1 lakh in each of the 2 preceding financial years or
- Where taxpayers have received a refund of unutilized input tax credit exceeding ₹1 lakh in the preceding financial year on account of exports or supplies to SEZ or
- Where taxpayers have received a refund of unutilized input tax credit exceeding ₹1 lakh in the preceding financial year on account of inverted duty structure or
- The taxpayer has discharged his liability towards output tax through the Electronic Cash Ledger for an amount which is more than 1% of the total output liability, applied cumulatively, up to the said month in the current financial year or
- The taxpayer is
  - Government Department
  - Public Sector Undertaking
  - Local authority
  - Statutory body

The Commissioner or any officer authorized by him on this behalf may remove the said restriction after such verification and safeguards as he may deem fit (vide Notification No. 94/2020 CT., Dated 22-12-2020)

W.e.f. 01-10-2022, section 49(12) of CGST Act, 2017 has been inserted concerning the above rule. This insertion gives rule 86B legal backing.

## INPUT TAX CREDIT

Section 17(1), Goods or Services or both are used by the Registered Person (R.P.) partly for the purpose of any business and partly for other purposes:

The amount of credit shall be restricted to so much of the input tax as is attributable to the purpose of his business.

Section 17(2), Goods or Services or both are used by the Registered Person (R.P.) partly for taxable supplies including zero-rated supplies and partly for effecting exempt supplies:

The amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

Section 17(3) of the CGST Act, 2017 the value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

Exempted supply for the purpose of Rule 42 and Rule 43



Includes	Excludes
<ul style="list-style-type: none"> <li>i. Outward supplies on which recipient is liable to pay tax under RCM.</li> <li>ii. Transactions in securities (value of supply shall be taken as 1% of the sale value of such securities).</li> <li>iii. Sale of land (value shall be taken as the same as adopted for the purpose of paying Stamp Duty).</li> <li>iv. Sale of building value shall be taken as the same as adopted for the purpose of paying Stamp Duty (except construction of complex where supply is made before obtaining completion certificate).</li> <li>v. Nil rate of supply.</li> <li>vi. Non-taxable supply.</li> </ul>	<ul style="list-style-type: none"> <li>i. Activities specified in Schedule III (except sale of land &amp; building).</li> <li>ii. Interest earned on deposits, loans and advances (except Banks/NBFCs).</li> <li>iii. Supply of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India.</li> <li>iv. Excise duty, Sales Tax.</li> <li>v. The value of supply of duty credit scrips like MEIS, RoDTEP's, SEIS &amp; EPCG (NT No.14/2022 CT Dt 5th July 2022).</li> </ul>



# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2023 TERM OF EXAMINATION\_SYLLABUS 2022

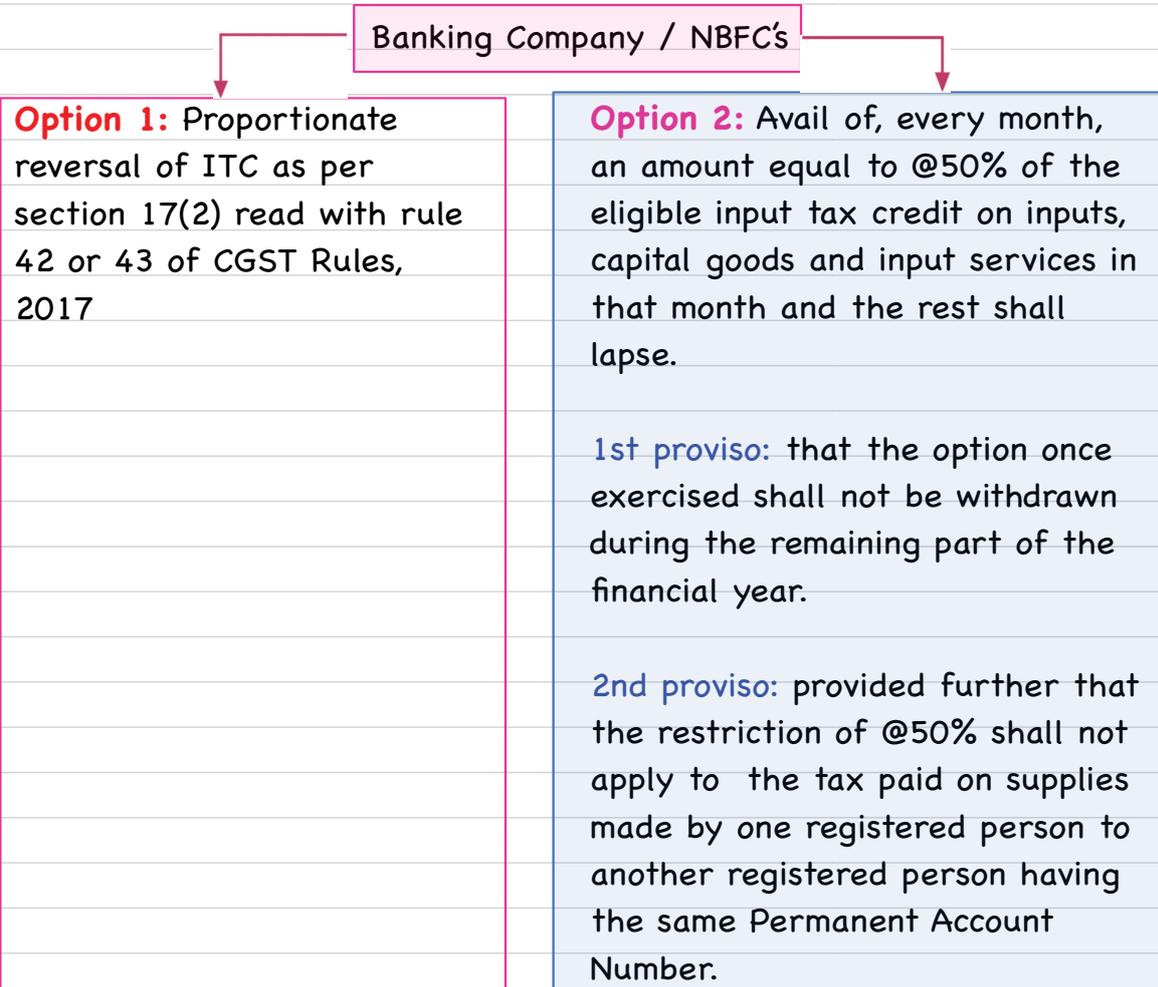
## INPUT TAX CREDIT



the ITC so availed by the recipient of deemed export supplies would not be subjected to provisions of Section 17 of the CGST Act, 2017 (vide CBIC Circular No 172/04/2022 GST dt.6th July 2022).

## INPUT TAX CREDIT

◆ Section 17(4) of the CGST Act, 2017 Banking Company or NBFCs:



**Example:** OK Bank has availed credit of ₹25,00,000 lacs in the month of December 20XX. Total credit, out of which ₹5,00,000 pertains to non-business purpose and ₹7,00,000 pertains to credit availed under 2nd proviso of section 17(4). Find the total input tax credit eligible to OK Bank.

**Note:** OK Bank opted to avail ITC an amount equal to 50% of eligible credit.

**Answer:** statement showing eligible ITC to OK Bank - December 20XX

Particulars	ITC Amount in ₹	Remarks
Input tax credit attributable to non-business purpose	Nil	ITC fully not allowed
ITC from its other establishment	7,00,000	ITC fully allowed.
Other ITC	6,50,000	(25,00,000 - 5,00,000 - 7,00,000) × 50%
<b>Total ITC allowed</b>	<b>13,50,000</b>	

W.e.f. 01-10-2022, Rule 38 providing for claim of credit by a banking company or a financial institution has been amended to remove the reference to Form GSTR-2 therefrom.



# SUPPLEMENTARY PAPER 19 FOR JUNE 2023 TERM OF EXAMINATION SYLLABUS 2022

## INPUT TAX CREDIT

### Blocked Credit Sec. 17(5) of the CGST Act, 2017

#### Capital goods

w.e.f. 1-2-2019:

(a) motor vehicles for transportation of persons having approved seating capacity of not more than 13 persons (including the driver), except when they are used for making the following taxable supplies, namely:-

(A) further supply of such vehicles; or

(B) transportation of passengers; or

(C) imparting training on driving such motor vehicles;

(aa) vessel and aircraft except when they are used-

(i) For making the following taxable supplies, namely: -

(A) Further supply of such vessels or aircraft; or

(B) Transportation of passengers or

(C) Imparting training on navigating such vessel or

(D) Imparting training on flying such aircraft

(ii) For transportation of goods;

(ab) services of general insurance, servicing, repair and maintenance insofar as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or (aa);

Provided that the input tax credit in respect of such services shall be available-

(i) Where the motor vehicles, vessels or aircraft referred to in clause (a) or (aa) are used for the purposes specified therein;

(ii) Where received by a taxable person engaged-

(I) In the manufacture of such motor vehicles, vessels or aircraft; or

(II) In the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;

#### Input & Input Service

(b) w.e.f. 1-2-2019, the following supply of goods or services or both-

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or (aa) except when used for the purposes specified therein, life insurance and health insurance;

Provided that input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

(ii) membership of a club, health and fitness centre;

(iii) travel benefits extended to employees on vacation such as leave or home travel concession;

Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

(c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;

(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

(e) goods or services or both on which tax has been paid under section 10;

(f) goods or services or both received by a non-resident taxable person except on goods imported by him;

(g) goods or services or both used for personal consumption;

(h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and

(i) any tax paid in accordance with the provisions of Fraud, Detention, Seizure and confiscation of goods or conveyance.



# SUPPLEMENTARY PAPER 19 FOR JUNE 2023 TERM OF EXAMINATION SYLLABUS 2022

## INPUT TAX CREDIT

Proviso after sub-clause (iii) of Section 17(5)(b) "That scope of input tax credit is being widened, and it would now be made available in respect of Goods or services which are obligatory for an employer to provide to its employees, under any law for the time being in force."

As per CBIC Circular No. 172/04/2022 GST dt 6th July 2022, it is clarified that that the proviso after sub-clause (iii) of clause (b) of sub-section (5) of section 17 of the CGST Act is applicable to the whole of clause (b) of sub-section (5) of section 17 of the CGST Act.

It is clarified that "leasing" referred in sub-clause (i) of clause (b) of sub-section (5) of section 17 refers to leasing of motor vehicles, vessels and aircrafts only and not to leasing of any other items. Accordingly, availment of ITC is not barred under sub-clause (i) of clause (b) of sub-section (5) of section 17 of the CGST Act in case of leasing, other than leasing of motor vehicles, vessels and aircrafts (CBIC Circular No. 172/04/2022 GST dt 6th July 2022).

## INPUT TAX CREDIT



### Availment of ITC [Section 41 of the CGST Act, 2017] w.e.f. 01-10-2022:

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to avail the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger.

(2) The credit of input tax availed by a registered person under sub-section (1) in respect of such supplies of goods or services or both, the tax payable whereon has not been paid by the supplier, shall be reversed along with applicable interest, by the said person in such manner as may be prescribed:

Provided that where the said supplier makes payment of the tax payable in respect of the aforesaid supplies, the said registered person may re-avail the amount of credit reversed by him in such manner as may be prescribed.”.

The new section 41 provides that the taxpayer shall self-assess and claim ITC in GSTR 3B. It further provides that in case the taxpayer has claimed ITC of GST which is not paid/ deposited by the corresponding supplier, than the taxpayer / recipient shall reverse the ITC along with interest. The recipient shall be eligible to re-claim the ITC reversed, on payment of GST by the supplier.

Note: Provisional ITC and Matching Concept under Section 41 of CGST Act, 2017 is now overruled w.e.f. 01.10.2022.

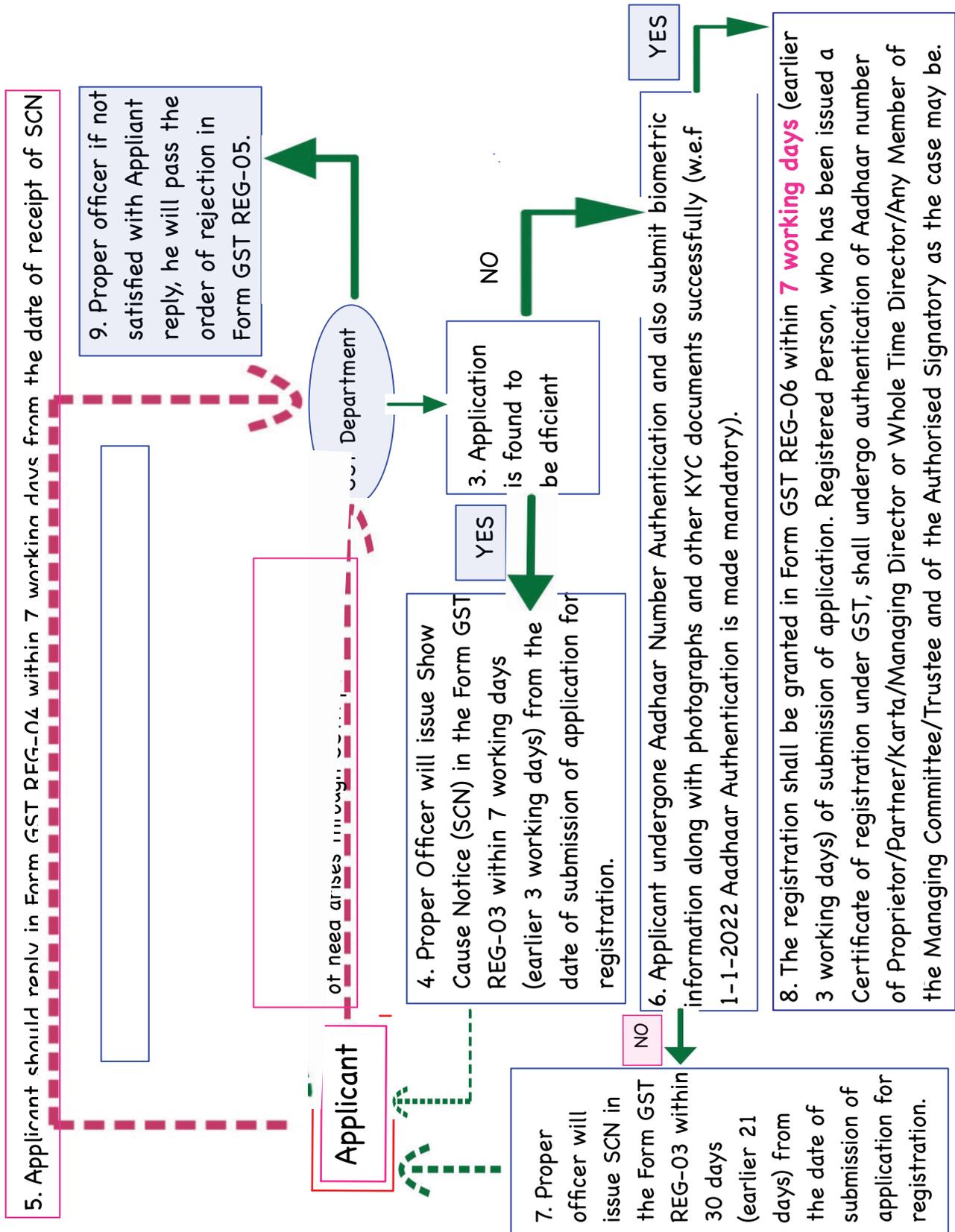
W.e.f. 01-10-2022, sections 42 (OMITTED): Matching, Reversal and Reclaim of ITC.

W.e.f. 01-10-2022, Section 43 of CGST Act 2017 (OMITTED): Matching, Reversal and Reclaim of Reduction in Output Tax Liability.

W.e.f. 01-10-2022, section 43A (OMITTED): Procedure for furnishing return and availing input tax credit.

## REGISTRATION UNDER GST

W.e.f. 1-1-2022 Registration procedure u/s 25 of the CGST Act, 2017, Notification No. 94/2020 C.T., dated 22-12-2021 & NT 38/2021 CT dt 21-12-2021:





# SUPPLEMENTARY PAPER 19 FOR JUNE 2023 TERM OF EXAMINATION SYLLABUS 2022

## REGISTRATION UNDER GST

After Aadhaar Authentication such person is also eligible for the following purposes:

- ★ For filing of application for revocation of cancellation of registration
- ★ For filing of refund application in Form RFD-01
- ★ For refund of the IGST paid on goods exported out of India

If an Aadhaar number is not assigned to an existing registered person, such person shall be offered alternate and viable means of identification in the prescribed manner. Such manner has been prescribed by rule 10B as follows:

- (A) Such person shall furnish her/his Aadhaar Enrolment ID slip; and
- (B) (i) Bank passbook with photograph or
- (ii) Voter Identity card issued by the Election Commission of India; or
- (iii) Passport; or
- (iv) Driving Licence issued by the Licensing Authority.

Such person shall undergo the authentication of Aadhaar number within a period of 30 days of the allotment of the Aadhaar number.



### **Persons/class of persons exempt from aadhaar authentication:**

The provisions of Section 25(6B) and (6C) of CGST Act, 2017 shall not apply to a person who is

- (a) Not a citizen of India; or
- (b) A Department or establishment of the Central Government or State Government; or
- (c) A local authority; or
- (d) A statutory body; or
- (e) A Public Sector Undertaking; or
- (f) A person applying for registration under the provisions of sub-section (9) of Section 25 of the CGST Act, 2017 (i.e. United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries or person holding Unique Identity Number (UIN)).

(Notification No. 3/2021 C.T., dated 23-2-2021)



# SUPPLEMENTARY PAPER 19 FOR JUNE 2023 TERM OF EXAMINATION SYLLABUS 2022

## REGISTRATION UNDER GST

Turnover ₹40 lac is not applicable if exclusively supply of following goods:

- Ice cream
- Tobacco and
- Tobacco substitutes (like pan masala etc.)
- Aerated Water

W.e.f. 1-4-2022:

- Fly ash bricks or fly ash aggregate with 90% or fly ash content; Fly ash blocks
- Bricks of fossil meals or similar siliceous earths
- Building Bricks, Earthen or roofing tiles

In such case turnover limit is ₹20 lac or ₹10 lac as the case may be is applicable.



# SUPPLEMENTARY PAPER 19 FOR JUNE 2023 TERM OF EXAMINATION SYLLABUS 2022

## REGISTRATION UNDER GST

### 2. Cancellation by a GST officer Section 29(2):

GST registration of a person or business can be cancelled by a proper GST officer in one of the following cases:

- If the registered person has violated any of GST provisions or laws.

- W.e.f. 1st October 2022, A composition registered person has not furnished the return for a financial year beyond 3 months from the due date of furnishing of the said return as against the earlier provision which provided non-filing for 3 consecutive tax periods.

- W.e.f. 1st October 2022, A normal registered person (other than composition scheme) who is required to file return:

monthly	- not furnished for a continuous period of 6 months in case of regular taxpayers
quarterly	- not furnished for a continuous period of 2 tax periods in case of QRMP scheme.

- A voluntarily registered person who has not commenced any business in the six months from the registration date.

- If the registration is obtained by fraud methods, the proper officer has the right to cancel the registration with retrospective effect.

W.e.f. 22-12-2020 (vide NT 94/2020 CT dated 22-12-2020)

- If a registered person avails input tax credit in violation of the provisions of section 16 of the Act or rules made thereunder or

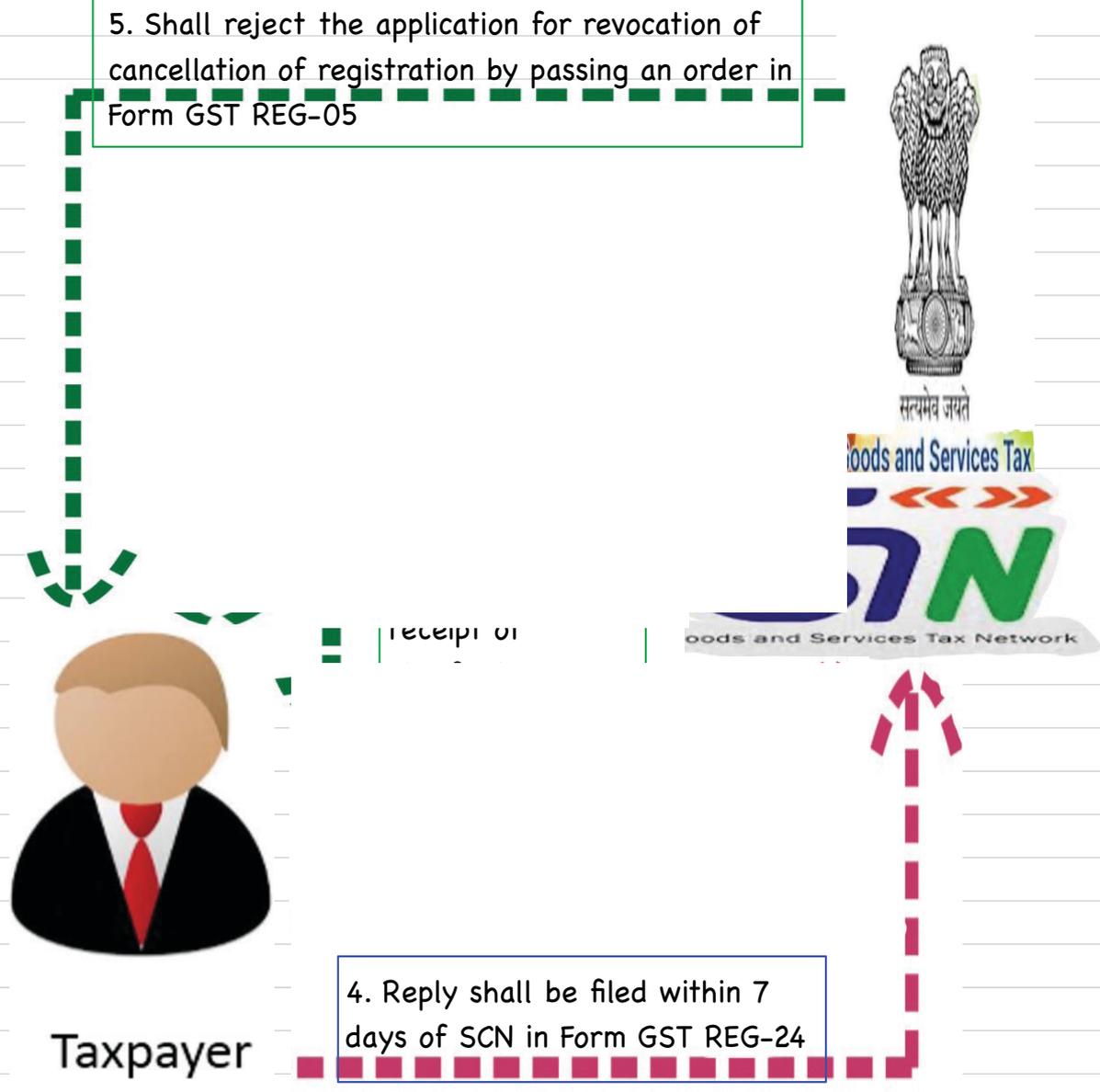
- If a registered person furnishes details of outward supplies in FORM GSTR-1 for one or more tax periods in excess of outward supplies declared in GSTR-3B

- If a registered person violates provisions of newly inserted rule 86B (i.e. restriction on the use of ITC while discharging output liability)

**REGISTRATION UNDER GST**



**Procedure for Revocation of cancellation of registration under GST:**



Extension of time limit for filing application:

w.e.f. 1-10-2021, On sufficient cause being shown, and for reasons to be recorded in writing, be extended,

- by the Additional Commissioner or the Joint Commissioner, as the case may be, for a period not exceeding 30 days;
- by the Commissioner, for a further period not exceeding 30 days, beyond the period specified in clause (a)

Insertion of 2nd proviso in rule 21A(4) (**Automatic revocation**): There will be automatic revocation of suspended GST registration upon furnishing of pending GST returns, if GST registration was suspended due to non-filing of GST returns (NT 14/2022 CT dt. 5th July 2022).



# SUPPLEMENTARY PAPER 19 FOR JUNE 2023 TERM OF EXAMINATION SYLLABUS 2022

## PAYMENT OF TAX

### CBIC Circular No. 172/04/2022 GST 6th July 2022:

Question 1: Whether the amount available in the electronic credit ledger can be used for making payment of any tax under the GST Laws?

Answer: CBIC clarified that any payment towards output tax, whether self-assessed in the return or payable as a consequence of any proceeding instituted under the provisions of GST Laws, can be made by utilization of the amount available in the electronic credit ledger of a registered person.

It is further reiterated that as output tax does not include tax payable under reverse charge mechanism, implying thereby that the electronic credit ledger cannot be used for making payment of any tax without which is payable under reverse charge mechanism

Question 2: Whether the amount available in the electronic credit ledger can be used for making payment of any liability other than tax under the GST Laws?

Answer: As per sub-section (4) of section 49, the electronic credit ledger can be used for making payment of output tax only under the CGST Act or the IGST Act. It cannot be used for making payment of any interest, penalty, fees or any other amount payable under the said acts. Similarly, electronic credit ledger cannot be used for payment of erroneous refund sanctioned to the taxpayer, where such refund was sanctioned in cash.

Question 3: Whether the amount available in the electronic cash ledger can be used for making payment of any liability under the GST Laws?

Answer: As per sub - section (3) of section 49 of the CGST Act, the amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of the GST Laws.



# SUPPLEMENTARY PAPER 19 FOR JUNE 2023 TERM OF EXAMINATION SYLLABUS 2022

## PAYMENT OF TAX

**W.e.f. 5th July 2022, Section 49(10) of the CGST Act, 2017 w.e.f. Notification No. 9/2022 CT dt 5th July 2022:**

"A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under this Act, to the electronic cash ledger for,--

- (a) integrated tax, central tax, State tax, Union territory tax or cess; or
- (b) integrated tax or central tax of a distinct person as specified in sub-section (4) or, as the case may be, sub-section (5) of section 25,

in such form and manner and subject to such conditions and restrictions as may be prescribed and such transfer shall be deemed to be a refund from the electronic cash ledger under this Act:

Provided that no such transfer under clause (b) shall be allowed if the said registered person has any unpaid liability in his electronic liability register."

**"Rule 87(14) of CGST Rules, 2017 Electronic Cash Ledger (Vide Notification No. 14/2022 CT dt 5th July 2022):-**

A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under the Act to the electronic cash ledger for central tax or integrated tax of a distinct person as specified in sub-section (4) or, as the case may be, sub-section (5) of section 25, in FORM GST PMT- 09:

Provided that no such transfer shall be allowed if the said registered person has any unpaid liability in his electronic liability register."

Further Form GST PMT-09 (i.e. Transfer of amount from one account head to another in electronic cash ledger) has been amended.

Thus, now the refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49 shall be filed electronically in Form RFD-01 instead of the respective return forms as provided earlier (rule 89(1)).



# SUPPLEMENTARY PAPER 19 FOR JUNE 2023 TERM OF EXAMINATION SYLLABUS 2022

## PAYMENT OF TAX

### **W.e.f. 01-10-2022, Restriction for utilizing the amount available in electronic credit ledger:**

As per Section 49(2) The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with [section 41 (OMITTED w.e.f. 01-10-2022 "or section 43A"), to be maintained in such manner as may be prescribed.

Section 49(4), The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions (inserted w.e.f. 01-10-2022, "and restrictions") and within such time as may be prescribed.

Section 49(4) is being amended so as to provide for prescribing restrictions for utilizing the amount available in the electronic credit ledger. Under the said provisions, Rule 86A of the CGST Rules 2017 can directly fall. This may also be the enabling provisions for providing further restrictions in the utilization of balance in the electronic credit ledger

### **W.e.f. 01-10-2022 Section 49(12), Maximum payment of output taxes allowed from electronic credit ledger:**

The Government may specify the maximum proportion of output tax liability which may be discharged through the electronic credit ledger for specified class of persons. The balance has to be paid through the electronic cash ledger. Currently, Rule 86B provides for such restriction of utilization from electronic credit ledger only upto 99% of output taxes for certain taxpayers. This may also be the enabling provisions for providing further restrictions in the utilization of balance in the electronic credit ledger.

### **Amendments in rule 87 (Electronic Cash ledger):**

Clause (ia) inserted in rule 87(3): The amount of tax, interest, penalty, fee or any other amount may also be deposited through Unified payment interface (UPI) or Immediate Payment Services (IMPS) from any bank, on the GST portal. Sub-rule (3) has been added for this purpose and consequential amendment has been made in sub-rule (5).

## PAYMENT OF TAX

### Insertion of sub-rule (4B) in rule 86 (Electronic Credit Ledger):

(vide NT 14/2022 CT dt 5th July 2022)

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), 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.

### Procedure for re-credit of amount in electronic credit ledger:

(Circular No. 174/06/2022 GST dt 6th July 2022)

Step 1: deposit of erroneous refund of ITC or IGST along with a written request in format enclosed as Annexure-A to the Circular, through Form GST DRC-03 by debiting of amount from electronic cash ledger.



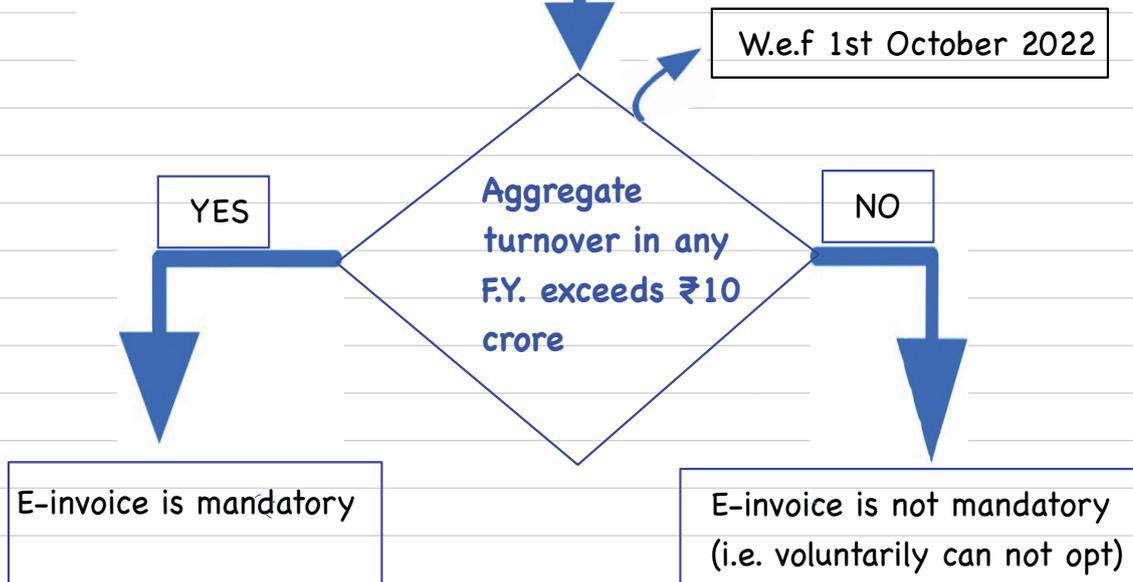
Step 2: Thereafter, the proper officer, on being satisfied, he shall re-credit an amount in electronic credit ledger equivalent to the amount of erroneous refund so deposited by the registered person, by passing an order in FORM GST PMT-03A.



Step 3: re-credit in electronic credit ledger shall be granted preferably within a period of 30 days from the date of receipt of request for re-credit of erroneous refund amount so deposited or from the date of payment of full amount of erroneous refund along with applicable interest, and penalty, wherever applicable, whichever is later.

### TAX INVOICE

**E-invoice:**



#### Exemption from mandatory E-invoicing:

1. SEZ's are not required to issue e-invoice (but not SEZ Developers)
2. Insurer or a banking company or a financial institution, including NBFC's are exempt from the e-invoicing mandate.
3. Goods Transport Agency's (GTAs) are exempt from the e-invoicing mandate.
4. Suppliers of passenger transportation service are exempt from the e-invoicing mandate.
5. Suppliers of services by way of admission to exhibition of cinematograph films in multiplex screens.
6. E-invoice is not applicable for nil rated or wholly exempted supplies.
7. For high sea sales and bonded warehouse sales, e-invoice is not applicable. (these transactions covered under Schedule III of CGST Act, 2017).
8. E-invoice is not applicable for import Bills of Entry.
9. Free Trade & Warehousing Zones (FTWZ) are exempt from e-invoice.
10. E-invoice is not applicable to invoices issued by Input Service Distributor (ISD).
11. Where supplies are received by notified person from
  - (i) an unregistered person (attracting reverse charge under section 9(4) or
  - (ii) through import of services,
 E-invoicing does not arise / not applicable.
12. CBIC has notified vide Central Tax Notification no.23 dated 1st June 2021 that the e-invoicing system shall not apply to a government department and local authority.



# SUPPLEMENTARY PAPER 19 FOR JUNE 2023 TERM OF EXAMINATION SYLLABUS 2022

## TAX INVOICE

### **Insertion of a new clause (s) in rule 46 (Tax Invoice) (vide Notification No. 14/2022-CT dt. 5th July, 2022):**

A declaration shall be given in the tax invoice, where e-invoice is not required to be issued despite the aggregate turnover being more than the threshold limit applicable for e-invoicing as per below format:

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

### **In case of issuance of e-invoice, no requirement to carry the physical copy of the tax invoice (Circular No. 160/16/2021 GST dated 20.09.2021):**

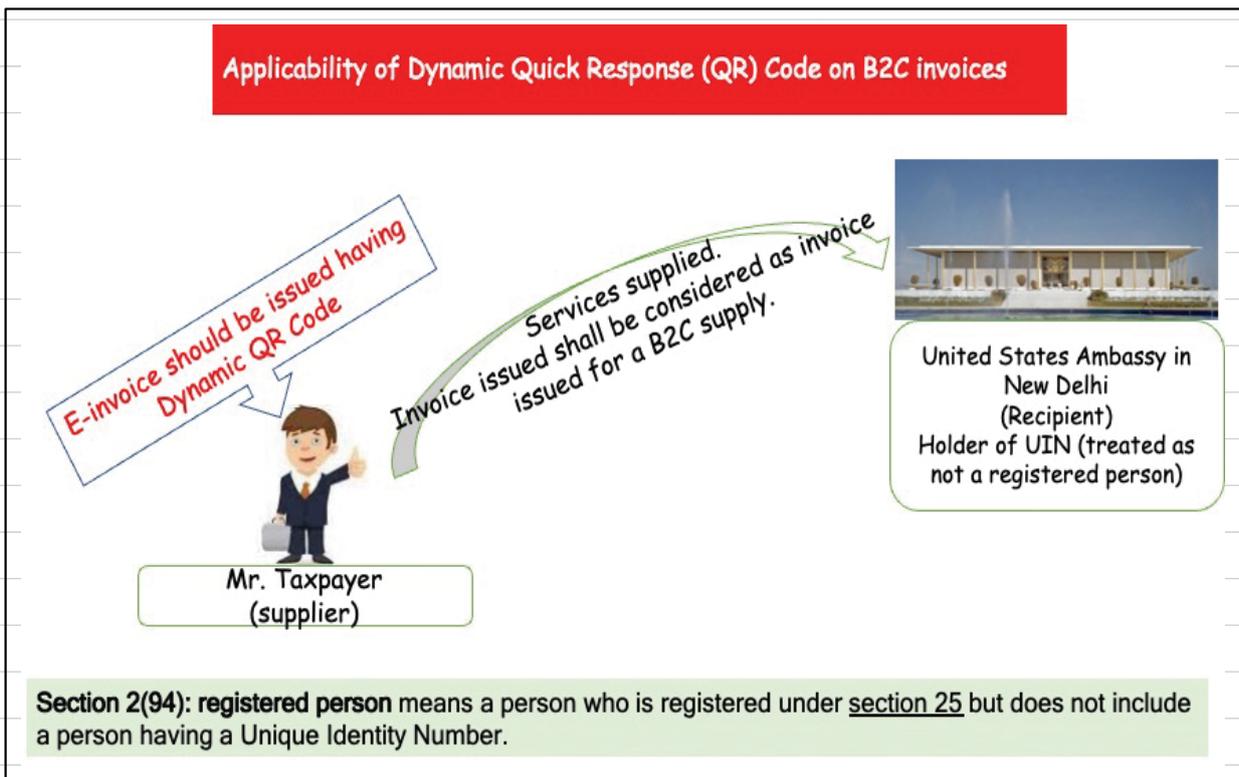
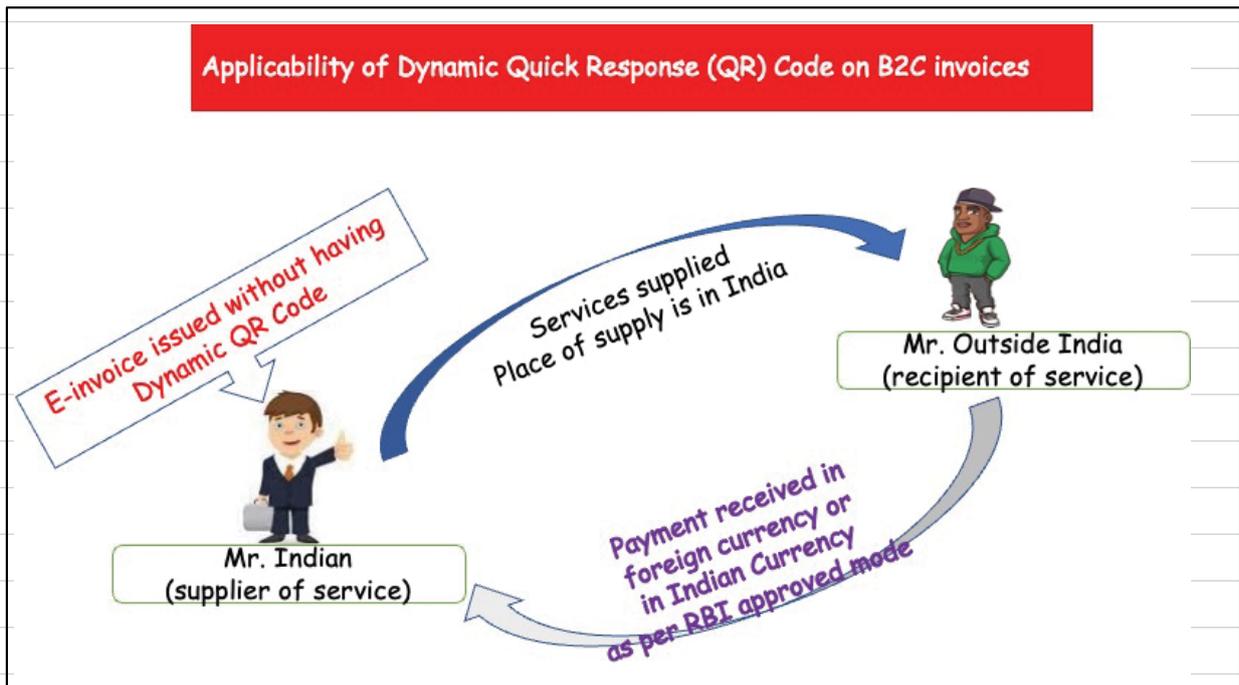
It is clarified that there is no requirement to carry the physical copy of tax invoice in cases where e-invoice has been generated by the supplier. Wherever e-invoice has been generated, production of the Quick Reference (QR) code having an embedded Invoice Reference Number (IRN) electronically, for verification by the proper officer, would suffice.

## TAX INVOICE

A GST Invoice will be valid only with a valid IRN.

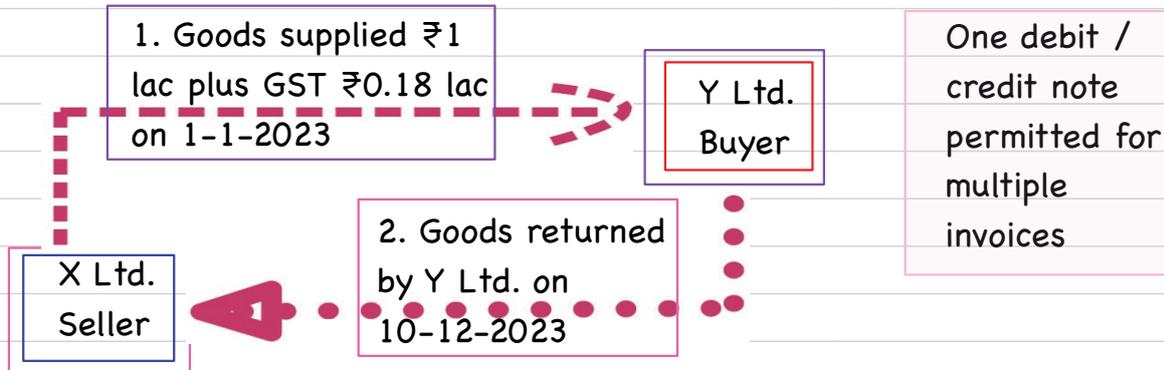
Invoice to be issued by specified registered person, whose aggregate turnover in a preceding financial year exceed ₹50 crore (w.e.f. 1-4-2021), to an unregistered person (B2C invoice), to have Dynamic Quick Response (QR) code.

**Clarification in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices:**



### TAX INVOICE

#### ■ Credit and Debit Notes (Sec 34 of the CGST Act, 2017) w.e.f. 01-10-2022:



Credit note should be issued by X Ltd., to Y Ltd., on or before 30th November 2024 or date of furnishing of the annual return for 2023-24 whichever is earlier.

Debit note should be issued by Y Ltd., to X Ltd., on or before 30th November 2024 or date of furnishing of the annual return for 2023-24 whichever is earlier.

As per the amended provision, date of debit note and date of underlying invoice have been delinked. Thus, debit note in respect of an invoice can be raised even after 30th November following end of financial year to which the invoice pertains.



# SUPPLEMENTARY\_PAPER\_19\_FOR\_JUNE\_2023 TERM OF EXAMINATION\_SYLLABUS\_2022

## INTEREST

### Interest on delayed payment of GST:

Interest @18% p.a. Sec 50(1)

Interest @24% p.a. Sec 50(3)

Taxable person who fails to pay self assessment tax or any part thereof on or before due date shall, on his own, pay interest @18% p.a. as per Section 50(1) on the net amount payable by cash (i.e. after deducting allowable ITC).

Interest shall be calculated from the day succeeding the day on which such tax was due to be paid.

Retrospective amendment in Section 50(3) of CGST Act, with effect from July 01, 2017, to provide that interest will be payable on the wrongly availed ITC only when the same is utilized.

(NT No.09/2022-CT dt. 5th July 2022)

No interest leviable if wrong ITC availed but not utilized.

Section 50(2) of the CGST Act, 2017 "the interest payable shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid".

Section 2(87) of the CGST Act defines the term 'prescribed' to mean prescribed by the Rules made under the Act on the recommendation of the Council.

Now, the Central Government on the recommendation of the GST Council has introduced Rule 88B vide Notification No. 14/2022-Central Tax, dated 5 July 2022 with retrospective effect from 1st July 2017. The said Rule prescribes the manner of computing interest on delayed payment of tax.

## INTEREST

Rule 88B can be classified into the following 3 categories:-

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 of the CGST Act [proviso to Section 50(1)]	Interest to be paid for the period of delay in filing the said return beyond the due date upto date of filing GSTR-3B	Tax paid by debiting the electronic cash ledger
88B(2)	In all other cases where interest is payable on delay in payment of tax covered by Section 50(1)	Period starting from the date on which such tax was due to be paid till the date such tax is paid.	Amount of tax which remains unpaid (i.e. Gross liability without deducting ITC)
88B(3)	Where interest is payable on the amounts of ITC wrongly availed and utilised covered by Section 50(3)	Period starting from the date of utilisation of such wrongly availed input tax credit till the date of reversal of such credit or payment of tax in respect of such amount	Amount of input tax credit wrongly availed and utilised



# SUPPLEMENTARY PAPER 19 FOR JUNE 2023 TERM OF EXAMINATION SYLLABUS 2022

## INTEREST

Date of the utilization of input tax credit means as under -

Cases, wherein, return in Form GSTR-3B is to be furnished	Date of the utilization of input tax credit = Earlier of the <ul style="list-style-type: none"> <li>■ due date of the return or</li> <li>■ actual date of filing return.</li> </ul>
In any other case	Date of debit in the electronic credit ledger

### Rule 88B(1) of CGST Rules, 2017 :

Example 1:

Total liability	Input Tax Credit	Net GST liability paid after due date	Liability on which interest is applicable
10,00,000	6,00,000	4,00,000	4,00,000
10,00,000	2,00,000	8,00,000	8,00,000
10,00,000	12,00,000	Nil	Nil

### Rule 88B(2) of CGST Rules, 2017:

Example 2:

M/s Raj & Co., has made a supply of goods/service in the month of Feb for ₹100,000 and GST collected on such supply is 5% which is ₹ (100,000\*5%)= ₹5000. Assuming E-Credit Ledger balance is Rs. 2000.

let's suppose the due date for the GSTR-3B for Feb Month is 20-March M/s Raj & Co., filed his GSTR-3B against show cause notice issued by Proper Officer under section 73 of CGST Act, 2017 on 20th April. Calculate Interest amount.

Solution:-

Due date for payment of tax collected by M/s Raj & Co., in the month of Feb is 20-Mar. Interest @ 18% p.a is payable for the period for which the tax remains unpaid in terms of Sec-50(1) of CGST Act, 2017. Calculation of interest amount is as follows:-

$$= ₹(5000 * 18% * 31/365) = ₹76/- \text{ (Calculated on Gross GST Liability).}$$

## INTEREST

**Rule 88B(3) of CGST Rules 2017:**

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

Interest will be applicable on the amount, by which the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed. Let's consider a situation:

**Example 3:**

Month	Opening Balance in e-credit ledger (A)	Eligible ITC (B)	ITC wrongly availed (C)	Total ITC (D) = A+B+C	Output tax liability ₹ (E)	Closing Balance in e-credit ledger (F) = D-E	Amount on which interest is payable	Due Date (G)	Filing Date (H)	Date of utilization of ITC wrongly (G) Or (H) whichever is earlier
April	Nil	3,50,000	25,000	3,75,000	3,50,000	25,000	Nil	20th May	20th May	NA
May	25,000	2,50,000	Nil	2,75,000	2,50,000	25,000	Nil	20th June	18th June	NA
June	25,000	1,50,000	Nil	1,75,000	1,65,000	10,000	15,000	20th July	19th July	19th July
July	10,000	3,00,000	Nil	3,10,000	3,10,000	Nil	10,000	20th Aug	28th Aug	20th Aug

**Sec 75(9) of CGST Act, 2017:** Interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability.



# SUPPLEMENTARY PAPER 19 FOR JUNE 2023 TERM OF EXAMINATION SYLLABUS 2022

## RETURNS

Return Form	Particulars	Frequency	Due Date
GSTR-5	Return for <b>Non-Resident foreign taxable person</b> (Section 39(5) of the CGST Act, 2017)	Monthly	W.e.f. 01-10-2022, 13th day of the following month (prior to 1-10-22, 20th of the next month) or within 7 days after the last day of the period of registration specified under section 27(1), whichever is earlier



# SUPPLEMENTARY PAPER 19 FOR JUNE 2023 TERM OF EXAMINATION SYLLABUS 2022

## RETURNS

### **W.e.f. 01-10-2022, Amendment in section 37 of the CGST Act, 2017 (Furnishing of details of outward supplies):**

1. Sub-section (1) of Sec 37 has been amended to provide for prescribing conditions and restrictions for furnishing the details of outward supply and for communication of such details to the concerned recipients.
2. The restriction earlier applicable for not being allowed to furnish the details of outward supplies from 11th day to 15th day of the month succeeding the tax period has been removed.
3. The two-way communication process which provided for acceptance or rejection of the details communicated has been done away with.
4. Provide for an extended time upto 30th November of the following financial year for rectification of errors in respect of details of outward supplies furnished under sub-section (1).

### **W.e.f. 01-10-2022, Substitution of section 38 of the CGST Act, 2017 (Communication of details of inward supplies and input tax credit):**

Section 38 has been substituted with a new section prescribing the manner as well as conditions and restrictions for communication of details of inward supplies and input tax credit to the recipient by means of an auto-generated statement and to do away with two-way communication process in return filing.

### **Amendment w.e.f 01-10-2022, in section 39 of the CGST Act, 2017 (Furnishing of returns):**

- It has been provided that the non-resident taxable person shall furnish the return for a month by 13th day of the following month instead of 20th day after the end of a calendar month.
- Persons furnishing quarterly return have been provided an option to either pay self-assessed tax or an amount that may be prescribed.
- The condition of complying with sections 37 and 38 before correcting any omission or incorrect particulars in the next return has been done away with.
- An extended time of 30th November of following financial year has been provided for rectification of errors in the return furnished under section 39.
- Furnishing of details of outward supplies of a tax period under section 37(1) has been provided as a condition for furnishing of return under section 39 for the said tax period in addition to the earlier condition of furnishing the returns for any of the previous tax periods. However, the Government may on the recommendations of the Council allow furnishing of return under section 39 even if the earlier conditions are not satisfied.



# SUPPLEMENTARY PAPER 19 FOR JUNE 2023 TERM OF EXAMINATION SYLLABUS 2022

## RETURNS

### **Sequential filing of GSTR-1 & filing of GSTR-1 before GSTR-3B on GST Portal:**

Section 37(4) : A registered person shall not be allowed to furnish the details of outward supplies under sub-section (1) for a tax period, if the details of outward supplies for any of the previous tax periods has not been furnished by him:

The Central Government has amended Section 37 & Section 39 of Central Goods & Service Tax Act (CGST), 2017 vide Notification No. 18/2022-Central Tax dated 28th September, 2022 with effect from 01 October, 2022. According to section 37(4) of CGST, Act, a taxpayers shall not be allowed to file GSTR-1 if previous GSTR-1 is not filed and as per sec 39(10) a taxpayer shall not be allowed to file GSTR-3B if GSTR-1 for the same tax period is not filed.

Section 37(4) & 39(10) of Central Goods & Service Tax Act, 2017 are reproduced below:

Section 39(10) : A registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous tax periods or the details of outward supplies under sub-section (1) of section 37 for the said tax period has not been furnished by him:

These changes are being implemented prospectively and will be operational on GST Portal from 01st November, 2022. Accordingly, from October-2022 tax period onwards, the filing of previous period GSTR-1 will be mandatory before filing current period GSTR-1.

Illustration 1: Filing of October, 2022 period GSTR-1 will be mandatory before filing GSTR-1 of November, 2022 period. Further, from October, 2022 tax period onwards, filing of GSTR-1 will also be mandatory before filing GSTR-3B.

Illustration 2: Taxpayer will not be allowed to file GSTR-3B for October, 2022 period if GSTR-1 of October, 2022 period is not filed.

Proviso to section 37(4), Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the details of outward supplies under sub-section (1), even if he has not furnished the details of outward supplies for one or more previous tax periods.

**W.e.f. 01-10-2022, Extension of rectification of GSTR-08:** Due date of rectification of any omission or incorrect particulars furnished in GSTR-8 to 30th November following the end of financial year or the actual date of furnishing of annual statement, whichever is earlier (NT No. 18/2022-Central Tax Dated 28.09.2022).



# SUPPLEMENTARY PAPER 19 FOR JUNE 2023 TERM OF EXAMINATION SYLLABUS 2022

## RETURNS

W.e.f. 01-10-2022, Section 47 of CGST Act 2017: Levy of Late Fee (CHAPTER IX - RETURNS)

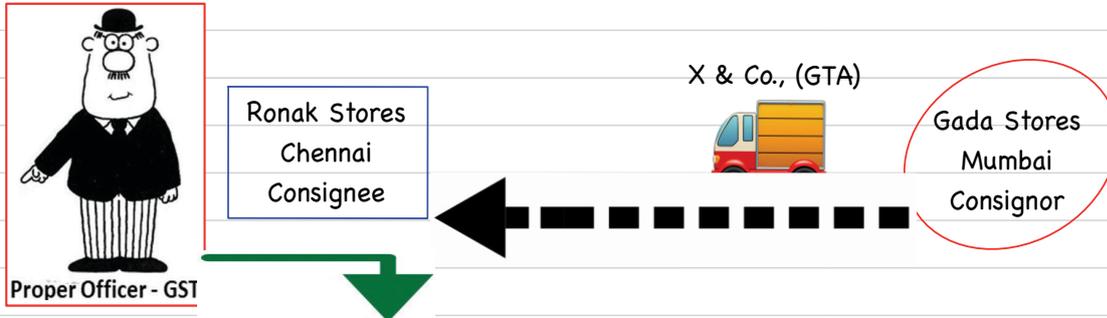
(1) Any registered person who fails to furnish the details of outward supplies required under section 37 (outward supplies) or returns required under section 39 (Return GSTR-3B) or section 45 (i.e Final Return) or (section 52 - TCS inserted w.e.f. 1-10-2022) by the due date shall pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum amount of five thousand rupees.

(2) Any registered person who fails to furnish the return required under section 44 (Annual Return) by the due date shall be liable to pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum of an amount calculated at a quarter per cent. of his turnover in the State or Union territory.

A circular has been issued to make mandatory furnishing of correct and proper information of inter-State supplies and amount of ineligible/blocked input tax credit and reversal thereof in return in FORM GSTR-3B and statement in FORM GSTR-1. Circular No.170/02/2022-GST dt. 6th July, 2022:

## OFFENCES & PENALTIES

Section 129, Detention, seizure and release of goods and conveyances in transit,  
As per Finance Act, 2021 (w.e.f. 1-1-2022):



As per section 129(1) of the CGST Act, 2017 where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,-- Upon payment of penalty in addition to tax and interest. W.e.f. 1-1-2022, only penalty is payable for release of such goods but amount of penalty is now higher.

Particulars	Taxable Goods		Exempted Goods	
	When owner comes forward	When owner does not come forward	When owner comes forward	When owner does not come forward
Penalty Sec 129(1) (a)/(b)	<b>200%</b> of Tax payable on such goods	<b>50%</b> of the value of goods or <b>200%</b> of the tax payable on such goods, <b>whichever is higher.</b>	<b>@2%</b> of the value of goods Or ₹25,000 <b>Whichever is less</b>	<b>@5%</b> of the value of goods Or ₹25,000 <b>Whichever is less</b>

Sec 129(1)(c), Upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) of Section 129(1), in such form and manner as may be prescribed.

### OFFENCES & PENALTIES

Sec 129(3), The Proper Officer shall issue notice within 7 days of such detention or seizure, specifying the penalty payable, and thereafter pass an order within 7 days from the date of service of such notice, for payment of penalty u/s 129.

Sec 129(6), Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under sub-section (1) within **15 days** from the date of receipt of the copy of the order passed under sub-section (3), the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed in newly inserted rule 144A, to recover the penalty payable under sub-section (3):

Provided that the conveyance shall be released on payment by the transporter of **penalty under sub-section (3) or one lakh rupees**, whichever is less:

Provided further that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer. As a result, proceedings u/s129 delinked from the proceedings u/s130.

**Example 1:** Who will be considered as the "owner of the goods" for the purposes of section 129(1) of the CGST Act?

**Answer:** As per the CBIC Circular, It is hereby clarified that if the invoice or any other specified document is accompanying the consignment of goods, then either the consignor or the consignee should be deemed to be the owner. If the invoice or any other specified document is not accompanying the consignment of goods, then in such cases, the proper officer should determine who should be declared as the owner of the goods.

**Example 2:** Calculate the amount to be paid for release of goods detained or seized under section 129 of the CGST Act, 2017, if owner of the goods does not come forward for payment of applicable tax and penalty.

Particulars	Amount (₹)
Value of Goods	15,00,000
GST payable on such goods	2,70,000

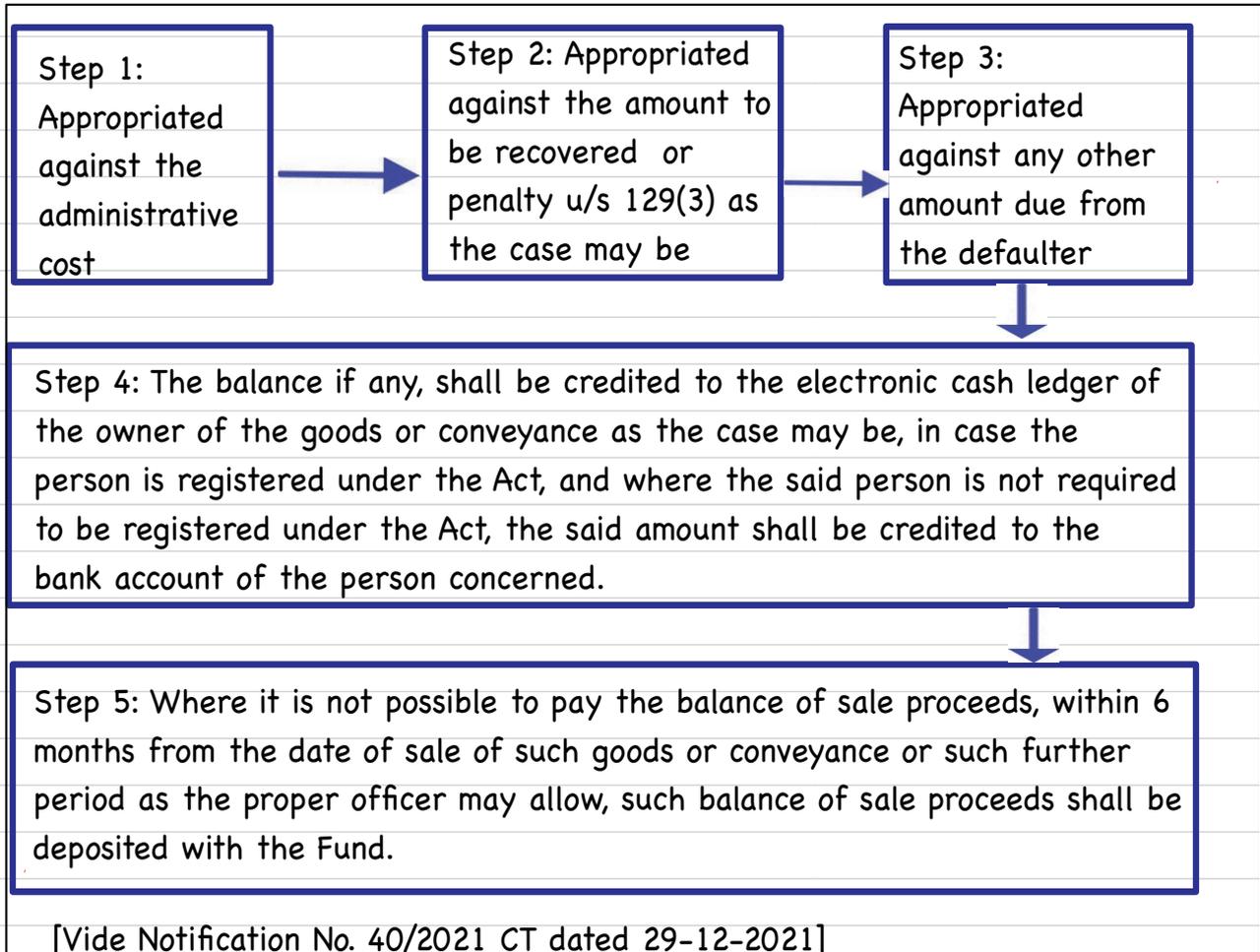
**Answer:**

In the given case, the amount payable under section 129 = ₹7,50,000/-

Penalty u/s 129 is ₹7,50,000 [₹7,50,000 i.e. @50% of ₹15,00,000 or ₹5,40,000 (200% of ₹2,70,000) whichever is higher].

## OFFENCES & PENALTIES

Sequence of appropriation provided for sale proceeds realised for recovery of penalty under section 129(3) dealt under Rule 154 of CGST Rules, 2017:



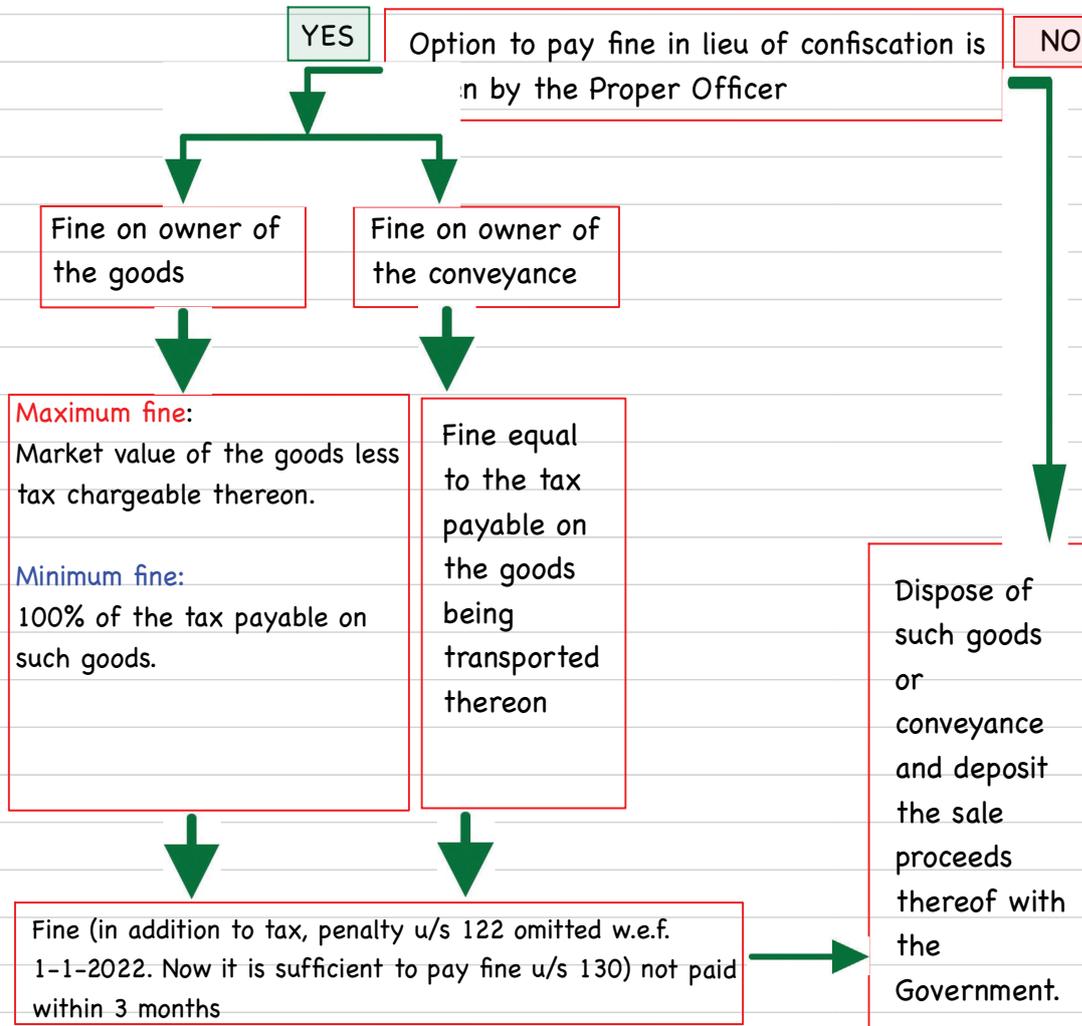
**A new rule 144A (Recovery of penalty by sale of goods or conveyance detained or seized in transit) has been inserted with effect from**

**01.01.2022:** The new rule lays down that that where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under section 129(1) within fifteen days from the date of receipt of the copy of the order passed under section 129(3), the proper officer shall proceed for sale or disposal of the goods or conveyance so detained or seized by preparing an inventory and estimating the market value of such goods or conveyance.

If the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer. The said goods or conveyance shall be sold through a process of auction, including e-auction.

### OFFENCES & PENALTIES

Section 130, Confiscation of goods or conveyances and levy of penalty as per Finance Act, 2021 (w.e.f. 1-1-2022):



#### Confiscation takes place in the following cases u/s 130(1):

- (i) supplies or receives any goods in contravention of any of the provisions of this Act or rules made there under leading to **evasion of tax**.
  - (ii) does not account for any goods on which he is liable to pay tax under this Act.
  - (iii) supplies any goods liable to tax under this Act without having applied for the registration.
  - (iv) Contravenes any of the provisions of the CGST/SGST Act or rules made there under with intent to evade payment of tax."
  - (v) Uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made there under.
- However, the conveyance shall not be confiscated if the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance.

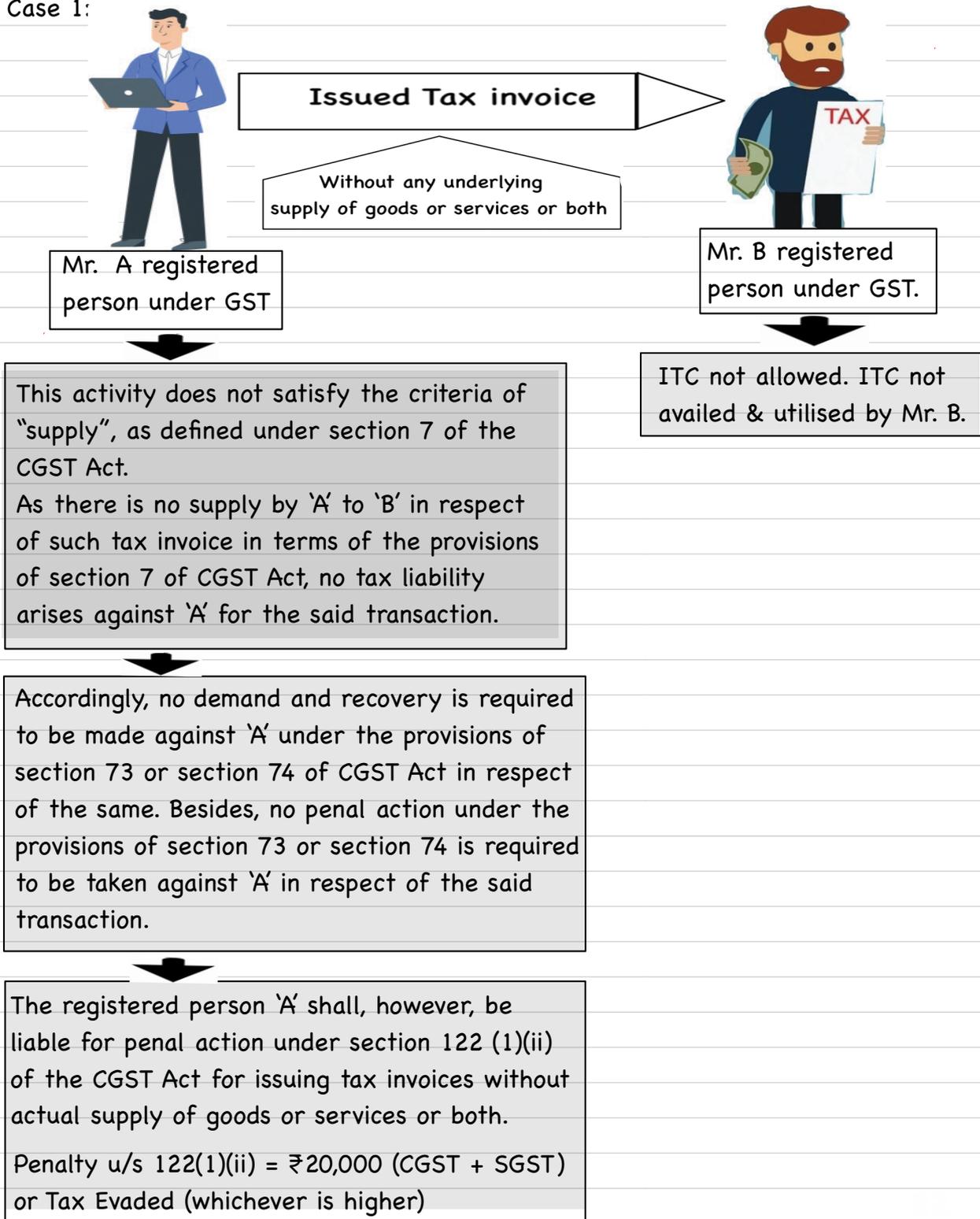
## OFFENCES & PENALTIES



A circular has been issued clarifying various issues relating to applicability of demand and penalty provisions under the CGST Act, 2017 in respect of transactions involving fake invoices:

[Circular No. 171/03/2022-GST dt. 6th July, 2022]

Case 1:



## OFFENCES & PENALTIES

Case 2:



Mr. A registered person under GST

Issued Tax invoice

Without any underlying supply of goods or services or both



Mr. B registered person under GST.

No tax to be recovered from 'A'

'B' avails input tax credit on the basis of the said tax invoice. B further issues invoice along with underlying supply of goods or services or both to his buyers and utilizes ITC availed on the basis of the above mentioned invoices issued by 'A', for payment of his tax liability in respect of his said outward supplies.

The registered person 'A' shall, however, be liable for penal action under section 122 (1)(ii) of the CGST Act for issuing tax invoices without actual supply of goods or services or both.

Since, 'B' has availed and utilised fraudulent ITC on the basis of the said tax invoice, without receiving the goods or services or both in contravention of Section 16(2)(b) of CGST Act, he shall be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 74 of the CGST Act, along with applicable interest under provisions of section 50 of the said Act.

Penalty u/s 122(1) (ii) = ₹20,000 (CGST + SGST) or Tax Evaded (whichever is higher)

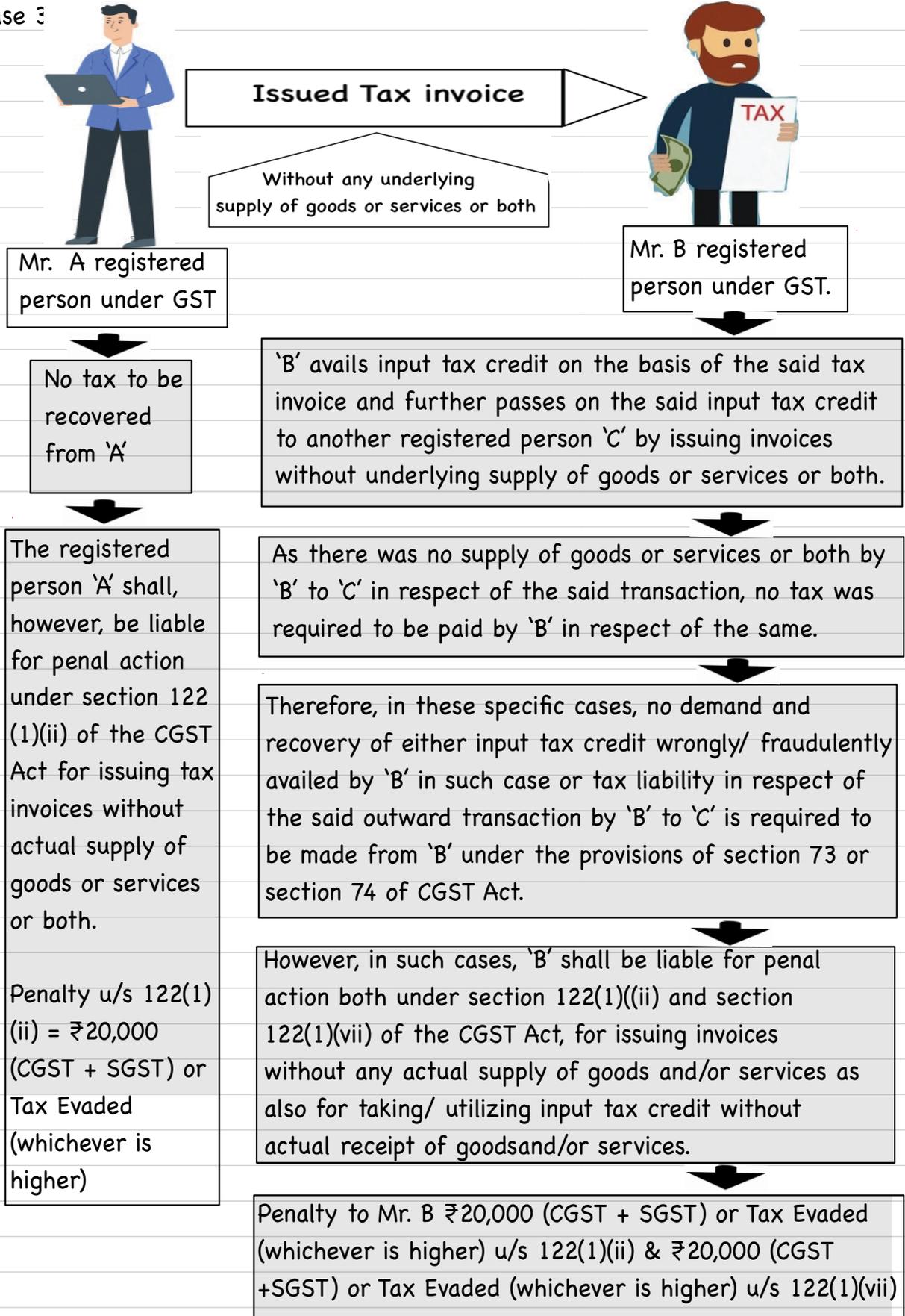
Further, as per provisions of section 75(13) of CGST Act, if penal action for fraudulent availment or utilization of ITC is taken against 'B' under section 74 of CGST Act, no penalty for the same act, i.e. for the said fraudulent availment or utilization of ITC, can be imposed on 'B' under any other provisions of CGST Act, including under section 122. It means no other penalty will be levied.

On Mr. B: Penalty of 15% or 25% or 50% or 100% of tax {CGST & SGST} (depending on time of payment of tax) u/s 74.

## OFFENCES & PENALTIES



Case 3



### OFFENCES & PENALTIES

Since, 'C' has availed and utilised fraudulent ITC on the basis of the said tax invoice, without receiving the goods or services or both in contravention of Section 16(2)(b) of CGST Act, he shall be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 74 of the CGST Act, along with applicable interest under provisions of section 50 of the said Act.

Mr. C has to pay penalty @15% or 25% or 50% or 100% of tax as the case may be u/s 74 along with Interest u/s 50.



Any person who has retained the benefit of transactions specified under sub-section (1A) of section 122 of CGST Act, and at whose instance such transactions are conducted, shall also be liable for penal action under the provisions of the said sub-section. It may also be noted that in such cases of wrongful/fraudulent availment or utilization of input tax credit, or in cases of issuance of invoices without supply of goods or services or both, leading to wrongful availment or utilization of input tax credit or refund of tax, provisions of section 132 of the CGST Act may also be invocable, subject to conditions specified therein, based on facts and circumstances of each case.

#### **Monetary limit of ₹500 lakh is not applicable to prosecute a person:**

**(i) Habitual evaders:** A company/taxpayer would be treated as habitual evader, if it has been involved in two or more cases of confirmed demand (at the first adjudication level or above) of tax evasion/fraudulent refund or misuse of ITC involving fraud, suppression of facts etc. in past two years such that the total tax evaded and/or total ITC misused and/or fraudulently obtained refund exceeds Five Hundred Lakh rupees. DIGIT database may be used to identify such habitual evaders.

**(ii) Arrest Cases:** Cases where during the course of investigation, arrests have been made under section 69 of the CGST Act.



# SUPPLEMENTARY PAPER 19 FOR JUNE 2023 TERM OF EXAMINATION SYLLABUS 2022

## OFFENCES & PENALTIES

Guidelines on issuance of summons under section 70 of the CGST Act, 2017:  
(Instruction No. 03/2022-23 (GST-Investigation) dt. 17.08.2022)

Summons by Superintendents should be issued after obtaining prior written permission from an officer not below the rank of Deputy/ Assistant Commissioner with the reasons for issuance of summons to be recorded in writing.



the officer issuing summons should record in file about appearance/ non-appearance of the summoned person



Issuance of summons may be avoided to call upon statutory documents which are digitally/ online available in the GST portal.



Summons should not issued in first instance to Senior management officials unless their involvement in the decision making leads to loss of revenue.



Generation and quoting of Document Identification Number (DIN) mandatory on communication issued by officers of CBIC to tax payers and other concerned persons for the purpose of investigation.



The summoning officer must be present at the time and date for which summons is issued. In case of any exigency, the summoned person must be informed in advance in writing or orally.



All persons summoned are bound to appear before the officers concerned, the only exception being women who do not by tradition appear in public or privileged persons.



Generally 3 summons at reasonable intervals will be issued in case summoned person does not join investigation. After that a complaint should be filed with jurisdictional magistrate. However, this does not bar to issue further summons to the said person under section 70 of the CGST Act, 2017.

## OFFENCES & PENALTIES

**Guidelines for arrest and bail in relation to offences punishable under the CGST Act, 2017 (Instruction No. 02/2022-23 (GST-Investigation) dt. 17.08.2022):**

### Step 1: Conditions precedent to arrest

I.e. non-bailable offence or arrest is necessary to ensure proper investigation etc. Arrest not be resorted in cases of technical nature i.e. demand of tax is based on a difference of opinion regarding interpretation of Law.

### Step 2: Procedure to arrest

Pr. Commissioner/Commissioner shall record on file that after considering the nature of offence, the role of person involved and evidence available, he has reason to believe that the person has committed an offence as mentioned in Section 132 and may authorize an officer of central tax to arrest the concerned person(s).

### Step 3: Arrest memo

The arrest memo should indicate relevant section (s) of the CGST Act, 2017 or other laws attracted to the case and to the arrested person and inapplicable provisions should be struck off. In addition, the grounds of arrest must be explained to the arrested person and this fact must be mentioned in the arrest memo and also informed immediately to a nominated or authorised person of the arrested person.

### Step 4: Post arrest formalities

In cases, where a person is arrested under sub-section (1) of Section 69 of the CGST Act, 2017, for an offence specified under sub-section (4) of Section 132 of the CGST Act, 2017 (i.e. bailable offences), the Assistant Commissioner or Deputy Commissioner is bound to release a person on bail against a bail bond.

In cases, where a person is arrested under sub-section (1) of Section 69 of the CGST Act, 2017, for an offence specified under sub-section (5) of Section 132 of the CGST Act, 2017 (non-bailable), the officer authorized to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty-four hours.

### Step 5: Report to be sent

a monthly report of all persons arrested in the Zone shall be sent by the Principal Chief Commissioner(s)/Chief Commissioner(s) to the Directorate General of GST Intelligence, Headquarters, New Delhi, by the 5th of the succeeding month.

## OFFENCES & PENALTIES



w.e.f. 1-1-2022, Section 151 of the CGST Act has been substituted to empower the jurisdictional commissioner to call for information from any person relating to any matter dealt with in connection with the Act.

Earlier, Commissioner was required to issue a notification to call for information from the concerned persons relating to any matter in respect of which statistics were to be collected.



W.e.f. 1-1-2022, section 152 of the CGST Act, has been amended so as to provide that no information obtained u/s 150 and 151 shall be used for the purpose of any proceedings under that Act without giving an opportunity of being heard to the person concerned.

w.e.f 1-1-2022, Section 168 of the CGST Act has been amended to enable the jurisdictional commissioner to exercise powers under section 151 to call for information.



W.e.f. 01-10-2022, Consequent to the amendment in section 38, sub-section (2) of section 168 has been amended so as to remove the reference of section 38 therefrom.



Amendment of [section 74](#) as per Finance Act, 2021 (w.e.f. 1-1-2022): In section 74 of the Central Goods and Services Tax Act, in Explanation 1, in clause (ii), for the words and figures "sections 122, 125, 129 and 130", the words and figures "sections 122 and 125" shall be substituted.

"where the notice under the same proceedings is issued to the main person liable to pay tax and some other person, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under section 122 and 125 are deemed to be concluded". As a result, only proceedings u/s 122 & 125 would be deemed to be concluded thus resulting in proceedings of the detention, seizure & confiscation of goods and conveyances in transit (Sec.129 & 130) separate from the demand and recovery proceedings u/s 73 & 74.

## REFUND

In case of deficiency in refund application, limitation period of 2 years for making refund claim to exclude the time period from the date of filing of refund claim till the date of communication of the deficiencies (Notification No. 15/2021 CT dated 18.05.2021)

Refund under GST  
(CBIC Clarifications)

Time period for refund claim shall not be applicable in case of refund of excess balance in e-cash ledger.

Furnishing of certificate /declaration under rule 89(2)(l) (i.e. Refund amount  $\leq$  2 lakh) or rule 89(2)(m) (i.e. a Certificate in Annexure 2 of FORM GST RFD-01 issued by a CA or a Cost Accountant where refund amount is  $>$  2 lakh) for not passing the incidence of tax to any other person is not required in case of refund of excess balance in e-cash ledger as unjust enrichment clause is not applicable in such case.

TDS/TCS credited to e-cash ledger of the registered person. The registered person is at liberty to discharge his tax liability either through debit in e-credit ledger or through debit in electronic cash ledger as his choice. Excess amount after discharge of tax dues and other dues payable can be refunded to the registered person.

**W.e.f 01-10-2022, Refund from electronic cash ledger not through GSTR-3B but through prescribed manner (Vide NT no. 18/2022-CT Dt28.09.2022 GST:**

Proviso to section 54(1): Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in "such form and" manner as may be prescribed.

Refund of any balance in electronic cash ledger cannot be claimed in GSTR-3B. The said refund shall be claimed in such form and manner as would be prescribed. It should be noted that currently there is no mechanism to claim refund of electronic cash ledger via GSTR-3B, hence making it a redundant provision in the Act.

## REFUND



### **W.e.f. 01-10-2022, Relevant date prescribed for refund of supplies to SEZ without payment of tax:**

Refund is allowed to be claimed only within 2 years from the relevant date. In case of refund of any unutilized ITC on account of supplies to SEZ unit / developer without payment of tax, no relevant date had been prescribed by the GST law. The said loophole is now plugged by providing relevant date for such supplies as the due date of furnishing GSTR-3B of the applicable month for which refund is claimed.



### **Facility of withdrawal of refund application by taxpayer introduced rule 90(5) and (6):**

Earlier the taxpayer had no option to withdraw their refund applications, if they has committed any mistakes, while filing the application. A functionality has now been implemented for the taxpayer by inserted subrule (5) and (6) to rule 90 of CGST Rules, 2017.

The applicant may, at any time before issuance of provisional refund sanction order or final refund sanction order or payment order or refund withhold order or show cause notice, in respect of any refund application filed, withdraw the said application for refund by filing an application in the prescribed form.

On submission of such withdrawal application, any amount debited by the applicant from electronic credit ledger or electronic cash ledger, as the case may be, while filing refund application, shall be credited back to the ledger from which such debit was made (Notification No. 15/2021) CT dated 18/05/2021)



### **No restriction on receipt of deemed export supplies in availing ITC of the tax paid on such supplies (CBIC Clarification No. 147/2021 GST dated**

**12.3.2021):** In a case where recipient of deemed export supplies claims the refund on such supplies, there is no restriction on such recipient in availing ITC of the tax paid on such supplies.

## REFUND



W.e.f. 5th July 2022, An explanation has been inserted in sub-rule (4), to clarify that while calculating refund of unutilised ITC in case of zero-rated supply without payment of tax, **value of goods exported out of India** shall be taken as: (Vide Notification No. 14/2022-CT dt. 5th July, 2022)

(i) the Free on Board (FOB) value declared in the Shipping Bill or Bill of Export form, as the case may be, as per the Shipping Bill and Bill of Export (Forms) Regulations, 2017; or,

(ii) the value declared in tax invoice or bill of supply;

whichever is less



Definition of turnover of **zero-rated supplies of goods** amended [Rule 89(4) (C)] vide Circular No. 147/03/2021 GST dated 12-3-2021

Lower of the two shall be taken:

- Value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or
- **1.5 times** the value of like goods domestically supplied by the same or, similarly placed supplier

■ 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 letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under rule 89(4A) or 89(4B) or both.



# SUPPLEMENTARY PAPER 19 FOR JUNE 2023 TERM OF EXAMINATION SYLLABUS 2022

## REFUND

The term "Adjusted Total Turnover" as defined under rule 89(4) includes "Turnover in a State or Union Territory". As per section 2(112) of the CGST Act. "Turnover in a State or Union Territory" includes turnover/ value of export/ zero-rated supplies of goods. As seen above, the definition of 'Turnover of zero-rated supply of goods' has been amended. In view of the above, it can be stated that the same value of zero-rated/ export supply of goods, as calculated as per amended definition of "turnover of zero-rated supply of goods", needs to be taken into consideration while calculating "turnover in a State or a Union Territory", and accordingly, in "adjusted total turnover" for the purpose of rule 89(4).

Thus, the restriction of 1.5 times of the value of like goods domestically supplied, as applied in "turnover of zero-rated supply of goods", would also apply to the value of "adjusted total turnover" in rule 89(4) of the CGST Rules.

CBIC Circular No. 172/04/2022 GST Dt. 6th July 2022, The ITC of tax paid on deemed export supplies, allowed to the recipients for claiming refund of such tax paid, is not ITC in terms of the provisions of Chapter V of the CGST Act, 2017. Therefore, such ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is not to be included in the "Net ITC" for computation of refund of unutilised ITC on account of zero-rated supplies under rule 89(4) or on account of inverted rated structure under rule 89(5) of the CGST Rules, 2017.

### REFUND

- **Adjusted Total Turnover** means the sum total of the value of-
  - (a) the turnover in a State or a Union territory, as defined under clause (112) of section 2, 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,
 excluding-
  - (i) the value of exempt supplies other than zero-rated supplies; and
  - (ii) the turnover of supplies in respect of which refund is claimed under rule 89(4A) or 89(4B) or both, if any, during the relevant period.

■ Turnover in State or turnover in Union territory means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter-State supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes central tax, State tax, Union territory tax, integrated tax and cess.

The same can be explained by the following illustrations where actual value per unit of goods exported is more than 1.5 times the value of same/ similar goods in domestic market, as declared by the supplier:

#### Example 1:

	GST invoice for export (₹)	Value of like goods supplied domestically (₹)	1.5 times the value of like goods supplied domestically (₹)	Value for purpose of refund claim (₹)	Adjusted total turnover for formulae (₹)
Case A	1,00,000	90,000	1,35,000	1,00,000	1,90,000
Case B	2,00,000	60,000	90,000	90,000	1,50,000



# SUPPLEMENTARY PAPER 19 FOR JUNE 2023 TERM OF EXAMINATION SYLLABUS 2022

## REFUND

**Example 2:** Win India Exports Pvt. Ltd., is supplier of taxable goods in both domestic market and overseas. During the relevant period of refund, the details of his inward supply and outward supply details are shown in the table below:

Outward supply	Value per unit	No. of units supplied	turnover
Local	₹200	5	₹1,000
Export	₹350	5	₹1,750
Total			₹2,750

Net admissible Input Tax Credit is ₹270/-.

Find the refund amount as per rule 89(4) of the CGST Rules, 2017?

**Answer:**

Refund amount = ₹162/- [i.e. ₹270 × ₹1,500 / ₹2,500]

**Working note:**

Actual export turnover = ₹1,750 (i.e. ₹350 × 5 units)

OR

(₹200 × 5 units) × 1.5 times = ₹1,500

**Whichever is Less**

Adjusted total turnover = ₹2,500 (i.e. local supply ₹1,000 + Export ₹1,500)

## REFUND

### Inverted Rate of Tax as per Section 54(3)(ii) Rule 89(5) of CGST Rules, 2017:

CBIC vide Notification No. 14/2022-Central Tax dated 05-07-2022 has made an amendment in the formula under Rule 89(5) of CGST Rules, 2017 which now reads as under-

#### Maximum Refund Amount =

$$\left[ \left( \text{Turnover of inverted rated supply of goods and service} \right) \times \frac{\text{Net ITC}}{\text{Adjusted Total Turnover}} \right] - \left[ \left( \text{Tax payable such as inverted rated supply of goods and services} \right) \times \left( \frac{\text{Net ITC}}{\text{ITC availed on inputs and input services}} \right) \right]$$

Net ITC 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;

Adjusted Total turnover shall have the same meaning as assigned to it in sub-rule (4)."

- Refund of ITC under section 54(3)(ii) restricted to the extent of credit reflected in Form GSTR-2A/2B.
- ITC on capital goods not qualify for refund u/s 54(3)(ii) of CGST Act, 2017.
- ITC on input services also not qualify for refund u/s 54(3)(ii) of CGST Act, 2017.
- Refund of accumulated ITC on account of reduction in GST rate on goods, not available:

Vide Notification No. 14/2022-Central Tax dated 05.07.2022, amendment has been made in sub-rule (5) of rule 89 of CGST Rules, 2017, modifying the formula prescribed therein. The said amendment is not clarificatory in nature and is applicable prospectively with effect from 05.07.2022 (vide CBIC Circular No. 181/13/2022 GST dt. 10th November 2022).

**ITC of Input goods only allowed as refund prospectively based on new formulae**

## REFUND

Example: M/s X Ltd., Turnover and ITC during January 2023 are as follows:

Turnover of Inverted rated supply of goods and services (GST @5%)	₹5,50,000
Other turnover (GST 18%)	₹ 50,000
<b>Total turnover.</b>	<b>₹6,00,000</b>

ITC on input goods (GST @18%)	₹50,000
ITC on input services (GST @18%)	₹15,000
ITC on capital goods (GST @28%)	₹25,000
<b>Total ITC</b>	<b>₹90,000</b>

Advise to M/s X Ltd., with regard to maximum amount of refund under Rule 89(5) of CGST Rules, 2017.

Answer: Maximum amount of refund under rule 89(5) of CGST Rules, 2017 is ₹24,680/-

$$\left[ 5,50,000 \times \frac{50,000}{6,00,000} \right] - \left[ 27,500 \times \frac{50,000}{65,000} \right] = ₹45,833 - ₹21,153 = ₹24,680$$

Note:

Input service should be not included for the purpose of refund as in respect of input goods are eligible for refund but input services are not bought under this bracket.

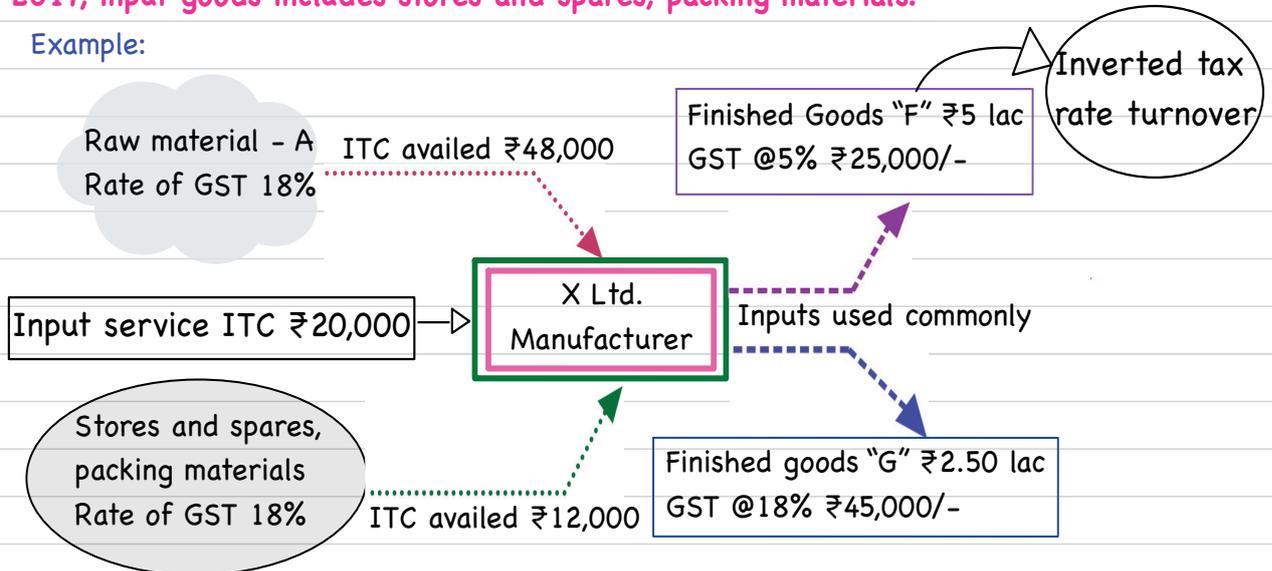
Example 2: An applicant trading in goods has purchased, say goods "X" attracting 18% GST. However, subsequently, the rate of GST on "X" has been reduced to, say 12%.

Now, it has been clarified that refund of accumulated input tax credit on account of inverted structure section 54(3)(ii) of the CGST Act, 2017 would be allowed in cases where accumulation of input tax credit is on account of rate of tax on outward supply being less than the rate of tax on inputs (same goods) at the same point of time, as per some concessional notification issued by the Government providing for lower rate of tax for some specified supplies subject to fulfilment of other conditions [Circular No. 173/05/2022-GST dt. 6th July, 2022].

### REFUND

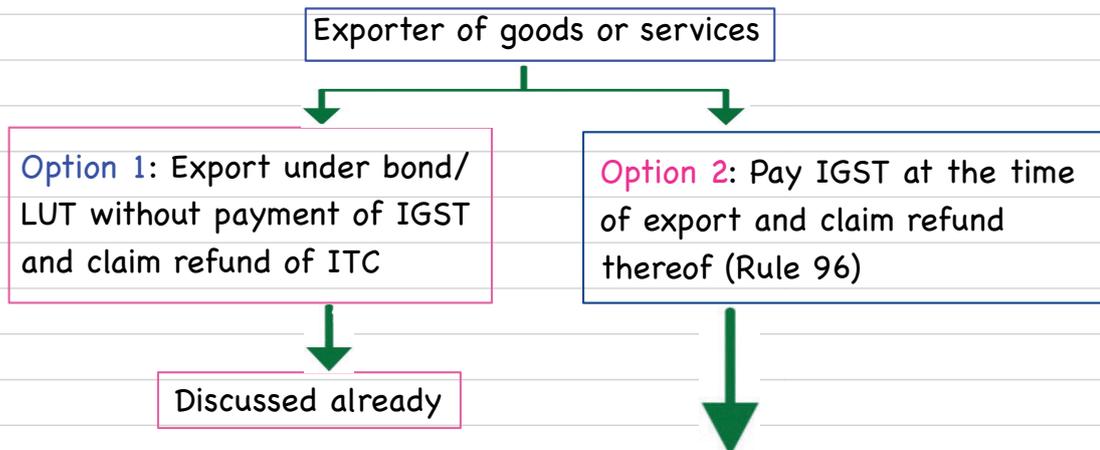
**Inverted Rate of Tax as per Section 54(3)(ii) Rule 89(5) of CGST Rules, 2017, input goods includes stores and spares, packing materials:**

Example:



$$\begin{aligned}
 \text{Refund amount} &= [(\text{₹}5 \text{ lac}) \times 60,000/7,50,000] - [\text{₹}25,000 \times (60,000/80,000)] \\
 &= \text{₹}40,000 - \text{₹}18,750 \\
 &= \text{₹}21,250
 \end{aligned}$$

## REFUND



Person claiming refund of IGST paid on export of goods/ services should not have:

- (i) received supplies on which the benefit of deemed exports, *except so far it relates to receipt of capital goods by such person against Export Promotion Capital Goods (EPCG) Scheme*, has been availed or benefit of supply of goods to merchant exporters at the concessional rate of 0.1% has been availed, or
- (ii) availed the benefit of exemption from IGST and Compensation Cess, in respect of goods imported by EOU or for goods imported under Advance Authorisation (AA).

For the purpose of this sub-rule, the benefit of the notifications mentioned above 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.

**Order for release of withheld refund to be issued where refund no longer liable to be withheld. Order for complete adjustment of demand for refund not required to be issued (Rule 92(1) and (2)):**

Earlier, in case where refund is completely adjusted against any outstanding demand, an order giving details of the adjustment was issued (proviso to rule 92(1) of the CGST Rules). The said proviso has been omitted. Accordingly, no such order will now be issued.

Further, proviso to rule 92(2) has been inserted to provide that where the proper officer or the Commissioner is satisfied that the refund is no longer liable to be withheld, he may pass an order for release of withheld refund in prescribed form (Notification No. 15/2021 CT dated 18.5.2021).

### REFUND

 Amendments in rule 96 - Refund of integrated tax paid on goods or services exported out of India w.e.f. 01.07.2017 (vide NT No. 14/2022 CT dt 5th July 2022):

a) Reference of Form GSTR-3 has been removed from clause (b) of sub-rule (1). A proviso has been added in sub-rule (1) specifying that if there is any mismatch between the data furnished by the exporter of goods in shipping bill and those furnished in statement of outward supplies in FORM GSTR-1, such application for refund of integrated tax shall be deemed to have been filed on such date when the mismatch in respect of the said shipping bill is rectified by the exporter.

b) A new clause (c) has been inserted in sub-rule (4) to provide that the claim for refund shall be withheld where the Commissioner in the Board or an officer authorised by the Board, on the basis of data analysis and risk parameters, is of the opinion that verification of credentials of the exporter, including the availment of ITC by the exporter, is considered essential before grant of refund, in order to safeguard the interest of revenue.

c) New sub-rules (5A) and (5B) have been inserted specifying that where refund is withheld in accordance with the provisions of clause (a) or newly inserted clause (c) or clause (b) of sub-rule (4) proper officer passes an order for withholding of refund due to violation of Customs Act, 1962 under clause (b) of sub-rule (4), such claim shall be transmitted to the proper officer of Central tax, State tax or Union territory tax, as the case may be, electronically through the common portal in a system generated FORM GST RFD-01 and the intimation of such transmission shall also be sent to the exporter electronically through the common portal, and notwithstanding anything to the contrary contained in any other rule, the said system generated form shall be deemed to be the application for refund in such cases and shall be deemed to have been filed on the date of such transmission.

Another sub-rule (5C) has been inserted to provide that the application for refund in FORM GST RFD-01 transmitted electronically through the common portal in terms of sub-rules (5A) and (5B) shall be dealt in accordance with the provisions of rule 89.

d) Sub-rules (5), (6) and (7) have been omitted.

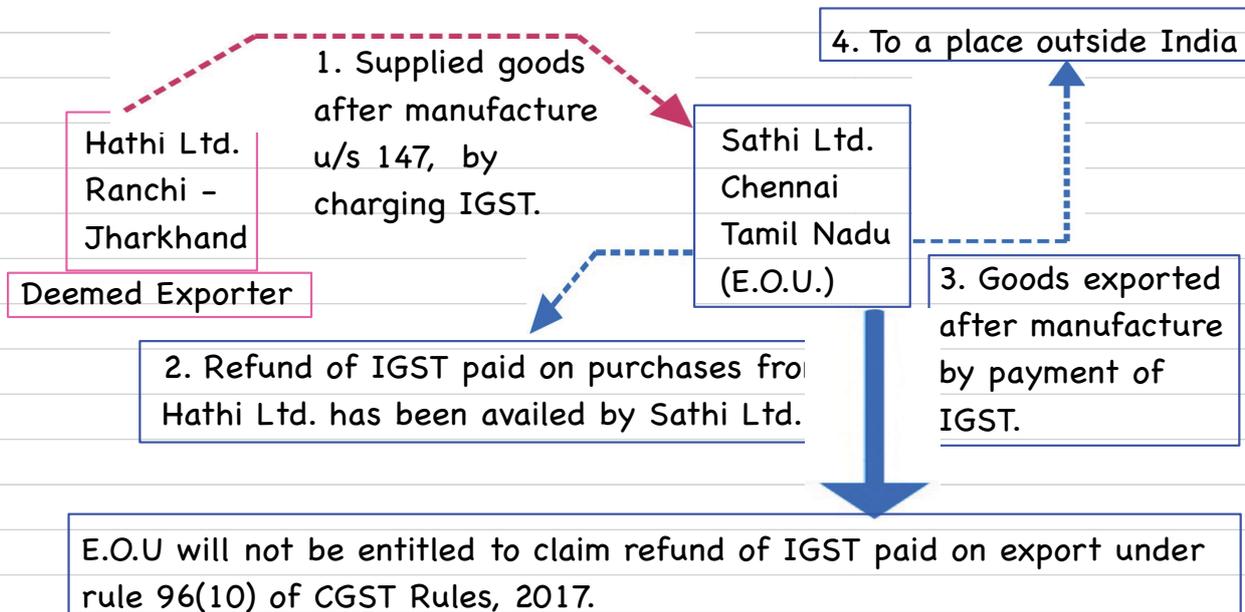


# SUPPLEMENTARY PAPER 19 FOR JUNE 2023

## TERM OF EXAMINATION SYLLABUS 2022

### REFUND

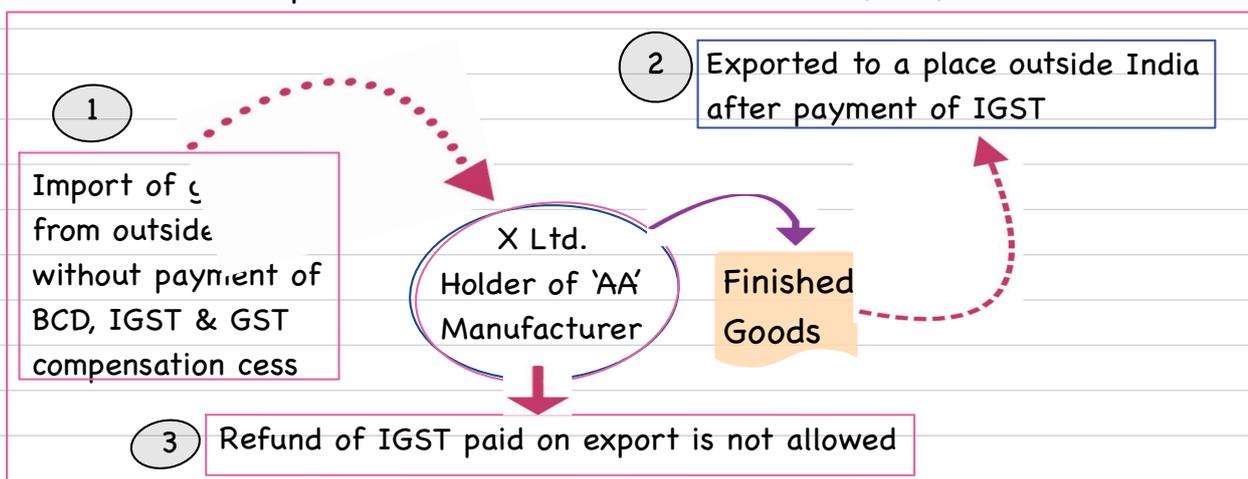
Case 1: Goods procured from deemed exporter u/s 147 of CGST Act, 2017:



Alternatively, the supplier of such deemed exports supplies can also file the refund application, in cases where the recipient does not avail of input tax credit on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund.

**Relevant date** (i.e. , the date on which the return relating to such deemed exports is furnished) is same to supplier or recipient whoever claims refund of tax paid on such deemed export. Further, as the tax on the supply of goods, regarded as deemed export, would be paid by the supplier in his return, therefore, the relevant date for purpose of filing of refund claim for refund of tax paid on such supplies would be the date of filing of return, related to such supplies, by the supplier (CBIC Circular No. 166/22/2021 GST dt. 17.11.2021).

Case 2: Goods imported under Advance Authorisation ("AA"):



## REFUND



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

Supplies made to UN bodies and embassies may be exempted from payment of GST as per international obligations. However, this exemption has been operationalized by way of a refund mechanism. So, a taxable person making supplies to such bodies would charge the tax due and remit the same to Government account.

However, w.e.f. 01-10-2022, the UN bodies and other entities notified under section 55 can claim refund of the taxes paid by them on their inward supplies of goods or services or both, may make an application for such refund, in such form and manner as may be prescribed, before the expiry of 2 years from the last date of the quarter in which such supply was received.

OMITTED w.e.f. 01-10-2022, The claim has to be made before the expiry of 6 months [increased to '18 months'] from the last day of the quarter in which such supply was received.

- Specialised agencies notified under section 55 of CGST Act entitled to refund of IGST paid on import of goods.

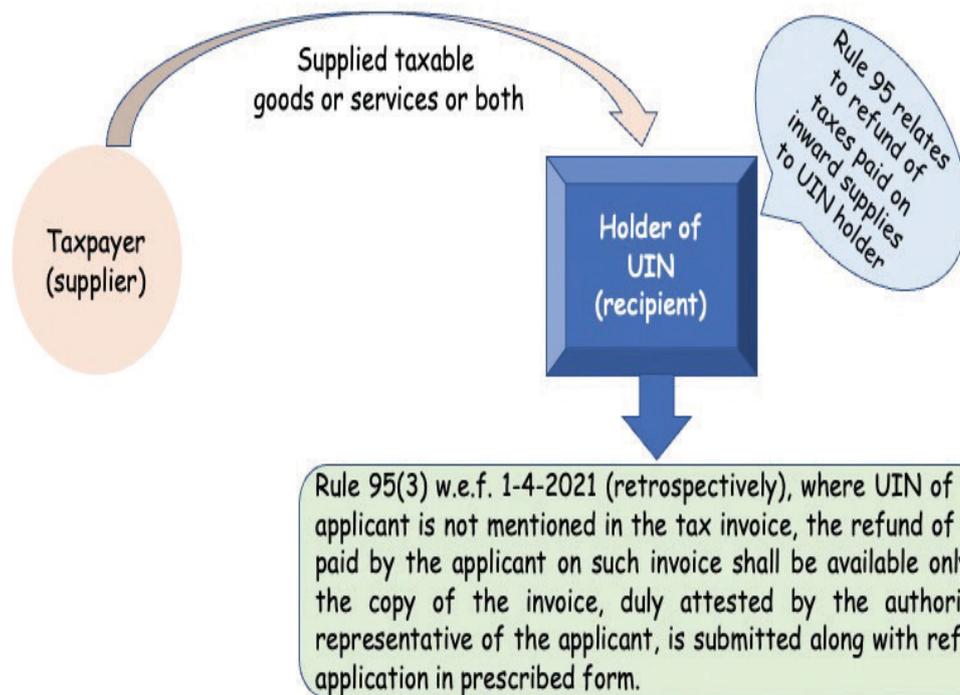
- Import of services by United Nations or a specified international organisation for official use of the United Nations or the specified international organisation is exempted from IGST.

- Import of services by Foreign diplomatic mission or consular post in India, or diplomatic agents or career consular officers (including members of his or her family) posted therein also be exempted from IGST.

- Refund claim- Waiver from recording of UIN on the invoices issued by the retailers/suppliers, pertaining to the refund claim further extended from April, U 2020 to March, 2021, subject to the condition that the copies of such invoices are attested by the authorized representative of the UIN entity and the same is submitted to the jurisdictional officer (CBIC circular No. 144/14/2020 GST dated 15-12-2020).

## REFUND

### Refund of GST to Unique Identification Number (UIN) holder



#### Refund to international tourist:

An enabling mechanism has been introduced in Section 15 of the IGST Act, 2017 whereby an international tourist procuring goods in India, may while leaving the country seek refund of integrated tax paid by them.

#### **W.e.f. 01-10-2022, Withholding and deduction of amounts extended to all kinds of refunds section 54(10) of CGST Act, 2017:**

Where any refund is due to a registered person who has defaulted in furnishing of any return or has not paid the GST liability, the refund due is liable to be withheld or deductible from the refund due. This clause is applicable only for refund of unutilized input tax credit i.e. for exports, supplies to SEZ and inverted duty structure. The withholding and deduction of refund is now being extended to all kinds of refunds if there is any pending liability of the applicant.

The extent of withholding the refund of tax has been extended by removing the reference to refund in case of unutilised input tax credit in sub-section (3) of section 54.

## REFUND

Refund to retail outlets established in the departure area of an international airport [OMITTED w.e.f. 1st July 2019] Rule 95A:

This rule has been omitted with retrospective effect from 01.07.2019. Owing to this omission, Circular No. 106/25/2019-GST dated 29.06.2019 has been withdrawn, wherein certain clarifications were given in relation to rule 95A vide Circular No. 176/08/2022-GST dt. 6th July, 2022.





## **TAX COLLECTED AT SOURCE**



### **Important points:**

- TCS shall be paid by debiting the e-cash ledger and electronic liability register shall be credited accordingly.
- No TCS in case of Net value is negative.
- No TCS in case of exempted supply.
- No TCS in case of supply in between two ECO's
- Application for Registration as TCS collector is Form GST REG-07
- Monthly Return: Form GSTR-08, within 10 days from the end of the relevant tax period. W.e.f. 01-10-2022, Due date of rectification of any omission or incorrect particulars furnished in GSTR-8 to 30th November following the end of financial year or the actual date of furnishing of annual statement, whichever is earlier.
- The operator who collects tax at source shall furnish an annual Statement (in Form GSTR-9B), electronically, containing all the details, under sub-section (3) of Section 52 of the Act, regarding:
  - (a) Outward supplies of Goods and Services
  - (b) Return of goods and services during the Financial Year, Before 31st December following the end of such Financial Year.



# SUPPLEMENTARY PAPER 19 FOR JUNE 2023 TERM OF EXAMINATION SYLLABUS 2022

## GST PRACTITIONER

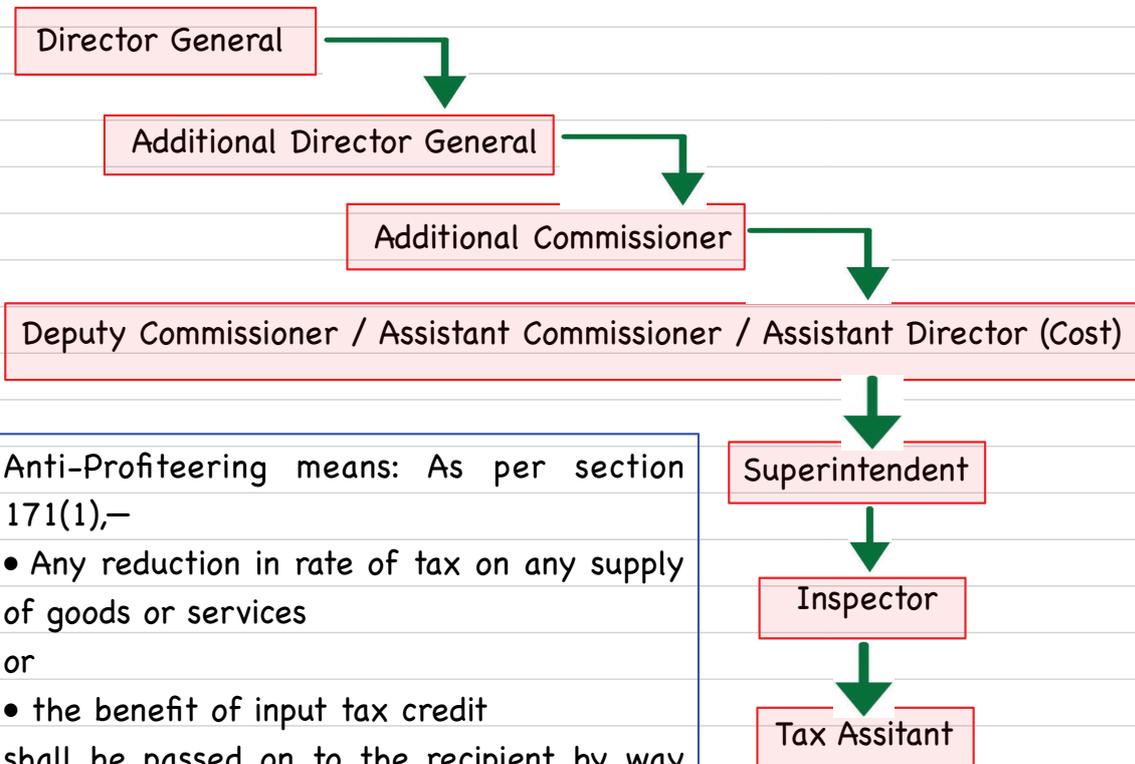
### Functions of GST Practitioner's:

- furnish details of outward supplies (section 37 and (omitted w.e.f. 01-10-2022 inward supplies u/s 38) and furnish monthly return & quarterly, return u/s 39, annual u/s 44 or final return u/s 45.
- make deposit for credit into the electronic cash ledger
- file a claim for refund
- file an application for amendment or cancellation of registration
- Furnish information for generation of e-way bill;
- Furnish details of challan in Form GST ITC-04;
- Furnish an application for amendment or cancellation of enrolment under rule 58 (i.e. records to be maintained by owner or operator of godown or warehouse and transporters); and
- File an intimation to pay tax under the composition scheme or withdraw from the said scheme; etc.,

## ANTI-PROFITEERING



Organisational structure of Directorate General of Anti-profiteering:



Anti-Profiteering means: As per section 171(1),—

- Any reduction in rate of tax on any supply of goods or services
- or
- the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.

It not, it amounted to profiteering.

### Screening Committee:

An officer of the State to be nominated by the Commissioner and an officer of the Central to be nominated by the Chief Commissioner.

**Standing Committee:** Nominated by GST Council.

■ Penalty = 10% of the amount so profiteered.

Note: Penalty is nil, if the profiteered amount is deposited within 30 days of passing of the order by the National Anti-profiteering Authority (NAA).

### Tenure of Anti-Profiteering Authority extended to five years:

[Notification No. 37/2021 CT dated 1.12.2021]

With effect from 30.11.2021, rule 137 of the CGST Rules, 2017 has been amended to extend the tenure of National Anti-Profiteering Authority from existing 4 years to 5 years. Thus, the Authority shall cease to exist after the expiry of five years from the date on which the Chairman enters upon his office unless the Council recommends otherwise.

## DEMAND & ADJUDICATION



### Clarification on the legal position of voluntary payment of taxes during the course of inspection, search or investigation:

Under CGST Act, 2017, the taxpayers have an option to make voluntary payment of tax through Form DRC-03. Such voluntary payment of tax before issuance of show cause notice is permitted under section 73(5) and section 74(5) of the CGST Act, 2017. This helps the taxpayers in discharging their admitted liability, self-ascertained or as ascertained by the tax officer, without having to bear the burden of interest under section 50 of CGST Act, 2017 for delayed payment of tax and may also save him from higher penalty imposable on him subsequent to issuance of show cause notice under section 73 or section 74, as the case may be.

Recovery of taxes not paid or short paid, can be made under the provisions of section 79 of CGST Act, 2017 only after following due legal process of issuance of notice and subsequent confirmation of demand by issuance of adjudication order. Therefore, there may not arise any situation where "recovery" of the tax dues has to be made by the tax officer from the taxpayer during the course of search, inspection or investigation, on account of any issue detected during such proceedings. However, the law does not bar the taxpayer from voluntarily making payment of any tax liability ascertained by him or the tax officer in respect of such issues, either before or during the course of such proceedings or subsequently. The tax officer should however, inform the taxpayers regarding the provisions of voluntary tax payments through DRC-03.

The Pr. Chief Commissioners/ Chief Commissioners, CGST Zones and Pr. Director General, DGGI are advised that in case, any complaint is received from a taxpayer regarding use of force or coercion by any of their officers for getting the amount deposited during search or inspection or investigation, the same may be enquired at the earliest and in case of any wrongdoing on the part of any tax officer, strict disciplinary action as per law may be taken against the defaulting officers.

[Instruction No. 01/2022-23 [GST-Investigation] dt. 25.05.2022]



# SUPPLEMENTARY PAPER 19 FOR JUNE 2023 TERM OF EXAMINATION SYLLABUS 2022

## DEMAND & ADJUDICATION



Amendment of [section 75](#) as per Finance Act, 2021 (w.e. 1-1-2022): In section 75 of the Central Goods and Services Tax Act, in sub-section (12), the following Explanation shall be inserted, namely:-

Explanation.- For the purposes of this sub-section, the expression "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39 (payment of tax GSTR-3B).

Previously the Government could initiate Demand / Recovery Proceedings only if liability was furnished in GSTR 3B. Such Practical Difficulty has now been removed vide the Explanation inserted and any Liability as furnished in GSTR 1 and not paid through GSTR 3B Is liable to be recovered.

Example 1: a typographical error/wrongly reported details in GSTR-1 or GSTR-3B which may be rectified in subsequent GSTR\_1 or GSTR-3B.

Example 2: where a supply could not be declared in GSTR-1 of an earlier tax period, though the tax on the same was paid by correctly reporting the same in GSTR-3B of said tax period; details may now be reported in the GSTR-1 of the current tax period.

Therefore, in case of mis-match between GSTR-1 and GSTR-3B, the proper officer may first send a communication to the registered person to pay the self-assessed tax short paid /not paid, or to explain the reasons for the same, within a reasonable time 23prescribed in the communication.

Recovery proceedings under section 79 will be initiated by the proper officer only when the said person either (i) fails to reply to the proper officer, or (ii) fails to make the payment of such amount short paid/not paid within the prescribed time or (iii) fails to explain the reasons for such amount short paid/not paid (instruction No. 01/2022 GST dated 07/01/2022).

## DEMAND & ADJUDICATION



Amendment of [section 83](#) as per Finance Act, 2021 (w.e.f. 1-1-2022): In section 83 of the Central Goods and Services Tax Act, for sub-section (1), the following sub-section shall be substituted, namely:-

(1) Where, after the initiation of any proceeding under Chapter XII (Advance Ruling), Chapter XIV (i.e. Transitional Provisions) or Chapter XV (i.e. Anti-Profitteering), the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue it is necessary so to do, he may, by order in writing, attach provisionally, any property, including bank account, belonging to the taxable person or any person specified in sub-section (1A) of section 122, in such manner as may be prescribed.

Vide this Modification Powers of Provisional attachment of the Commissioner have been extended to proceeding under Chapter XII (Assessment), XIV (Inspection, Search, Seizure and Arrest) or XV (Demands and Recovery) for attachment of property including bank account belonging to the taxable person / person who has retained benefits of offences under 122(1A) e.g Fake Invoice Transactions, where he feels that provisional attachment is necessary to protect the Interest of the Revenue.

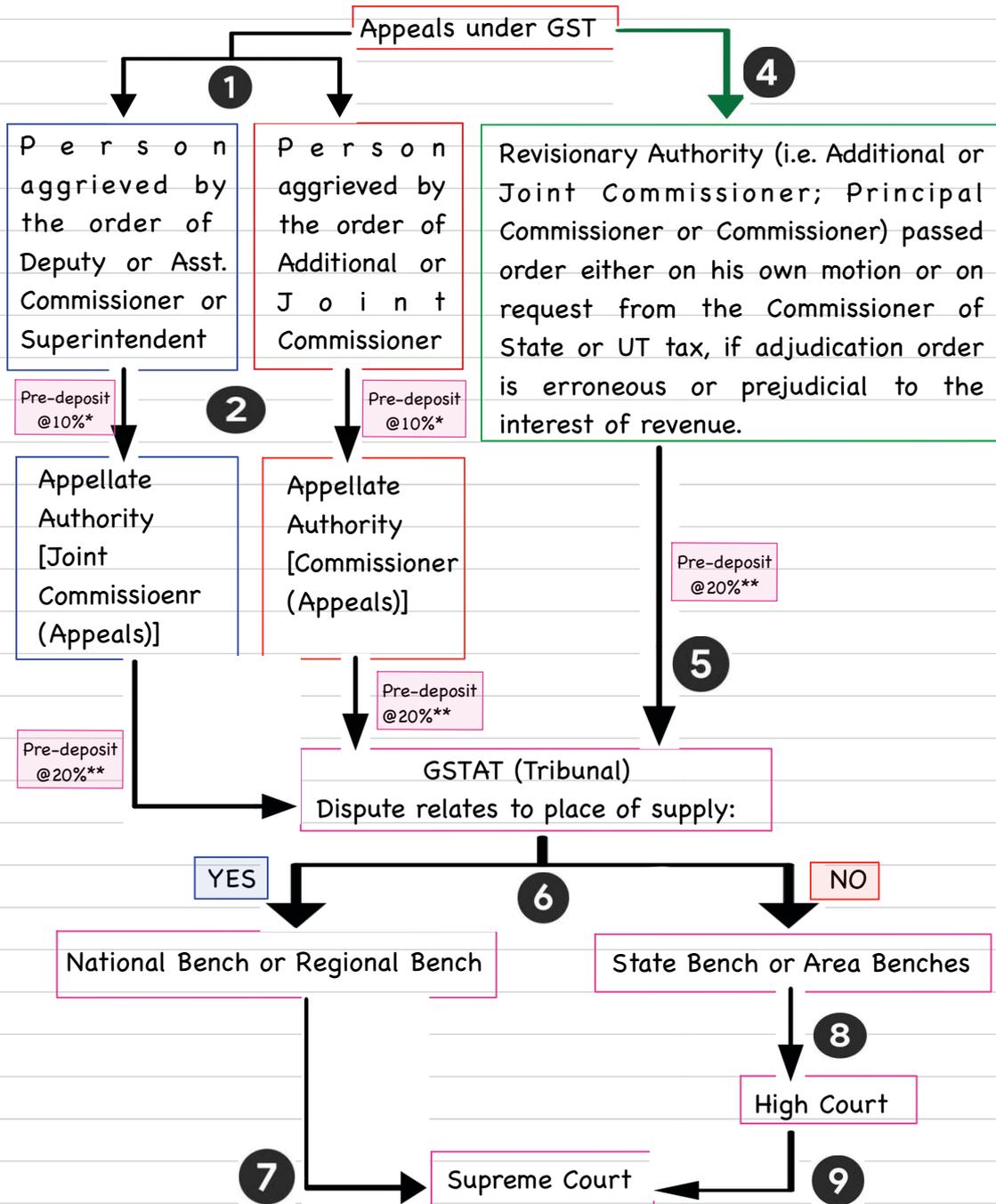
Further, earlier the person whose property is attached could file an objection to such attachment within 7 days of the attachment. However, said provision has been amended by aforesaid notification to provide that the objections to such attachment can be filed at any time. Further, amendment in rule 159 of the CGST Rules, 2017 is also effective from 1-1- 2022. Further, a copy of the order of provisional attachment of the property including bank account shall also be sent to the person whose property is being attached.



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## TERM OF EXAMINATION SYLLABUS 2022

### APPEALS



\*Maximum amount of pre deposit is ₹25 crore of CGST & ₹25 crore of SGST/UTGST u/s 107(6) of the CGST Act 2017.

\*\*Maximum amount of pre deposit is ₹50 crore of CGST & ₹50 crore of SGST/UTGST u/s 112(8) of the CGST Act 2017.



# SUPPLEMENTARY PAPER 19 FOR JUNE 2023 TERM OF EXAMINATION SYLLABUS 2022

## APPEALS

Amendment of [section 107](#) as per Finance Act, 2021 (w.e.f. 1-1-2022): In section 107 of the Central Goods and Services Tax Act, in sub-section (6), the following proviso shall be inserted, namely:-

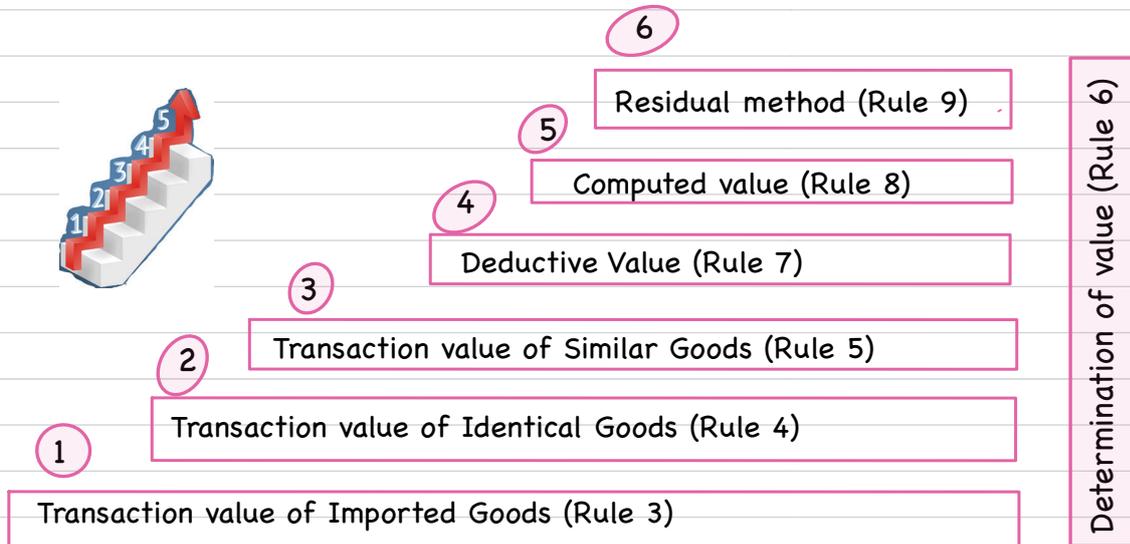
Provided that no appeal shall be filed against an order under sub-section (3) of section 129, unless a sum equal to twenty-five per cent. of the penalty has been paid by the appellant. Previously payment of 10% of the tax in dispute was enough for the Assessee to file an appeal against an order u/s 129(3) which has now been increased to 25% of the penalty.



# Customs Act and Rules

## Import of Goods

### Valuation of Imported Goods:



Rule 3: Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10.

Transaction Value of import goods under section 14(1) of the Customs Act and Rule 3(1) of the Imported Goods Rules:

This method is applicable only when importer satisfies the following conditions:

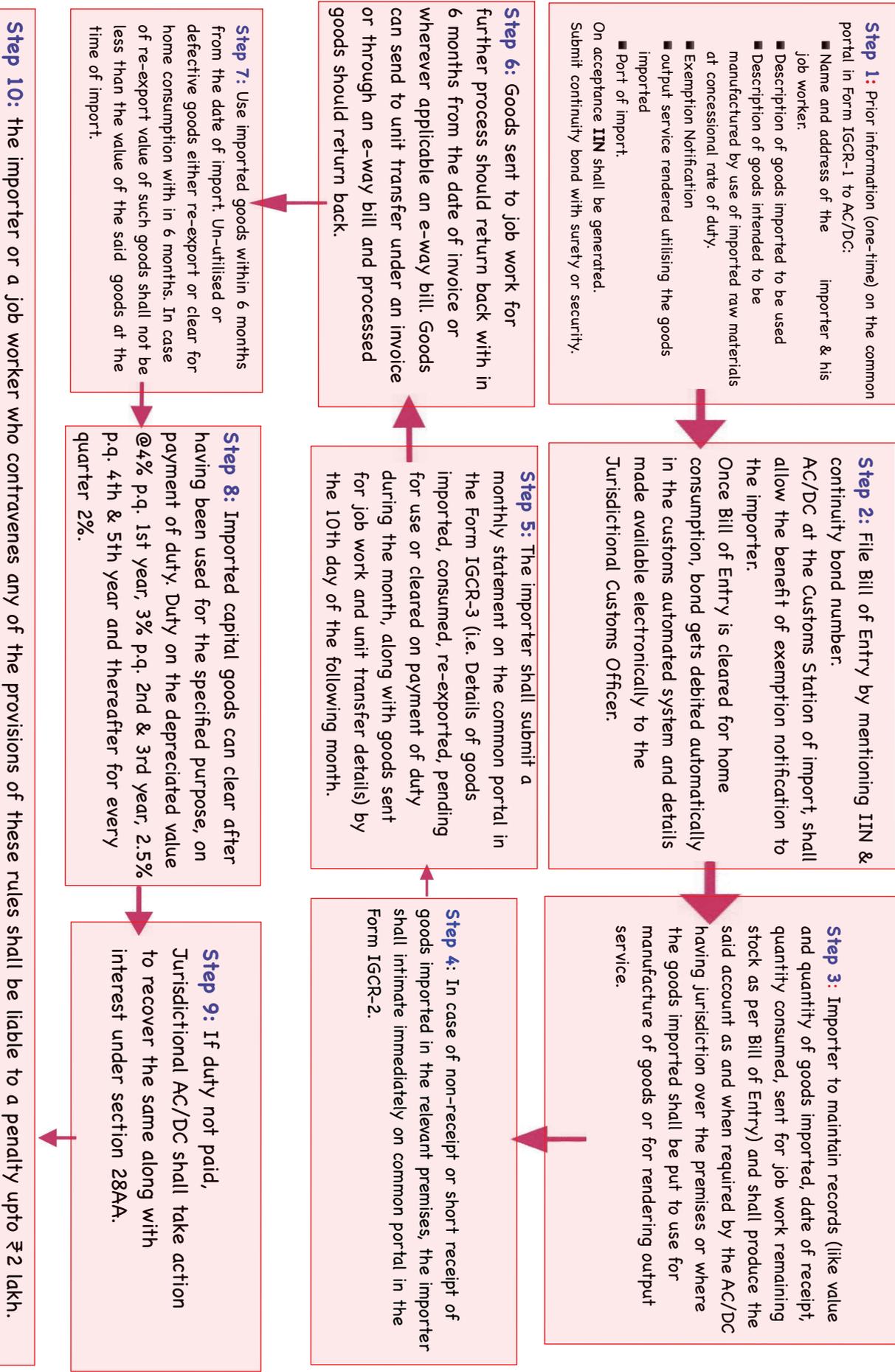
- There are no restrictions as to the disposition or use of the goods by the buyer,
- The sale or price is not subject to some conditions or considerations for which a value cannot be determined in respect of the goods being valued,
- No part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules, and
- The buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of rule 3(3).

As per Section 14(1)(iv) is inserted in Finance Act, 2022 (w.e.f. 30.03.2022), provisions for rules enabling the Board to specify the additional obligations of the importer in respect of a class of imported goods whose value is not being declared correctly, the criteria of selection of such goods, and the checks in respect of such goods. This amendment is a measure to address the issue of undervaluation in imports.

The government has recently proposed draft Customs (Assistance in Value Declaration of Identified Imported Goods) Rules, 2022.

### Import of Goods

**Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 read with amendments NT No 07/2022 w.e.f. 1-3-2022**





# SUPPLEMENTARY PAPER 19 FOR JUNE 2023

## TERM OF EXAMINATION SYLLABUS 2022

### Import of Goods

**Example:** M/s X Ltd., imported capital goods under Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 worth ₹2 crore after payment of customs duty of ₹20 lakh on 10th October 2022 and duty concession is ₹10 lakh. Imported capital goods have come into use for the purpose as specified in the exemption notification w.e.f. 1st January 2023. M/s X Ltd., clear the capital goods imported, after having been used for the specified purpose on 15th June 2023. The applicable rate of customs duty is @15% (ignore any other cess or duty).

Find the difference between the duty leviable on such goods but for the exemption availed and that already paid, if any, at the time of importation, along with interest, at the rate fixed by the notification issued under section 28AA of the Customs Act 1962, on the depreciated value allowed in straight line method?

Note: difference duty has been paid on 30th June 2023

Answer:

Customs duty payable on depreciated value of capital goods (see note 1) =	₹27,60,000
Less: duty already paid at the time of import of capital goods =	₹20,00,000
Difference duty to be paid	= ₹7,60,000

Working note 1:

Particulars	Working in ₹	Duty in ₹
Depreciated value of capital goods (The depreciation shall be allowed from the date when the imported capital goods have come into use for the purpose as specified in the exemption notification upto the date of its clearance	₹2 crore - (₹2 crore × 4% × 2 quarters) = ₹1.84 crore From 1st January 2023 to 15th June 2023 = 2 quarters	₹1.84 crore × 15% = ₹27,60,000

Rate of interest is 15% p.a.

Period for which interest payable: from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

From 1st November 2022 to 30th June 2023 = 242 days

Interest = ₹7,60,000 × 15% × 242 / 365 = ₹75,584/-



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## Import of Goods

**Implementation of automation in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 with effect from 01.03.2022 are being amended to provide the following facilities:**

The amendments are aimed at simplifying the procedures with a focus on automation and making the entire process contact-less.

These include:

- a) The process is being automated. The Rules prescribe the submission of the necessary details electronically, through the common portal. (The common portal is the one notified vide notification 33/2021 dated 29-03-2021 and accessible at the URL [www.icegate.gov.in](http://www.icegate.gov.in)).
- b) The various forms have been standardized and notified for the purpose of electronic submission of details.
- c) Individual transaction based permissions and intimations, such as - intimation of the intent to import goods at a concessional rate of duty, intimation of the receipt of goods, permission to re-export or clear goods domestically etc, are all being done away with.
- d) A monthly statement would to be submitted by the importer on the common portal
- e) A procedure for inter-unit transfer of the imported goods has been provided for
- f) An electronic option for voluntary payment through the common portal, as specified in the Rules, is also being developed for implementation.

**Duty concessions on specified items when imported by bonafide exporters:**

A scheme is being introduced for bonafide exporters on duty-free imports for the purpose of use in goods meant for export, based on end-use monitoring subject to the requirement of exporting value added products manufactured using inputs imported under specified exemptions, within a period of 6 months. Importer shall be required to follow the procedure under the IGCR Rules.



# SUPPLEMENTARY PAPER 19 FOR JUNE 2023 TERM OF EXAMINATION SYLLABUS 2022

## Import of Goods

**W.e.f. 10th September 2022, Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022 notified vide Notification 74/2022 dated 9th September, 2022:**

To further facilitate the trade and to expand the scope of application, the IGCRS Rules, 2022 have been notified, while retaining the basic contours of IGCR, 2017.

It is pertinent to note that these changes are of the nature that broaden the scope of coverage of IGCR and ensure that useful additional data fields are effectively captured.

It is reiterated that these rules are not a departure from the existing procedure and hence all the clarifications provided vide Circulars 48/2017 dated 08.12.2017, 10/2021 dated 17.05.2021 and 04/2022 dated 27.02.2022, will continue be in effect, unless specifically modified by this Circular.

### **1. The salient changes include:**

- a. Clarifying the time period of utilisation to be the time period for compliance and bringing in a provision to extend the said period in certain cases for the reasons beyond the importer's control.
- b. Prescribing a procedure for immediate re-credit of Bonds by Jurisdictional customs officer, rather than waiting till the time of filing of the monthly statement.
- c. Expanding the scope of the IGCR procedure applicable to Specified End Use mentioned in Customs Notifications, i.e. apart from those pertaining to manufacturing and in respect of those for providing output services. In case of end use, supply to the end use recipient and the nature of the supply is to be captured in the IGCR automated module.
- d. Changes in the forms to capture the details where intended purpose is the export of goods using the goods imported.
- e. Corresponding changes in the forms to better capture the different intended purposes (manufacturing, import for specified end use, export of goods using goods imported, supply to end use recipient or for provision of output service) and additional details such as Sl.No. of the Notification etc.
- f. In Rule 13 of IGCRS Rules, 2022, it is mentioned that reference in any rule, notification, circular, instruction, standing order, trade notice or other order in pursuance of the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 and any provision thereof or to the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2016 and any corresponding provisions thereof or to the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 and any corresponding provisions thereof shall be construed as reference to the Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022.



# SUPPLEMENTARY PAPER 19 FOR JUNE 2023 TERM OF EXAMINATION SYLLABUS 2022

## Import of Goods

### 2. Time period for utilisation of goods:

When time period for utilisation is specified in the notifications, the said time period will apply. If not specified, the time period of six months will apply.

Further, multiple representations have been received in the Board regarding the inability to utilise the goods imported for intended purpose under IGCR within the prescribed time period of 6 months. In order to facilitate trade in such situations, a provision has been introduced wherein the jurisdictional Commissioner can further extend such period of six months by another 3 months. However, it is clarified that such extension can be given provided the importer furnishes sufficient reason/s for not conforming to the time period so prescribed, which were beyond the importer's control.

### 3. Specified End Use:

IGCRS Rule, 2022 is also expanded to include cases where the intended purpose is for putting the goods imported to specified end use and not necessarily manufacturing or for

providing output services. In this regard, it is clarified that:

- a. Procedure of intimation, generation of a unique IGCR Identification Number (IIN), import of the goods, submission of bond, maintenance of records, filing of monthly statement or any other procedures remains the same. The Importer shall undertake compliance to the officer having jurisdiction over primary address specified in the Importer Exporter Code (IEC) issued by DGFT.
- b. End use may be specified by a notification under sub-section (1) of section 25 or under section 11 of the Customs Act, 1962.
- c. Where the import is undertaken for a specified end use and no differential duty is involved, the value of the bond shall be equal to the assessable value of the goods.
- d. In cases where the intended purpose of import is supply of the goods to an end use recipient, the importer shall supply these goods under an invoice or where ever applicable, through an e-way bill, as mentioned in the CGST Act, 2017. The description and quantity of such goods shall be clearly mentioned by the importer.
- e. The importer shall maintain a record of all such goods supplied in a month and provide the details in the monthly statement.
- f. The restrictions on job work are only relating to the case where it is undertaken on the goods belonging to importer and does not apply to the end use recipient who receives the goods on the supply and deals with it as stipulated in the notification.



# SUPPLEMENTARY PAPER 19 FOR JUNE 2023 TERM OF EXAMINATION SYLLABUS 2022

## Import of Goods

### 4. Bond & Bank Guarantee:

In view of the changes introduced to the procedures, the Bank guarantee/cash security/surety shall be taken as per the following norms for the purpose of extending the benefit under the Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022.

Importer	Quantum of Bank Guarantee/Cash Security/Surety
Government or PSU or Autonomous institute under the said government or Authorised Economic Operator or Banks & PSU's	Nil
Importers annual turnover in the preceding year is above ₹1 crore	Importers shall give surety for the amount of duty foregone. However, where the importer is not able to provide the surety, a bank guarantee/cash security equivalent to not more than 5% of bond debit value (i.e. - Duty foregone in case of concessional rate and assessable value of the goods in other cases) shall be furnished.
Others	Bank guarantee/Cash security- not more than 25% of the bond debit value (i.e. - Duty foregone in case of concessional rate and assessable value of the goods in other cases).

As a trade facilitation measure, a new Form IGCR-3A has been notified for confirmation of consumption for intended purpose at the common portal at any point in time for immediate re-credit of the bond by the jurisdictional AC/DC, without waiting for the filing of monthly statement on the 10th of every month. The details filed in form IGCR-3A shall get auto populated in the monthly statement of the subsequent month, which has to be only confirmed by the importer.



# SUPPLEMENTARY PAPER 19 FOR JUNE 2023 TERM OF EXAMINATION SYLLABUS 2022

## Import of Goods

### **Specified deposit exempted from provisions of electronic cash ledger (section 51A of the Customs Act, 1962):**

Section 51A provides for payment of duty, interest, penalty, fee or any other sum payable by a person through deposit made in electronic cash ledger.

Section 51A(4) provides that CBIC may by notification exempt certain deposits to which provisions of Electronic Cash Ledger will not be applicable. Accordingly, w.e.f. 30.11.2022, CBIC has exempted deposits:-

(1) with respect to goods imported or exported in customs stagnations where customs automated system is not in place;

(2) with respect to accompanied baggage;

(3) other than those used for making payment of,-

(a) any duty of customs, including ceases and surcharges levied as duties of customs;

(b) IGST;

(c) GST Compensation Cess;

(d) interest, penalty, fees or any other amount payable under the said Act, or the Customs Tariff Act, 1975

from the provisions of section 51A of the Customs Act, 1962

(Notification No, 19/2022 CUS Dt. 30.03.2022 as amended by Notification No. 48/2022 CUS dt. 31.05.2022)



# SUPPLEMENTARY PAPER 19 FOR JUNE 2023 TERM OF EXAMINATION SYLLABUS 2022

## Foreign Trade Policy

### Foreign Trade Policy 2015-20

- The existing FTP 2015-20 which is valid up to September 30, 2022 is extended up to March 31, 2023 (Notification No. 37/2015-20 dated 29.09.2022).

Exemption from IGST and GST compensation cess, in case of imports under Advance Authorisation, EPCG, EOU/EHTP/STP/BTP units, granted without any time restriction (Notification No. 16/2015-20 dated 01-07-2022)



# SUPPLEMENTARY PAPER 19 FOR JUNE 2023 TERM OF EXAMINATION SYLLABUS 2022

## Foreign Trade Policy

Principles of restrictions and prohibitions for imports/exports revised to be in the line with international agreements (Notification No. 17/2015-2020 dated 10-8-2021):

W.e.f. 10-8-2021, principles of restorations and prohibitions for imports/exports have been revised as follows:

DGFT may, through a notification, impose probation or restriction

A. On export of foodstuffs or other essential products for preventing or relieving critical shortages;

B. On imports and exports necessary for the application of standards or regulations for the classification, grading or marketing of commodities in international trade;

C. On imports of fisheries product, imported in any form, for enforcement of governmental measures to restrict production of the domestic product or for certain other purposes;

D. On import to safeguard country's external financial position and to ensure a level of reserves;

E. On imports to promote establishment of a particular industry;

F. For preventing sudden increases in imports from causing serious injury to domestic producers or to relieve producers who have suffered such injury;

G. For protection of public morals or to maintain public order;

H. For protection of human, animal or plant life or health;

I. Relating to the importations or exportations of gold or silver;

J. Necessary to secure compliances with laws and regulations including those relating to the protection of patents, trademarks and copyrights, and the prevention of deceptive practices;

K. Relating to the products of prison labour;

L. For the protection of national treasures of artistic, historic or archaeological value;

M. For the conservation of exhaustible natural resources;

N. For ensuring essential quantities for the domestic processing industry

O. Essential to the acquisition or distribution of products in general or local short supply;

P. for the protection of country's essential security interests:

i. Relating to fissionable materials or the materials from which they are derived;

ii. Relating to the traffic in arms, ammunition and implements of war;

iii. Taken in time of war or other emergency in international relations; or

Q. In pursuance of country's obligations under the United Nations Charter for the maintenance of international peace and security.



# SUPPLEMENTARY PAPER 19 FOR JUNE 2023 TERM OF EXAMINATION SYLLABUS 2022

## Foreign Trade Policy

### Duty credit scrip's:

Goods Exported after manufacture in India

Export of services

Merchandise Export from India Scheme (MEIS)

Service Export from India Scheme (SEIS)

Exporters are entitled to duty credit scrip's subject to various conditions. These duty credit scrip's can be used for payment of:

Customs duties on imported goods including capital goods.

Excise duty on domestic inputs/capital goods.

w.e.f. 1-7-2017 GST will not be debited in duty credit scrips such as MEIS and SEIS. MEIS and SEIS scrip would be used only for payment of BCD.

These credit scrip's are transferrable (it means can be sold to others). Goods imported under credit scrip's are also freely transferable.

### MEIS Reward Rates:

Reward rates are prescribed under Appendix 3B-MEIS Schedule Table 2. ITC (HS) code wise list of products with rewards rates are incorporated under Appendix 3B. There are three types of reward rates are prescribed namely 2%, 3% and 5%. Applicability of these rates depends up on the country group and description of goods.

On request, split certificates of Duty Credit Scrip subject to a minimum of ₹ 5 Lakh each and multiples thereof may also be issued, at the time of application.

Once Duty Credit Scrip has been issued, request for splits can be permitted with same port of registration as appearing on the original Scrip.

The above procedure shall be applicable only in respect of EDI enabled ports.

In case of export through non-EDI ports, the facility of splits shall not be allowed after issue of Scrip.

■ Social Welfare Surcharge (SWS) cannot be paid by utilizing MEIS/SEIS Scrip (Circular No. 02/2020 - 10th Jan 2020).

MEIS replaced with a new scheme with effect from 01.01.2021.

Benefits under MEIS are not available for exports made with effect from 01.01.2021. Further, Government has introduced a new scheme Remission of Duties and Taxes on Exported Products (RoDTEP) to all export goods with effect from 01.01.2021



# SUPPLEMENTARY PAPER 19 FOR JUNE 2023 TERM OF EXAMINATION SYLLABUS 2022

## Foreign Trade Policy

### **New Scheme RODTEP:**

The Government had recently announced the introduction of a new scheme "Remission of Duties and Taxes on Exported Products" (RoDTEP) to replace the Merchandise Exports from India Scheme (MEIS) available to exporters of goods. Accordingly, the items covered under the existing MEIS scheme would be shifted in a phased manner to the new RoDTEP scheme.

RoDTEP has been made effective for exports from 1st January 2021 in respect of those exports where intention to claim the benefit has been manifested on the shipping bills. RoDTEP is going to give a boost to Indian exports by providing a level playing field to domestic industry abroad.

### **RoDTEP Benefits:**

Being WTO-compliant, the RoDTEP scheme can make available from the government benefits to the exporters seamlessly.

- (a) The scheme is more exhaustive in that certain taxes that were not covered under the previous scheme are also included in the list, for example, education cess, state taxes on oil, power and water.
- (b) It will add more competitiveness in the foreign markets, with assured duty benefits by the Indian Government.
- (c) It will also help exporters meet international standards and promote business growth etc.,

### **Objective of RODTEP Scheme:**

The Scheme's objective is to refund, currently un-refunded duties and taxes. The scheme has been introduced with an objective to neutralize the taxes and duties suffered on exported goods which are otherwise not credited or remitted or refunded in any manner and remain embedded in the export goods. This scheme provides for rebate of all hidden Central, State, and Local duties/taxes/levies on the goods exported which have not been refunded under any other existing scheme namely:

- Mandi Tax, Municipal Taxes, Property Taxes, VAT,
- Coal cess,
- Central Excise duty on fuel,
- Electricity duty on purchase of electricity,
- Stamp duty on export documents; etc.

will now be refunded under this particular scheme.

All the items under the MEIS and the RoSCTL (Rebate of State and Central Taxes and Levies) are now under the purview of the RoDTEP Scheme.



## Foreign Trade Policy

### RODTEP Scheme Operating Principles:

1. RoDTEP support will be available to eligible exporters at a notified rate as a percentage of Freight On Board (FOB) value. Rebate on certain export products will also be subject to value cap per unit of the exported product.

However, for the purpose of calculation of duty credit, value of exported shall be least of the following:

- (a) FOB value of said goods, or
- (b) 1.5 times of the market price of the goods.

2. Identified export sectors and rates under RoDTEP cover 8555 tariff lines in addition to similar support being extended to apparel and made-ups exports under RoSCTL scheme of Ministry of Textiles.

3. Employment Oriented Sectors like Marine, Agriculture, Leather, Gems & Jewellery etc. are covered under the Scheme. Other sectors like Automobile, Plastics, Electrical / Electronics, Machinery etc. also get support. The entire value chain of textiles also gets covered through RoDTEP & RoSCTL.

4. Rebate under the Scheme shall not be available in respect of duties and taxes already exempted or remitted or credited.

5. The determination of ceiling rates under the scheme will be done by a Committee in the Department of Revenue/Drawback Division with suitable representation of the DoC/DGFT, line ministries and experts, on the sectors prioritized by Department of Commerce and Department of Revenue.

6. No provision for remission of arrears or contingent liabilities is permissible under the Scheme to be carried over to the next financial year.

7. The rebate allowed is subject to the receipt of sale proceeds within time allowed under the Foreign Exchange Management Act, 1999 failing which such rebate shall be deemed never to have been allowed. The rebate would not be dependent on the realisation of export proceeds at the time of issue of rebate. However, adequate safeguards to avoid any misuse on account of non-realisation and other systemic improvements as in operation under Drawback Scheme, IGST and other GST refunds relating to exports would also be applicable for claims made under RoDTEP Scheme.



## **Foreign Trade Policy**

### **Mechanism of Issuance of Rebate:**

(a) Scheme would be implemented through end to end digitalization of issuance of rebate amount in the form of a transferable duty credit/ electronic scrip (e-scrip), which will be maintained in an electronic ledger by the Central Board of Indirect Taxes and Customs (CBIC).

(b) Necessary rules and procedure regarding grant of RoDTEP claim under the scheme and implementation issues including manner of application, time period for application and other matters including export realisation, export documentation, sampling procedures, record keeping etc. would be notified by the CBIC, Department of Revenue on an IT enabled platform with a view to end to end digitalisation.

(c) Necessary provisions for recovery of rebate amount where foreign exchange is not realised, suspension /withholding of RoDTEP in case of frauds and misuse, as well as imposition of penalty will also be built suitably by CBIC.

### **Eligible Sectors for RoDTEP Scheme:**

The following sectors are eligible to avail of benefits under the scheme.

1. All sectors shall be covered under the scheme. Labour-intensive sectors will be accorded a priority.
2. Both manufacturer exporters and merchant exporters (traders) are eligible.
3. There is no turnover threshold for availing benefits under the scheme.
4. Re-exported products are not eligible under this scheme.
5. The exported products should have India as their country of origin to be eligible for benefits under the scheme.
6. Special Economic Zone Units and Export Oriented Units are also eligible.
7. The scheme also applies to goods that have been exported via courier through e-commerce platforms.



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## Foreign Trade Policy

### **Ineligible categories under the Scheme for claiming benefit:**

The following categories of exports/exporters which shall not be eligible for rebate under the RoDTEP Scheme:

- (i) Exports of imported goods as per para 2.46 of FTP i.e. Import for Export;
- (ii) Exports through trans-shipments, meaning thereby exports originating in third country but trans-shipped through India;
- (iii) Export products which are subject to minimum export price or export duty;
- (iv) Products which are restricted for exports under Schedule-2 of Export Policy in ITC (HS);
- (v) Products which are prohibited for exports under Schedule-2 of Export Policy in ITC (HS);
- (vi) Deemed Exports;
- (vii) Supplies of products manufactured by DTA units to SEZ/FTWZ units;
- (viii) Products manufactured in EHTP and BTP;
- (ix) Products manufactured partly or wholly in a warehouse under section 65 of Customs Act, 1962 ;
- (x) \* Products manufactured or exported in discharge of export obligation against advance authorisation or Duty Free Import Authorization (DFIA) or Special Advance Authorisation issued under a duty exemption scheme of relevant Foreign Trade Policy;
- (xi) \* Products manufactured or exported by a unit licensed as 100% Export Oriented Unit (EOU) in terms of the provisions of the Foreign Trade Policy;
- (xii) \* Products manufactured or exported by any of the units situated in Free Trade Zone (FTZ), Export Processing Zones (EPZ) or Special Economic Zone (SEZ);
- (xiii) Products manufactured or exported availing the benefit of Notification No 32/1997- Customs dated 01.04.2017 (i.e. jobbing transactions);
- (xiv) Exports for which electronic documentation in ICEGATE EDI has not been generated or Exports from Non-EDI port; and
- (xv) Goods which have been taken into use after manufacture (i.e. second-hand goods);

[\*\*\* As per para 4.55B of the FTP (inserted vide DGFT Notification No. 19/2015-20 dated 17.08.2021), the inclusion of exports made by categories mentioned in Sr. No. X, XI and XII above i.e. the exporters under the categories of SEZ, EOU, Advance Authorisation etc. and the RoDTEP rates for export items under such categories would be decided later based on the recommendations of the RoDTEP Committee.]



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## Foreign Trade Policy

### RoDTEP vs MEIS:

Feature	RoDTEP	MEIS
Incentive Scheme	Refund of indirect taxes on inputs used in the manufacture of exported products that are not being currently reimbursed in any other existing schemes.	Incentive on exports of goods in form of transferable scrips
Mode of issue	Issued in the form of transferable duty credit/ electronic scrip, which will be maintained in electronic ledger	Issued in the form of transferable scrips (physical copy)
WTO compliant	Yes. It is as per WTO norms.	No.
Incentive	At a notified rate as a percentage of Freight On Board (FOB) value. Rebate on certain export products will also be subject to value cap per unit of the exported product.	As a % of realised FOB value of exports in free foreign exchange or FOB value of exports as per shipping Bill, whichever is lower.
Transferable	Transferable in open market	Transferable in open market

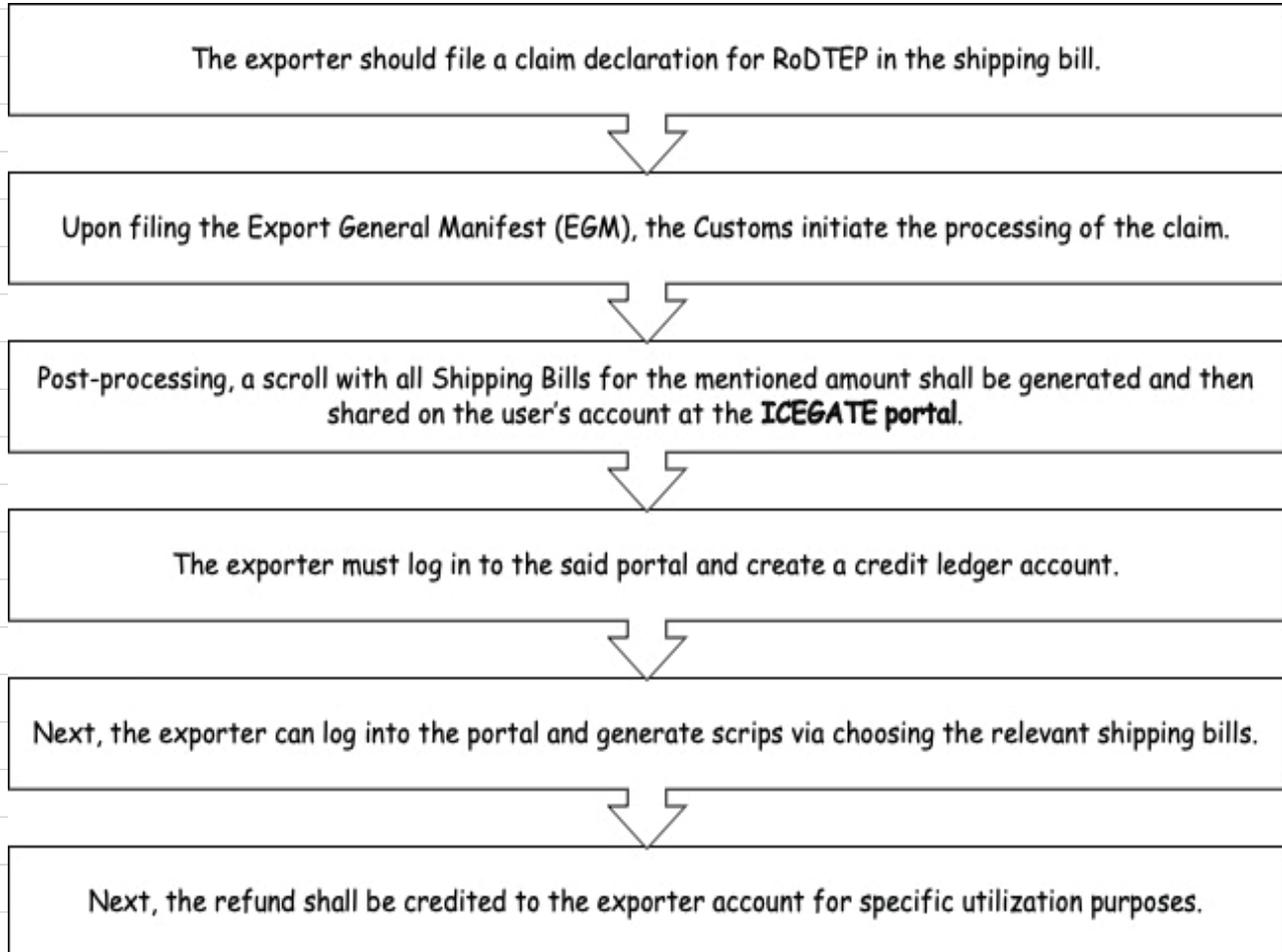
### Utilisation of Duty Credit:

The created and approved Scrips can either be used for debiting Basic Customs Duty for own imports or the approved Scrip can be transferred to another IEC holder who is also created RODTEP Ledger under his log in Credentials

The current owner of the Scrip can use the scrip credits for debiting to his imports in the same manner in the past like all other scrips like MEIS, RoSCTL etc as in the past

## Foreign Trade Policy

The process of generating and claiming scrips as per the RoDTEP scheme is shown below.



The common documents required for RoDTEP Scheme include

- Shipping bills,
- Digital Signature Certificate (DSC) – Class 3,
- Electronic Bank Realisation Certificate (eBRC), and
- RCMC Certificate.

**Electronic Bank Realisation Certificate:** An eBRC (electronic Bank Realisation Certificate) refers to a digital certificate for those engaged with the export business. It is granted by the designated bank as confirmation that the concerned exporter has received payment against the exports of goods or services.

**Registration Cum Membership Certificate:** As per the Foreign Trade Policy, a RCMC is required to avail benefits under the policy. The certificate mainly benefits the exporters and helps reduce immediate liabilities relating to shipping.



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## Foreign Trade Policy

### **Provisions relating to denomination of export contracts amended:**

Now, invoicing payment and settlement of exports and imports has been made permissible in Indian rupees (INR). Accordingly, settlement of trade transactions in INR may also take place through the Special Rupee Vostro Accounts opened by AD (Authorised Dealer) banks in India, in accordance to the following procedures:

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

(II) Indian exporters, undertaking exports of goods and services through this mechanism, shall be paid the export proceeds in INR from the balances in the designated Special Vostro account of the correspondent bank of the partner country (Notification No. 33/2015-20 dated 16.09.2022).