



**SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024  
TERM OF EXAMINATION\_SYLLABUS 2022**

# Indirect Tax Laws and Practice

**STATUTORY UPDATES**

**FOR**

**JUNE 2024 EXAMINATION**

(FROM 1<sup>ST</sup> JUNE 2023 TO 30<sup>TH</sup> NOVEMBER 2023 BASED ON FINANCE ACT, 2023)

SIGNIFICANT NOTIFICATIONS AND CIRCULARS ISSUED BETWEEN 1<sup>ST</sup> JUNE 2023 TO 30<sup>TH</sup> NOVEMBER 2023 IN GST LAWS AS WELL AS CUSTOMS LAW AND FTP ARE GIVEN IN THIS STATUTORY UPDATE.



**SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024**  
**TERM OF EXAMINATION\_SYLLABUS 2022**

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**SECTION- A**  
**GOODS AND SERVICES TAX (GST)**  
**ACT & RULES**

## SUPPLY under GST – A Refresh

1. W.e.f. 1st October 2023: Section 2(80A) "**online gaming**" means offering of a game on the internet or an electronic network and includes online money gaming;



2. W.e.f. 1st October 2023: Section 2(80B) "**online money gaming**" means online gaming in which players pay or deposit money or money's worth, including virtual digital assets, in the expectation of winning money or money's worth, including virtual digital assets, in any event including game, scheme, competition or any other activity or process, whether or not its outcome or performance is based on skill, chance or both and whether the same is permissible or otherwise under any other law for the time being in force.



3. W.e.f. 1st October 2023, Section 2(102A) "**specified actionable claim**" means the actionable claim involved in or by way of-

- (i) betting;
- (ii) casinos;
- (iii) gambling;
- (iv) horse racing;
- (v) lottery; or
- (vi) online money gaming.



# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024

## TERM OF EXAMINATION\_SYLLABUS 2022

the amendments made under this Act shall be without prejudice to provisions of any other law for the time being in force, providing for prohibiting, restricting or regulating betting, casino, gambling, horse racing, lottery or online gaming.

It implies that the amendment provisions would prevail despite there being provisions in any other law which prohibit, restrict or regulate specified actionable claims of any kind.

Note: IGST rate on such specified actionable claims is @28% (New entry 227A inserted in Sch IV)

**4. Section 2(105) “supplier”** in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied;

**New proviso added to Section 2(105) w.e.f. 1st October 2023:**

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

**Summary:**

To provide that a person who organizes or arranges, directly or indirectly, supply of specified actionable claims, including a person who owns, operates or manages digital or electronic platform for such supply, shall be deemed to be a supplier of such actionable claims.

5. W.e.f. 1st October 2023, Section 2(117A)"**virtual digital asset**" shall have the same meaning as assigned to it in clause (47A) of section 2 of the Income-tax Act, 1961.





# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024 TERM OF EXAMINATION\_SYLLABUS 2022

## Scope of Supply

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### 1. Activities specified in Schedule III (i.e. Negative List)

6. Actionable claims, other than (w.e.f. 1<sup>st</sup> October 2023) specified actionable claims. It means specified actionable claims shall be taxable under GST.

**As per Finance Act, 2023 supply excludes the following with retrospective effect (w.e.f. 1st July, 2017):**

7. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India;

8. (a) Supply of warehoused goods to any person before clearance for home consumption;  
(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption;

However, No refund of such tax paid shall be available in cases where any tax has already been paid in respect of such transactions/ activities during the period from July 01, 2017 to January 31, 2019.

[Notification No. 38/2023- Central Tax dated August 04, 2023]

2. Question: Whether the activity of holding shares by a holding company of the subsidiary company will be treated as a supply of service or not and whether the same will attract GST or not?

Answer: As per CBIC Circular No. Circular No. 196/08/2023-GST dated 17<sup>th</sup> July 2023, Securities are considered neither goods nor services in terms of definition of goods under clause (52) of section 2 of CGST Act and the definition of services under clause (102) of the said section. Further, securities include 'shares' as per definition of securities under clause (h) of section 2 of Securities Contracts (Regulation) Act, 1956.

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

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

## Composite and Mixed Supplies

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**CBIC Circular No.206/18/2023-GST dt. 31<sup>st</sup> October 2023:**

1. Question: Whether GST is applicable on reimbursement of electricity charges received by real estate companies, malls, airport operators etc. from their lessees/occupants?

Answer: As per CBIC Circular No.206/18/2023-GST dt. 31<sup>st</sup> October 2023, It is clarified that whenever electricity is being supplied bundled with renting of immovable property and/or maintenance of premises, as the case may be, it forms a part of composite supply and shall be taxed accordingly. The principal supply is renting of immovable property and/or maintenance of premises, as the case may be, and the supply of electricity is an ancillary supply as the case may be. Even if electricity is billed separately, the supplies will constitute a composite supply and therefore, the rate of the principal supply i.e., GST rate on renting of immovable property and/or maintenance of premise, as the case may be, would be applicable.

However, where the electricity is supplied by the Real Estate Owners, Resident Welfare Associations (RWAs), Real Estate Developers etc., as a pure agent, it will not form part of value of their supply. Further, where they charge for electricity on actual basis that is, they charge the same amount for electricity from their lessees or occupants as charged by the State Electricity Boards or DISCOMs from them, they will be deemed to be acting as pure agent for this supply.

**2. Whether supply of food or beverages in cinema hall is taxable as restaurant service:-**

As per CBIC Circular No. 201/13/2023-GST dt. 1<sup>st</sup> August 2023,

*Supply of food or beverages in a cinema hall* is taxable as „restaurant service“ as long as:

- the food or beverages are supplied by way of or as part of a service, and
- supplied independent of the cinema exhibition service.

It is further clarified that where the sale of cinema ticket and supply of food and beverages are *clubbed together*, and such bundled supply satisfies the test of *composite supply*, the entire supply will attract GST at the rate applicable to service of exhibition of cinema, the principal supply.





## **SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024 TERM OF EXAMINATION\_SYLLABUS 2022**

3. Question: Whether job work for processing of “Barley” into “Malted Barley” attracts GST@5% as applicable to "job work in relation to food and food products" or 18% as applicable on “job work in relation to manufacture of alcoholic liquor for human consumption”?

Answer: As per CBIC Circular No.206/18/2023-GST dt. 31st October 2023, Malt is a food product. It can be directly consumed as part of food preparations or can be used as an ingredient in food products and also used for manufacture of beer and alcoholic liquor for human consumption. However, irrespective of end-use, conversion of barley into malt amounts to job work in relation to food products.

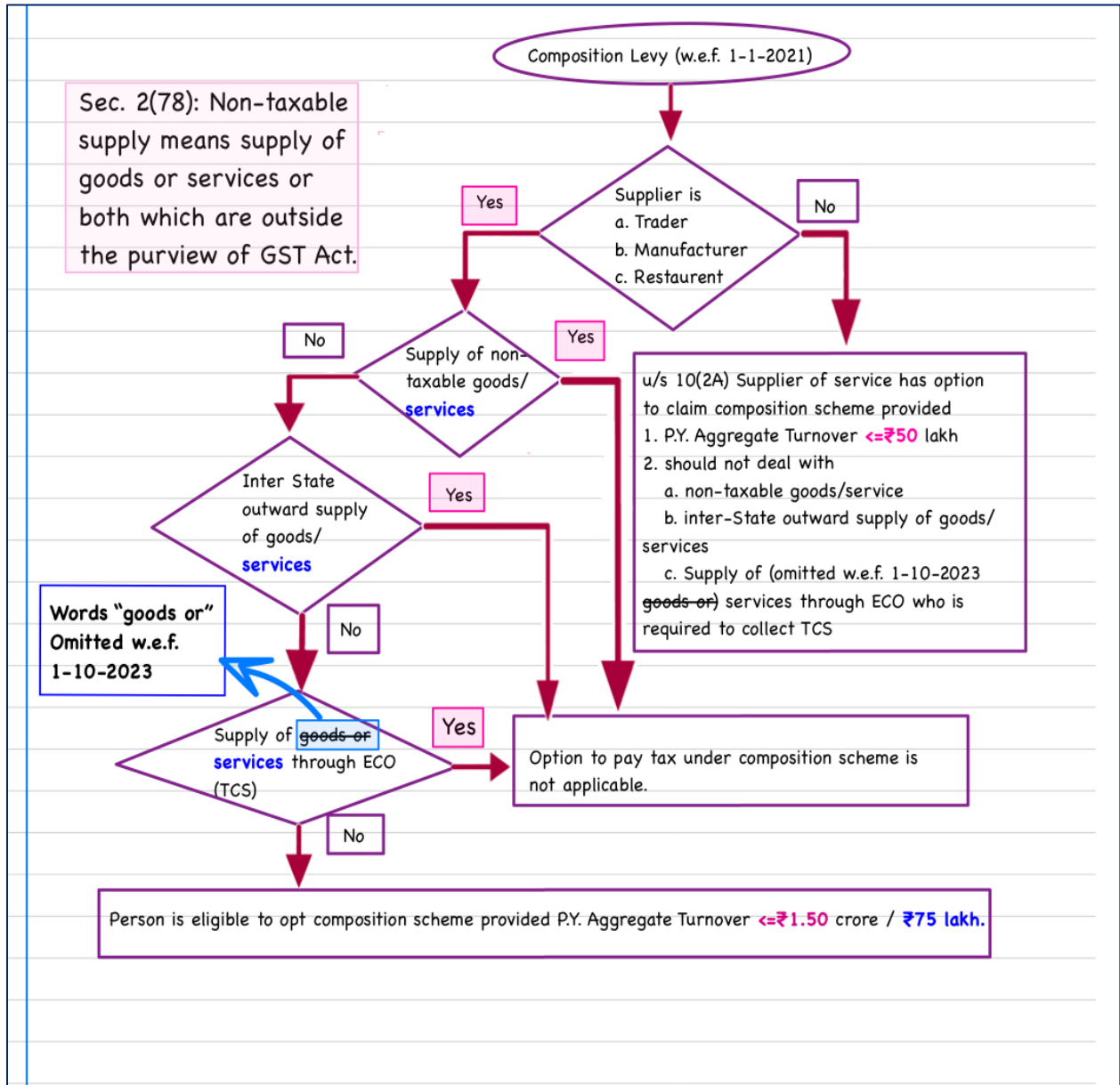
It is hereby clarified that job work services in relation to manufacture of malt are covered by the entry at Sl. No. 26 (i) (f) which covers “job work in relation to all food and food products falling under chapters 1 to 22 of the customs tariff” irrespective of the end use of that malt and attracts 5% GST.



# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024 TERM OF EXAMINATION\_SYLLABUS 2022

## Composition Scheme

### Person eligible for Composition Levy u/s 10 of CGST



With effect from 01.10.2023, following procedure shall be followed by an electronic commerce operator who is required to collect tax at source under section 52 in respect of supply of goods made through it by a composition taxpayer-

- It shall not allow any inter-State supply of goods made through it by the said persons;
- It shall collect tax at source under section 52(1) in respect of supply of goods made through it by the said persons and pay to the Government as per provisions of 52(3);
- It shall furnish the details of supplies of goods made through it by the said persons in Form GSTR-8 electronically on the common portal.





# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024

## TERM OF EXAMINATION\_SYLLABUS 2022

### **Illustration:**

Peter England is a trader who sells his ready-made clothes online on Amazon India (an Electronic Commerce Operator). He received an order for ₹12,00,000 in the previous year. Peter England also supplied goods from there out lets. Aggregate turnover of the company in the previous year was ₹21,00,000.

Peter England is eligible for the composition scheme.

### **Solution:**

w.e.f. 1st October 2023, a composition scheme tax payer is allowed to sell goods through electronic comece operator. In the given case, Peter England engaged in making supply of goods through an electronic commerce operator who is required to collect tax at source under section 52 of CGST Act, 2017. Hence, Peter England is eligible for composition scheme provided it should not be an inter-state supply of goods.



# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024 TERM OF EXAMINATION\_SYLLABUS 2022

## Exemptions under GST

1. w.e.f. 20th October 2023: New entry 3B inserted [to exempt the supply of the following service]:

Services provided to a Governmental Authority by way of -

- water supply,
- public health,
- sanitation conservancy,
- solid waste management and
- slum improvement and up gradation

[Notification No 13/2023-CGST(R) dt 19.10.2023 & 16/2023-IGST(R) dt 19.10.2023]

2. Entry 6: Services by the Central Government, State Government, Union territory or local authority excluding the following services—

- services by the Department of Posts (w.e.f. 20<sup>th</sup> October 2023, “and the Ministry of Railways (Indian Railways)” inserted);
- services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
- transport of goods or passengers; or
- any service, other than services covered under entries (a) to (c) above, provided to business entities are exempt from GST.

3. Entry 7: Services provided by the Central Government, State Government, Union territory or local authority to a business entity with an aggregate turnover of upto ₹40 lakh or ₹ 20 lakh (₹ 10 lakh in case of a special category state) in the preceding financial year are exempt.

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

(a) Services

- by the Department of Posts (w.e.f. 20<sup>th</sup> October 2023, “and the Ministry of Railways (Indian Railways)” inserted);
- in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
- of transport of goods or passengers; and

(b) services by way of renting immovable property.

4. Entry 8: Services provided by the Central Government, State Government, Union territory or local authority to another Central Government, State Government, Union territory or local authority are exempt:

Provided that nothing contained in this entry shall apply to services—

- by the Department of Posts (w.e.f. 20<sup>th</sup> October 2023, “and the Ministry of Railways (Indian Railways)” inserted);
- in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
- of transport of goods or passengers.



# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024

## TERM OF EXAMINATION\_SYLLABUS 2022

5. Entry 9: Services provided by Central Government, State Government, Union territory or a local authority where the consideration for such services does not exceed ₹ 5,000:

Provided that nothing contained in this entry shall apply to—

- (i) services by the Department of Posts (w.e.f. 20<sup>th</sup> October 2023, “and the Ministry of Railways (Indian Railways)” inserted);
- (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
- (iii) transport of goods or passengers

6. Question: Whether District Mineral Foundations Trusts (DMFTs) set up by the State Governments are Governmental Authorities and thus eligible for the same exemptions from GST as available to any other Governmental Authority?

Answer: As per CBIC Circular No. 206/18/2023-GST dated 31st October 2023, DMFTs work for the interest and benefit of persons and areas affected by mining related operations by regulating receipt and expenditure from the respective Mineral Development Funds created in the concerned district. They provide services related to drinking water supply, environment protection, health care facilities, education, welfare of women and children, supply of medical equipment etc.

These activities are similar to activities that are enlisted in Eleventh Schedule and Twelfth Schedule of the Constitution. The ultimate users of the various schemes under DMF are individuals, families, women and children, farmers/producer groups, SHGs of the mining affected areas etc. The services/supplies out of DMF fund are provided free of charge and no consideration is realized from the beneficiaries by DMF against such services.

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

7. Question: Whether supply of pure services and composite supplies by way of horticulture/horticulture works (where the value of goods constitutes not more than 25 per cent of the total value of supply) made to Central Public Works Department (CPWD) are eligible for exemption from GST under Sr. No. 3 and 3A of Notification no 12/2017-CTR dated 28.06.2017

Answer: As per CBIC Circular No. 206/18/2023-GST dated 31st October 2023, Maintenance of community assets, urban forestry, protection of the environment and promotion of ecological aspects are functions entrusted to Panchayats and Municipalities under Article 243G and 243W read with Sr. No. 29 of 11th Schedule and Sr. No. 8 of 12th Schedule of the constitution.

Sr. No. 3 and 3A of notification No. 12/2017-CTR exempt pure services and composite supply of goods and services in which value of goods does not constitute more than 25%, that are provided to the Central Government, State Government or Union territory or local authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.

Accordingly, it is clarified that supply of pure services and composite supplies by way of horticulture/horticulture works (where the value of goods constitutes not more than 25 per cent of the total value of supply) made to CPWD are eligible for exemption from GST under Sr. No. 3 and 3A of Notification no 12/2017-CTR dated 28.06.2017

8. GST exemption on Satellite launch services supplied by Indian Space Research Organisation, Antrix Corporation Limited or New Space India Limited is extended to such services supplied by organisations in private sectors w.e.f. 27-07-2023.



# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024 TERM OF EXAMINATION\_SYLLABUS 2022

It means satellite launch services supplied by any person are exempt under GST.



9. Case Law: SARASWATY PRESS LIMITED (20/WBAAR/2023-24 dated 13.09.2023):

Facts of the Case: The applicant is an entity engaged in the business of printing including question papers of educational institutions, which requires maintenance of secrecy, accuracy and timely delivery of the material. The applicant has been undertaking the job of printing of question papers for different Universities of various states and

charging GST on invoices raised for such services. All its clients are primarily Government Based- both Central and State Governments.

Whether the supply of service of printing question papers for the conduct of examinations to educational institutions, supplied by the applicant will be covered by Sr. No 66 of the N.No. 12/2017-CT (R) as amended, and N. No. 12/2017-ST (R) as amended, and whether such supply of services shall be treated as exempt supply.

Decision: The supply of services of printing question papers for conduct of examinations to educational institutions, supplied by the applicant will be covered by Sl. No 66 of the Notification No. 12/2017-CT (R) as amended, and therefore shall be treated as exempt supply

**10. online information and database access retrieval service (OIDAR):**

On September 26, 2023, the Indian government released a circular to end GST exemption enjoyed by overseas online information and database access retrieval service (OIDAR) providers. This change, which comes into effect from October 1, 2023, means that companies such as Facebook, Google, and various edtech platforms will face an integrated GST (IGST) of up to 18 percent on their services provided to both individuals and the government.

Until this recent change, OIDAR services provided by overseas companies to the Indian central government, state governments, government authorities, or individuals for non-business purposes were exempt from taxation.

w.e.f. 1<sup>st</sup> October 2023, Section 2(17) of IGST Act, 2017 “online information and database access or retrieval services” means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply impossible to ensure in the absence of information technology and includes electronic services such as,—

- (i) advertising on the internet;
- (ii) providing cloud services;
- (iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;



# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024

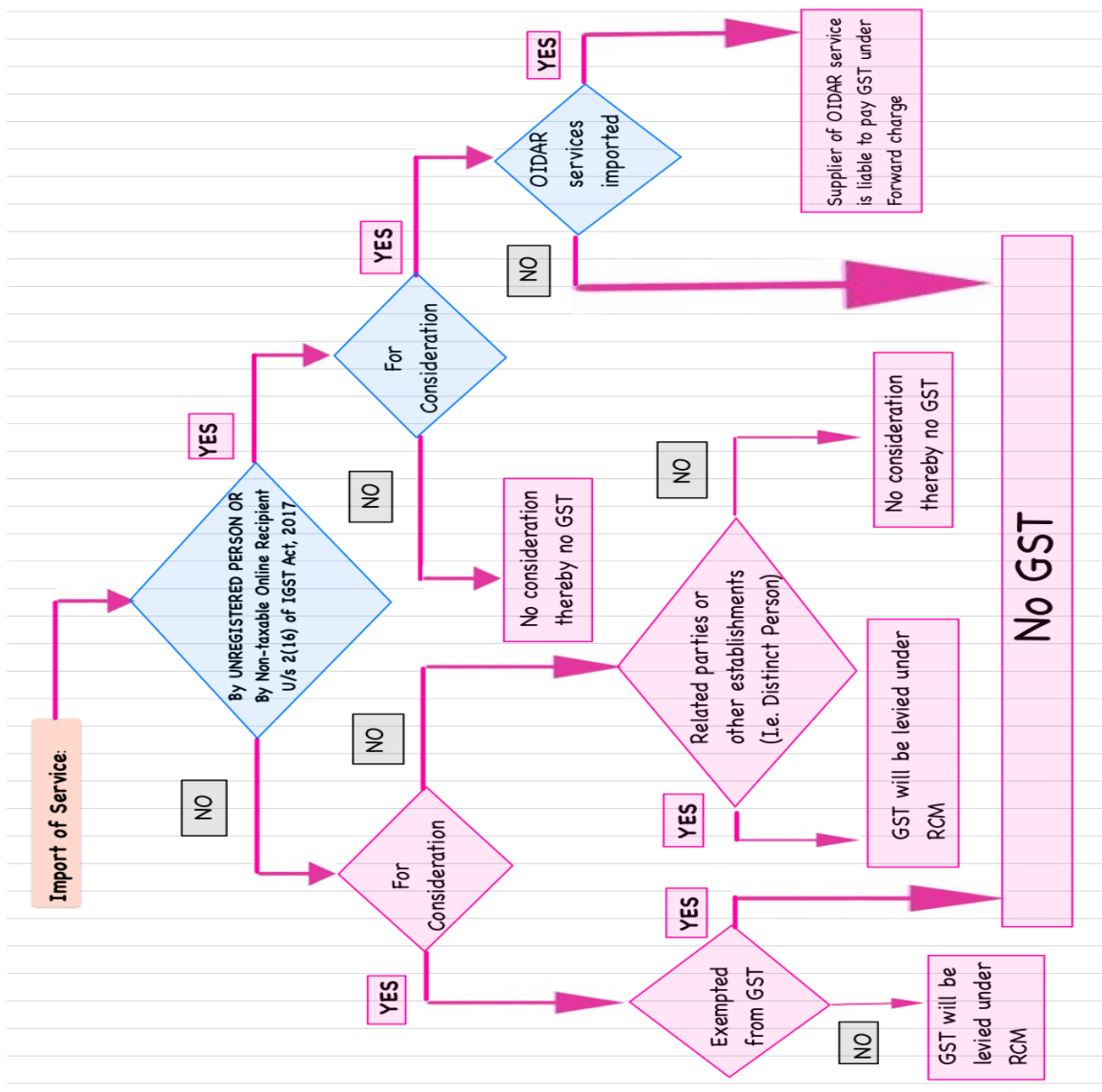
## TERM OF EXAMINATION\_SYLLABUS 2022

- (iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;
- (v) online supplies of digital content (movies, television shows, music and the like);
- (vi) digital data storage; and
- (vii) w.e.f. 1<sup>st</sup> October 2023, online gaming, excluding the online money gaming as defined in clause (80B) of section 2 of the Central Goods and Services Tax Act, 2017 (12 of 2017.);

11. w.e.f. 1st October 2023, Section 2(16) of the Integrated Goods and Services Tax (IGST) Act, 2017  
 Non-taxable online recipient: means any unregistered person receiving online information and database access or retrieval services located in taxable territory.

Explanation: for the purposes of this clause, the expression “unregistered person” includes a person registered Solely in terms of clause (vi) of section 24 of CGST Act, 2017.

Simplified Approach:





# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024 TERM OF EXAMINATION\_SYLLABUS 2022

## Reverse Charge Mechanism

### 1. Used vehicles, seized and confiscated goods, old and used goods, waste and scrap:

Supplier	Recipient	Levy of GST on
Central Government, State Government, Union territory or a local authority.	Any registered person.	Recipient

W.e.f. 20th October 2023, GST on supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap by the Ministry of Railways (Indian Railways) is made payable under forward charge mechanism.

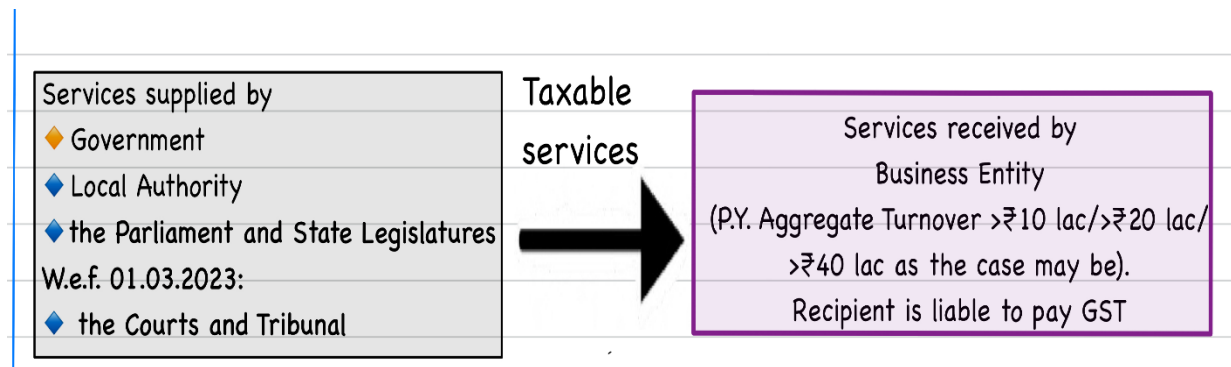
[Notification No 19/2023-CGST(R) dt 19.10.2023 & 22/2023-IGST(R) dt 19.10.2023]

### 2. Person liable to pay GST – in case of Goods Transport Agency:

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 31st May 2023 for the Financial Year 2023-24. However, GTA commencing new business or crossing registration threshold during any financial year will be allowed to exercise the option to pay GST under forward charge mechanism during the year in which it commences new business or crosses registration threshold within - 45 days from the date of applying for GST registration or 1 month from the date of obtaining registration whichever is later [Notification No 05/2023-CC (R) dt 09-05-2023].

Note: Payment of tax under reverse charge is the default mode of payment of tax for a GTA. Annexure V is required to be filed only when GTA wishes to pay tax under forward charge.

### 3. Person liable to pay GST – in case of Services supplied by the Central Government, State Government, Union territory, the Parliament and State Legislatures (w.e.f. 01.03.2023 shall also apply to the Courts and Tribunal) or local authority:





# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024

## TERM OF EXAMINATION\_SYLLABUS 2022

Sl. No.	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
5	<p>Services supplied by the Central Government, State Government, Union territory, the Parliament and State Legislatures (w.e.f. 01.03.2023 shall also apply to the Courts and Tribunal) or local authority to a business entity excluding: —</p> <p>(1) Renting immovable property to a registered person, w.e.f. 25.1.2018 covered under RCM. However, <b>renting of immovable property by government or local authority to un-registered person shall continue under forward charge;</b> and</p> <p>(2) Services specified below: —</p> <p>(i) Services by the Department of Posts (w.e.f. 20<sup>th</sup> October 2023, “and the Ministry of Railways (Indian Railways)” inserted);</p> <p>(ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;</p> <p>(iii) Transport of goods or passengers.</p>	<p>Central Government, State Government, Union territory, Parliament and State Legislatures, (w.e.f. 01.03.2023 Courts and Tribunal) or local authority</p>	<p>Any business entity located in taxable territory.</p>	Recipient
5A	<p>Services supplied by the Central Government [w.e.f. 20<sup>th</sup> October 2023, excluding the Ministry of Railways (Indian Railways)]”, State Government, Union territory or local authority by way of renting of immovable property to a person registered under the Central Goods and Services Tax Act, 2017 (12 of 2017).</p>	<p>Central Government, State Government, Union territory, Parliament and State Legislatures, (w.e.f. 01.03.2023 Courts and Tribunal) or local authority</p>	<p>Any person registered under the Central Goods and Services Tax Act, 2017.”;</p>	Recipient.

#### 4. Person liable to pay GST – in case of a director of Company or body corporate:

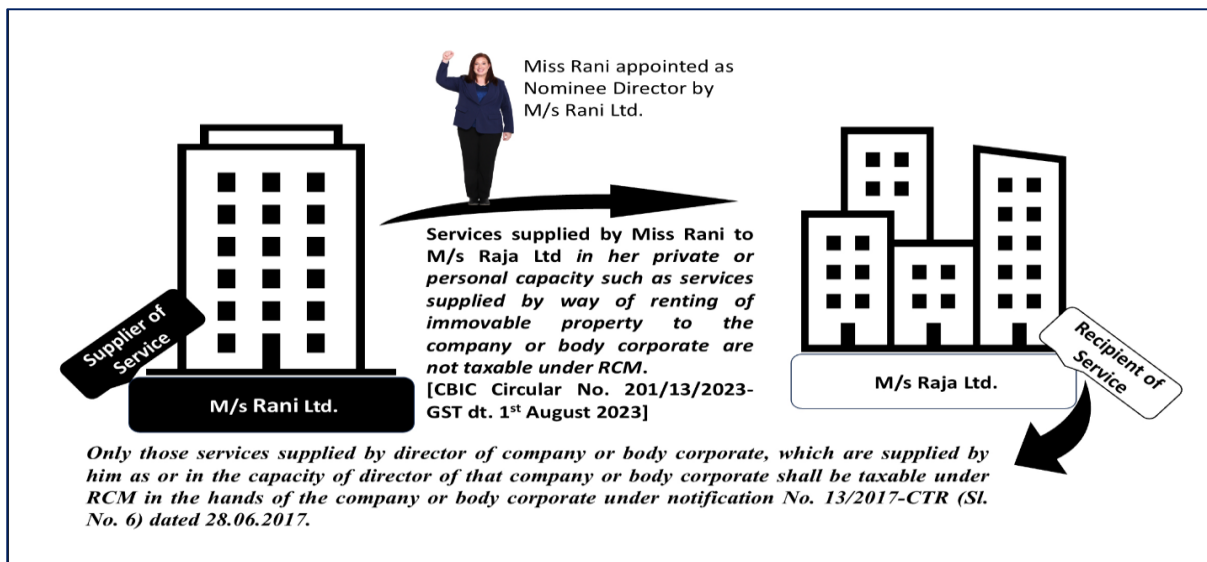
Sl. No.	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
6	<p>Services supplied by a director of a company or a body corporate to the said company or the body corporate</p>	<p>A director of a company or a body corporate</p>	<p>The company or a body corporate located in the taxable territory</p>	Recipient

**Whether services supplied by director of a company in his personal capacity such as renting of immovable property to the company or body corporate are subject to Reverse Charge mechanism (RCM):**

As per CBIC Circular No. 201/13/2023-GST dt. 1<sup>st</sup> August 2023,

# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024 TERM OF EXAMINATION\_SYLLABUS 2022

- Entry No. 6 of notification No. 13/2017 CT(R) dt 28.06.2017 provides that tax on services supplied by director of a company or a body corporate to the said company or the body corporate shall be paid by the company or the body corporate under RCM.
- In this regard it is clarified that *services supplied by a director of a company or body corporate to the company or body corporate in his private or personal capacity such as services supplied by way of renting of immovable property to the company or body corporate are not taxable under RCM.*
- *Only those services supplied by director of company or body corporate, which are supplied by him as or in the capacity of director of that company or body corporate shall be taxable under RCM in the hands of the company or body corporate under notification No. 13/2017-CTR (Sl. No. 6) dated 28.06.2017.*



## 5. Person liable to pay GST – in case of import of service:

Sl. No.	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
10	<p>Any service supplied by any person who is located in a non-taxable territory to any person other than <b>non-taxable online recipient</b>.</p> <p><b>w.e.f. 1<sup>st</sup> October 2023</b>, Section 2(16) of the Integrated Goods and Services Tax (IGST) Act, 2017 <b>Non-taxable online recipient:</b></p> <p>means any unregistered person receiving online information and database access or retrieval services located in taxable territory.</p> <p>Explanation: for the purposes of this clause, the expression “unregistered person” includes a</p>	Any person located in a non-taxable territory	Any person located in taxable territory other than non-taxable online recipient.	Recipient





# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024

## TERM OF EXAMINATION\_SYLLABUS 2022

	person registered solely in terms of clause (vi) of section 24 of CGST Act, 2017.  (Section 24(vi) of CGST Act, 2017 Persons who are required to deduct tax under section 51 (TDS), whether or not separately registered under this Act).			
11	(Omitted w.e.f. 1 <sup>st</sup> October 2023: Services supplied by a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India upto the customs station of clearance in India).  The government has exempted payments made for goods imported through ocean freight from 5 per cent integrated GST with effect from October 1, 2023.	A person located in non-taxable territory	Importer, as defined in clause (26) of section 2 of the Customs Act, 1962 (52 of 1962), located in taxable territory.	Importer

**No IGST on ocean freight in case of import of goods on CIF basis [vide Notification Nos. 11 & 13/2023- IT(R) dt. 26.09.2023]:**

w.e.f. 1<sup>st</sup> October 2023, the exemption shall apply to—

- (1) services by way of transportation of goods by a vessel from a place outside India upto the customs station of clearance in India received by persons specified in the entry.



The government has exempted payments made for goods imported through ocean freight from 5 per cent integrated GST with effect from October 1, 2023.

The Supreme Court in the case of *Union of India & Anr. v. M/s Mohit Minerals Pvt. Ltd. Civil Appeal No. 1390 of 2022 dated May 19, 2022*, has held that levy imposed on the 'service' aspect of the transaction is in violation of the principle of 'composite supply' enshrined under section 2(30) read with section 8 of the CGST Act. Since the Indian importer is liable to pay IGST on the 'composite supply', comprising of supply of goods and supply of services of transportation, insurance, etc. in a CIF contract, a separate levy on the Indian importer for the 'supply of services' by the shipping line would be in violation of section 8 of the CGST Act.



# SUPPLEMENTARY\_PAPER\_19\_FOR JUNE 2024

## TERM OF EXAMINATION\_SYLLABUS 2022

In line with the said judgment, w.e.f 1<sup>st</sup> October 2023, following amendments have been made in the IGST notifications to provide that IGST will not be leviable on ocean freight under reverse charge on CIF contracts of import of goods by the Indian importers.

**Refund:** Taxpayers who have paid GST on 'Ocean Freight' on imported goods will be entitled to claim refunds, following the Supreme Court verdict, provided they have not claimed input tax credit. It means "Indian importers (who had paid GST under RCM on Ocean Freight) should evaluate the possibility of filing refund claims for claiming the said amounts (to the extent not utilized as input credit).

"Further, importers who had not paid the tax on import of such Ocean Freight services would no longer be required to pay GST on such services in view of the said judgement.

### **Time period to claim refund:**

The Hon'ble High Court, Gujarat in M/S Comsol Energy Private Limited v. State of Gujarat [R/Special Civil Application No. 11905 of 2020 decided on December 21, 2020] allowed the refund claim of Integrated Goods and Service Tax ("IGST") paid on ocean freight under the reverse charge mechanism ("RCM") beyond the statutory time limit prescribed under Section 54 of the Central Good and Service Tax Act, 2017 ("the CGST Act"). Held that, the amount collected without authority of law cannot be considered as tax collected and therefore, Section 54 of the CGST Act shall not be applicable. Further, noted that the refund claim was within the time limit prescribed under the Limitation Act, 1963 ("the Limitation Act").

The Hon'ble High Court, Gujarat has decided as under:

1. Observed that, Article 265 of the Constitution of India provides that no tax shall be levied or collected except by authority of law. Since the amount of IGST collected by the Central Government is without authority of law, the Respondent is obliged to refund the amount erroneously collected.
2. Further observed that, Section 54 of the CGST Act is applicable only for claiming refund of any tax paid under the provisions of the CGST Act. The amount collected by the Respondent without authority of law is not considered as tax collected by them and therefore, Section 54 of the CGST Act is not applicable.
3. Noted that, Section 17(1) of the Limitation Act is the appropriate provision for claiming the refund of the amount paid to the Respondent under the mistake of law.

Set aside Impugned Deficiency Memo and directed the Respondent to process the refund claim along with simple interest at the rate of 6% per annum at the earliest.

### **6. Supplies made through Electronic Commerce Operator (ECO), Section 9(5) of CGST Act, 2017:**

Output tax shall be paid by e-commerce operator even though e-commerce operator is not the actual supplier of service. E-commerce is liable to comply with GST provisions as if he is a supplier of services and liable to pay tax. In case services are notified u/s 9(5), actual supplier of services need not required to get registration even if turnover exceeds threshold limit unless stated otherwise.

**Passenger Transport Service:** Services by way of transportation of passengers by a radio-taxi, motor cab, maxi cab and motorcycle; with effect from 1st January 2022, the scope of Passenger Transport Service expanded to include service provided through Omnibus and any other motor vehicle. (Notification No.17/2021 dated 18.11.2021).



# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024 TERM OF EXAMINATION\_SYLLABUS 2022

W.e.f. 20th October 2023, Notification No. 17/2017-CT(R) dt. 28.06.2017 has been amended to provide that GST in case of services by way of transportation of passengers provided through Omnibus shall be paid by the ECO except where the supplier supplying such service through the ECO is a Company.

Further, 'Company' shall have the same meaning as assigned to it in section 2(20) of the Companies Act, 2013 (vide Notification No. 16/2023-CT(R) dt. 19.10.2023)

It means, w.e.f. 20th October 2023, in case of Services by way of transportation of passenger by Omnibus, the tax on such supplies of which shall be paid by the E-commerce operator, only where the person supplying such service through E-Commerce Operator is not a Company.





# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024 TERM OF EXAMINATION\_SYLLABUS 2022

## Time of Supply

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### 1. Time of Supply in case of supply of Specified Actionable Claims:

w.e.f. 1-10-2023 Notification No. 50/2023: Amends Notification No. 66/2017 – CT Dated 15.11.2017 (which provides for an exemption on advance received in case of supply of goods) to state that registered persons making a supply of actionable claims as defined under Section 2(102A) will be liable to pay tax on advance received by them.

The time of supply in case of supply of specified actionable claim as defined under section 2(102A) of CGST Act, 2017 shall be determined in accordance with section 12(2) [i.e. date of issue of invoice/ last date for issue of invoice OR, receipt of payment, whichever is earlier].

Example: M/s Pocker Pokiri Pvt. Ltd. Supplier of online money gaming registered person under GST located in New Delhi. Supplied online money gaming (i.e. goods) on 1<sup>st</sup> January 2024 to Mr. Appavi of Chennai.

Case 1: Invoice issued on 1<sup>st</sup> February 2024 and payment received on 26<sup>th</sup> December 2023.

Case 2: Invoice issued on 1<sup>st</sup> February 2024 and payment received on 26<sup>th</sup> March 2024.

Find the time of supply in the above two cases?

Answer: Case 1: time of supply is 26<sup>th</sup> December 2023

Case 2: time of supply is 1<sup>st</sup> January 2024



# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024 TERM OF EXAMINATION\_SYLLABUS 2022

## Place of supply

### 1. Export of Services – Section 2(6) of IGST Act, 2017:

the supply of any service when, —

- (i) the supplier of service is located in India;
- (ii) the recipient of service is located outside India;
- (iii) the place of supply of service is outside India;
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by Reserve Bank of India (w.e.f. 1-2-2019); and
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;

### **CBIC Circular No. 202/14/2023-GST dated 27-10-2023, Clarification relating to export of services as provided in sub-clause (iv) of the Section 2(6) of the IGST Act 2017:**

□ RBI has put in place an *additional arrangement* for invoicing, payment, and settlement of exports / imports in INR through *Special Rupee Vostro Accounts* opened by Authorised Dealer Banks of correspondent bank(s) of the partner trading country [subject to conditions stipulated under Regulation 7(1) of Foreign Exchange Management (Deposit) Regulations, 2016 for opening of such accounts].

□ The relevant provisions of the Foreign Trade Policy (FTP), 2023 also reiterate that export of services can take place through the mechanism put in place regarding Special Rupee Vostro Account [subject to compliances mandated under RBI's Circular No.10 dated 11th July 2022].

□ When the Indian exporters, undertaking export of services, *are paid the export proceeds in INR from the Special Rupee Vostro Accounts* of correspondent bank(s) of the partner trading country, opened by AD banks, the same *shall be considered to be fulfilling the conditions of sub-clause (iv) of clause (6) of section 2 of IGST Act, 2017*, subject to the conditions/ restrictions mentioned in FTP 2023 & extant RBI Circulars and without prejudice to the permissions / approvals, if any, required under any other law.

### 2. Non-taxable online recipient Section 2(16) of IGST Act, 2017:

Non-taxable online recipient means **w.e.f. 1<sup>st</sup> October 2023**, Section 2(16) of the Integrated Goods and Services Tax (IGST) Act, 2017 **Non-taxable online recipient:**

means any unregistered person receiving online information and database access or retrieval services located in taxable territory.

Explanation: for the purposes of this clause, the expression “unregistered person” includes a person registered solely in terms of clause (vi) of section 24 of CGST Act, 2017.

(Section 24(vi) of CGST Act, 2017, Persons who are required to deduct tax under section 51 (TDS), whether or not separately registered under this Act).

### 3. Place of supply of goods made to a person other than a registered person:

**W.e.f. 1<sup>st</sup> October 2023, Insertion of new clause (ca) to Section 10(1) of the IGST Act, 2017**, The place of supply of goods made to an unregistered person, [notwithstanding anything contrary contained in the provisions of clause (a) and (c) of section 10(1)] shall be,-



# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024

## TERM OF EXAMINATION\_SYLLABUS 2022

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

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

#### 4. Place of supply of goods imported into India – Online Money Gaming:

It is notified that, with effect from 1<sup>st</sup> October 2023, the supply of online money gaming as the supply of goods on import of which, integrated tax shall be levied and collected under sub-section (1) of section 5 of the IGST Act, 2017 and not under the provisions of section 3 of the Customs Tariff Act, 1975 [Notification No 3/2023-IT dt 29-09-2023 w.e.f 01.10.2023].

This implies that import of specified actionable claim of online money gaming will be taxed under IGST as import of goods without applicability of customs duty.

#### 5. Place of supply of services by way of Transportation of goods including by mail or courier [Section 12(8) of IGST Act, 2017]:

S. No.	Nature of Service	Place of supply of service
1	Services by way of Transportation of goods including by mail or courier	Provided to a registered person: <ul style="list-style-type: none"> <li>● Location of recipient of Service. Provided to a un-registered person:</li> <li>● Location at which such goods are handed over for their transportation.</li> </ul> (omitted w.e.f. 1 <sup>st</sup> October 2023 - Provided that where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods)

**Example 1:**

Supplier of goods transport service = Mr. Z of West Bengal.  
 Recipient of goods transport service = Mr. X of West Bengal.  
 Place of supply u/s 12(8) = West Bengal

In the given case Mr. Z would charge CGST & SGST from Mr X in terms of sub-section (2) of section 8 of the IGST Act, for supply of services by way of transportation of goods.

Mr. X would be eligible to take input tax credit of CGST & SGST in respect of supply of services received by him from Mr. Z, subject to the fulfilment of other conditions laid down in section 16 and 17 of the CGST Act.



# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024

## TERM OF EXAMINATION\_SYLLABUS 2022

Example 2: consider Example 1 above, what state code must be mentioned by the supplier of the said service of transportation of goods, where the transportation of goods is to a place outside India, while reporting the said supply in FORM GSTR-1?

Answer: The supplier of service shall report place of supply of such service by selecting State code as '96- Foreign Country' from the list of codes in the dropdown menu available on the portal in FORM GSTR-1.

**6. As per CBIC Circular No. 203/15/2023-GST dt. 27th October 2023: Place of supply in case of supply of services in respect of advertising sector clarification is as follows:**

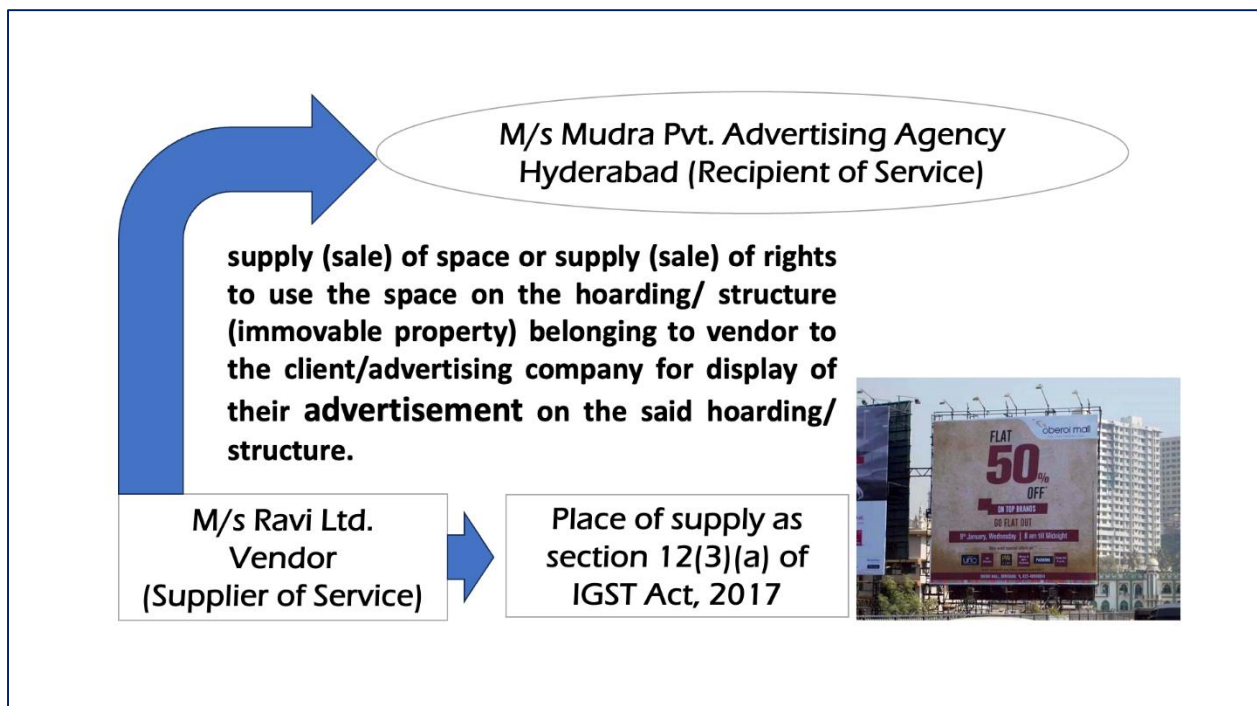
S.No.	Issue	clarification
1	<p>Advertising companies are often involved in procuring space on hoardings/ bill boards erected and mounted on buildings/land, in different States, from various suppliers (“vendors”) for providing advertisement services to its corporate clients. There may be variety of arrangements between the advertising company and its vendors as below:</p> <p>(i) There may be a case wherein there is supply (sale) of space or supply (sale) of rights to use the space on the hoarding/ structure (immovable property) belonging to vendor to the client/advertising company for display of their advertisement on the said hoarding/ structure. What will be the place of supply of services provided by the vendor to the advertising company in such case?</p> <p>(ii) There may be another case where the advertising company wants to display its advertisement on hoardings/ bill boards at a specific location availing the services of a vendor. The responsibility of arranging the hoardings/ bill boards lies with the vendor who may himself own such structure or may be taking it on rent or rights to use basis from another person. The vendor is responsible for display of the advertisement of the advertisement company at the said location. During this entire time of display of the advertisement, the vendor is in possession of the</p>	<p>1.1 It is clarified that the place of supply in the case supply of services in respect of advertising sector, in the cases referred in (i) and (ii), shall be determined as below:</p> <p>1.2 Place of supply in Case (i): The hoarding/structure erected on the land should be considered as immovable structure or fixture as it has been embedded in earth. Further, place of supply of any service provided by way of supply (sale) of space on an immovable property or grant of rights to use an immovable property shall be governed by the provisions of section 12(3)(a) of IGST Act. As per section 12(3)(a) of IGST Act, the place of supply of services directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work shall be the location at which the immovable property is located. Therefore, the place of supply of service provided by way of supply of sale of space on hoarding/ structure for advertising or for grant of rights to use the hoarding/ structure for advertising in this case would be the location where such hoarding/ structure is located.</p> <p>1.3 Place of supply in Case (ii): In this case, as the service is being provided by the vendor to the advertising company and there is no supply (sale) of space/supply (sale) of rights to use the space on hoarding/</p>

# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024

## TERM OF EXAMINATION\_SYLLABUS 2022

<p>hoarding/structure at the said location on which advertisement is displayed and the advertising company is not occupying the space or the structure. In this case, what will be the place of supply of such services provided by the vendor to the advertising company?</p>	<p>structure (immovable property) by the vendor to the advertising company for display of their advertisement on the said display board/structure, the said service does not amount to sale of advertising space or supply by way of grant of rights to use immovable property. Accordingly, the place of supply of the same shall not be covered under section 12(3)(a) of IGST Act. Vendor is in fact providing advertisement services by providing visibility to an advertising company's advertisement for a specific period of time on his structure possessed/taken on rent by him at the specified location. Therefore, such services provided by the Vendor to advertising company are purely in the nature of advertisement services in respect of which Place of Supply shall be determined in terms of Section 12(2) of IGST Act.</p>
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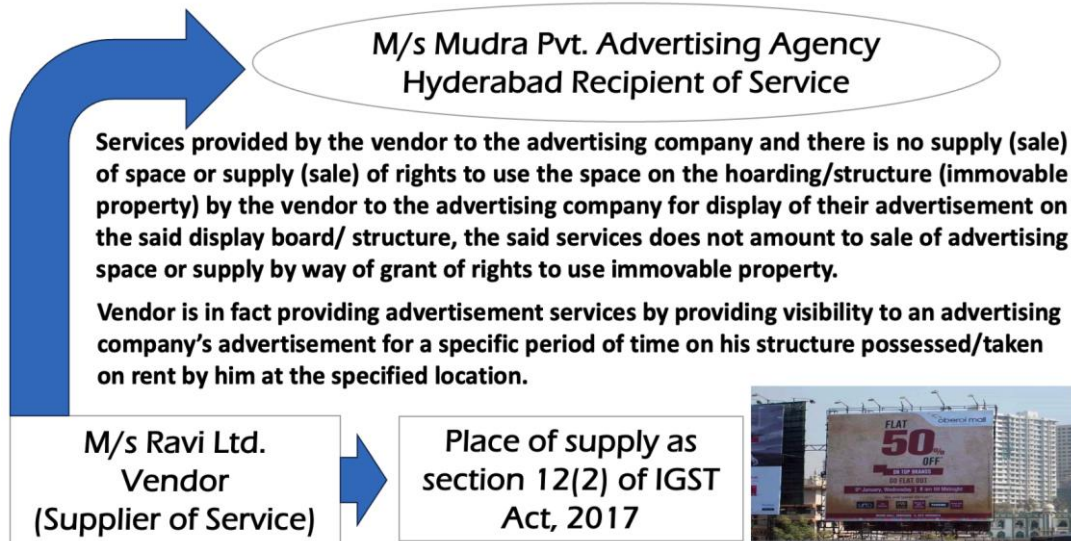
Simplified approach:





# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024

## TERM OF EXAMINATION\_SYLLABUS 2022



### 7. Place of supply in case of supply of the “co-location services” clarification as per CBIC Circular No. 203/15/2023-GST dt. 27th October 2023 is as follows:

**Issue:** Co-location is a data center facility in which a business/company can rent space for its own servers and other computing hardware along with various other bundled services related to Hosting and information technology (IT) infrastructure. A business/company who avails the co-location services primarily seek security and upkeep of its server/s, storage and network hardware; operating systems, system software and may require to interact with the system through a web-based interface for the hosting of its websites or other applications and operation of the servers. In this respect, various doubts have been raised as to

- i. Whether supply of co-location services are renting of immovable property service (as it involves renting of space for keeping/storing company's hardware/servers) and hence the place of supply of such services is to be determined in terms of provision of clause (a) of sub-section (3) of Section 12 of the IGST Act which is the location where the immovable property is located; or
- ii. whether the place of supply of such services is to be determined by the default place of supply provision under sub-section (2) of section 12 of the IGST Act as the supply of service is Hosting and Information Technology (IT) Infrastructure Provisioning services involving providing services of hosting the servers and related hardware, security of the said hardware, air conditioning, uninterrupted power supply, fire protection system, network connectivity, backup facility, firewall services, 24 hrs. monitoring and surveillance service for ensuring continuous operations of the servers and related hardware, etc.

#### Clarifications of the CBIC:

It is clarified that the Co-location services are in the nature of “Hosting and information technology (IT) infrastructure provisioning services”. Such services do not appear to be limited to the passive activity of making immovable property available to a customer as the arrangement of the supply of colocation services not only involves providing of a physical space for server/network hardware along with air conditioning, security service, fire protection system and power supply but it also involves the supply of various services by the supplier related to hosting and information technology infrastructure services like network connectivity, backup facility,



# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024 TERM OF EXAMINATION\_SYLLABUS 2022

firewall services, and monitoring and surveillance service for ensuring continuous operations of the servers and related hardware, etc. which are essential for the recipient business/company to interact with the system through a web based interface relating to the hosting and operation of the servers.

In such cases, supply of colocation services cannot be considered as the services of supply of renting of immovable property. Therefore, the place of supply of the colocation services shall not be determined by the provisions of clause (a) of sub-section (3) of Section 12 of the IGST Act but the same shall be determined by the default place of supply provision under sub-section (2) of Section 12 of the IGST Act i.e. location of recipient of co-location service.

However, in cases where the agreement between the supplier and the recipient is restricted to providing physical space on rent along with basic infrastructure, without components of Hosting and Information Technology (IT) Infrastructure Provisioning services and the further responsibility of upkeep, running, monitoring and surveillance, etc. of the servers and related hardware is of recipient of services only, then the said supply of services shall be considered as the supply of the service of renting of immovable property. Accordingly, the place of supply of these services shall be determined by the provisions of clause (a) of sub-section (3) of Section 12 of the IGST Act which is the location where the immovable property is located.



## 8. Place of provision of a service of transportation of goods other than by way of mail or courier [Section 13(9) of IGST Act, 2017]

### Place of supply of Service = Destination of such Goods

Section 13(9) of IGST Act, 2017 omitted vide Finance Act, 2023, w.e.f. 1st October 2023. W.e.f. 1-10-2023 place of supply will be under section 13(2) of IGST Act.

As per CBIC Circular No. 203/15/2023 dt 27-10-2023, It is clarified that after the said amendment comes into effect, the place of supply of services of *transportation of goods, other than through mail and courier*, in cases where location of supplier of services or location of recipient of services is outside India, *will be determined by the default rule under section 13(2) of the IGST Act* and not as performance based services u/s 13(3) of the IGST Act.



# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024

## TERM OF EXAMINATION\_SYLLABUS 2022

Place of supply in case of service of *transportation of goods by mail or courier* will continue to be determined by the default rule under *section 13(2)* of the IGST Act, 2017.

### 9. Online information and database access or retrieval services [Section 13(12) of IGST]

POS = Location of the recipient of service

On September 26, 2023, the Indian government released a circular to end GST exemption enjoyed by overseas online information and database access retrieval service (OIDAR) providers. This change, which comes into effect from October 1, 2023, means that companies such as Facebook, Google, and various edtech platforms will face an integrated GST (IGST) of up to 18 percent on their services provided to both individuals and the government.

Until this recent change, OIDAR services provided by overseas companies to the Indian central government, state governments, government authorities, or individuals for non-business purposes were exempt from taxation.

**Example:** Online information and data base access or retrieval services, where imported from Google and Facebook by Mr. Rahim (unregistered person) located in taxable territory, for ₹20,000 on 1<sup>st</sup> January 2024. Is it subject to GST?

Answer: Yes. It is a taxable supply of service.

IGST is liable to pay by supplier of OIDAR namely, Google and Facebook in the given case.

### 10. W.e.f. 01-10-2023, Insertion of new Section 14A in the IGST Act, 2017 [Special provision for specified actionable claims supplied by a person located outside taxable territory] to provide that,-

▪A supplier of online money gaming [as defined in 2(80B) of CGST Act, 2017] not located in the taxable territory, shall be liable to pay integrated tax in respect of said supply by him to a person in the taxable territory.

▪the said supplier shall obtain a single registration under the Simplified Registration Scheme [referred to in sub-section (2) of

section 14 of the IGST Act, 2017] for payment of integrated tax

▪Any person located in the taxable territory representing such supplier for any purpose in the taxable territory

shall get registered and pay the integrated tax on behalf of the said supplier.

▪If such supplier does not have a physical presence or does not have a representative for any purpose in the taxable

territory, he shall appoint a person in the taxable territory for the purpose of paying integrated tax and such

person shall be liable for payment of such tax.

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



# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024 TERM OF EXAMINATION\_SYLLABUS 2022

## Value of Supply

### 1. Rule 28: Value of supply of goods or services or both between distinct or related persons, other than through an agent:

w.e.f. 26th October 2023, Insertion of sub-rule (2) to rule 28:

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

one per cent of the amount of such guarantee offered,

or

the actual consideration,

whichever is higher.

The CBIC has also issued Circular No. 204/16/2023-GST, dated 27-10-2023 to clarify the taxability and valuation of corporate guarantee under GST. It is clarified that the activity of providing corporate guarantee to the bank/financial institutions for providing credit facility to the other company, where both the companies are related, is to be treated as supply of service. In case where no consideration is involved then also it is to be treated as a taxable supply of service as per provisions of Schedule I of CGST Act.

### **Circular No. 204/16/2023-GST, dated 27-10-2023:**

S. No.	Issue	clarification
1	Whether the activity of providing personal guarantee by the Director of a company to the bank/ financial institutions for sanctioning of credit facilities to the said company without any consideration will be treated as a supply of service or not and whether the same will attract GST or not.	<p>CBIC clarified about the taxability and valuation of 'personal guarantees' provided by a director on behalf of the company. The CBIC has taken reference from RBI Circular which clearly states that no consideration by way of commission, brokerage fees or any other form, can be paid to the director by the company, directly or indirectly, in lieu of providing personal guarantee to the bank for borrowing credit limits.</p> <p>Therefore, it is clarified that the open market value of the said transaction may be taken as zero and thus, the taxable value would be zero. In such a scenario, no tax is payable, except in exceptional cases where consideration is charged for undertaking the guarantee.</p> <p>There may, however, be cases where the director, who had provided the guarantee, is no longer connected with the management but continuance of his guarantee is considered essential because the new management's guarantee is either not available or is found inadequate, or there may be other exceptional cases where the promoters, existing directors, other managerial personnel, and shareholders of borrowing concerns</p>



# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024

## TERM OF EXAMINATION\_SYLLABUS 2022

		are paid remuneration/ consideration in any manner, directly or indirectly. In all these cases, the taxable value of such supply of service shall be the remuneration/ consideration provided to such a person/ guarantor by the company, directly or indirectly.
2	Whether the activity of providing corporate guarantee by a person on behalf of another related person, or by the holding company for sanction of credit facilities to its subsidiary company, to the bank/ financial institutions, even when made without any consideration will be treated as a taxable supply of service or not, and if taxable, what would be the valuation of such supply of services.	<p>Where the corporate guarantee is provided by a company to the bank/financial institutions for providing credit facilities to the other company, where both the companies are related, the activity is to be treated as a supply of service between related parties as per provisions of Schedule I of CGST Act, even when made without any consideration.</p> <p>Similarly, where the corporate guarantee is provided by a holding company, for its subsidiary company, those two entities also fall under the category of 'related persons'. Hence the activity of providing corporate guarantee by a holding company to the bank/financial institutions for securing credit facilities for its subsidiary company, even when made without any consideration, is also to be treated as a supply of service by holding company to the subsidiary company, being a related person, as per provisions of Schedule I of CGST Act.</p> <p>In respect of such supply of services by a person to another related person or by a holding company to a subsidiary company, in form of providing corporate guarantee on their behalf to a bank/ financial institution, the taxable value will be determined as per rule 28 of CGST Rules.</p> <p>Considering different practices being followed by the field formations and taxpayers in determining such taxable value, in order to provide uniformity in practices and ease of implementation, sub-rule (2) has been inserted in rule 28 of CGST Rules vide Notification No. 52/2023 dated 26.10.2023, for determining the taxable value of such supply of services between related persons in respect of providing corporate guarantee. Accordingly, consequent to insertion of the said sub-rule in rule 28 of CGST Rules, in all such cases of supply of services by a related person to another person, or by a holding company to a subsidiary company, in the form of providing corporate guarantee on their behalf to a bank/ financial institution, the taxable value of such supply of services, will henceforth be determined as per the provisions of the sub-rule (2) of Rule 28 of CGST Rules, irrespective of whether full ITC is available to the recipient of services or not.</p> <p>It is clarified that the sub-rule (2) of Rule 28 shall not apply in respect of the activity of providing personal guarantee by the Director to the banks/ financial institutions for securing credit facilities for their companies and the same shall be valued in the manner provided in S. No. (1) above.</p>



# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024

## TERM OF EXAMINATION\_SYLLABUS 2022

2. W.e.f. 1st October 2023, under Section 15(5) of the CGST Act, the government on the recommendation of the Council has notified the value of supply for the following Rule 31B and 31C –

Rule 31B of CGST Rules, 2017, Value of supply in case of online gaming including online money gaming.–

Notwithstanding anything contained in this chapter, the value of supply of online gaming, including supply of actionable claims involved in online money gaming, shall be the total amount paid or payable to or deposited with the supplier by way of money or money's worth, including virtual digital assets, by or on behalf of the player:

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

Rule 31C of the CGST Rules, 2017: Value of supply of actionable claims in case of casino.–  
Notwithstanding anything contained in this chapter, the value of supply of actionable claims in casino shall be the total amount paid or payable by or on behalf of the player for –

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

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

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

### Example 1:

Let us assume each player placed bets worth Rs 100. As such, total bets would be Rs 400. Now, the company concerned gets a platform fee, at the rate of 10 per cent of the bet. This meant Rs 10 from each player and Rs 40 in total is what the company earns. Players winning the games can redeploy their prize into the game.

The industry wants to pay a GST of Rs 40 only. However, the Council decided to impose 28 per cent GST on Rs 400 and exempted the prize money redeployed in the games from GST.



# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024

## TERM OF EXAMINATION\_SYLLABUS 2022

### Example 2:

Gaming Platform Type	Game Type	User Purchase (In-Game Currency)	Platform Fee (10% of purchase)	New GST (28% on Full Purchase)
Overseas Gaming Platform	Game of Skill	Rs. 100	Rs. 10	Rs. 28
Overseas Gaming Platform	Game of Chance	Rs. 100	Rs. 10	Rs. 28

For both games of skill (like Online Chess) and games of chance (like Online Slot Machine) on an overseas platform, if a player spends Rs. 100, the platform's 10% fee equals Rs. 10. Out of this, the platform needs to pay 28% as GST, which amounts to Rs.28 on the Rs. 100 spent.

Example 3: Let's assume that if one has placed a bet of Rs. 10,000 for online gaming or horse racing or bought a chip of Rs. 10,000 in casinos, he will need to pay IGST at the rate of 28%. If he wins, say Rs. 3,000 and the total amount in the next bet or chip becomes Rs. 13,000, he will not be required to pay GST on the redeployed winnings amount of Rs. 3,000. However, if he loses Rs. 10,000 and places another Rs. 10,000 that will be considered a fresh bet or chip and will attract 28% IGST.

### Important points:

1. Winnings used further in the game are exempt, but taxes won't be returned in case of cash refunds.
2. overseas platforms offering services to Indian players must mandatorily register for GST in India.
3. the new rule imposes a 28% GST on both games of skill and chance, eliminating previous distinctions.



# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024 TERM OF EXAMINATION\_SYLLABUS 2022

## Input Tax Credit

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### 1. Transportation of Passengers and Renting of Motor Vehicle designed to carry passengers allowed to avail ITC of input service from the same line of business [Notification No 11/2017-CT(R) dt 28.06.2017 is amended w.e.f. 20-10-2023]:

Transport of passengers by any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient is taxable @ 5% [Sl no 8(vi), Heading 9964] on the condition that ITC other than the ITC of input services in the same line of business has not been taken. [The said supply of service is taxable @ 12% with availability of full ITC].

Renting of any motor vehicle designed to carry passengers where the cost of fuel is included in consideration charged from the service recipient is taxable @ 5% on the condition that ITC other than the ITC of input services in the same line of business has not been taken. [The said supply of service is taxable @ 12% with availability of full ITC].

w.e.f. 20th October 2023, in the above two services a new condition is added that if tax is charged by the supplier of input service in the same line of business at a rate higher than 5%, ITC in respect of such input service in the same line of business shall not be taken in excess of 5% [vide Notification No 12/2023-CGST(R) dt 19.10.2023 & 15/2023-IGST(R) dt 19.10.2023].

Illustration: 'A' engages 'B' for transport from New Delhi to Jaipur in a motor cab for ₹1000. 'B', for supplying the said service, hires a motor cab with operator from 'C' for ₹800. 'C' charges 'B' CGST & SGST at the rate of 12% (₹ 96). If 'B' charges 'A' CGST & SGST at the rate of 5%, he shall be entitled to take input tax credit on the input service in the same line of business supplied by 'C' only to the extent of ₹ 40 (5% of Rs. 800) and not ₹ 96.

### 2. Question: Whether 'same line of business' in case of passenger transport service and renting of motor vehicles includes leasing of motor vehicles without operators.

Answer: As per CBIC Circular No. 206/18/2023-GST dated 31<sup>st</sup> October 2023, Services of transport of passengers by any motor vehicle (SAC 9964) and renting of motor vehicle designed to carry passengers with operator (SAC 9966), where the cost of fuel is included in the consideration charged from the service recipient attract GST at the rate of 5% with input tax credit of services in the same line of business.

Same line of business as stated in the notification No. 11/2017-Central Tax (Rate) means "service procured from another service provider of transporting passengers in a motor vehicle or renting of a motor vehicle".

It is hereby clarified that input services in the same line of business include transport of passengers (SAC 9964) or renting of motor vehicle with operator (SAC 9966) and **not leasing of motor vehicles without operator** (SAC 9973) which attracts GST and/or compensation cess at the same rate as supply of motor vehicles by way of sale.

### 3. 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.





# SUPPLEMENTARY\_PAPER\_19\_FOR\_JUNE\_2024

## TERM OF EXAMINATION\_SYLLABUS\_2022

**Explanation:** For the purposes of this sub-section, the expression “value of exempt supply” shall not include the value of activities or transactions specified in Schedule III, except

(w.e.f. 1<sup>st</sup> October 2023),

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

(ii) the value of such activities or transactions as may be prescribed in respect of clause (a) of paragraph 8 of the said Schedule.

**Insertion of new Explanation 3 to Rule 42 and 43 (w.e.f. 01-10-2023):**

The value of activities or transactions mentioned in entry 8(a) of Schedule III of the GST Act which is required to be included in the value of exempt supplies in terms of clause (b) of the Explanation to section 17(3) of the Act *shall be* the value of supply of goods from the Duty-Free Shops located at the arrival terminal in international airports to the incoming passengers.

Exempted supply for the purpose of Rule 42 and Rule 43	
Includes	Excludes
i. Outward supplies on which recipient is liable to pay tax under RCM.	i. Activities specified in Schedule III (except sale of land & building and w.e.f. 1st October 2023 Supply of warehoused goods to any person before clearance for home consumption).
ii. Transactions in securities (value of - supply shall be taken as 1% of the sale value of such securities).	ii. Interest earned on deposits, loans and advances (except Banks/NBFC's).
iii. Sale of land (value shall be taken as the same as adopted for the purpose of paying Stamp Duty).	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.
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).	iv. Excise duty, Sales Tax.
v. Nil rate of supply.	v. The value of supply of duty credit scrips like MEIS, RoDTEP's, SEIS & EPCG (NT No.14/2022 CT Dt 5th July 2022).
vi. Non-taxable supply.	

**4. Blocked Credit, Section 17(5)(fa) w.e.f. 1<sup>st</sup> October 2023, goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013.**

Facts of the case: Assessee had availed credit of GST paid on house-keeping and gardening services. In the given case assessee incurred expenditure of housekeeping and gardening in his business premises, out of CSR fund. However, Revenue disallowed the credit and also imposed penalty on the ground that the assessee was not eligible to avail credit of GST paid on these services.

# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024

## TERM OF EXAMINATION\_SYLLABUS 2022

Assesse claim: The environmental law expects the employer to keep the factory without contravening any of those laws. That apart, now the concept of corporate social responsibility is also relevant. Under the CSR policy, the company has contributed 2% of its net profit earned during the last three financial years. The majority of the CSR fund is utilized on Contribution towards the environment protection. It is to discharge a statutory obligation, when the employer spends money to maintain their factory premises in an eco-friendly manner, certainly, the tax paid on such services would form part of the costs of the final products.

However, w.e.f. 1-10-2023, goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013 is blocked credit under section 17(5)(fa) of CGST Act, 2017. Therefore, ITC is not allowed.

From the above, it is evident that Revenue action is correct.



### 5. CBIC Circular No. 195/07/2023-GST dated 17th July 2023, Clarification on availability of ITC in respect of warranty replacement of parts and repair services during warranty period.

S.No.	Issue	Clarification
1	<p>There are cases where the original equipment manufacturer offers warranty for the goods supplied by him to the customer and provides replacement of parts and/ or repair services to the customer during the warranty period, without separately charging any consideration at the time of such replacement/ repair services.</p> <p>Whether GST would be payable on such replacement of parts or supply of repair services, without any consideration from the customer, as part of warranty?</p>	<p>The value of original supply of goods (provided along with warranty) by the manufacturer to the customer includes the likely cost of replacement of parts and / or repair services to be incurred during the warranty period on which tax would have already been paid at the time of original supply of goods.</p> <p>As such where the manufacturer provides replacement of parts and/ or repair services to the customer during the warranty period, without separately charging any consideration at the time of such replacement/ repair services, no further GST is chargeable on such replacement of parts and/ or repair service during warranty period. However, if any additional consideration is charged by the manufacturer from the customer, either for replacement of any part or for any service, then GST will be payable on such supply with respect to such additional consideration.</p>
2	<p>Whether in such cases, the manufacturer is required to reverse the input tax credit in</p>	<p>In such cases, the value of original supply of goods (provided along with warranty) by the manufacturer to the customer includes the likely cost of replacement of parts</p>



# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024

## TERM OF EXAMINATION\_SYLLABUS 2022

	respect of such replacement of parts or supply of repair services as part of warranty, in respect of which no additional consideration is charged from the customer?	and/ or repair services to be incurred during the warranty period.  Therefore, these supplies cannot be considered as exempt supply and accordingly, the manufacturer, who provides replacement of parts and/ or repair services to the customer during the warranty period, is not required to reverse the input tax credit in respect of the said replacement parts or on the repair services provided.
3	Whether GST would be payable on replacement of parts and/ or repair services provided by a distributor without any consideration from the customer, as part of warranty on behalf of the manufacturer?	There may be instances where a distributor of a company provides replacement of parts and/ or repair services to the customer as part of warranty on behalf of the manufacturer and no separate consideration is charged by such distributor in respect of the said replacement and/ or repair services from the customer.  In such cases, as no consideration is being charged by the distributor from the customer, no GST would be payable by the distributor on the said activity of providing replacement of parts and/ or repair services to the customer.  However, if any additional consideration is charged by the distributor from the customer, either for replacement of any part or for any service, then GST will be payable on such supply with respect to such additional consideration.
4	the above scenario where the distributor provides replacement of parts to the customer as part of warranty on behalf of the manufacturer, whether any supply is involved between the distributor and the manufacturer and whether the distributor would be required to reverse the input tax credit in respect of such replacement of parts?	(a) There may be cases where the distributor replaces the part(s) to the customer under warranty either by using his stock or by purchasing from a third party and charges the consideration for the part(s) so replaced from the manufacturer, by issuance of a tax invoice, for the said supply made by him to the manufacturer. In such a case, GST would be payable by the distributor on the said supply by him to the manufacturer and the manufacturer would be entitled to avail the input tax credit of the same, subject to other conditions of CGST Act. In such case, no reversal of input tax credit by the distributor is required in respect of the same.  (b) There may be cases where the distributor raises a requisition to the manufacturer for the part(s) to be replaced by him under warranty and the manufacturer then provides the said part(s) to the distributor for the purpose of such replacement to the customer as part of warranty.



# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024

## TERM OF EXAMINATION\_SYLLABUS 2022

		<p>In such a case, where the manufacturer is providing such part(s) to the distributor for replacement to the customer during the warranty period, without separately charging any consideration at the time of such replacement, no GST is payable on such replacement of parts by the manufacturer. Further, no reversal of ITC is required to be made by the manufacturer in respect of the parts so replaced by the distributor under warranty.</p> <p>(c) There may be cases where the distributor replaces the part(s) to the customer under warranty out of the supply already received by him from the manufacturer and the manufacturer issues a credit note in respect of the parts so replaced subject to provisions of sub-section (2) of section 34 of the CGST Act. Accordingly, the tax liability may be adjusted by the manufacturer, subject to the condition that the said distributor has reversed the ITC availed against the parts so replaced.</p>
5	Where the distributor provides repair service, in addition to replacement of parts or otherwise, to the customer without any consideration, as part of warranty, on behalf of the manufacturer but charges the manufacturer for such repair services either by way of issue of tax invoice or a debit note, whether GST would be payable on such activity by the distributor?	<p>In such scenario, there is a supply of service by the distributor and the manufacturer is the recipient of such supply of repair services in accordance with the provisions of sub-clause (a) of clause (93) to section 2 of the CGST Act, 2017.</p> <p>Hence, GST would be payable on such provision of service by the distributor to the manufacturer and the manufacturer would be entitled to avail the input tax credit of the same, subject to other conditions of CGST Act.</p>
6	Some times companies provide offers of Extended warranty to the customers which can be availed at the time of original supply or just before the expiry of the standard warranty period. Whether GST would be payable in both the cases?	<p>(a) If a customer enters in to an agreement of extended warranty with the manufacturer at the time of original supply, then the consideration for such extended warranty becomes part of the value of the composite supply, the principal supply being the supply of goods, and GST would be payable accordingly.</p> <p>(b) However, in case where a consumer enters into an agreement of extended warranty at any time after the original supply, then the same is a separate contract and GST would be payable by the service provider, whether manufacturer or the distributor or any third party, depending on the nature of the contract (i.e. whether the extended warranty is only for goods or for services or for composite supply involving goods and services)</p>



# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024

## TERM OF EXAMINATION\_SYLLABUS 2022

### 6. Clarification regarding taxability of services provided by an office of an organisation in one State to the office of that organisation in another State, both being distinct persons (vide CBIC Circular No. 199/11/2023-GST dated 17<sup>th</sup> July 2023):

<i>S. No.</i>	<i>Issues</i>	<i>Clarification</i>
<i>1</i>	Whether HO can avail the input tax credit (hereinafter referred to as 'ITC') in respect of common input services procured from a third party but attributable to both HO and BOs or exclusively to one or more BOs, issue tax invoices under section 31 to the said BOs for the said input services and the BOs can then avail the ITC for the same or whether is it mandatory for the HO to follow the Input Service Distributor (hereinafter referred to as 'ISD') mechanism for distribution of ITC in respect of common input services procured by them from a third party but attributable to both HO and BOs or exclusively to one or more BOs?	<p>It is clarified that in respect of common input services procured by the HO from a third party but attributable to both HO and BOs or exclusively to one or more BOs, HO has an option to distribute ITC in respect of such common input services by following ISD mechanism laid down in Section 20 of CGST Act read with rule 39 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as 'the CGST Rules'). However, as per the present provisions of the CGST Act and CGST Rules, it is not mandatory for the HO to distribute such input tax credit by ISD mechanism. HO can also issue tax invoices under section 31 of CGST Act to the concerned BOs in respect of common input services procured from a third party by HO but attributable to the said BOs and the BOs can then avail ITC on the same subject to the provisions of section 16 and 17 of CGST Act.</p> <p>In case, the HO distributes or wishes to distribute ITC to BOs in respect of such common input services through the ISD mechanism as per the provisions of section 20 of CGST Act read with rule 39 of the CGST Rules, HO is required to get itself registered mandatorily as an ISD in accordance with Section 24(viii) of the CGST Act.</p> <p>Further, such distribution of the ITC in respect a common input services procured from a third party can be made by the HO to a BO through ISD mechanism only if the said input services are attributable to the said BO or have actually been provided to the said BO. Similarly, the HO can issue tax invoices under section 31 of CGST Act to the concerned BOs, in respect of any input services, procured by HO from a third party for on or behalf of a BO, only if the said services have actually been provided to the concerned BOs.</p>
<i>2</i>	In respect of internally generated services, there may be cases where HO is providing certain services to the BOs for which full input tax credit is	The value of supply of services made by a registered person to a distinct person needs to be determined as per rule 28 of CGST Rules, read with sub-section (4) of section 15 of CGST Act. As per clause (a)



# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024

## TERM OF EXAMINATION\_SYLLABUS 2022

	<p>available to the concerned BOs. However, HO may not be issuing tax invoice to the concerned BOs with respect to such services, or the HO may not be including the cost of a particular component such as salary cost of employees involved in providing said services while issuing tax invoice to BOs for the services provided by HO to BOs. Whether the HO is mandatorily required to issue invoice to BOs under section 31 of CGST Act for such internally generated services, and/ or whether the cost of all components including salary cost of HO employees involved in providing the said services has to be included in the computation of value of services provided by HO to BOs when full input tax credit is available to the concerned Bos.</p>	<p>of rule 28, the value of supply of goods or services or both between distinct persons shall be the open market value of such supply. The second proviso to rule 28 of CGST Rules provides that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services. Accordingly, in respect of supply of services by HO to BOs, the value of the said supply of services declared in the invoice by HO shall be deemed to be open market value of such services, if the recipient BO is eligible for full input tax credit.</p> <p>Accordingly, in cases where full input tax credit is available to a BO, the value declared on the invoice by HO to the said BO in respect of a supply of services shall be deemed to be the open market value of such services, irrespective of the fact whether cost of any particular component of such services, like employee cost etc., has been included or not in the value of the services in the invoice.</p> <p>Further, in such cases where full input tax credit is available to the recipient, if HO has not issued a tax invoice to the BO in respect of any particular services being rendered by HO to the said BO, the value of such services may be deemed to be declared as Nil by HO to BO, and may be deemed as open market value in terms of second proviso to rule 28 of CGST Rules.</p>
3	<p>In respect of internally generated services provided by the HO to BOs, in cases where full input tax credit is not available to the concerned BOs, whether the cost of salary of employees of the HO involved in providing said services to the BOs, is mandatorily required to be included while computing the taxable value of the said supply of services provided by HO to BOs.</p>	<p>In respect of internally generated services provided by the HO to BOs, the cost of salary of employees of the HO, involved in providing the said services to the BOs, is not mandatorily required to be included while computing the taxable value of the supply of such services, even in cases where full input tax credit is not available to the concerned BO.</p>



# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024 TERM OF EXAMINATION\_SYLLABUS 2022

## Registration under GST

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### 1. Persons are not liable for registration

(1) **Section 23(2):** The Government may, on the recommendation of the GST Council. w.e.f. 1st October 2023 amendment of section 23(2) shall be deemed to have been substituted with effect from the 1st of July, 2017, namely:—

“Notwithstanding anything to the contrary contained in such-section (1) of section 22 or section 24, the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, specify the category of persons who may be exempted from obtaining registration under this Act.”.

Exemption provided to persons not liable to be registered u/s 22(1) from the provision of mandatory registration even if they supply through ECO under the following conditions:

He shall not make any inter-State supply of goods—

- He shall not make supply of goods through ECO in more than one State/UT
- He shall declare his PAN, address of his place of business and the State/UT in which he seeks to make such supply on the common portal before making any supply of goods through ECO and the same shall be subjected to validation on the common portal;
- On successful validation of his PAN he shall be granted an enrolment number in a State/UT
- No supply shall be made by such persons through ECOs unless is granted an enrolment number on the common portal
- Once he is granted registration under GST Acts, the enrolment number shall become invalid from the effective date of registration.

[Notification No 34/2023-CT, dated 31-07-2023, w.e.f. 31-07-2023]

w.e.f. 1st October 2023, In respect of supply of goods made through ECOs by the persons exempted from obtaining registration in terms of notification issued u/s 23(2):

1. The ECOs shall allow the supply of goods through it, only if enrolment number has been allotted on the common portal to the said person;
2. He shall not allow any inter-State supply of goods through it;
3. No tax to be collected at source by the ECOs in respect of the said supply of goods made through it;
4. The ECOs shall furnish the details of supplies of goods made through it in the statement in FORM GSTR-8 electronically on the common portal;

[In case of involvement of multiple ECOs in a single supply of goods through ECO platform, “the electronic commerce operator” shall mean the ECO who finally releases the payment to the said person for the said supply made by the said person through him.]

[Notification No 37/2023-CT, dated 04-08-2023]

### 2. Compulsory registration in certain cases:

As per section 24(xia) of CGST Act, 2017 w.e.f. 1st October 2023, every person supplying online money gaming from a place outside India to a person in India;

### 3. Amendment to Form GST REG- 01:

Part-B of Form GST REG-01 has been amended to incorporate One Person Company as a category of Constitution of Business w.e.f. 26th October 2023.



# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024

## TERM OF EXAMINATION\_SYLLABUS 2022

#### **4, Furnishing of Bank Account Details. — (Rule 10A):**

After a certificate of registration in FORM GST REG-06 has been made available on the common portal and a Goods and Services Tax Identification Number has been assigned, the registered person, except those who have been granted registration under rule 12 or, as the case may be rule 16, shall w.e.f. 4th August 2023, within 30 days from the date of grant of registration or before furnishing the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1 or using invoice furnishing facility (IFF), whichever is earlier,

(omitted w.e.f 4th August 2023, but not later than forty five days from the date of grant of registration or the date on which the return required under section 39 is due to be furnished, whichever is earlier),

furnish information with respect to details of bank account, on the common portal.

Provided that in case of a proprietorship concern, the PAN of the proprietor shall also be linked with the Aadhaar number of the proprietor (Effective date yet to be notified).

This relaxation is not available for those who have been granted registration as TDS deductor/ TCS collector under rule 12 or who have obtained *suo-motu* registration under rule 16.

#### **5. Substitution of Rule 21A(2A) (w.e.f. 04-08-2023):**

The registration granted to a person shall be *suspended*, if he does not submit his bank account details as prescribed in Rule 10A.

#### **6. Amendments in rule 8 - Application for registration [vide Notification No. 26/2022-CT, dated 26.12.2022]:**

- (i) Sub-rule (1) has been amended to do away with the requirement of mentioning mobile no. and e-mail address in the application for registration.
- (ii) The Permanent Account Number (PAN) shall also be verified through OTP sent to the mobile no. and e-mail address linked to the PAN. Consequently, clause (b) and (c) of sub-rule (2) which required verification of mobile no. and e-mail address have been omitted.

W.e.f. 1st October 2023 Rule 8(1) amended, Every person who is liable to be registered under sub-section (1) of section 25 and every person seeking registration under sub-section (3) of section 25 (hereafter in this Chapter referred to as "the applicant"), except—

- (i) a non-resident taxable person;
- (ii) a person required to deduct tax at source under section 51;
- (iii) a person required to collect tax at source under section 52;
- (iv) a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 or a person supplying online money gaming from a place outside India to a person in India referred to in section 14A under the Integrated Goods and Services Tax Act, 2017 (13 of 2017),

shall, before applying for registration, declare his Permanent Account Number, State or Union territory in Part A of FORM GST REG-01 on the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

Provided that every person being an Input Service Distributor shall make a separate application for registration as such Input Service Distributor.





# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024

## TERM OF EXAMINATION\_SYLLABUS 2022

W.e.f. 1st October 2023, Registration to a person supplying online money gaming from a place outside India to a person in India shall be granted in accordance with the provisions of rule 14.

It means grant of registration to a person supplying OIDAR from a place outside India to a non-taxable online recipient or to a person supplying online money gaming from a place outside India to a person in India.

Application for registration FORM GST REG-10  
to  
Certificate of Registration FORM GST REG-06

w.e.f. 1st October 2023, It is notified that the Principal Commissioner of Central Tax, Bengaluru West and all the officers subordinate to him as the officers empowered to grant registration in case of supply of online money gaming provided or agreed to be provided by a person located in non-taxable territory and received by a person in India [Notification No 4/2023-IT, dated 29-09-2023, w.e.f 01.10.2023].

### **7. Applicability of biometric-based Aadhaar authentication in the State of Puducherry:**

Notification of the State of Puducherry (besides existing Gujarat) as the States where biometric-based Aadhaar authentication and taking photograph of the applicant would be mandatory in case of applications of new registration under rule 8(4A) [*i.e. applicants who opt for Aadhaar authentication and is identified as risky on the portal*].

[Notification No 31/2023-CT, dated 31-07-2023, w.e.f. 31-07-2023]

### **8. Amendments in rule 9 (Verification of the application and approval):**

New proviso (aa) has been inserted in sub-rule (1) to lay down that registration shall be granted within thirty days of submission of application to a person, who has undergone authentication of Aadhaar number as specified in sub-rule (4A) of rule 8, and is identified on the common portal, based on data analysis and risk parameters, for carrying out physical verification of places of business. Consequential amendment has been made in sub-rule (2) by inserting a new proviso (aa) therein as well.

W.e.f. 4th August 2023, Mandatory requirement of the presence of the applicant, during physical verification of the place of business for grant of registration has been done away with (amendments in Rule 9(1) and Rule 25).

### **A corresponding amendment has been made in rule 25. Substituted rule 25 provides as follows:**

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

Where the physical verification of the place of business of a person is required BEFORE the grant of registration the circumstances specified in the proviso to rule 9(1), the proper officer shall get such verification of the place of business done and the verification report along with the other documents, including photographs, shall be uploaded in prescribed form on the common portal at least 5 working days prior to the completion of the time period specified in the said proviso [Notification No. 38/2023 CT dated 04.08.2023].

### **9. New functionalities in GSTIN Portal:**

Display of details of suspended registration in Part A of registration application under registrations mapped against the same PAN:



# SUPPLEMENTARY\_PAPER\_19\_FOR JUNE 2024

## TERM OF EXAMINATION\_SYLLABUS 2022

- Taxpayer can view list of all GST registration applications filed using the same PAN in Part A of the registration application. Taxpayers will now also be able to view the suspended GSTIN details mapped to the said PAN.

Facility to view supporting document attached in Form GST REG 17:

- The supporting documents uploaded by Tax officer while issuing show cause notice for cancellation of registration in Form GST REG-17, shall now be made available for view/download to the taxpayers as well as the tax officers.

Enabling of bank account validation for taxpayers:

- A new functionality has been implemented on the GST portal to validate the bank account details of the taxpayers to establish its authenticity. This validation has been enabled by the GSTN through linkage with NPCI Database.

Enabling Cash Transfer between different GSTINs registered on the common PAN:

- A new functionality has been provided on the portal for the taxpayers to transfer an amount lying in their cash ledgers across GSTINs registered on the same PAN using the Form GST PMT-09.

### **10. Order of cancellation of Registration as TDS or TCS:**

W.e.f. 26th October 2023, amendment in Form GST REG-08 is order of cancellation of Registration as TDS or TCS.

Hitherto, there was no option available for an e-commerce operator having TCS registration to apply for cancellation of TCS registration in case of the closure of the operations of e-commerce operator. Similarly, there was also no option for a TDS registrant to apply for cancellation of TDS registration. Thus, rule 12(3) has been suitably amended to apply for cancellation of registration.

### **11. Deemed revocation of suspension:**

Insertion of second proviso to Rule 21A(4) (w.e.f. 04-08-2023):

Provision for deemed revocation of suspension upon compliance with the provisions of rule 10A, in case where the registration has been suspended for contravention of the said rule & the registration has not already been cancelled by the proper officer.

*Note:* The registration granted to a person shall be suspended if he does not submit his bank account details as prescribed in Rule 10A.

### **12. Time Limit for Revoking Cancelled GST Registrations Extended**

**Rule 23 (w.e.f. 01-10-2023)**, The period for submission of an application for revocation of cancellation of registration is extended to 90 days (from the existing time period of 30 days) from the date of the service of the order of cancellation of registration.

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

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



# **SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024**

## **TERM OF EXAMINATION\_SYLLABUS 2022**

It means, the said time period may further be extended up to 180 days (instead of the existing provision to extend it for a maximum period of 90 days) by the Commissioner or an officer authorised by him in this behalf.

However, it must be noted that no application for revocation shall be filed if the registration has been cancelled for failure to furnish returns and payment of tax in terms of such returns till the same has been paid along with interest, penalty and late fees associated with such returns. This condition still holds valid.

Provided also that all returns due for the period from the date of the order of cancellation of registration till the date of the order of revocation of cancellation of registration shall be furnished by the said person within a period of thirty days from the date of order of revocation of cancellation of registration:

Provided also that where the registration has been cancelled with retrospective effect, the registered person shall furnish all returns relating to period from the effective date of cancellation of registration till the date of order of revocation of cancellation of registration within a period of thirty days from the date of order of revocation of cancellation of registration.



# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024 TERM OF EXAMINATION\_SYLLABUS 2022

## Payment of Tax

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### **1. Payment of Tax by online money gaming supplier from a place outside India:**

w.e.f. 1st October 2023 Substitution of second proviso to rule 87(3): Consequential amendment made to provide that a person supplying online money gaming from a place outside India to a person in India may generate challan in Form GST PMT-06 through International Money Transfer through SWIFT (Society for Worldwide Interbank Financial Telecommunication) payment network. This type of payment process is already in place where a person supplying OIDAR services from a place outside India to a non-taxable online recipient located in in India.

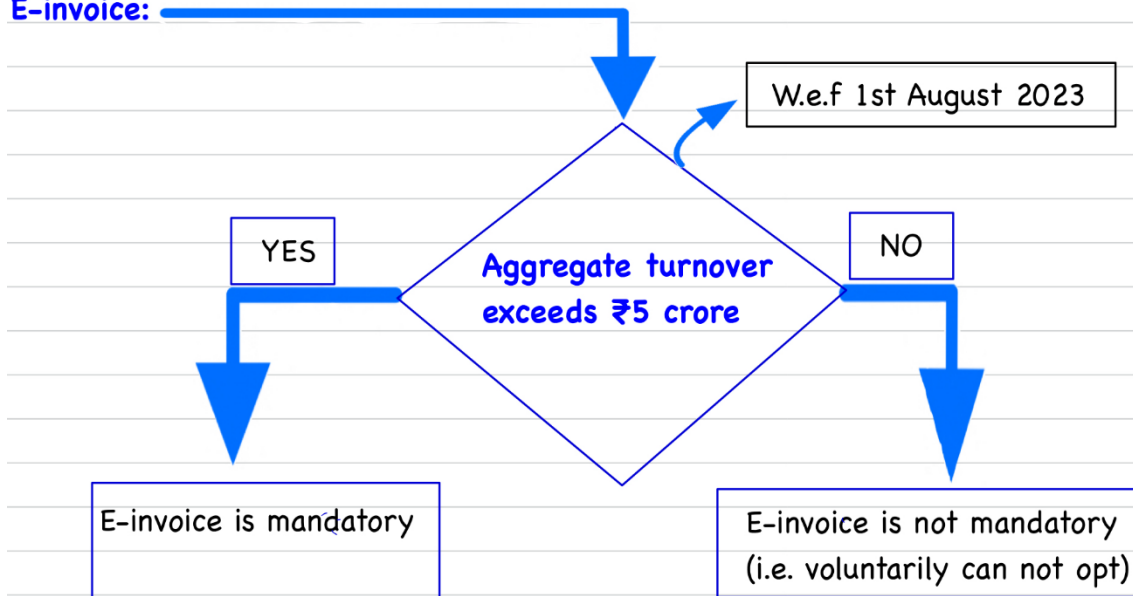


# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024 TERM OF EXAMINATION\_SYLLABUS 2022

## Tax Invoice

### 1. E-Invoice mandatory:

**E-invoice:**



With effect from 01-08-2023, registered persons other than—

- a Special Economic Zone unit,
- a Government department, a Local authority and,
- persons as referred in Rule 54(2)/(3)/(4)/(4A) [Insurer/a banking company/Financial Institution including a NBFC, GTA, Supplier of passenger transportation service & Multiplexes]

whose aggregate turnover in any preceding financial year from 2017-18 onwards exceeds Rs. 5 Cr shall prepare e-invoice in accordance with rule 48(4)

[Notification No 10/2023-CT, dated 10-05-2023, w.e.f. 01-08-2023 (842-F.T., dated 19-05-2023)]

**Question:** Whether e-invoicing is applicable for supplies made by a registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, to Government Departments or establishments/ Government agencies/local authorities/PSUs which are registered solely for the purpose of deduction of tax at source as per provisions of section 51 of the CGST Act?

**Answer:** As per CBIC Circular No. 198/10/2023-GST, dated 17th July, 2023, Government Departments or establishments/Government agencies/local authorities/PSUs, which are required to deduct tax at source as per provisions of section 51 of the CGST/SGST Act, are liable for compulsory registration in accordance with section 24(vi) of the CGST Act.

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

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



# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024

## TERM OF EXAMINATION\_SYLLABUS 2022

**2. In cases involving supply of online money gaming/service provided by/through ECO or by supplier of OIDAR services to unregistered recipient, tax invoice to contain the name of the State irrespective of value of supply [Rule 46 amended w.e.f. 4th August 2023]:-**

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

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

As a result, with effect from 04.08.2023 to provide that the tax invoice may contain the name of the State of the recipient only and the same shall be deemed to be the address on record of the recipient. The name and address of the recipient along with its PIN code is not mandatory to be declared on the tax invoice [Notification No. 38/2023 CT dated 04.08.2023 and 51/2023 CT dated 29.09.2023].

Note: Where the recipient is registered, tax invoice shall contain the name, address and GSTIN/UIN of the recipient [Clause (d) of Rule 46(f)].

**3. E-way bills for Intra-State movement of gold, precious stones, etc.:**

Insertion of new Rule 138F (w.e.f. 04-08-2023):

For generation of e-way bills for intra-State movement of gold, precious stones, etc. in case of the consignment value exceeds ₹ 2 lakh and thereof [The rule to be inserted in the SGST Rules of the states desirous of mandating e-way bills for intra-states movement of gold, precious stones etc] [Notification No 38/2023-CT dt 04-08-2023].



# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024 TERM OF EXAMINATION\_SYLLABUS 2022

## Interest

### 1. As per CBIC Circular No. 192/04/2023-GST, dated 17th July, 2023, Clarification on charging of interest under section 50(3), in cases of wrong availment of IGST credit and reversal thereof:

Where IGST credit has been wrongly availed and subsequently reversed on a certain date, there will not be any interest liability under section 50(3) if, during the time period starting from such availment and up to such reversal, the balance of ITC in the electronic credit ledger (ECL), under the heads of IGST, CGST and SGST taken together, has never fallen below the amount of such wrongly availed ITC, even if available balance of IGST credit in electronic credit ledger individually falls below the amount of such wrongly availed IGST credit.

Credit of Compensation Cess available in ECL cannot be taken into account while considering the balance of ECL for the purpose of calculation of interest u/r 88B(3) in respect of wrongly availed and utilized IGST, CGST or SGST credit.

### 2. Interest to be paid by the department:

Section	Scenario	Interest rate per annum
Section 54(12) of the CGST Act, 2017	Refund of tax has been withheld from a person on account of an appeal or proceeding but which is later found to be eligible to be paid.	6%
Section 56(1) of the CGST Act, 2017	Refund of tax has not been given to a person within 60 days from the date of receipt of application for refund. (w.e.f. 1st October 2023, the words “for the period of delay beyond 60 days from the date of receipt of such application till the date of refund of such tax, to be computed in such manner and subject to such conditions and restrictions as may be prescribed (i.e. refer Rule 94)” shall be substituted).	6%
Proviso to section 56 of the CGST Act, 2017	Refund ordered by an adjudicating authority or Appellate Authority or Appellate Tribunal or court has not been paid to a person within 60 days from the date of receipt of application for refund till the date of refund.	9%

**Rule 94 – Order sanctioning interest on delayed refunds (w.e.f. 1<sup>st</sup> October 2023) vide Central Tax Notification No. 38/2023 (dated 04th August 2023):**

[ (1) Where any interest is due and payable to the applicant under section 56, the proper officer shall make an order along with a payment order in **FORM GST RFD-05**, specifying therein the amount of refund which is delayed, the period of delay for which interest is payable and the amount of interest payable, and such amount of interest shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.]

[ (2) The following periods shall not be included in the period of delay under sub-rule (1), namely:-

(a) any period of time beyond fifteen days of receipt of notice in FORM GST RFD-08 under sub-rule (3) of rule 92, that the applicant takes to-

(i) furnish a reply in FORM GST RFD-09, or

(ii) submit additional documents or reply;

and

(b) any period of time taken either by the applicant for furnishing the correct details of the bank account to which the refund is to be credited or for validating the details of the bank account so furnished, where the amount of refund sanctioned could not be credited to the bank account furnished by the applicant.”]



# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024 TERM OF EXAMINATION\_SYLLABUS 2022

## Returns under GST

1. Form and manner of submission of return by persons providing OIDAR services and by persons supplying online money gaming from a place outside India to a person in India.

Return Form	Particulars	Frequency	Due Date
GSTR-5A	w.e.f. 1 <sup>st</sup> October 2023: Form and manner of submission of return by persons providing OIDAR services and by persons supplying online money gaming from a place outside India to a person in India	monthly	<i>on or before the twentieth day of the month succeeding the calendar month or part thereof.</i>

2. Amendments made in the third proviso to Rule 89 (w.e.f. 04-08-2023):

A Casual Taxable persons (CTP) or a Non-resident Taxable person (NRTP) can claim refund of the tax paid in advance in terms of section 27 only after furnishing of the last return required to be furnished by him.

3. Amendment in Form GSTR-8 [Statement for Tax Collection at Source]:

Return Form	Particulars	Frequency	Due Date
GSTR-8	Details of supplies effected through e-commerce operator and the amount of tax collected	Monthly	10th of next month.  W.e.f. 26th October 2023 Amendment in FORM GSTR-8 [Statement for Tax Collection at Source] : Format of FORM GSTR- 8 amended to provide for payment of late fee on delayed furnishing of the same by the e-commerce operators as required u/s 52.

4. Maximum time period to submit GST Returns:

W.e.f. 1st October 2023, New insertion of sub-section 5 to section 37: A time limit of 3 years is provided for furnishing of the details of outward supplies in Form GSTR 1 from the due date of furnishing of the same for a tax period.

Government is empowered to relax the said time period for a registered person or class of registered persons.

W.e.f. 1st October 2023, New insertion of sub-section 11 to section 39: A time limit of 3 years is provided for furnishing of the return (i.e. Form GSTR 3B) from the due date of furnishing of the same for a tax period.

Government is empowered to relax the said time period for a registered person or class of registered persons.





# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024 TERM OF EXAMINATION\_SYLLABUS 2022

W.e.f. 1st October 2023, **New insertion of sub-section 2 to section 44: A time limit of 3 years is provided for furnishing of the annual return in Form GSTR-9 for a F.Y. from the due date of furnishing of the same.**

**Government is empowered to relax the said time period for a registered person or class of registered persons.**

W.e.f. 1st October 2023, **New insertion of sub-section 14 to section 52: A time limit of 3 years is provided for furnishing of the statement in Form GSTR 8 by an e-commerce operator from the due date of furnishing of the same.**

**Government is empowered to relax the said time period for an e-commerce operator or a class of e-commerce operators.**

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

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

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

Within a period of 7 days.

The differential amount shall be liable to be demanded in terms of section 73/74,-

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

[Notification No 38/2023-CT dt 04-08-2023]

**6. Insertion of new Rule 59(6)(e) (w.e.f. 04-08-2023): A registered person shall not be allowed to submit the details of his outward supplies in FORM GSTR 1/ IFF for a subsequent tax period:**

- If he has been issued with an intimation u/r 88D for a tax period(s)
  - unless he makes payment of the amount of ITC availed in excess or,
  - furnishes a reply in respect of the unpaid amount of ITC that has been intimated to have been availed in excess.
- If he has not furnished the details of the bank account as per the provisions of rule 10A.

[Notification No 38/2023-CT dt 04-08-2023]



# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024 TERM OF EXAMINATION\_SYLLABUS 2022

## Offences & Penalties

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### 1. Penalty provision to Electronic Commerce Operator (ECO):

w.e.f. 1<sup>st</sup> October 2023, Section 122(1B) is inserted to provide that any electronic commerce operator who :

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

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

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

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

Thus, the proposed amendment seeks to provide for penal provisions applicable to electronic commerce operators in case of contravention of provisions relating to supplies of goods or services made through them by unregistered persons or composition taxpayers.

### 2. Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences), namely (Section 132(1) of the CGST Act, 2017):—

The following offences are omitted from section 132(1):

(g) obstructs or prevents any officer in the discharge of his duties under this Act - Omitted w.e.f. 1st October 2023,;

(j) tampers with or destroys any material evidence or documents - Omitted w.e.f. 1st October 2023,;

(k) fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information - Omitted w.e.f. 1st October 2023,; or

The following offence is amended:

(l) (W.e.f. 1st October 2023, read as) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (f) and clauses (h) and (i) of this section,



# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024

## TERM OF EXAMINATION\_SYLLABUS 2022

### 3. Cognizable or non-cognizable:

Section	Tax amount involved	Quantum of punishment by imprisonment	Cognizable or non-cognizable	Bailable or non-bailable
132(1)(i)	> `500 lakhs	Upto 5 years with fine	Cognizable	Non-bailable
132(1)(ii)	> `200 lakhs ≤ `500 lakhs	Upto 3 years with fine	Non-cognizable	Bailable
132(1)(iii)	> `100 lakhs ≤ `200 lakhs	Upto 1 years with fine	Non-cognizable	Bailable
132(1)(iv)	W.e.f. 1st October 2023, Offence specified in clauses (f) of Section 132(1) of the CGST Act, 2017	Upto 6 months or with fine or with both	Non-cognisable	Bailable

**Section 132(1)(iii), in case of [w.e.f. 1st October 2023 an offence specified in clause (b)], (prior to 1st October 2023 “any other offence”) where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds `100 lakh but does not exceed `200 lakh with imprisonment for a term which may extend to one year and with fine.**

### 4. Compounding of offences under GST:

Section 138(1): Any offence under this Act may, either before or after the institution of prosecution, be compounded by the Commissioner on payment, by the person accused of the offence, to the Central Government or the State Government, as the case be, of such compounding amount in such manner as may be prescribed:

w.e.f. 1st October 2023, Compounding will **not be available** for—

- a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f), (h), (i) and (l) of sub-section (1) of section 132;
- (omitted – a person who has been allowed to compound once in respect of any offence, other than those in clause (a), under this Act or under the provisions of any State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act or the Integrated Goods and Services Tax Act in respect of supplies of value exceeding one crore rupees);
- a person who has been accused of committing an offence under clause (b) of sub-section (1) of Section 132;
- a person who has been convicted for an offence under this Act by a court;
- (omitted - a person who has been accused of committing an offence specified in clause (g) or clause (j) or clause (k) of sub-section (1) of section 132 of the CGST Act, 2017; and)
- any other class of persons or offences as may be prescribed:

Provided further that any compounding allowed under the provisions of this section shall not affect the proceedings, if any, instituted under any other law:

Provided also that compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences.

Section 138(2): The amount for compounding of offences under this section shall be such as may be prescribed, subject to the minimum amount not being less than 25%. of the tax involved and the maximum amount not being more than 100% of the tax involved.



# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024

## TERM OF EXAMINATION\_SYLLABUS 2022

Section 138(3): On payment of such compounding amount as may be determined by the Commissioner, no further proceedings shall be initiated under this Act against the accused person in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abated.

w.e.f. 1st October 2023, Rule 162(3A) of the CGST Rules, 2017, The Commissioner shall determine the compounding amount under sub-rule (3) of Rule 162 of the CGST Rules, 2017 as per the Table below:-

S. No.	Offence	Compounding amount if offence is punishable under clause (i) of subsection (1) of Section 132 (i.e. tax amount involved > `500 lakhs)	Compounding amount if offence is punishable under clause (ii) of subsection (1) of Section 132 (i.e. tax amount involved > `200 lakhs ≤ `500 lakhs)
(1)	(2)	(3)	(4)
1	Offence specified in clause (a) of sub-section (1) of section 132 of the Act	Up to 75% of the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken, subject to minimum of 50% of such amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken.	Up to 60% of the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken, subject to minimum of 40% of such amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken.
2	Offence specified in clause (c) of sub-section (1) of section 132 of the Act		
3	Offence specified in clause (d) of sub-section (1) of section 132 of the Act		
4	Offence specified in clause (e) of sub-section (1) of section 132 of the Act		
5	Offence specified in clause (f) of sub-section (1) of section 132 of the Act	Amount equivalent to 25% of tax evaded.	Amount equivalent to 25% of tax evaded.
6	Offence specified in clause (h) of sub-section (1) of section 132 of the Act		
7	Offence specified in clause (i) of sub-section (1) of section 132 of the Act		
8	Attempt to commit the offences or abets the commission of offences mentioned in clause (a), (c) to (f) and clauses (h) and (i) of sub-section (1) of section 132 of the Act	Amount equivalent to 25% of such amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken.	Amount equivalent to 25% of such amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken.

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



# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024 TERM OF EXAMINATION\_SYLLABUS 2022

## 5. w.e.f. 1<sup>st</sup> October 2023 New Section 158A: Consent based sharing of information furnished by taxable person:

(1) Notwithstanding anything contained in sections 133, 152 and 158, the following details furnished by a registered person may, subject to the provisions of subsection (2), and on the recommendations of the Council, be shared by the common portal with such other systems as may be notified (w.e.f. 1<sup>st</sup> October 2023 vide Notification No. 33/2023 dt. 31-7-2023 notifies “Account aggregator” as the system with which information may be shared by common portal based on consent u/s 158A) by the Government, in such manner and subject to such conditions as may be prescribed, namely:-

- (a) particulars furnished in the application for registration under section 25 or in the return filed under section 39 or under section 44;
- (b) the particulars uploaded on the common portal for preparation of invoice, the details of outward supplies furnished under section 37 and the particulars uploaded on the common portal for generation of documents under section 68;
- (c) such other details as may be prescribed.

(2) For the purposes of sharing details under sub-section (1), the consent shall be obtained, of –  
(a) the supplier, in respect of details furnished under clauses (a), (b) and (c) of subsection (1); and  
(b) the recipient, in respect of details furnished under clause (b) of subsection (1), and under clause (c) of sub-section (1) only where such details include identity information of the recipient, in such form and manner as may be prescribed.

(3) Notwithstanding anything contained in any law for the time being in force, no action shall lie against the Government or the common portal with respect to any liability arising consequent to information shared under this section and there shall be no impact on the liability to pay tax on the relevant supply or as per the relevant return.

### Insertion of new Rule 163 (w.e.f. 01-10-2023):

**New provision prescribing rules for consent based sharing of information with respect to particulars furnished in registration applications, returns filed etc. by a registered person with “Account Aggregator”** [a NBFC which undertakes the business of an Account Aggregator in accordance with the policy directions issued by the RBI and defined as such in the NBFC Aggregator (Reserve Bank) Directions, 2016] (“requesting system”) as a consequence of insertion of section 158A vide Finance Act, 2023.

**“Account Aggregator”** [a NBFC which undertakes the business of an Account Aggregator in accordance with the policy directions issued by the RBI and defined as such in the NBFC Aggregator (Reserve Bank) Directions, 2016] **as the systems with which information may be shared by the common portal based on consent under the newly inserted Section 158A**

[Notification No 33/2023-CT dt 31-07-2023 w.e.f. 01-10-2023]



# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024 TERM OF EXAMINATION\_SYLLABUS 2022

## Refund

### 1. Special Economic Zones (SEZ's)/Developer of SEZ units:

Allowing supplies to SEZ units/developer for authorised operations for IGST refund route by amendment in Notification No. 01/2023-Integrated Tax, dated 31.07.2023

The Council has recommended to amend Notification No. 1/2023-IT, dated 31.07.2023, w.e.f. 01.10.2023 so as to allow the suppliers to a Special Economic Zone developer or a Special Economic Zone unit for authorised operations to make supply of goods or services (except the commodities like pan masala, tobacco, gutkha, etc. mentioned in the Notification No. 1/2023-Integrated Tax, dated 31.07.2023) to the Special Economic Zone developer or the Special Economic Zone unit for authorised operations on payment of integrated tax and claim the refund of tax so paid [*vide* Notification No. 05/2023-IT, dated 26-10-2023].

### 2. Provisional refund:

As per section 54(6) of the CGST Act, 2017, @90% of the total amount of refund claimed, on account of zero-rated supply of goods or services or both made by registered persons, may be sanctioned on a provisional basis. The remaining @10% can be refunded later after due verification of documents furnished by the applicant

W.e.f. 1st October 2023, u/s 54(6), the reference of “provisionally accepted input tax credit” is removed so as to align the same with the present scheme of availment of self-assessed ITC as per section 41(1).

### 3. w.e.f. 20<sup>th</sup> October 2023, Amendment in *Notification No. 5/2017- CT(R) dt. 28.06.2017 - Supplies of goods in respect of which no refund of unutilised input tax credit shall be allowed where rate of tax on input is higher than rate of tax on output supplies of such goods*

A new entry has been inserted in *Notification No. 5/2017- CT(R) dt. 28.06.2017* to provide that no refund of unutilised input tax credit under inverted duty structure shall be allowed in case of supply of imitation zari thread or yarn made out of Metallised polyester film /plastic film. An explanation has also been inserted providing that this shall apply for refund of input tax credit only on polyester film /plastic film (*vide Notification No. 20/2023-CT ® dt. 19.10.2023*)

**w.e.f. 20<sup>th</sup> October 2023, No refund of unutilised ITC on account of inverted duty structure in terms of section 54(3) shall be allowed in case of supply of services of *construction of a complex, building or a part thereof, intended for sale to a buyer, wholly or partly, where the amount charged from the recipient of service includes the value of land or undivided share of land, as the case may be, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier* (*vide Notification No 15/2023-CGST(R) dt 19.10.2023 & 18/2023-IGST(R) dt 19.10.2023*).**

### 4. Rule 89(2)(k) (w.e.f. 04-08-2023): a statement showing the details of the amount of claim on account of excess payment of tax [inserted w.e.f. 4th August 2023, and interest, if any, or any other amount paid.]

This amendment is made to align the existing provision of the rule with the existing provision of refund in section 54.



# SUPPLEMENTARY\_PAPER\_19\_FOR JUNE 2024 TERM OF EXAMINATION\_SYLLABUS 2022

## **5. Rule 94 – Order sanctioning interest on delayed refunds (w.e.f. 1<sup>st</sup> October 2023) vide Central Tax Notification No. 38/2023 (dated 04th August 2023):**

[(1) Where any interest is due and payable to the applicant under section 56, the proper officer shall make an order along with a payment order in **FORM GST RFD-05**, specifying therein the amount of refund which is delayed, the period of delay for which interest is payable and the amount of interest payable, and such amount of interest shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.]

[(2) The following periods shall not be included in the period of delay under sub-rule (1), namely:-

(a) any period of time beyond fifteen days of receipt of notice in FORM GST RFD-08 under sub-rule (3) of rule 92, that the applicant takes to-

- (i) furnish a reply in FORM GST RFD-09, or
- (ii) submit additional documents or reply;

and

(b) any period of time taken either by the applicant for furnishing the correct details of the bank account to which the refund is to be credited or for validating the details of the bank account so furnished, where the amount of refund sanctioned could not be credited to the bank account furnished by the applicant.”]

## **6. As per CBIC Circular No. 197/09/2023-GST, dated 17th July, 2023:**

### **1. Refund of accumulated ITC on the basis of that available as per FORM GSTR 2B:**

- With effect from 01.01.2022, the restriction on availability of refund of accumulated input tax credit for a tax period on the basis of the credit available as per FORM GSTR-2B for the said tax period or for any of the previous tax periods, shall be applicable for the refund claims for the tax period of January 2022 onwards.
- In cases where refund claims for a tax period from January 2022 onwards have already been disposed of, in accordance with the extant guidelines in force, the same may not be reopened.

### **2. Requirement of the undertaking in FORM RFD 01 inserted vide Circular No. 125/44/2019-GST, dated 18.11.2019:**

Para 7 of Circular No. 125/44/2019-GST, dated 18.11.2019 provides for an undertaking to be provided by the applicant electronically along with the refund claim in FORM RFD-01 in accordance with the Rule 89(1) of CGST Rules. Para 7 of Circular No. 125/44/2019-GST, dated 18.11.2019 is reproduced below:

“7. Since the functionality of furnishing of FORM GSTR-2 and FORM GSTR-3 remains unimplemented, it has been decided by the GST Council to sanction refund of provisionally accepted input tax credit.

However, the applicants applying for refund must give an undertaking to the effect that the amount of refund sanctioned would be paid back to the Government with interest in case it is found subsequently that the requirements of clause (c) of sub-section (2) of section 16 read with sub-section (2) of section 42 of the CGST Act have not been complied with in respect of the amount refunded. This undertaking should be submitted electronically along with the refund claim.”

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

References have been received citing the instances where exporters have voluntarily made payment of due integrated tax, along with applicable interest, in cases where goods could not be exported or payment for export of services could not be received within time frame as prescribed in clause (a) or (b), as the case may be, of sub-rule (1) of rule 96A of CGST Rules. Clarification is being sought as to whether subsequent to export of the said goods or as the case may be, realization of payment in case of



# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024

## TERM OF EXAMINATION\_SYLLABUS 2022

export of services, the said exporters are entitled to claim not only refund of unutilized input tax credit on account of export but also refund of the integrated tax and interest so paid in compliance of the provisions of sub-rule (1) of rule 96A. of CGST Rules.

It is mentioned that in terms of sub-rule (1) of rule 96A of the CGST Rules, a registered person availing of the option to export without payment of integrated tax is required to furnish a bond or a Letter of Undertaking (LUT), prior to export, binding himself to pay the tax due along with applicable interest within a period of—

- (a) fifteen days after the expiry of three months, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the goods are not exported out of India; or
- (b) fifteen days after the expiry of one year, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange or in Indian rupees, wherever permitted by the Reserve Bank of India.

In this context, it has been clarified *inter alia* in para 45 of Circular No. 125/44/2019-GST, dated 18.11.2019 that:

“.....exports have been zero rated under the IGST Act and as long as goods have actually been exported even after a period of three months, payment of Integrated tax first and claiming refund at a subsequent date should not be insisted upon. In such cases, the jurisdictional Commissioner may consider granting extension of time limit for export as provided in the said sub-rule on post facto basis keeping in view the facts and circumstances of each case. The same principle should be followed in case of export of services”

Further, in Para 44 of the aforesaid Circular, it has been emphasized that the substantive benefits of zero rating may not be denied where it has been established that exports in terms of the relevant provisions have been made.

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

It is also clarified that in such cases subsequent to export of the goods or realization of payment in case of export of services, as the case may be, the said exporters would be entitled to claim refund of the integrated tax so paid earlier on account of goods not being exported, or as the case be, the payment not being realized for export of services, within the time frame prescribed in clause (a) or (b), as the case may be, of sub-rule (1) of rule 96A. It is further being clarified that no refund of the interest paid in compliance of sub-rule (1) of rule 96A shall be admissible.

It may further be noted that the refund application in the said scenario may be made under the category “Excess payment of tax”. However, till the time the refund application cannot be filed under the category “Excess payment of tax” due to non-availability of the facility on the portal to file refund of IGST paid in compliance with the provisions of sub-rule (1) of rule 96A of CGST Rules as “Excess payment of tax”, the applicant may file the refund application under the category “Any Other” on the portal.





# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024 TERM OF EXAMINATION\_SYLLABUS 2022

## Tax Collected at Source

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

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

Amended rule 67(2) provides as follows:

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

### 2. As per CBIC Circular No. 194/06/2023-GST dt. 17th July 2023, Clarification on TCS liability under Sec 52 in case of multiple E-commerce Operators in one Transaction:

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

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

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

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

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

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

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



# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024 TERM OF EXAMINATION\_SYLLABUS 2022

## GST Practitioner

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### 1. w.e.f. 26th October 2023, Amendment in FORM GST PCT-01 [Application for Enrolment as Goods and Services Tax Practitioner]:

Format of FORM GST PCT-01 amended to incorporate all the options of qualification as required by any person desirous of enrolling as a GST Practitioner.



# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024 TERM OF EXAMINATION\_SYLLABUS 2022

## Demand & Adjudication

### 1. Amendment to sub-rule (3) to rule 142 [Notice and order for demand of amounts payable under the Act]:

The mention of Form GST DRC-05\* as an “order” in the sub-rule is changed to “intimation” to align the same with the content of the said Form.

[\*Intimation of conclusion of proceedings in case a person chargeable with tax makes payment,-

(i) within 30 days of the service of show cause notice u/s 73/74 and Form GST DRC-01; or

(ii) within 7 days of notice issued u/s 129(3) but before issuance of order u/s 129(3) in Form GST DRC-03] (vide Notification No 52/2023-CT dt 26-10-2023).

### 2. Rule 142B of CGST Rules, 2017 w.e.f. 4th August 2023, Intimation of certain amounts liable to be recovered under section 79 of the Act.-

(1) Where, in accordance with section 75 read with rule 88C, or otherwise, any amount of tax or interest has become recoverable under section 79 and the same has remained unpaid, the proper officer shall intimate, electronically on the common portal, the details of the said amount in FORM GST DRC-01D, directing the person in default to pay the said amount, along with applicable interest, or, as the case may be, the amount of interest, within seven days of the date of the said intimation and the said amount shall be posted in Part-II of Electronic Liability Register in FORM GST PMT-01.

(2) The intimation referred to in sub-rule (1) shall be treated as the notice for recovery.

(3) Where any amount of tax or interest specified in the intimation referred to in sub-rule (1) remains unpaid on the expiry of the period specified in the said intimation, the proper officer shall proceed to recover the amount that remains unpaid in accordance with the provisions of rule 143 or rule 144 or rule 145 or rule 146 or rule 147 or rule 155 or rule 156 or rule 157 or rule 160.”.

Rule 143 - Recovery by deduction from any money owed.

Rule 144 - Recovery by sale of goods under the control of proper officer

Rule 145 - Recovery from third person

Rule 146 - Recovery through execution of a decree, etc.

Rule 147 - Recovery by sale of movable or immovable property

Rule 155 - Recovery through land revenue authority

Rule 156 - Recovery through court

Rule 157 - Recovery from surety

Rule 160 - Recovery from company in liquidation.



# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024

## TERM OF EXAMINATION\_SYLLABUS 2022

### 3. Provisional Attachment Section 83 of CGST Act, 2017:

w.e.f. 26<sup>th</sup> October 2023: As per amended Rule 159(2) of the CGST Rules, 2017 The Commissioner shall send a copy of the order of attachment [in FORM GST DRC-22] to the concerned Revenue Authority or Transport Authority or any such Authority to place encumbrance on the said movable or immovable property, which shall be removed only

- on the written instructions from the Commissioner to that effect
- (w.e.f. 26<sup>th</sup> October 2023, or on expiry of a period of one year from the date of issuance of order under sub-rule (1),

whichever is earlier),

and a copy of such order shall also be sent to the person whose property is being attached under section 83.

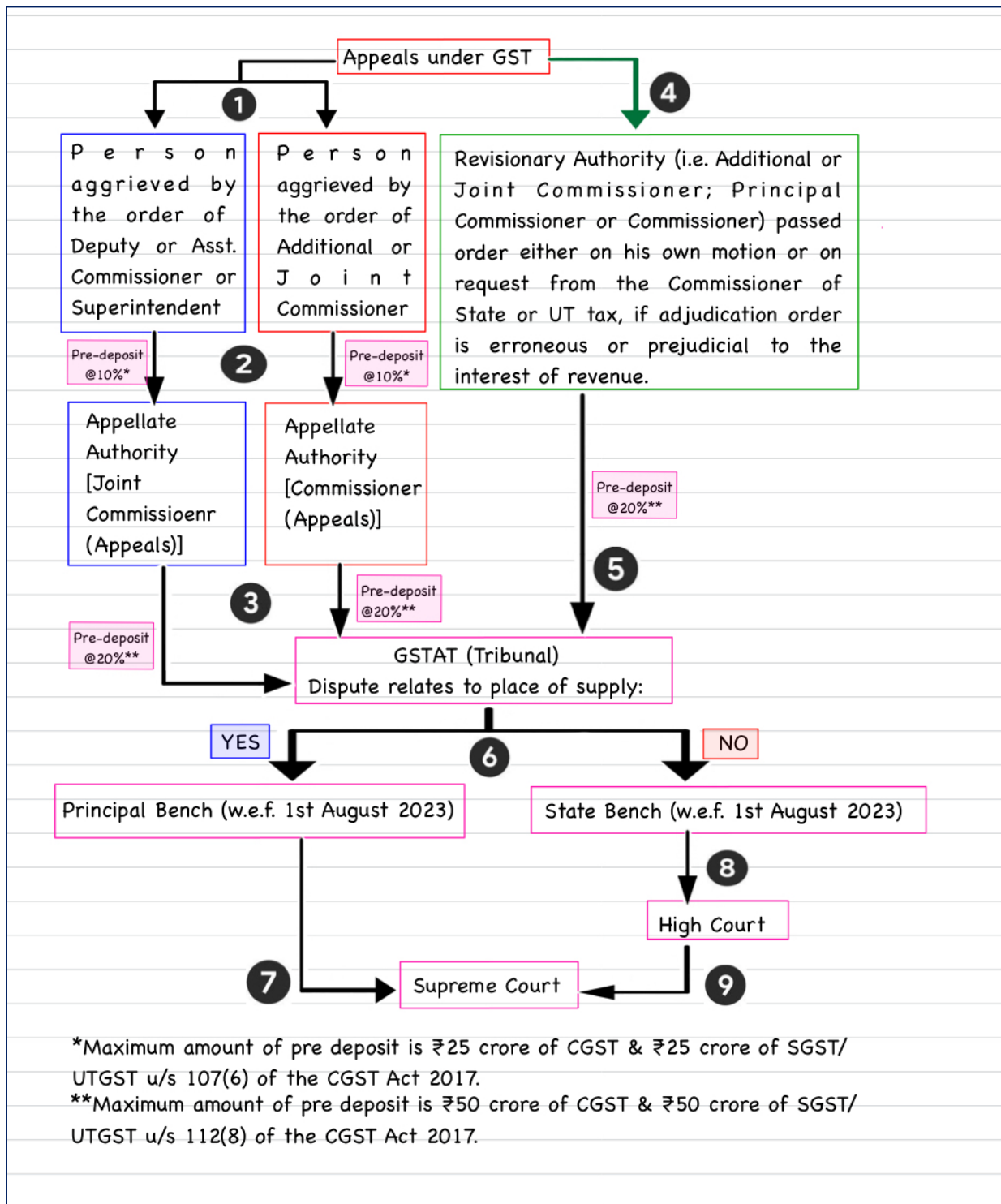
The Council has proposed an amendment to sub-rule (2) of Rule 159 within the CGST Rules of 2017, as well as to FORM GST DRC-22. This amendment stipulates that the provisional attachment order in FORM GST DRC-22 will no longer remain valid one year after its issuance. This modification aims to simplify the process of releasing provisionally attached properties without requiring an additional, specific written order from the Commissioner, once the one-year period has elapsed.



# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024 TERM OF EXAMINATION\_SYLLABUS 2022

## Appeals under GST

1. GSTAT consists of Principal Bench and State Bench w.e.f. 1<sup>st</sup> August 2023:





# SUPPLEMENTARY\_PAPER\_19\_FOR JUNE 2024 TERM OF EXAMINATION\_SYLLABUS 2022

## 2. Manually filing of appeal (Rule 108 & 109 (w.e.f. 04-08-2023):

Provision to file appeal electronically to the Appellate Authority.

Appeal can be filed manually only if,-

- it has been so notified by the Commissioner or,
- the same can not be filed electronically due to non-availability of the decision or order to be appealed against on the common portal.

Rule 108(1) Appeal by the taxpayer and Rule 109(1) Appeal by the Department.

## 3. w.e.f. 1<sup>st</sup> August 2023, Section 109 – Constitution of Appellate Tribunal and Benches thereof

(1) The Government shall, on the recommendations of the Council, by notification, establish with effect from such date as may be specified therein, an Appellate Tribunal known as the Goods and Services Tax Appellate Tribunal for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority.

(2) The jurisdiction, powers and authority conferred on the Appellate Tribunal shall be exercised by the Principal Bench and the State Benches constituted under sub-section (3) and sub-section (4).

(3) The Government shall, by notification, constitute a Principal Bench of the Appellate Tribunal at New Delhi which shall consist of the President, a judicial Member, a Technical member (Centre) and a Technical Member (State).

(4) On the request of the State, the Government may, by notification, constitute such number of State Benches at such places and with such jurisdiction as may be recommended by the Council, which shall consist of two Judicial Members, a Technical Member (Centre) and a Technical Member (State).

(5) The Principal Bench and the State Bench shall hear appeals against the orders passed by the Appellate Authority or the Revisional Authority:

**Provided** that the cases in which any one of the issues involved relates to the place of supply, shall be heard only by the Principal Bench.

(6) The President shall, from time to time, by a general or special order, distribute the business of the Appellate Tribunal among the Benches and may transfer cases from one Bench to another.

(7) The senior-most Judicial Member within the State Benches, as may be notified, shall act as the Vice-President for such State Benches and shall exercise such powers of the President as may be prescribed, but for all other purposes be considered as a Member.

(8) Appeals, where the tax or input tax credit involved or the amount of fine, fee or penalty determined in any order appealed against, does not exceed fifty lakh rupees and which does not involve any question of law may, with the approval of the President, and subject to such conditions as may be prescribed on the recommendations of the Council, be heard by a single Member, and in all other cases, shall be heard together by one Judicial Member and one Technical Member.

(9) If, after hearing the case, the Members differ in their opinion on any point or points, such Member shall state the point or points on which they differ, and the President shall refer such case for hearing,-



# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024

## TERM OF EXAMINATION\_SYLLABUS 2022

(a) where the appeal was originally heard by Members of a State Bench, to another Member of a State Bench within the State or, where no such other State Bench is available within the State, to a Member of a State Bench in another State;

(b) where the appeal was originally heard by Members of the Principal Bench, to another Member from the Principal Bench or, where no such other Member is available, to a Member of any State Bench,

and such point or points shall be decided according to the majority opinion including the opinion of the Members who first heard the case.

(10) The Government may, in consultation with the President, for the administrative efficiency, transfer Members from one Bench to another Bench:

**Provided** that a Technical Member (State) of a State Bench may be Transferred to a State Bench only of the same State in which he was originally appointed, in consultation with the State Government.

(11) No act or proceedings of the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of the existence of any vacancy or defect in the constitution of the Appellate Tribunal.”

Note: w.e.f. 1<sup>st</sup> August 2023, President and Members of Appellate Tribunal, their qualification, appointment, conditions of service etc. incorporated (vide Notification No. 28/2023 CT dt. 31-7-2023)

#### 4. Two-tier Tribunal:

w.e.f. 1<sup>st</sup> August 2023, The law envisages constitution of a two-tier Tribunal namely

- (1) The Principal Bench and
- (1) The State Benches.

Jurisdiction of the two constituents of the GST Tribunal is also defined. If place of supply is one of the issues in dispute, then the principal bench of the Tribunal will have jurisdiction.

#### 5. Appeal to High court and Supreme Court:

	<b>Appeal to Supreme Court:</b> <ul style="list-style-type: none"><li>■ Order passed by (w.e.f. 1-8-2023) Principal Bench of the Appellate Tribunal where on the issues involved related to place of supply.</li><li>■ Order passes by the High Court</li></ul>
<b>Appeal to High Court (Form GST APL-08)</b> Sec 117: <ul style="list-style-type: none"><li>■ Appeal against orders passed by the the (w.e.f. 1-8-2023) State Benches of the Appellate Tribunal.</li><li>■ Case involves a substantial question of law and does not involve any issue relating to place of supply.</li><li>■ Time period = 180 days from the date of communication of the order.</li><li>■ Can condone the delay in filing appeal without any limit.</li></ul>	



# **SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024**

## **TERM OF EXAMINATION\_SYLLABUS 2022**

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# **SECTION- B**

## **CUSTOMS ACT AND RULES**





# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024 TERM OF EXAMINATION\_SYLLABUS 2022

## Types of Duties

### Trade Facilitation Measures

#### 1. Facility of deferred payment - Due dates for payment of duty:

The eligible importer has to pay the duty by the dates mentioned below inclusive of the period (excluding holidays) as mentioned in section 47(1):—

1st to 15th day of any month	16th day of that month
16th day till the last day of any month other than March	1st day of the following month
16th day till the 31st day of March	31st March

The said rules have been amended to further provide that where the Central Government considers it necessary and expedient, it may, under exceptional circumstances, and for reasons to be recorded in writing, allow payment to be made on a different due date (vide Notification No. 58/2023-Cus Dt.03.08.2023)

#### 2. Deferred payment not to apply in certain cases:

If there is default in payment of duty by due date more than once in three consecutive months, this facility of deferred payment will not be allowed unless the duty with interest has been paid in full.

The benefit of deferred payment of duty will not be available in respect of the goods which have not been

assessed or not declared by the importer in the bill of entry.

The same has been amended to further provide that the eligible importer shall be permitted to make the deferred payment if he has—

- (i) paid the duty for a bill of entry within due date and
- (ii) paid the differential duty for the same bill of entry along with the interest on account of reassessment within one day (excluding holidays).

[Notification No.58/2023-Cus (N.T.) dated 03.08.2023]

#### 3. Section 51A of the Customs Act, 1962, Payment of duty, interest, penalty, etc.—

(1) Every deposit made towards duty, interest, penalty, fee or any other sum payable by a person under the provisions of this Act or under the Customs Tariff Act, 1975 (51 of 1975) or under any other law for the time being in force or the rules and regulations made thereunder, using authorised mode of payment shall, subject to such conditions and restrictions, be credited to the electronic cash ledger of such person, to be maintained in such manner, as may be prescribed.

(2) The amount available in the electronic cash ledger may be used for making any payment towards duty, interest, penalty, fees or any other sum payable under the provisions of this Act or under the Customs Tariff Act, 1975 (51 of 1975) or under any other law for the time being in force or the rules and regulations made thereunder in such manner and subject to such conditions and within such time as may be prescribed.



# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024

## TERM OF EXAMINATION\_SYLLABUS 2022

(3) The balance in the electronic cash ledger, after payment of duty, interest, penalty, fee or any other amount payable, may be refunded in such manner as may be prescribed.

(4) Notwithstanding anything contained in this section, if the Board is satisfied that it is necessary or expedient so to do, it may, by notification, exempt the deposits made by such class of persons or with respect to such categories of goods, as may be specified in the notification, from all or any of the provisions of this section.]

### **Phased implementation of Electronic Cash Ledger (ECL) w.e.f. 1-4-2023 section 51A of Customs Act, 1962:-**

Section 51A(4) provides that CBIC may by notification exempt certain deposits to which provisions of Electronic Cash Ledger will not be applicable. Accordingly, in the first phase from 01.04.2023 till 30.04.2023, CBIC has exempted following deposits from the payment of electronic cash ledger under section 51A of the Customs Act, 1962.

Exemption of deposits under Section 51A of Customs Act, 1962 till 30.11.2023:-

- (1)with respect to goods imported or exported in customs stations where customs automated system is not in place;
- (2)with respect to accompanied baggage;
- (3)with respect to goods imported or exported at international courier terminals;
- (4)other than those used for making electronic payment of:
  - (a) any duty of customs, including cesses and surcharges levied as duties of customs;
  - (b) integrated tax;
  - (c) Goods and Service Tax Compensation Cess;
  - (d) interest, penalty, fees or any other amount payable under the said Act, or the Customs Tariff Act, 1975.

In the second phase, from 01.05.2023, the exemptions cited above would continue, except for the deposits with respect to goods imported or exported at international courier terminals (Notification No. 18/2023 and 19/2023 Cus dated 30.03.2023 and Notification No, 69/2023 Cus. Dated 27.09.2023).



# SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024 TERM OF EXAMINATION\_SYLLABUS 2022

## Warehousing

### 1. Section 65 of the Customs Act, 1962 Manufacture and other operations in relation to goods in a warehouse:

With the permission of the Principal Commissioner of Customs or Commissioner of Customs and subject to such conditions and on payment of such fees as may be prescribed, the owner of any warehoused goods may carry on any manufacturing process or other operations in the warehouse in relation to such goods.

The Indian Government has set its sights on turning India into a global manufacturing hub and achieving the goals of “Make in India” and “Atma Nirbhar Bharat”. One such initiative was the introduction of the Manufacture and Other Operations in Warehouse Regulations (‘MOOWR’) Scheme.

As per the amendment to Section 65 of the Customs Act, the owner of the warehoused goods can carry on such manufacturing process or other operations subject to Section 65A of the Customs Act. However, Section 65A of the Customs Act has been inserted to provide for payment of IGST and Compensation Cess while depositing the goods in warehouse for carrying out manufacturing and other operations as per Section 65 of the Customs Act.

### PAYMENT OF IGST AND COMPENSATION CESS ON GOODS STORED FOR MANUFACTURING AND OTHER OPERATIONS IN WAREHOUSE:

Section 65 of the Customs Act permits the owner of any warehoused goods to carry on any manufacturing process or other operations in the warehouse subject to the permission of the Principal Commissioner of Customs or Commissioner of Customs. Currently, the Customs Act (ie., prior to the Finance Bill 2023 coming into force) permits such manufacturing process or other operations in warehouse without payment of Duties of Customs which include IGST and Compensation Cess.

As per Section 46 of the Customs Act, the importer has to file a Bill of Entry (BOE) for warehousing and thereafter, to clear such goods for home consumption, the importer has to file BOE for home consumption. The Custom Duties are payable only after the goods are cleared for home consumption from the warehouse.

As per the amendment to Section 65 of the Customs Act, the owner of the warehoused goods can carry on such manufacturing process or other operations subject to Section 65A of the Customs Act. However, Section 65A of the Customs Act has been inserted (w.e.f. 1<sup>st</sup> April 2023, Goods brought for operations in warehouse to have ordinarily paid certain taxes) to provide for payment of IGST and Compensation Cess while depositing the goods in warehouse for carrying out manufacturing and other operations as per Section 65 of the Customs Act.

As per Section 65A(B)(i) of the Customs Act the importer will, after the Finance Bill 2023 comes into force, need to file a BOE for home consumption (instead of a BOE for warehousing) even for the purpose of depositing the goods in warehouse. Consequently, the importer, while filing such BOE for home consumption has to pay IGST and Compensation Cess.



## SUPPLEMENTARY\_PAPER 19\_FOR JUNE 2024 TERM OF EXAMINATION\_SYLLABUS 2022

Further, the transfer of goods from one warehouse to another in terms of Section 67 of the Customs Act, will only be permitted upon filing of a BOE for home consumption and on payment of IGST and Compensation Cess.

Section 65A of the Customs Act is applicable prospectively inasmuch as it will not be applicable to goods which have already been deposited to the warehouse prior to notifying of Section 65A.

The Central Government has retained the power to exempt certain categories of goods, importers or exporters or industry from the purview of Section 65A of the Customs Act.

**Note:** Finance Bill, 2023 has been passed by Parliament and became Finance Act, 2023 on 31-3-2023, after receiving assent of President. Some changes have become effective from 1-4-2023. Provisions in respect of section 65A of Customs Act will be effective from the date to be notified.

New section 65A of the Customs Act, 1962 have not become effective till 30th November 2023.