

SUPPLEMENTARY

PAPER-18

INDIRECT TAX LAWS & PRACTICE

(Syllabus - 2016)

(Applicable for June 2021 Examination)

THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(Statutory body under an Act of Parliament)

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Section A

Goods and Services Tax [GST]



Study Note - 1

INTRODUCTION



FUNDAMENTALS OF GST

Union Territory Goods and Services Tax (UTGST):

UTGST levied and collected by Union Territories without State Legislatures, on intra-state supplies of taxable goods or services or both.

Note: India is a Union of States. The territory of India comprises of the territories of the States and the Union Territories. Currently, there are 28 States and 8 Union Territories; of which, three (Delhi, Pondicherry and Jammu & Kashmir) are having Legislature.

GST – in Union Territories without Legislature:

Supplies within such Union territory, Central GST will apply to whole of India and hence, it would be applicable to all Union Territories, with or without Legislature.

To replicate the law similar to State GST to Union Territories without Legislature, the Parliament has the powers under Article 246(4) to make such laws. Alternatively, the President of India may use his general powers to formulate such laws.

Hence, law same as similar to State GST can be formulated for Union Territory without Legislature, by the Parliament.

The following are Union Territories without Legislature:

1. Lakshadweep
2. Daman and Diu and Dadra and Nagar Haveli
3. Andaman and Nicobar Islands
4. Ladakh
5. Chandigarh



Definition of Union Territory has been amended w.e.f. 30.6.2020 (Section 2(114) of CGST Act, 2017):

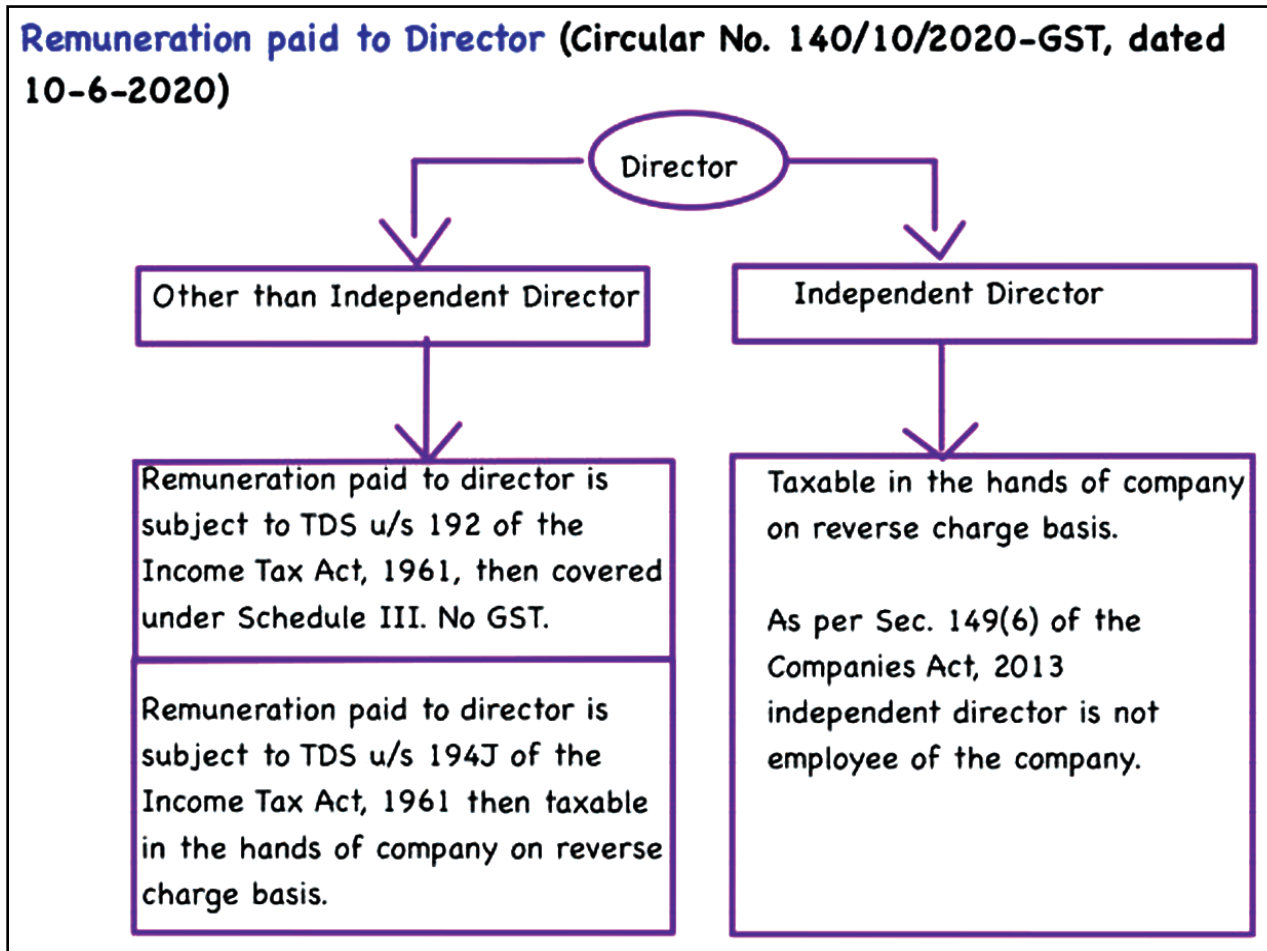
Union Territory of Dadra Nagar Haveli and Union Territory of Daman and Diu have been merged in one single Union Territory w.e.f. 26-1-2020. Ladakh has been made Union Territory w.e.f. 31.10.2019.

Study Note - 2

LEVY AND COLLECTION OF TAX



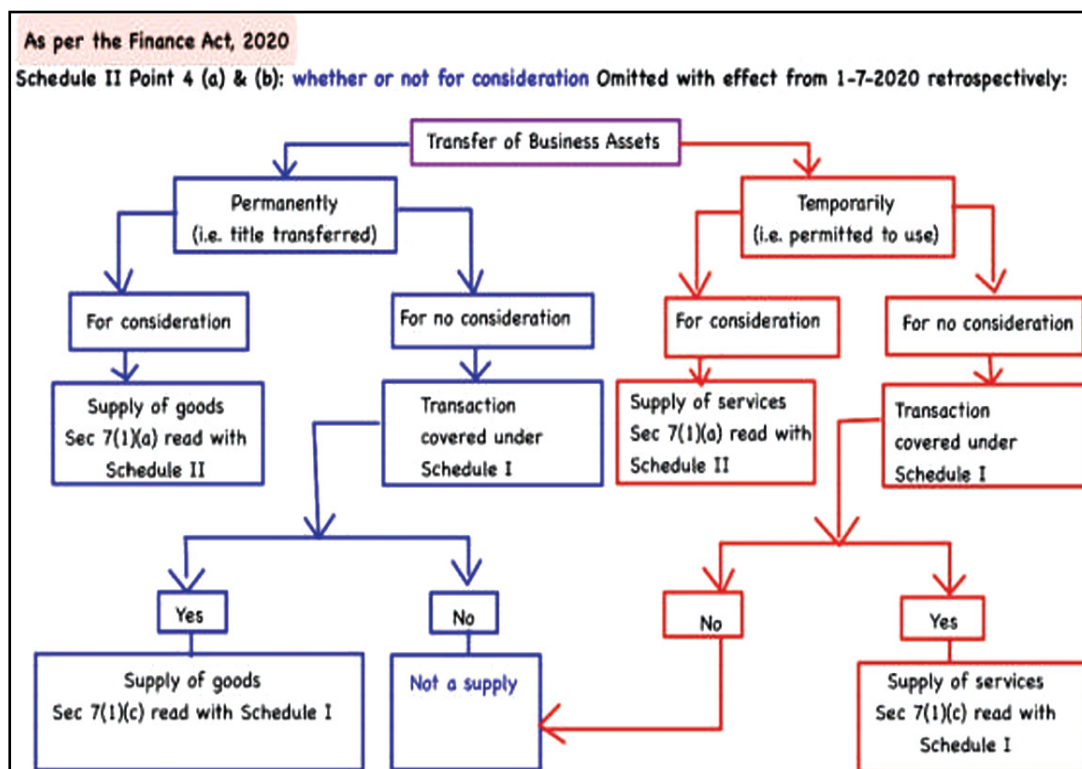
Director Remuneration (CBIC Circular No. 140/10/2020 – GST, dated 10-6-2020):



Schedule II of the CGST Act, 2017 has certain activities clearly classified as goods or services under GST to avoid any such confusion.

Schedule II of the CGST Act, 2017 has certain activities clearly classified as goods or services under GST to avoid any such confusion.

S. No.	Transaction	Supply of Goods	Supply of Service
4	Transfer of business assets		
	<p>(a) Goods forming part of business are transferred or disposed off by the owner whether or not for a consideration.</p> <p>These words “whether or not for a consideration” have been omitted retrospectively effect from 1-7-2017 (as per Finance Act, 2020).</p> <p>Example: M/s Ram & Co taxable person has availed ITC of furniture. After 2 years, he donated same to a Trust. This activity amounts to supply (ITC availed business asset disposed of (without consideration) Sec 7(1)(c) + Schedule I (Para 1))</p>	Yes	No
	<p>(b) The owner (person carrying on business) uses or allows to use business assets for personal use whether or not for a consideration.</p> <p>These words “whether or not for a consideration” have been omitted retrospectively effect from 1-7-2017 (as per Finance Act, 2020).</p> <p>This covers use of property or taxable person like motor vehicles, residence premises, guest house, telephone, laptops etc. for private use of partners/directors/executives/employees.</p>	No	Yes



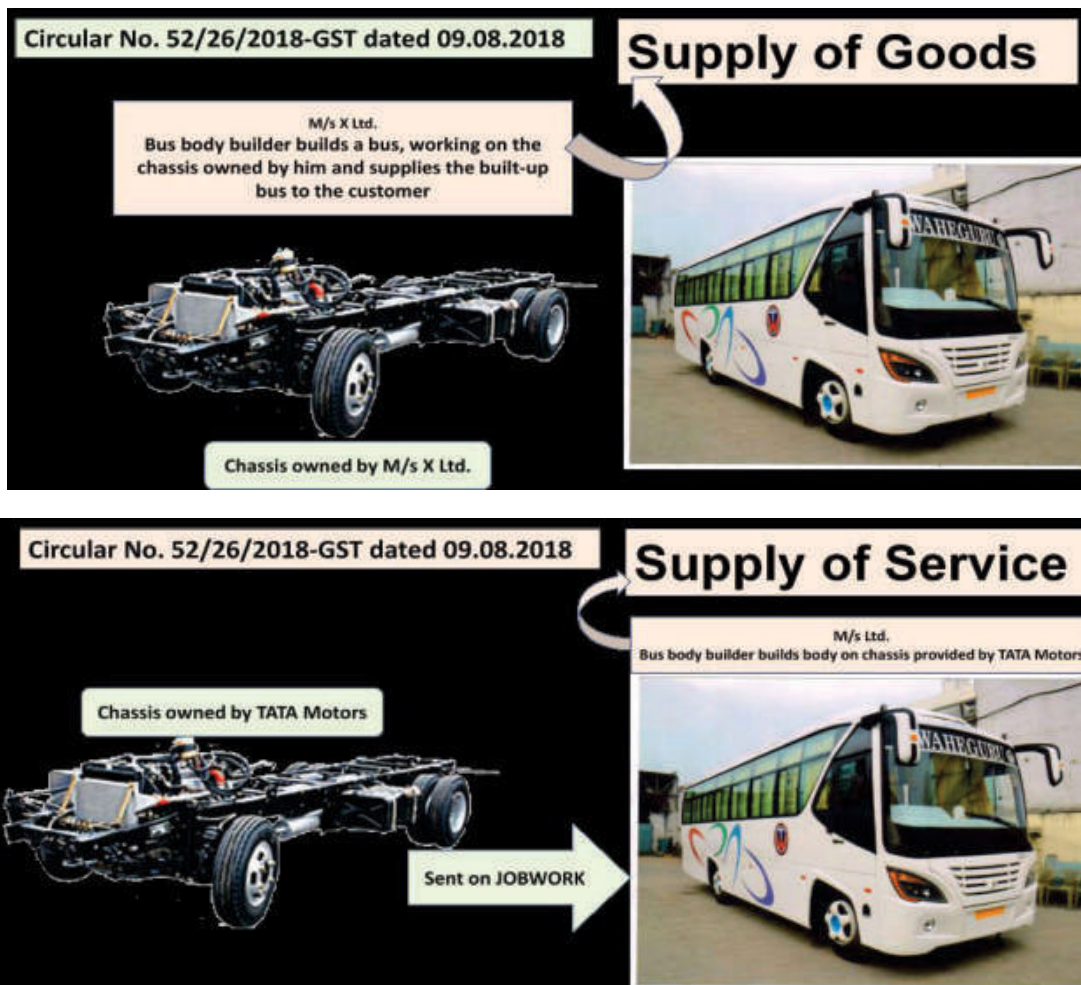
Bus body building activity is a supply of goods or services? As per CBIC Circular No. 52/26/2018-GST, dated 09.08.2018,

Thus, fabrication of buses may involve the following two situations:

- (a) Bus body builder builds a bus, working on the chassis owned by him and supplies the built-up bus to the customer, and charges the customer for the value of the bus.
- (b) Bus body builder builds body on chassis provided by the principal for body building, and charges fabrication charges (including certain material that was consumed during the process of job-work).

In the above context, it is hereby clarified that in case as mentioned (a) above, the supply made is that of bus, and accordingly supply would attract GST @28%.

In the case as mentioned at (b) above, fabrication of body on chassis provided by the principal (not on account of body builder), the supply would merit classification as service, and 18% GST as applicable will be charged accordingly.



He was not engaged in the manufacture of goods as notified u/s 10(2)(e) of the CGST Act, 2017 during the preceding financial year.

The registered person shall not be eligible to opt for composition levy under clause (e) of sub-section (1) of section 10 of the said Act if such person is a manufacturer of the following goods:

S. No.	Tariff item, sub-heading, or heading or Chapter	Description
1	2105 00 00	Ice cream and other edible ice, whether or not containing cocoa.
2	2106 90 20	Pan masala
3	24	All goods, i.e. Tobacco and manufactured tobacco substitutes
4	2202 10 10	w.e.f. 1-10-2019 AERATED WATER

a registered person making **supplies** of the above goods is also not eligible to pay concessional tax under the said notification (i.e. traders who deals with above goods are also not eligible for composition scheme).

Intimation for composition levy:		
Persons already registered under Pre-GST regime who opts to pay tax under section 10 (i.e. composition scheme)	Any registered person who opts to pay tax under section 10 of CGST Act, 2017 (i.e. composition scheme)	Any Persons who applied for registration
Shall electronically file an intimation in FORM GST CMP-01 , prior to the appointed day, but not later than 30 days after the said day, or such further period as may be extended by the Commissioner in this behalf:	Switches from Normal Scheme to Composition Scheme: shall electronically file an intimation in FORM GST CMP-02 , prior to the commencement of the financial year for which the option to pay tax under the aforesaid section is exercised and shall furnish the statement in FORM GST ITC-03 in accordance with the provisions of subrule (4) of rule 44 within a period of 60 days from the commencement of the relevant financial year.	Option to pay tax under section 10 in Part B of FORM GST REG-01, which shall be considered as an intimation to pay tax under the said section.
where the intimation in FORM GST CMP-01 is filed after the appointed day, the registered person <ul style="list-style-type: none"> shall not collect any tax from the appointed day shall issue bill of supply for supplies made after the said day 	NT. No. 30/2020-CT, dated 03.04.2020 w.e.f. 31.03.2020: [Provided that any registered person who opts to pay tax under section 10 for the financial year 2020-21 shall electronically file an intimation in FORM GST CMP-02 , on or before 30th day of June, 2020 and shall furnish the statement in FORM GST ITC-03 in accordance with the provisions of sub-rule (4) of rule 44 upto the 31st day of July, 2020.]	



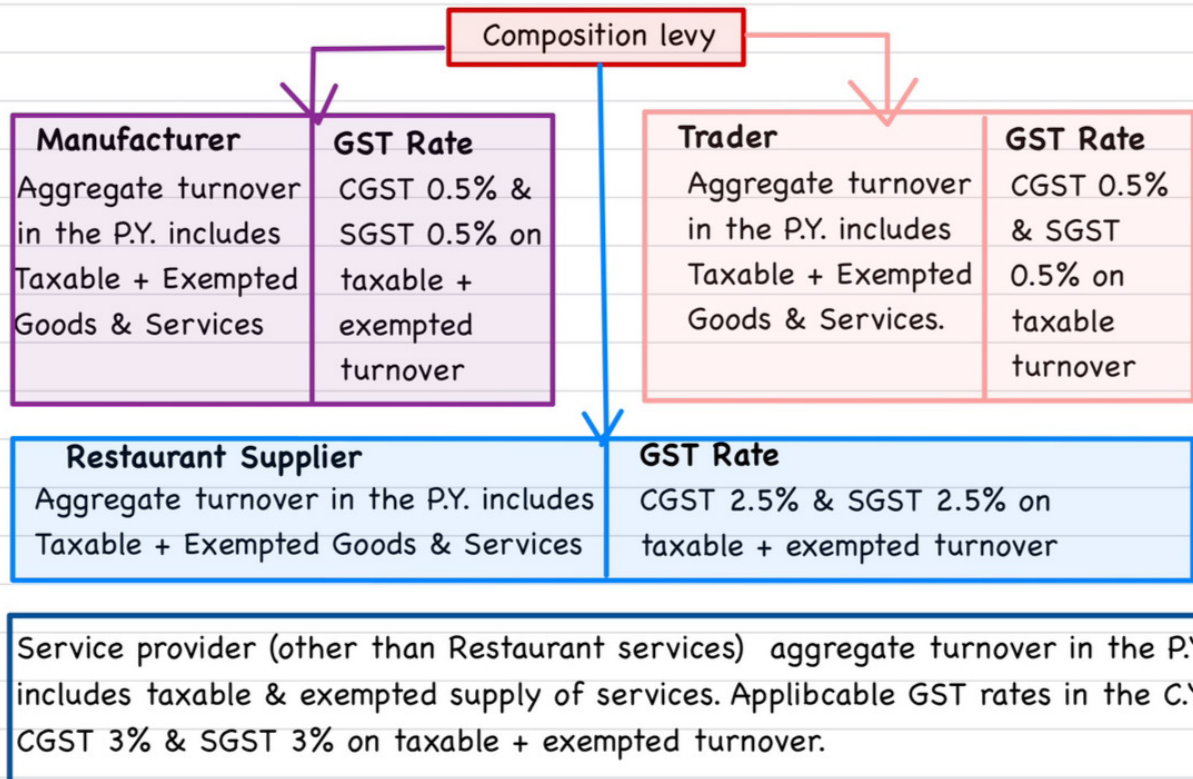
shall furnish the details of stock, including the inward supply of goods received from unregistered persons, held by him on the day preceding the date from which he opts to pay tax under the said section, electronically, in FORM GST CMP-03 within a period of 90 days from the date on which the option for composition levy is exercised		
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Section 10(3)	Lapse of Option availed by Composition dealers	Option availed u/s 10(1)/(2A) by a composition dealer wrt composition levy shall stands lapsed wef date on which his aggregate turnover exceeds the specified limits. If such date falls between 20.3.20 to 30.06.2020, there shall be no extension for such person for switching to regular person.
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Composition Levy:


Notification No. 50/2020 C.T., dated 24-6-2020 read with corrigendum to Notification No. 50/2020 C.T. (M.F. (D.R.) Corrigendum F. No. CBEC-20/06/09/2019-GST, dated 25-6-2020)

GST rates for composition scheme tax payers:



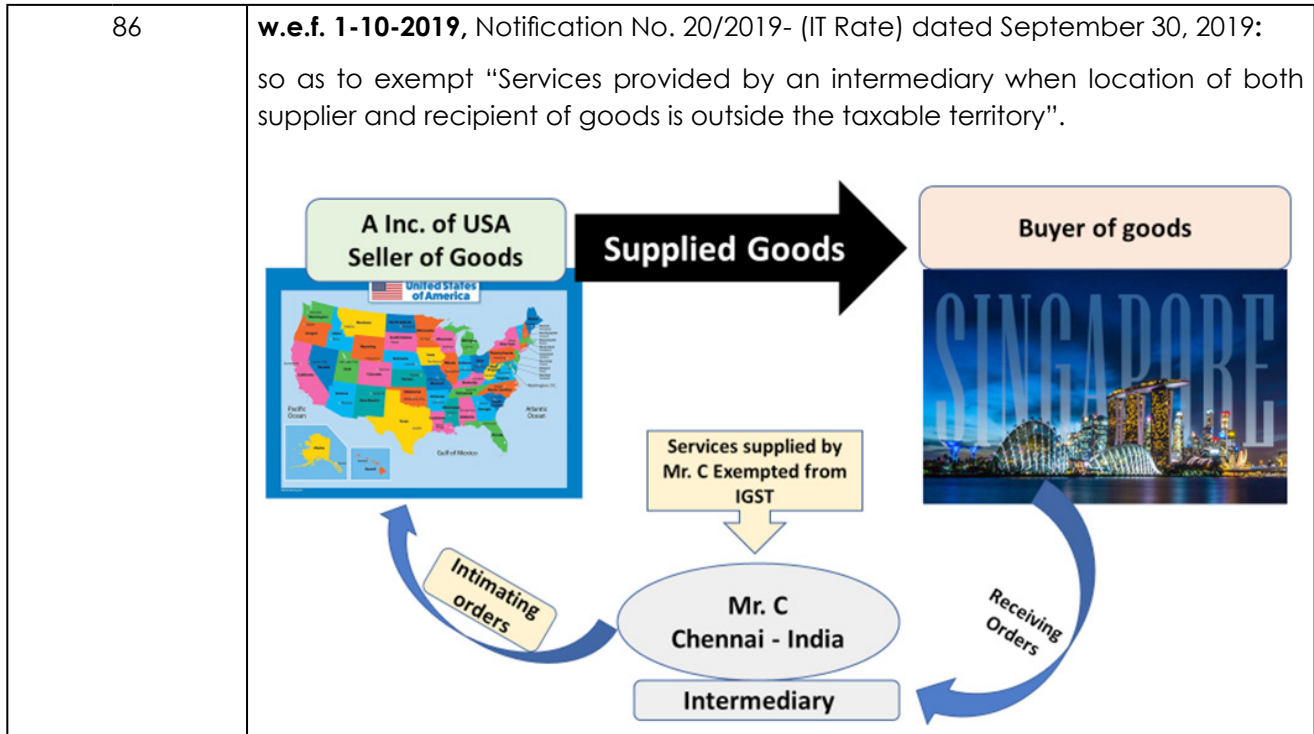
EXEMPTIONS

The following services are exempted from GST:

S.No.	Exempted services Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017)
19A	<p>w.e.f. 25.1.2018, Services by way of transportation of goods by an aircraft from customs station of clearance in India to a place outside India.</p> <p>This exemption granted only till 30th September 2018. Now extended upto 30th September 2019.</p> <p>w.e.f. 1-10-2019 this exemption further extended upto September 2020 w.e.f. 1-10-2020 this exemption further extended upto September 2021</p>
19B	<p>w.e.f. 25.1.2018, Services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India.</p> <p>This exemption granted only till 30th September 2018 Now extended upto 30th September 2019.</p> <p>w.e.f. 1-10-2019 this exemption further extended upto September 2020 w.e.f. 1-10-2020 this exemption further extended upto September 2021</p>
19C	<p>Satellite services supplied by Indian Space Research Organisation, Antrix Corporation Limited or New Space India Limited is exempted from GST (vide Notification No. 5/2020CT (Rate), dated 16-10-2020).</p>
22	<p>Services by way of giving on hire:—</p> <p>(a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or</p> <p>(b) to a goods transport agency, a means of transportation of goods. w.e.f. 25.1.2018,</p> <p>(c) motor vehicle for transport of students, faculty and staff, to a person providing services of transportation of students, faculty and staff to an educational institution providing services by way of pre-school education and education upto higher secondary school or equivalent.</p> <p>Entry 22 (aa): w.e.f 1-10-2019:</p> <p>Services by way of giving on hire to a local authority, an Electrically operated vehicle (EOV) meant to carry more than 12 passengers;</p> <div data-bbox="630 1562 1097 1881" data-label="Image">  </div>



41	<p>One time upfront amount (called as premium, salami, cost, price, development charges or by any other name) leviable in respect of the service, by way of granting long term (thirty years, or more) lease of industrial plots, provided by the State Government Industrial Development Corporations or Undertakings to industrial units.</p> <p>w.e.f.20th September 2018:</p> <p><i>“Explanation.—For the purpose of this exemption, the Central Government, State Government or Union territory shall have 50 per cent. or more ownership in the entity directly or through an entity which is wholly owned by the Central Government, State Government or Union territory.” [Notification No. 23/2018-Central Tax (Rate)].</i></p> <p>W.E.F 1-10-2019:</p> <p><i>Explanation.—For the purpose of this exemption, the Central Government, State Government or Union territory shall have 20 per cent. or more ownership in the entity directly or through an entity which is wholly owned by the Central Government, State Government or Union territory.”</i></p> <p><i>Provided that the leased plots shall be used for the purpose for which they are allotted, that is, for industrial or financial activity in an industrial or financial business area:</i></p> <p><i>Provided also that the State Government concerned shall monitor and enforce the above condition, as per the order issued by the State Government in this regard:</i></p> <p><i>Provided further that in case of any violation or subsequent change of land use, due to any reason whatsoever, the original lessor, original lessee as well as any subsequent lessee or buyer or owner shall be jointly and severally liable to pay such amount of integrated tax, as would have been payable on the upfront amount charged for the long term lease of the plots but for the exemption contained herein, along with the applicable interest and penalty:</i></p> <p><i>Provided also that the lease agreement entered into by the original lessor with the original lessee or subsequent lessee, or sub-lessee, as well as any subsequent lease or sale agreements, for lease or sale of such plots to subsequent lessees or buyers or owners shall incorporate in the terms and conditions, the fact that the integrated tax was exempted on the long term lease of the plots by the original lessor to the original lessee subject to above condition and that the parties to the said agreements undertake to comply with the same.</i></p>
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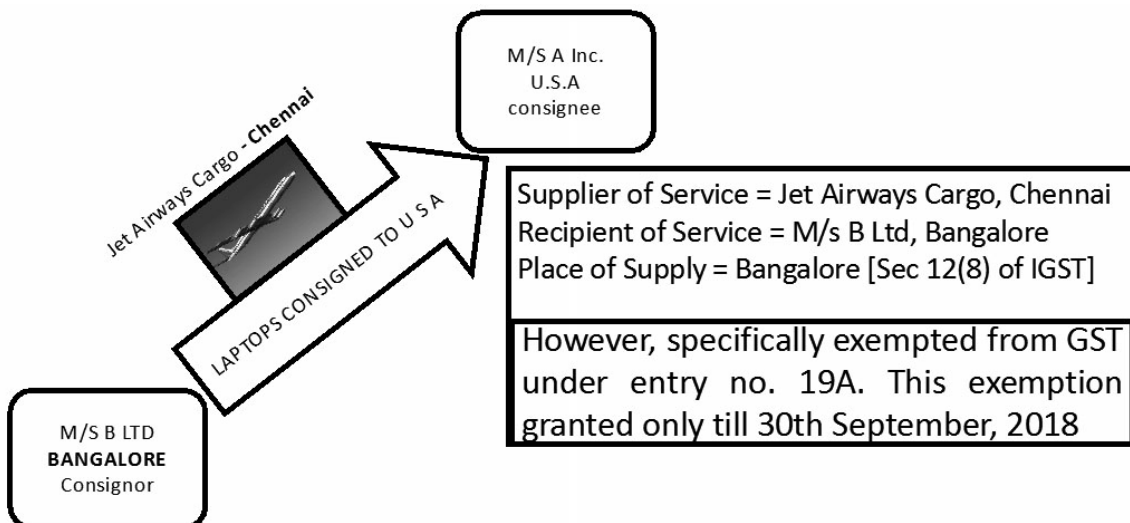


19A. Transportation of goods by an aircraft from customs station of clearance in India to a place outside India:

w.e.f. 25.1.2018, Services by way of transportation of goods by an aircraft from customs station of clearance in India to a place outside India.

This exemption further extended upto September 2020.

w.e.f. 1-10-2020 this exemption further extended upto September 2021.



19B. Transportation of goods by a vessel from customs station of clearance in India to a place outside India:

w.e.f. 25.1.2018, Services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India.

This exemption further extended upto September 2020.

w.e.f. 1-10-2020 this exemption further extended upto September 2021.

Supplier of Service	= Win Logistics Pvt. Ltd – Chennai
Recipient of Service	= M/s C Ltd, Chennai
Place of Supply	= Chennai [Sec 12(8) of IGST]
However, specifically exempted from GST under entry no. 19B. This exemption granted only till 30th September, 2018	



Entry No. 19C: Satellite services supplied by Indian Space Research Organisation, Antrix Corporation Limited or New Space India Limited is exempted from GST (vide Notification No. 5/2020CT (Rate), dated 16-10-2020):

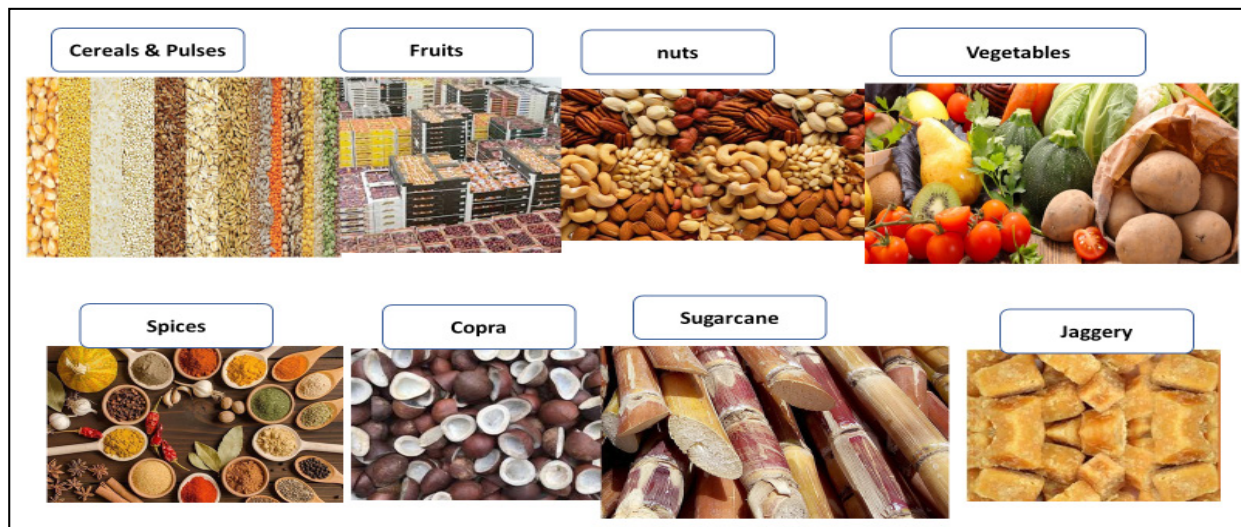
<p>Domestic Customers satellite</p>	<p style="text-align: center;">International Customers satellite</p>
	<p>Antrix Corporation Ltd. a wholly owned Government of India Company under the administrative control of Department of Space (DOS).</p>

Entry 22(aa): w.e.f 1-10-2019:

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

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

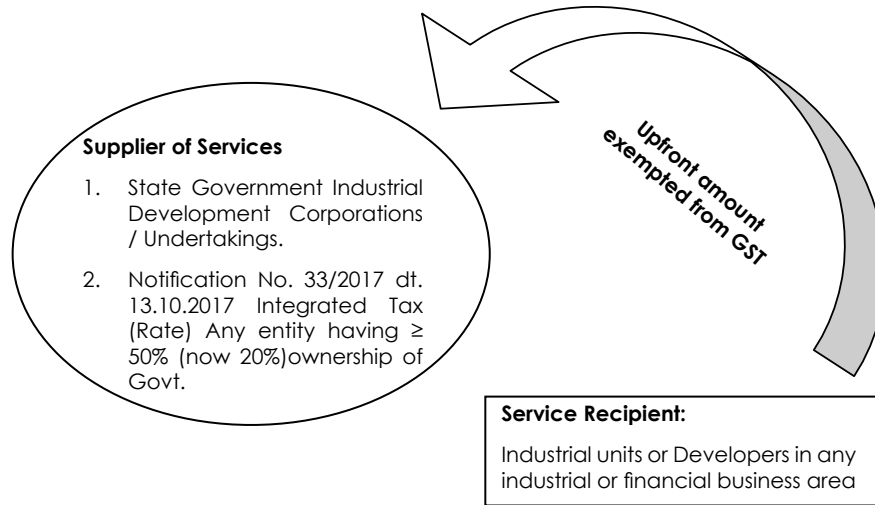
Entry 24B: Exempted Services: services provided by way of storage or warehousing of



Entry No. 41:

Upfront Fee in Long Term Lease exempted from GST:

One time upfront amount (called as premium, salami, cost, price, development charges or by any other name) leviable in respect of the service, by way of granting long term (thirty years, or more) lease of industrial plots, provided by the State Government Industrial Development Corporations or Undertakings to industrial units.



w.e.f. 20th September 2018:

“Explanation.— For the purpose of this exemption, the Central Government, State Government or Union territory shall have 50 per cent. or more ownership in the entity directly or through an entity which is wholly owned by the Central Government, State Government or Union territory.”[Notification No. 23/2018-Central Tax (Rate)].

W.E.F 1-10-2019:

Explanation.—For the purpose of this exemption, the Central Government, State Government or Union territory shall have 20 per cent. or more ownership in the entity directly or through an entity which is wholly owned by the Central Government, State Government or Union territory.”

Provided that the leased plots shall be used for the purpose for which they are allotted, that is, for industrial or financial activity in an industrial or financial business area:

Provided also that the State Government concerned shall monitor and enforce the above condition, as per the order issued by the State Government in this regard:

Provided further that in case of any violation or subsequent change of land use, due to any reason whatsoever, the original lessor, original lessee as well as any subsequent lessee or buyer or owner shall be jointly and severally liable to pay such amount of integrated tax, as would have been payable on the upfront amount charged for the long term lease of the plots but for the exemption contained herein, along with the applicable interest and penalty:

Provided also that the lease agreement entered into by the original lessor with the original lessee or subsequent lessee, or sub-lessee, as well as any subsequent lease or sale agreements, for lease or sale of such plots to subsequent lessees or buyers or owners shall incorporate in the terms and conditions, the fact that the integrated tax was exempted on the long term lease of the plots by the original lessor to the original lessee subject to above condition and that the parties to the said agreements undertake to comply with the same.

w.e.f. 1st January 2019, Insertion of new services to RCM u/s 9(3) of CGST Act [Notification No. 29/2018-CT (R), dated 31st December, 2018]:				
15	w.e.f. 1-10-2019: services provide by way of renting of a motor vehicle provided to a body corporate where cost of fuel is included in the consideration.	Any person other than a body corporate, paying central tax, and does not issue an invoice charging CGST @6% and SGST @6%.	Any body corporate located in the taxable territory.	Recipient

Notified services taken from unregistered person liable to tax on reverse charge basis w.e.f 1st April, 2019 (i.e. section 9(4) of the CGST Act, 2017 or section 5(4) of IGST Act, 2017)

The Central Government vide *Notification No. 07/2019-Central Tax (R), dated 29th March 2019* has notified that the registered person specified below shall in respect of supply of specified goods or services or both received from an unregistered supplier shall pay tax on reverse charge basis as recipient of such goods or services.

Sl. No	Category of supply of goods and services	Recipient of goods and services
1.	Supply of such goods and services or both other than services by way of grant of development rights, long term lease of land or FSI which constitute the shortfall from the minimum value of goods or services or both required to be purchased by a promoter for construction of project, in a financial year.	Promoter
2.	Cement falling in chapter heading 2523 in the first schedule to the Customs Tariff Act, 1975 (51 of 1975) which constitute the shortfall from the minimum value of goods or services or both required to be purchased by a promoter for construction of project, in a financial year (or part of the financial year till the date of issuance of completion certificate or first occupation, whichever is earlier)	Promoter
3.	Capital goods falling under any chapter in the first schedule to the Customs Tariff Act, 1975 (51 of 1975) supplied to a promoter for construction of a project	Promoter



w.e.f. 1-10-2019: The CBIC vide **Notification No. 23/2019- (CT Rate) dated September 30, 2019** has put a retrospective sunset clause on applicability of **Notification No. 04/2018- (CT Rate) dated January 25, 2018** w.r.t. development rights supplied on or after April 01, 2019. The later Notification provided special procedure to be followed while determining time of supply in case of construction services against transfer of development rights.

The date on which builder shall be liable to pay tax on TDR, FSI, long term lease (premium) of land under RCM in respect of flats sold after completion certificate is being shifted to date of issue of completion certificate or first occupation of the project, whichever is earlier.

The liability of builder to pay tax on construction of houses given to land owner in a JDA is also being shifted to the date of completion or first occupation of the project, whichever is earlier.

CBIC Instruction No. 3/2/2020- GST dated 24-6-2020:

One of the condition prescribed vide said notification is that atleast eighty per cent. of value of input and input services, [other than services by way of grant of development rights, long term lease of land or FSI, electricity, high speed diesel, motor spirit, natural gas], used in supplying the construction service, shall be received by the promoter/developer from registered supplier only. In case of shortfall from the said threshold of 80 per cent., the promoter/developer shall pay the tax on the value of input and input services comprising such shortfall in the manner as has been prescribed vide said notification. This tax shall be paid through a prescribed form electronically on the common portal by end of the quarter following the financial year. Accordingly for FY 2019-20, tax on such shortfall is to be paid by the 30th June, 2020.

In the above context, requests have been received seeking details of prescribed form on which the said tax amount has to be reported. 4. The issue referred by the trade has been examined. It has been decided that FORM GST DRC-03, as already prescribed, shall be used for making the payment of such tax by promoter/developer. Accordingly, person required to pay tax in accordance with the said notification on the shortfall from threshold requirement of procuring input and input services (below 80%) from registered person shall use the form **DRC-03** to pay the tax electronically on the common portal within the prescribed period.

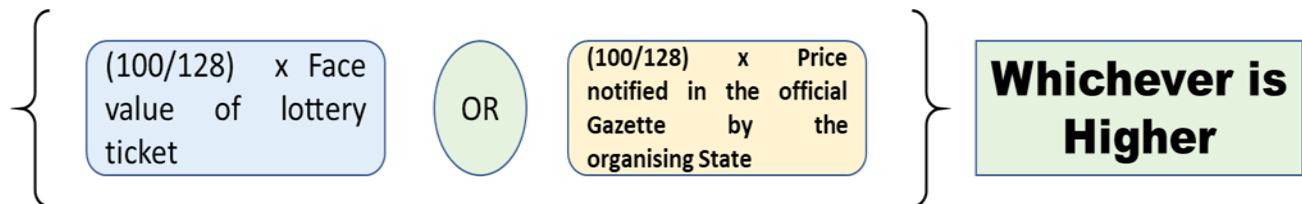
Study Note - 5

VALUE OF SUPPLY UNDER GST



Rule 31A. Value of supply in case of lottery, betting, gambling, and horse racing

Supply	Value
W.E.F. 1.3.2020 Supply of lottery run by State Govt. (OR) Supply of lottery authorised by State Govt.	Higher of the two amounts to be deemed as value: 100/128 of the face value of ticket OR 100/128 of the price as notified in the official Gazette by the organising State.
Supply of actionable claim in the form of chance to win in betting, gambling or horse racing in a race club	100% of the face value of the bet or the amount paid into totalisator



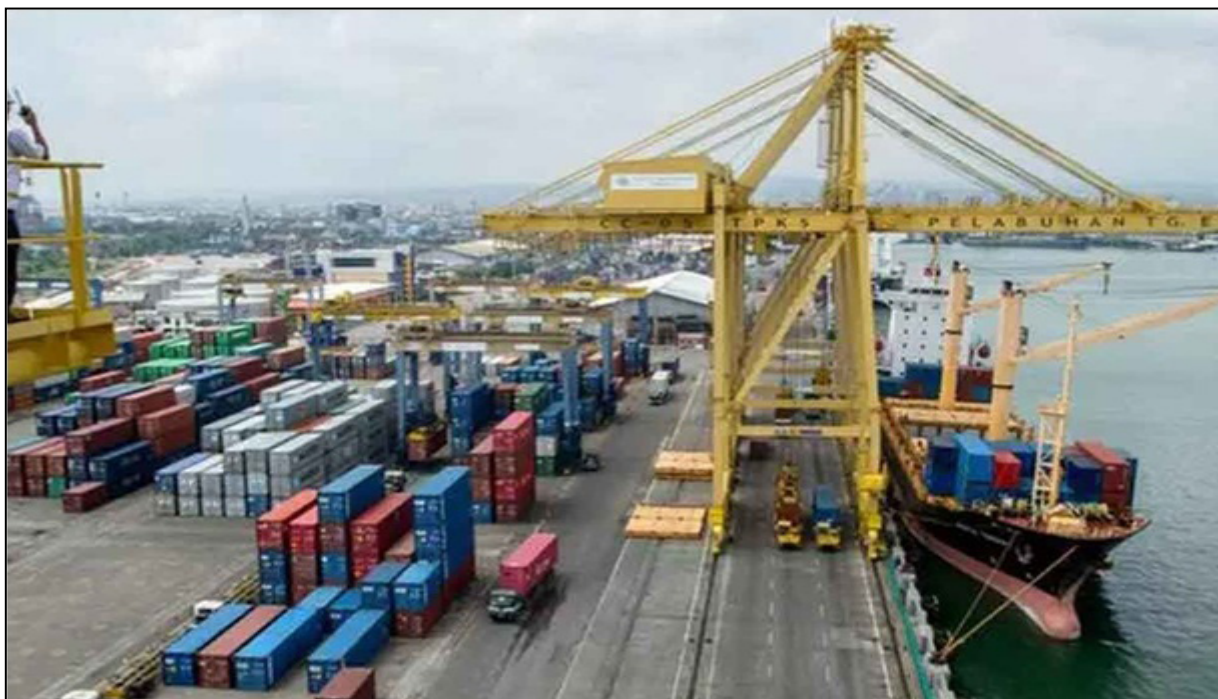
Study Note - 6

PLACE OF SUPPLY UNDER GST



Clarification in respect of determination of place of supply in following cases: -

Vide CBIC Circular No. 103/22/2019 GST dated 28.06.2019

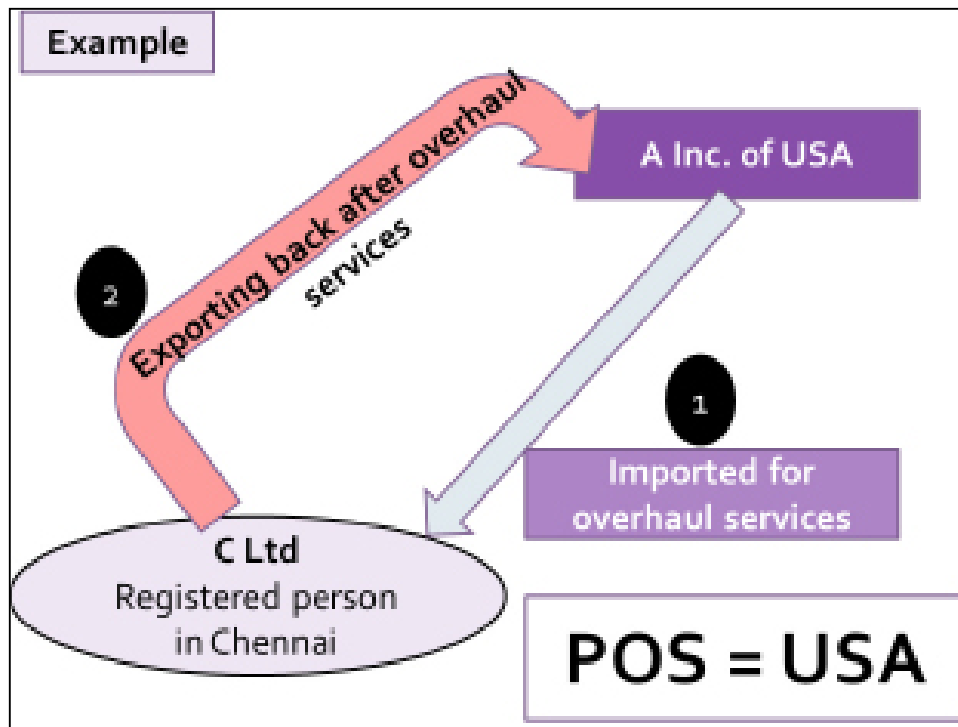


Various services are being provided by the port authorities to its clients in relation to cargo handling:
Place of supply: As per Section 12(2) or Section 13(2) of IGST Act, 2017.

Notification No. 2/2020 IT dated 26.03.2020

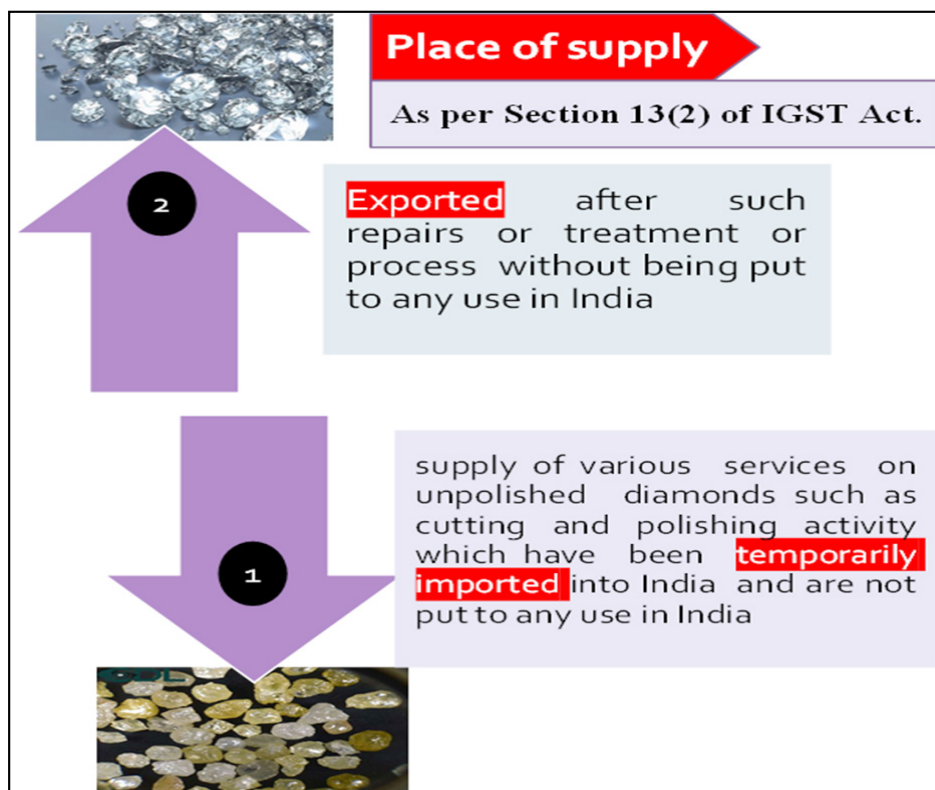
W.E.F 01.04.2020, B2B maintenance, repair and overhaul services have been notified as the services for which the place of supply shall be the place of effective use and enjoyment of a service as given under:

Description of services or circumstances	Place of supply
Supply of maintenance, repair or overhaul service in respect of aircrafts, aircraft engines and other aircraft components or parts supplied to a person for use in the course or furtherance of business	The place of supply of services shall be the location of the recipient of service



Clarification in respect of determination of place of supply in following cases: -

Vide CBIC Circular No. 103/22/2019 GST dated 28.06.2019



Clarification on supply of satellite launch services by ANTRIX Corporation Ltd.

Problem: How is the taxability of satellite launch services provided to both international and domestic customers by ANTRIX Corporation Limited, which is a wholly owned Government of India Company under the administrative control of Department of Space (DOS), determined?



In view of the above, place of supply of satellite launch services supplied by ANTRIX Corporation Limited to international customers would be outside India in terms of section 13(9) of IGST Act, 2017 and such supply which meets the requirements of section 2(6) of IGST Act, thus constitutes export of service and shall be zero rated in accordance with section 16 of the IGST Act. Where satellite launch service is provided by ANTRIX Corporation Limited to a person located in India, the place of supply of satellite launch service would be governed by section 12(8) of the IGST Act and would be taxable under CGST Act, UTGST Act or IGST Act, as the case may be.

ANTRIX Corporation Limited to international customers:

Place of supply u/s 13(9) = outside India

Note: Export of service and hence, no GST.

ANTRIX Corporation Limited to a person located in India:

Place of supply u/s 12(8) = India

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



ANTRIX Corporation Limited to a person located in India:

Place of supply u/s 12(8) = Outside India

However, Antrix Corporation Limited is not liable to pay IGST.

Note: Satellite services supplied by Indian Space Research Organisation, Antrix Corporation Limited or New Space India Limited is exempted from GST (vide Notification No. 6/2020 I.T. dated 15-10-2020).

Study Note - 7

INPUT TAX CREDIT (ITC)



Time limit to avail the input tax credit [Section 16(4) of the CGST Act, 2017]:

Time limit for availment of credit by registered taxable person is prescribed in the following manner.

- (a) Filing of return under section 39 for the month of September following end of financial year to which such invoice pertains
- Or
- (b) Filing of annual return Whichever is earlier.

ITC on invoices pertaining to a financial year or debit notes relating to invoices pertaining to a financial year can be availed any time till the due date of filing of the return for the month of September of the succeeding financial year or the date of filing of the relevant annual return, whichever is earlier.

Exception: the time limit u/s 16(4) does not apply to claim for re-availing of credit that had been reversed earlier.

It is worthy to that the return for the month of September is to be filed by 20th October and annual return of a financial year is to be filed by 31st December of the succeeding financial year.

As per Finance Act, 2020, the words were "invoice relating to such" has been omitted.

The effect of the amendment is that date of debit note, and date of underlying invoice have been delinked. Thus, debit note in respect of an invoice can be raised even after 30th September following end of financial year to which the invoice pertains.

It means the recipient can avail ITC of GST paid through debit note, even if the supply pertains to previous financial years.

Example:

M/s X Ltd. delivered a machine to M/s Y Ltd. in January 2018 under Invoice No. 180 dated 21st January for ₹ 5,00,000 plus GST, and undertook trial runs and calibration of the same machine as per the requirements of M/s Y Ltd. The amount chargeable for the past delivery activities were covered in a debit note raised in May 2018 for ₹ 1,25,000 plus GST. M/s Y Ltd did not file its annual return till October 2018.

Find the time limit u/s 16(4) of the CGST Act, 2017 within which input tax credit can be availed by M/s Y Ltd.

Answer:

Time limit to avail the ITC on machine (vide Invoice No. 180 dt. 21.01.2018) is 30th September 2018. Time limit to avail the ITC on debit note is also 30th September 2018.

Note: though the debit note was received in the next financial year (2018-19), it relates to an invoice received in the financial year ending 31st March 2018 (i.e. 2017-18).

Therefore, the time limit for taking ITC available on ₹ 5,00,000 as well as on ₹ 1,25,000 is 30th September 2018; earlier of the date of filing the annual return for 2017-18 or the due date for filing return for September 2018.

Note: As per Finance Act, 2020, the words were “invoice relating to such” has been omitted.

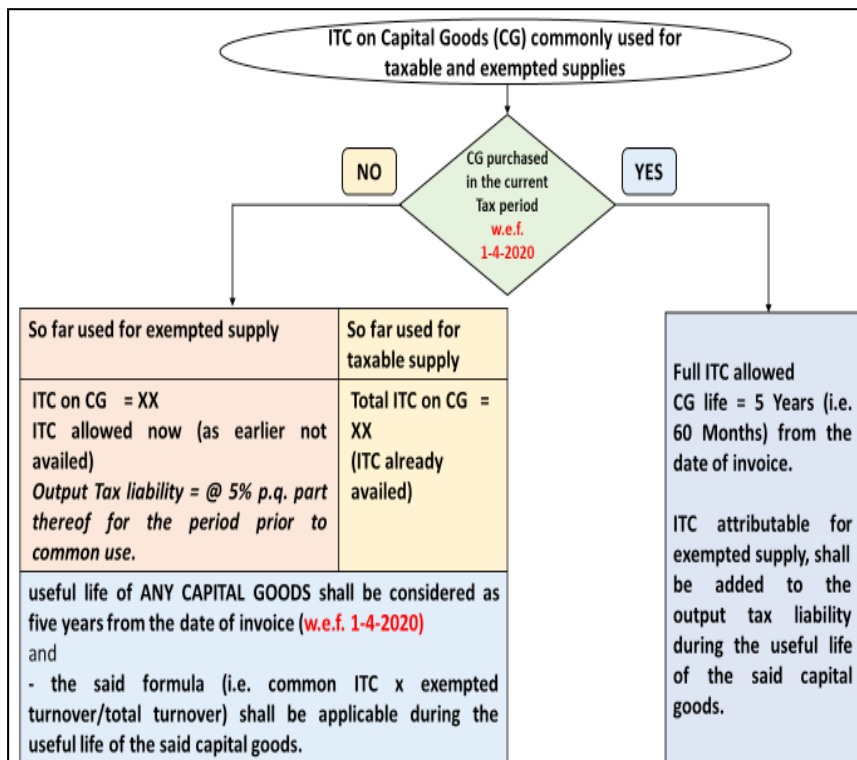
The effect of the amendment is that date of debit note, and date of underlying invoice have been delinked. Thus, debit note in respect of an invoice can be raised even after 30th September following end of financial year to which the invoice pertains.

It means the recipient can avail ITC of GST paid through debit note, even if the supply pertains to previous financial years.

NEW PROVISION – Rule 43 of the CGST Rules, 2017: Manner of determination of input tax credit in respect of capital goods and reversal thereof in certain cases:

w.e.f 1-4-2020, For the removal of doubt, it is clarified that useful life of any capital goods shall be considered as five years from the date of invoice and the said formula shall be applicable during the useful life of the said capital goods.

Amendment in rule 43 of the CGST Rules which prescribes the manner of determination of ITC in respect of capital goods and reversal thereof in certain cases w.e.f. 1-4-2020.



[Notification No. 16/2020 CT dated 23.03.2020]

Example: Roi Industries is a manufacturing company registered under GST. It manufactures two taxable products 'X' and 'Y' and one exempt product 'Z'. The turnover of 'X', 'Y' and 'Z' in the month of April, 20XX was ₹2,00,000, ₹10,00,000 and ₹12,00,000. Roi Industries is in possession of certain machines and purchases more of them. Useful life of all the machines is considered as 5 years.

From the following particulars furnished by it, compute the amount to be credited to the electronic credit ledger of Roi Industries and amount of common credit attributable towards exempted supplies, if any, for the month of April, 20XX.

Particulars	GST paid (₹)
Machine 'A' purchased on 01.04.20XX for being exclusively used for non-business purposes	19,200
Machine 'B' purchased on 01.04.20XX for being exclusively used in manufacturing zero-rated supplies	38,400
Machine 'C' purchased on 01.04.20XX for being used in manufacturing all the three products – X, Y and Z	96,000
Machine 'D' purchased on April 1, 2 years before 01.04.20XX for being exclusively used in manufacturing product Z. From 01.04.20XX, such machine will also be used for manufacturing products X and Y.	1,92,000
Machine 'E' purchased on April 1, 3 years before 01.04.20XX for being exclusively used in manufacturing products X and Y. From 01.04.20XX, such machine will also be used for manufacturing product Z.	2,88,000

Answer:

Statement showing Common ITC on Capital Goods as on 1st April 20XX

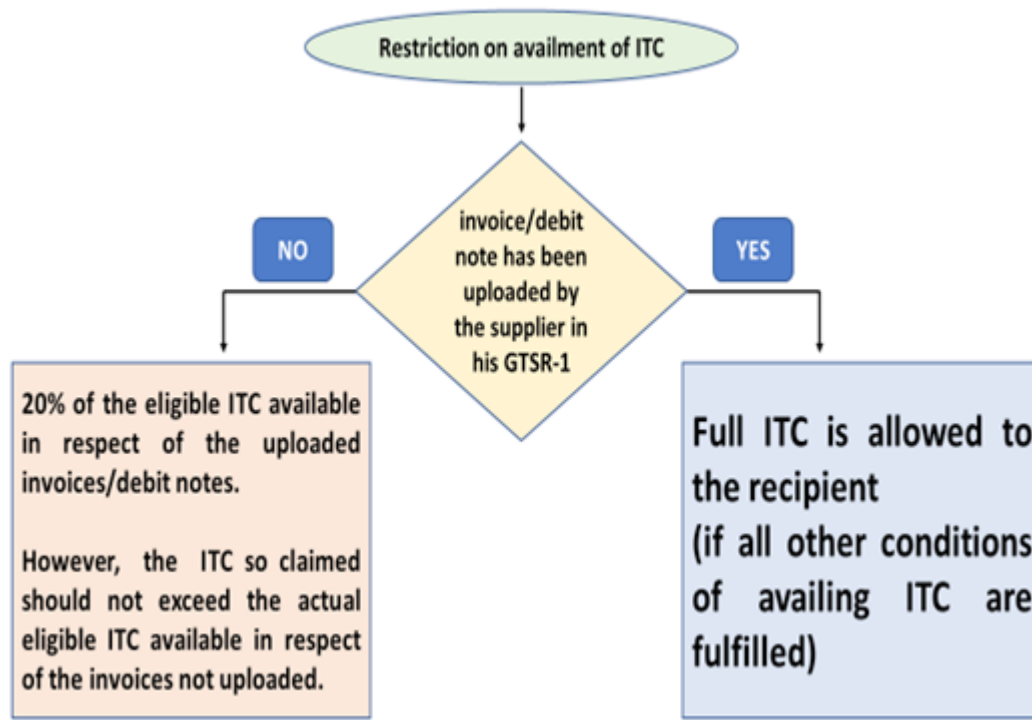
Particulars	Value in (₹)	Working note
Capital goods C Used both for taxable and exempted supplies	96,000	As per rule 43(1)(c) of CGST Rules, 2017
Capital goods D (has been exclusively used for 2 years for exempted supplies). Now there is change in use, both for taxable and exempted supplies.	1,92,000	Proviso to rule 43(1)(c) of CGST Rules, 2017. ₹1,92,000 ITC allowed fully, provided, ₹77,800 is considered as output tax liability in April, 20XX. $1.92 \text{ L} \times 5\% \times 8 \text{ quarters} = ₹76,800$.
Capital goods E (has been exclusively used for 3 years for taxable supplies). Now there is change in use, both for taxable and exempt supplies.	2,88,000	Proviso to rule 43(1)(d) of CGST Rules, 2017. ITC already availed and hence, ITC in April 20XX is not allowed.
Common credit	5,76,000	
the amount of input tax credit attributable to a tax period on common capital goods during their useful life	9,600	As per Rule 43(1)(e) of the CGST Rules, 2017 calculated as: $5,76,000 \div 60 = ₹9,600$

the amount of common credit attributable towards exempted supplies	4,800	As per Rule 43(1)(g) of the CGST Rules, 2017 calculated as: ₹9,600 x ₹12,00,000 / ₹24,00,000.
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Statement showing Total ITC to the Electronic Credit Ledger for the month of April 20XX:

Particulars	Value in ₹
Capital goods B used exclusively for taxable supplies (i.e. Zero-rated supply)	38,400
Capital goods C Used both for taxable and exempted supplies	96,000
Capital goods D (has been exclusively used for 2 years for exempted supplies). Now there is change in use, both for taxable and exempted supplies.	1,92,000
Electronic Credit Ledger	3,26,400

Restriction on availment of input tax credit (ITC) in respect of invoices/debit notes not uploaded by the suppliers in their GSTR-1s [New sub-rule (4) inserted in rule 36 of the CGST Rules] [Notification No. 49/2019-CT, dated 09.10.2019]



With effect from 01.01.2020, Notification No. 75/2019 CT dated 26.12.2019 has amended the said sub-rule to reduce the percentage of ITC that can be availed on invoices not uploaded by the suppliers in their GSTR-1s from **20% to 10%**.

invoice/debit note has not been uploaded by the supplier in his GSTR-1:

W.e.f. 1-1-2020 @10% (from 9th Oct 2019 to 31st Dec 2019 @20%) of the eligible ITC available in respect of the uploaded invoices/debit notes.

However, the ITC so claimed should not exceed the actual eligible ITC available in respect of the invoices not uploaded.

Example 1:

Mr. Vijay, a registered supplier, receives 100 invoices (for inward supply of goods/ services) involving GST of ₹ 10 lakh, from various suppliers during the month of October 20XX.

Compute the ITC that can be claimed by Mr. Vijay in his GSTR-3B for the month of October 20XX to be filed by 20th November 20XX in the following independent cases assuming that GST of ₹ 10 lakh is otherwise eligible for ITC:

Case I

Out of 100 invoices, 80 invoices involving GST of ₹ 6 lakh have been uploaded by the suppliers in their respective GSTR-1s filed on the prescribed due date therefor.

Case II

Out of 100 invoices, 75 invoices involving GST of ₹ 8.5 lakh have been uploaded by the suppliers in their respective GSTR-1s filed on the prescribed due date therefor.

Case III

Out of 100 invoices, 95 invoices involving GST of ₹ 9.5 lakh have been uploaded by the suppliers in their respective GSTR-1s filed on the prescribed due date therefor.

Answer:**Case I:**

ITC on invoices (uploaded in GSTR-1) = ₹6,00,000/-

Add: 10% on ₹6 lac = ₹60,000

Or

ITC on invoices not uploaded in

GSTR-1 is ₹4,00,000/-

Whichever is less = ₹60,000/-

Total ITC allowed = ₹6,60,000/-

Case II:

ITC on invoices (uploaded in GSTR-1) = ₹8,50,000/-

Add: 10% on ₹8.5 lac = ₹85,000

Or

ITC on invoices not uploaded in

GSTR-1 is ₹1,50,000/-

Whichever is less = ₹85,000/-

Total ITC allowed = ₹9,35,000/-

Case III:

ITC on invoices (uploaded in GSTR-1) = ₹9,50,000/-

Add: 10% on ₹9.50 lac = ₹95,000

Or

ITC on invoices not uploaded in

GSTR-1 is ₹50,000/-

Whichever is less = ₹50,000/-

Total ITC allowed = ₹10,00,000/-

Note: 10% restriction (earlier 20%) is not applicable cases:

- IGST paid on import of goods
- IGST paid on import of services (under Reverse Charge)
- Input Service Distributor distributes ITC
- Inward supplies received from Non-resident Taxable Person.

EXAMPLE 2: In the above Example 1 (case I), when can Mr. Vijay avail the balance ITC?

ANSWER: A taxpayer may avail full ITC in respect of a tax period, as and when the invoices are uploaded by the suppliers to the extent eligible ITC/ 1.1.

Therefore, Mr. Vijay may avail full ITC of ₹ 10 lakh in respect of the month of October 20XX, as and when the invoices are uploaded by the suppliers to the extent of ₹ 9.091 lakh (10 lakh/1.1). Hence, balance ITC of ₹ 3.4 lakh can be availed by Mr. Vijay if suppliers upload details of some of the invoices for the month of October 20XX involving ITC of ₹ 3.091 lakh out of outstanding invoices involving ITC of ₹ 4 lakh details of which had not been uploaded by the suppliers [₹ 6 lakh + ₹ 3.091 lakh = ₹ 9.091 lakh].

Suppose suppliers of Mr. Vijay upload 15 more invoices involving ITC of ₹ 3.091 lakh in the month of December 20XX. In such a scenario, ITC that can be claimed by Mr. Vijay for the month of December 20XX (in respect of such 15 invoices) will be as under –

100% ITC of ₹ 3.091 + ₹ 0.309 [10% of ₹ 3.091 lakh] = ₹ 3.4 lakh

Therefore, Mr. Vijay will be able to claim balance ITC of ₹ 3.4 lakh in the month of December 20XX.

Circular No. 123/ 42/ 2019 GST dated 11.11.2019 has clarified the following issues in relation to restriction in availment of ITC in terms of rule 36(4) as under:

- (1) The restriction is not imposed through the common portal and it is the responsibility of the taxpayer claiming credit to avail ITC on self-assessment basis.
- (2) The restriction shall be applied only on the invoices/ debit note, details of which are required by supplier to be uploaded under section 37(1) of the CGST Act. Therefore, taxpayer may avail full ITC in respect of IGST paid on imports, documents issued under RCM, credit received from ISD etc. which are outside the ambit of section 37(1).
- (3) ITC under rule 36(4) shall be calculated on total eligible ITC from all suppliers against all supplies whose details have been uploaded by the supplier. Therefore, the restriction is not on supplier basis.
- (4) The calculation would be based only on those invoices on which ITC is available and therefore, invoices on which ITC is not available [say under section 17(5) of the CGST Act] would not be considered for calculation of 20% **[amended to 10% subsequently]** of the eligible ITC available.
- (5) The amount of ITC in respect of the invoice/ debit note whose details have not been uploaded shall not exceed 20% **[amended to 10% subsequently]** of the eligible ITC in respect of invoice/ debit note which have been uploaded by supplier under section 37(1) **as on due date of filing Form GSTR-1** by the supplier for the said tax period. **The same can be ascertained as per GSTR 2A showing ITC on the due date of filing GSTR-1.**

For example: Due date for filing GSTR-1 for the month of January, 2020 is 11.02.2020.

Now, ITC in respect of invoice/ debit note which have not been uploaded by supplier shall be maximum of 20% **[amended to 10% subsequently]** of total ITC reflected in GSTR 2A as on 11.02.2020.

Restrictions on utilisation of ITC [Rule 86A]

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

The restrictions can be imposed in the following circumstances:

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



(iii) Registered person availing ITC is not in possession of tax invoice/valid document.

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

[Notification No. 75/ 2019 CT dated 26.12.2019]

Clarification of issues relating to application of sub-rule (4) of rule 36 of the CGST Rules, 2017, cumulatively for the months of February, 2020 to August, 2020:

The Central Board of Indirect Taxes & Customs vide **Circular No. 142/12/2020- GST dated 9th October, 2020** has issued the following clarification relating to application of sub-rule (4) of rule 36 of the CGST Rules, 2017 for the months of February, 2020 to August, 2020:-

Keeping the situation prevailing in view of measures taken to contain the spread of COVID-19 pandemic, vide notification No. 30/2020-CT, dated 03.04.2020, it had been prescribed that the condition made under sub-rule (4) of rule 36 of the CGST Rules shall apply cumulatively for the tax period February, March, April, May, June, July and August, 2020 and that the return in FORM GSTR-3B for the tax period September, 2020 shall be furnished with the cumulative adjustment of input tax credit for the said months.

1. It is re-iterated that the clarifications issued earlier vide Circular No. 123/42/2019 – GST dated 11.11.2019 shall still remain applicable, except for the cumulative application as prescribed in proviso to sub-rule (4) of rule 36 of the CGST Rules. Accordingly, all the taxpayers are advised to ascertain the details of invoices uploaded by their suppliers under subsection (1) of section 37 of the CGST Act for the periods of February, March, April, May, June, July and August, 2020, till the due date of furnishing of the statement in FORM GSTR-1 for the month of September, 2020 as reflected in GSTR-2As.
2. Taxpayers shall reconcile the ITC availed in their FORM GSTR-3Bs for the period February, 2020 to August, 2020 with the details of invoices uploaded by their suppliers of the said months, till the due date of furnishing FORM GSTR-1 for the month of September, 2020. The cumulative amount of ITC availed for the said months in FORM GSTR-3B should not exceed 110% of the cumulative value of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37 of the CGST Act, till the due date of furnishing of the statements in FORM GSTR-1 for the month of September, 2020.
3. It may be noted that availability of 110% of the cumulative value of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37 of the CGST Act does not mean that the total credit can exceed the tax amount as reflected in the total invoices for the supplies received by the taxpayer i.e. the maximum credit available in terms of provisions of section 16 of the CGST Act.
4. *The excess ITC availed arising out of reconciliation during this period, if any, shall be required to be reversed in Table 4(B)(2) of FORM GSTR-3B, for the month of September, 2020. Failure to reverse

such excess availed ITC on account of cumulative application of sub-rule (4) of rule 36 of the CGST Rules would be treated as availment of ineligible ITC during the month of September, 2020.

The manner of cumulative reconciliation for the said months in terms of proviso to sub-rule (4) of rule 36 of the CGST Rules is explained by way of illustration, in a tabulated form, below:-

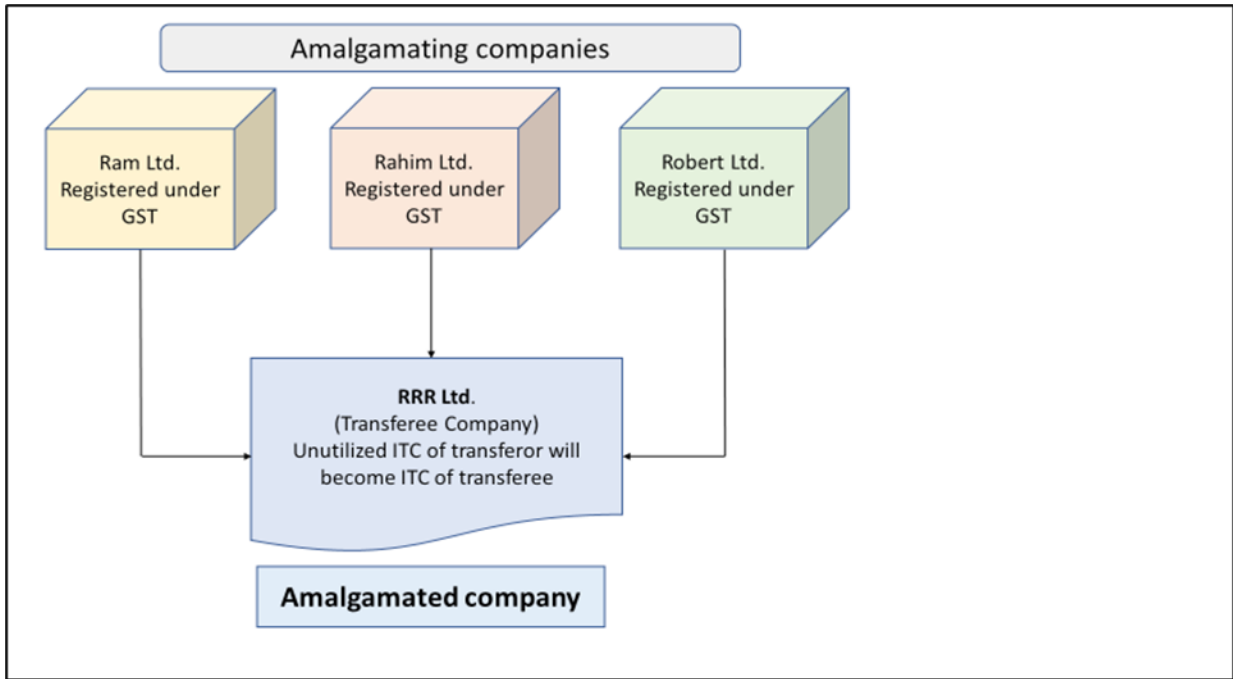
Tax period	Eligible ITC as per the provisions of Chapter V of the CGST Act and the rules made thereunder, except rule 36(4)	ITC availed by the taxpayer (recipient) in GSTR-3B of the respective months	Invoices on which ITC is eligible and uploaded by the suppliers till due date of FORM GSTR-1 for the tax period of September, 2020	Effect of cumulative application of rule 36(4) on availability of ITC.
Feb, 2020	300	300	270	Maximum eligible ITC in terms of rule 36 (4) is 2450 + [10% of 2450] =2695. Taxpayer had availed ITC of 2750. Therefore, ITC of 55 [2750-2695] would be required to be reversed as mentioned in para 4 *. above
March, 2020	400	400	380	
April, 2020	500	500	450	
May, 2020	350	350	320	
June, 2020	450	450	400	
July, 2020	550	550	480	
August, 2020	200	200	150	
TOTAL	2750	2750	2450	
ITC Reversal required to the extent of 55				
September, 2020	500	385	350	10% Rule shall apply independently for September, 2020
In the FORM GSTR-3B for the month of September, 2020, the tax payer shall avail ITC of 385 under Table 4(A) and would reverse ITC of 55 under Table 4(B)(2)				

vide Notification No. 16/2020-CT, dated 23.03.2020, w.e.f. 01.04.2020:

the amount of input tax in respect of capital goods used or intended to be used exclusively for non-business purposes or used or intended to be used exclusively for effecting exempt supplies shall be indicated in FORM GSTR-2 [and FORM GSTR3B] and shall not be credited to his electronic credit ledger;

An item of capital goods declared as above on its receipt shall not attract the provisions of sub-section (4) of section 18, if it is subsequently covered under this clause.

Clarification in respect of apportionment of ITC in cases of business reorganization under section 18(3) of the CGST Act read with rule 41(1) of the CGST Rules



Circular No. 133/03/2020- GST dated 23rd Mar 2020 **Demerger – ITC apportioned in ratio of value of assets**

	M.P. State (₹)	U.P. State (₹)	Total assets (₹)	clarification
Value of assets	60 crore	40 crore	100 crore	As per Rule 41 of CGST Rules, the value of assets of the new units is to be taken at the State level (at the level of distinct person) and not at the all-India level. Applicable for all types of business reorganisation.
Assets transferred on demerger	30 crore	10 crore	40 crore	
Unutilised ITC transferred to the demerged entity	$30/60 = 0.50$	$10/40 = 0.25$	$40/100 = 0.40$	

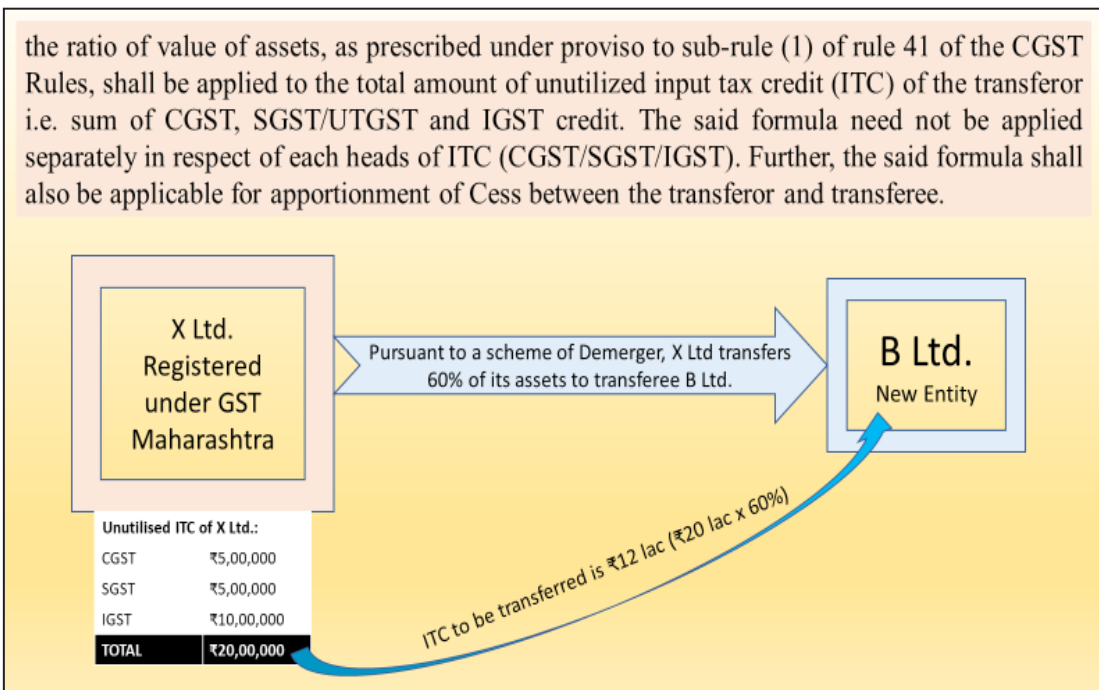
The flowchart details a demerger process. At the top left, a box for "XYZ Ltd. Registered under GST" shows "Total Assets ₹100 crore" and "Submit Form GST ITC-02 (i.e. transfer of ITC)". A box below it states "A certificate from CA/CMA is to be furnished". Two arrows lead to "A unit M.P. State" (Assets = ₹60 crore) and "B unit U.P. State" (Assets = ₹40 crore). A box labeled "Demerger" shows "Total assets transferred ₹40 crore". Arrows from the units point to a box for "ABC Ltd. A New Entity". One arrow from the B unit is labeled "Assets transferred ₹10 crore", and another from the A unit is labeled "Assets transferred ₹30 crore".

Question:

Is the transferor required to file FORM GST ITC – 02 in all States where it is registered?

Answer:

No. The transferor is required to file FORM GST ITC-02 only in those States where both transferor and transferee are registered.



How to determine the amount of ITC that is to be transferred to the transferee under each tax head (IGST/CGST/SGST) while filing of FORM GST ITC–02 by the transferor?

The total amount of ITC to be transferred to the transferee (i.e. sum of CGST, SGST/UTGST and IGST credit) should not exceed the amount of ITC to be transferred, as determined under Rule 41(1) of the CGST Rules.

However, the transferor shall be at liberty to determine the amount to be transferred under each tax head (IGST, CGST, SGST/UTGST) within this total amount, subject to the ITC balance available with the transferor under the concerned tax head.

In other words, for the purpose of apportionment of ITC under sub-rule (1) of rule 41 of the CGST Rules, while the ratio of the value of assets should be taken as on the “appointed date of demerger” (Sec. 232(6) of the Companies Act, 2013), the said ratio is to be applied on the ITC balance of the transferor on the date of filing **FORM GST ITC - 02** to calculate the amount to transferable ITC.

1	2	3	4	5	6
State	Asset Ratio of Transferee	Tax Heads	ITC balance of transferor (pre-apportionment) as on the date of filing Form GST ITC-02	Total amount of ITC transferred to the Transferee under Form GST ITC-02	ITC balance of Transferor (post apportionment) after filing of Form GST ITC-02 [4-5]
Delhi	70%	CGST	10,00,000	10,00,000	0
		SGST	10,00,000	10,00,000	0
		IGST	30,00,000	15,00,000	15,00,000
		TOTAL	50,00,000	35,00,000	15,00,000
Haryana	40%	CGST	25,00,000	3,00,000	22,00,000
		SGST	25,00,000	5,00,000	20,00,000
		IGST	20,00,000	20,00,000	0
		TOTAL	70,00,000	28,00,000	42,00,000

The due of furnishing of FORM ITC-04 for the quarter ending March, 2020 stands extended upto 30-6-2020 (vide CBIC Circular No. 138/08/2020 GST dated 6-5-2020).

CBIC has notified that the due dates to furnish ITC-04 for the January-March 2020 and April-June 2020 quarters (falling due between 20th March 2020 to 30th August 2020) stands extended till 31st August 2020.

The due of furnishing of FORM ITC-04 for the quarter ending September 2020 stands extended upto 30-11-2020 (vide Notification No. 87/2020 CT dated 10-11-2020).

Study Note - 8

REGISTRATION UNDER GST



Verification of the application and approval (w.e.f. 1-4-2020):

Vide NT No. 16/2020 – CT dt. 23.03.2020: As per Rule 8(4A), The applicant shall, while submitting an application under sub-rule (4), with effect from **01.04.2020**, undergo authentication of Aadhaar number for grant of registration.

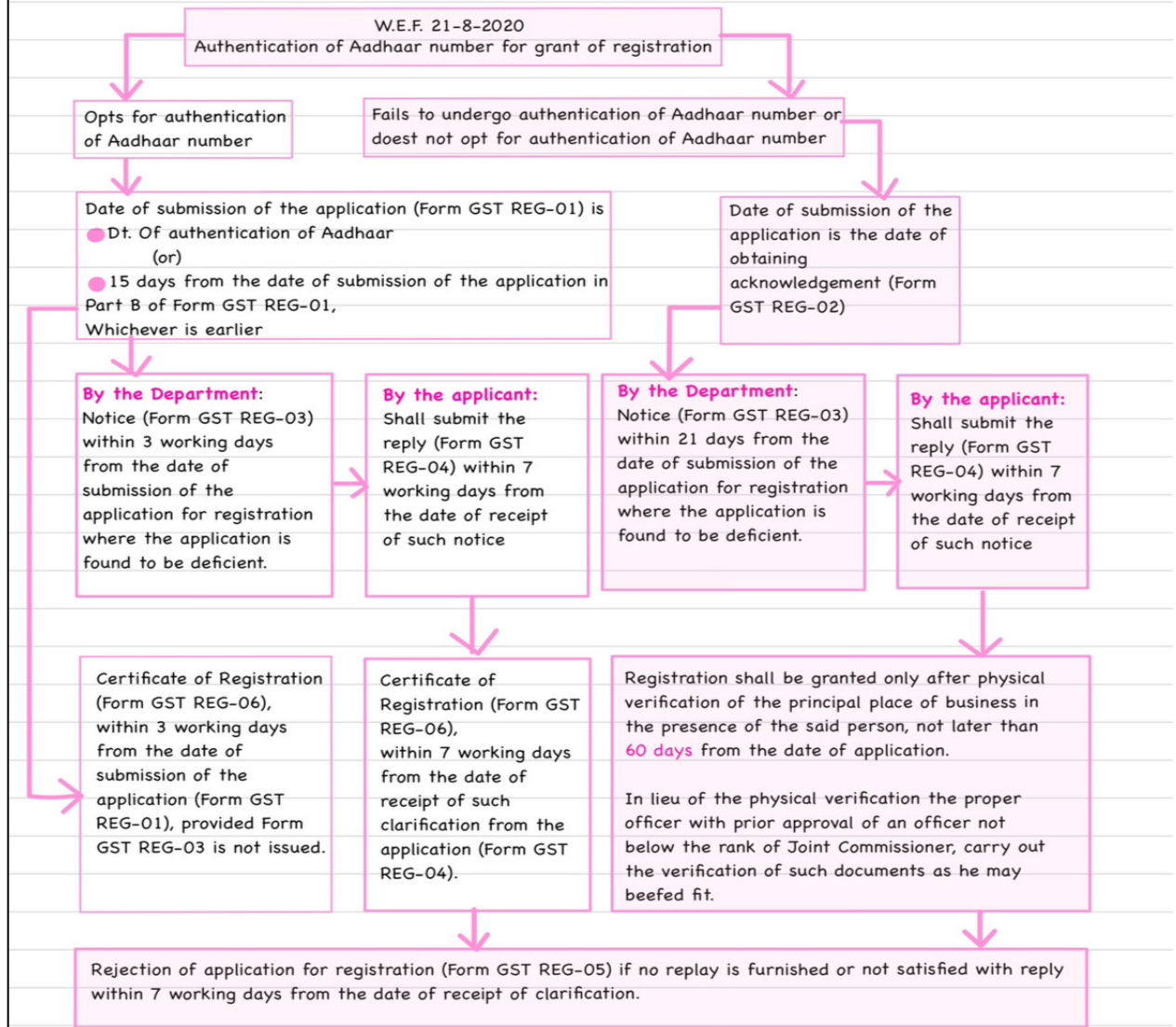
Provided that where a person, other than those notified under sub-section (6D) of section 25, fails to undergo authentication of Aadhaar number as specified in sub-rule (4A) of rule 8, then the registration shall be granted only after physical verification of the principle place of business in the presence of the said person, not later than **60 days** from the date of application, in the manner provided under rule 25 and the provisions of sub-rule (5) shall not be applicable in such cases (i.e. Deemed Registration).

The Central Government vide [Notification No. 62/2020- Central Tax dated 20th August 2020](#); has made the following amendments in the **Central Goods & Services Tax Rules, 2017 :-**

Rule	Amendments
Rule 8: (Application for registration)	Substitution of sub-rule (4A) wef 1st April,2020:- “(4A) Where an applicant, other than a person notified under sub-section (6D) of section 25, opts for authentication of Aadhaar number, he shall, while submitting the application under sub-rule (4), with effect from 21st August, 2020, undergo authentication of Aadhaar number and the date of submission of the application in such cases shall be the date of authentication of the Aadhaar number, or fifteen days from the submission of the application in Part B of FORM GST REG-01 under sub rule (4), whichever is earlier.”
Rule 9: (Verification of the application and approval.)	Amendments w.e.f 21st August,2020:- (i) Substitution of proviso in sub-rule (1):- in sub-rule (1), for the proviso, the following provisos shall be substituted, namely:- “Provided that where a person, other than a person notified under sub-section (6D) of section 25, fails to undergo authentication of Aadhaar number as specified in sub-rule (4A) of rule 8 or does not opt for authentication of Aadhaar number, the registration shall be granted only after physical verification of the place of business in the presence of the said person, in the manner provided under rule 25: Provided further that the proper officer may, for reasons to be recorded in writing and with the approval of an officer not below the rank of Joint Commissioner, in lieu of the physical verification of the place of business, carry out the verification of such documents as he may deem fit.”;

	<p><u>(ii) Insertion of proviso in sub-rule (2):-</u></p> <p>in sub-rule (2), before the Explanation, the following proviso shall be inserted, namely: -</p> <p>“Provided that where a person, other than a person notified under sub-section (6D) of section 25, fails to undergo authentication of Aadhaar number as specified in sub-rule (4A) of rule 8 or does not opt for authentication of Aadhaar number, the notice in FORM GST REG-03 may be issued not later than twenty one days from the date of submission of the application.”;</p> <p><u>(iii) in sub-rule (4), for the word, “shall”, the word “may” shall be substituted:</u></p> <p><u>(iv) Substitution of sub-rule (5):-</u></p> <p>for sub-rule (5), the following sub-rule shall be substituted, namely: -</p> <p>“(5) If the proper officer fails to take any action, -</p> <ul style="list-style-type: none"> (a) within a period of three working days from the date of submission of the application in cases where a person successfully undergoes authentication of Aadhaar number or is notified under subsection (6D) of section 25; or (b) within the time period prescribed under the proviso to sub-rule (2), in cases where a person, other than a person notified under sub- section (6D) of section 25, fails to undergo authentication of Aadhaar number as specified in sub-rule (4A) of rule 8; or (c) within a period of twenty one days from the date of submission of the application in cases where a person does not opt for authentication of Aadhaar number; or (d) within a period of seven working days from the date of the receipt of the clarification, information or documents furnished by the applicant under sub-rule (2), <p>the application for grant of registration shall be deemed to have been approved.”.</p>
<p>Rule 25: (Physical verification of business premises in certain cases.)</p>	<p><u>Insertion in Rule 25:-</u></p> <p>with effect from 21st August, 2020, after the words “failure of Aadhaar authentication”, the words “or due to not opting for Aadhaar authentication” shall be inserted.</p>

Application for Registration and Verification of the application and approval:



Aadhaar Authentication not applicable:

W.e.f. 1-4-2020, Authentication of Aadhaar number shall not apply to a person who is not a citizen of India or to a class of persons other than (i) Individual, (ii) authorised signatory of all types (iii) Managing and Authorised partner; and (iv) Karta of a HUF.

Deemed Registration: Proper officer fails to take any action

- (a) ≤ 3 working days from the date of submission of application
- (b) ≤ 7 working days from the date of submission of Form GST REG-04
- (c) ≤ 21 days from date of submission of the application



Cancellation by the registered person him self [Sec. 29(1)]:

- As per Finance Act, 2020, Voluntary registration can be cancelled by proper officer on own or on application by registered person or his legal heir.

Procedure for Revocation of Cancellation of Registration as per Rule 23 of the CGST Rules, 2017:

Particulars	Relevant Form
<p>Application for revocation of cancellation of registration within 30 days from the date of service of the order of cancellation of Registration.</p> <p>As per Finance Act, 2020: Provided that such period may on sufficient cause being shown, and for reasons to be recoded in writing, be extended</p> <p>(a) by the Additional Commissioner or the Joint Commissioner, as the case may be, for a period not exceeding 30 days.</p> <p>(a) by the Commissioner, for a further period not exceeding 30 days, beyond the period specified in clause (a).</p>	<p>GST REG-21</p> <p>Note: Application for revocation cannot be filed if cancellation is on account of failure to furnish returns or failure to pay liability unless such return is filed / liabilities are discharged.</p>

Study Note - 9

TAX INVOICE, CREDIT AND DEBIT NOTES AND OTHER DOCUMENT UNDER GST



Manner of issuing e-invoice:

Sub-rule (4) has been inserted to rule 48 to provide that the e-invoice shall be prepared by notified class of registered persons, on the recommendations of the Council, by including such particulars contained in Form GST INV-01 after obtaining an IRN (Invoice Reference Number) by uploading information contained therein on the Common GST Electronic Portal* in prescribed manner and subject to prescribed conditions and restrictions. Every invoice, issued by said persons, in any manner other than the manner specified in the rule 48(4) shall not be treated as an invoice. The requirement of preparing the invoices in duplicate and triplicate in case of supply of services and goods respectively does not apply to such e-invoices.

w.e.f. 1-10-2020, e-invoice is mandated for registered persons whose aggregate turnover (based on PAN) in a financial year is more than Rs. 500 Crores w.e.f. 30-7-2020 (earlier, this limit was ₹100 crores).

Further amendment, w.e.f. 1-1-2021, Government has mandated e-invoicing for taxpayers having aggregate turnover exceeding ₹100 crore (in any preceding financial year from 2017-18 onwards) to be implemented (vide Notification No. 88/2020 CT dated 10-11-2020).

Rules 46 and 49 of the CGST Rules, 2017 have been amended to provide that Government may, by notification, on the recommendations of the Council, and subject to such conditions and restrictions as mentioned therein, specify that the tax invoice/bill of supply shall have Quick Response (QR) code.

[Notification No. 31/2019 CT dated 28.06.2019 read with Notification No. 68, 69 and 71/2019 CT all dated 13.12.2019]

The Commissioner may, on the recommendations of the GST Council, by notification, exempt a person or a class of registered persons from issuance of invoice under rule 48(4) for a specified period, subject to such conditions and restrictions as may be specified in the said notification proviso to rule 48(4) of CGST Rules, 2017 inserted w.e.f. 30.9.2020.

Relaxation has been given to taxpayers from the requirement to generate IRN in respect of invoices issued during the period October 2020. In these cases, Invoice Reference Number (IRN) for such invoices from Invoice Reference Portal (IRP) can be generate within 30 days from the date of invoice (vide CBIC Notification No. 73/2020 CT dated 1-10-2020).

SEZ are not required to issue e-invoice (amendment dated 30-7-2020).

Electronic portals for e-invoice: Ten portals namely

- 1) www.einvoice1.gst.gov.in
- 2) www.einvoice2.gst.gov.in
- 3) www.einvoice3.gst.gov.in



- 4) www.einvoice4.gst.gov.in
- 5) www.einvoice5.gst.gov.in
- 6) www.einvoice6.gst.gov.in
- 7) www.einvoice7.gst.gov.in
- 8) www.einvoice8.gst.gov.in
- 9) www.einvoice9.gst.gov.in
- 10) www.einvoice10.gst.gov.in

have been notified for preparation of e-invoice. These websites are managed by GSTIN.

How is 'e-invoicing' different from present system?

There is no much difference indeed. Registered persons continue to create their GST invoices on their own Accounting / Billing/ERP systems. These invoices will now be reported to 'Invoice Reference Portal (IRP)'. On reporting, IRP returns the e-invoice with a unique 'Invoice Reference Number (IRN)' after digitally signing the e-invoice and adding a Quick Response Code. Then, the invoice can be issued to the receiver (along with QR Code).

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

Invoice to be issued by specified registered person, whose aggregate turnover in a preceding financial year from 2017-18 exceed ₹500 crore (now ₹100 crore), to an unregistered person (B2C invoice), to have Dynamic Quick Response (QR) code, w.e.f. 1-12-2020 (vide NT No. 71/2020 CT dated 30-9-2020)

GST e-invoice/Invoice Reference Number (IRN) System – FAQ (Version 1.3 Dt. 11-11-2020):

1. What is 'e-invoicing'?

Ans. As per Rule 48(4) of CGST Rules, notified class of registered persons have to prepare invoice by uploading specified particulars of invoice (in FORM GST INV-01) on Invoice Registration Portal (IRP) and obtain an Invoice Reference Number (IRN). After following above 'e-invoicing' process, the invoice copy containing inter alia, the IRN (with QR Code) issued by the notified supplier to buyer is commonly referred to as 'e-invoice' in GST. Because of the standard e-invoice schema (INV-01), 'e-invoicing' facilitates exchange of the invoice document (structured invoice data) between a supplier and a buyer in an integrated electronic format. Please note that 'e-invoice' in 'e-invoicing' doesn't mean generation of invoice by a Government portal.

2. How is 'e-invoicing' different from present system?

Ans. There is no much difference indeed. Registered persons will continue to create their GST invoices on their own Accounting/Billing/ERP Systems. These invoices will now be reported to 'Invoice Registration Portal (IRP)'. On reporting, IRP returns the e-invoice with a unique 'Invoice Reference Number (IRN)' after digitally signing the e-invoice and adding a QR Code. Then, the invoice can be issued to the receiver (along with QR Code). A GST invoice will be valid only with a valid IRN.

For more detailed process, please go through 'e-invoice - Detailed Overview'



3. For which businesses, e-invoicing is mandatory?

Ans. For Registered persons whose aggregate turnover (based on PAN) in any preceding financial year from 2017-18 onwards, is more than prescribed limit (as per relevant notification), e-invoicing is mandatory.

4. What are the advantages of e-invoice for businesses?

Ans. e-invoice has many advantages for businesses such as Auto-reporting of invoices into GST return, auto-generation of e-way bill (where required). e-invoicing will also facilitate standardisation and inter-operability leading to reduction of disputes among transacting parties, improve payment cycles, reduction of processing costs and thereby greatly improving overall business efficiency.

5. What businesses need to do, to be e -invoice ready?

Ans. Businesses will continue to issue invoices as they are doing now. Necessary changes on account of e-invoicing requirement (i.e. to enable reporting of invoices to IRP and obtain IRN), will be made by ERP/Accounting and Billing Software providers in their respective software. They need to get the updated version having this facility.

6. Is an invoice/CDN/DBN (required to be reported to IRP by notified person), valid without IRN?

Ans. As per Rule 48(4), notified person has to prepare invoice by uploading specified particulars in FORM GST INV-01 on Invoice Registration Portal and after obtaining Invoice Reference Number (IRN). As per Rule 48(5), any invoice issued by a notified person in any manner other than the manner specified in Rule 48(4), the same shall not be treated as an invoice. So, the document issued by notified person becomes legally valid only with an IRN. However, in the initial period of operation, Government has given a relaxation that invoices raised by notified taxpayers during October, 2020 without following e-invoice procedure (i.e. uploading invoice details on e-invoice portal (IRP), obtaining IRN and issuing invoice with QR Code) will be deemed to be valid and no penalty will be there if the IRN for such invoices is obtained within 30 days of date of invoice. It was also specified that no such relaxation would be available for the invoices issued from 1st November 2020.

7. What documents are presently covered under e -invoicing?

Ans. i. Invoices ii. Credit Notes iii. Debit Notes, when issued by notified class of taxpayers (to registered persons (B2B) or for the purpose of Exports) are currently covered under e-invoice. Though different documents are covered, for ease of reference and understanding, the system is referred as 'e-invoicing'.

8. What supplies are presently covered under e -invoice?

Ans. Supplies to registered persons (B2B), Supplies to SEZs (with/without payment), Exports (with/without payment), Deemed Exports, by notified class of taxpayers are currently covered under e-invoicing.

9. B2C (Business to Consumer) supplies can also be reported by notified persons?

Ans. No. Reporting B2C invoices by notified persons is not applicable/allowed currently. However, they will be brought under e-invoice in the next phase.

10. Is e-invoicing applicable for NIL-rated or wholly-exempt supplies?



Ans. No. In those cases, a bill of supply is issued and not a tax invoice.

11. Whether the financial/commercial credit notes also need to be reported to IRP?

Ans. No, only the credit and debit notes issued under Section 34 of CGST/SGST Act have to be reported.

12. Whether e-invoicing is applicable for supplies by notified persons to Government Departments?

Ans. e-invoicing by notified persons is mandated for supply of goods or services or both to a registered person. Thus, where the Government Department doesn't have any registration under GST (i.e. not a 'registered person'), e-invoicing doesn't arise.

However, where the Govt. department is having a GSTIN (as entity supplying goods/services/ deducting TDS), the same has to be mentioned as recipient GSTIN in the e-invoice.

13. Whether e-invoicing is applicable for invoices between two different GSTINs under same PAN?

Ans. Yes. e-invoicing by notified persons is mandated for supply of goods or services or both to a registered person. As per Section 25(4) of CGST/SGST Act, "A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act."

14. For high sea sales and bonded warehouse sales, whether e -invoicing is applicable?

Ans. No. These activities/transactions are neither supply of goods nor a supply of services, as per Schedule III of CGST/SGST Act.

15. What is the applicability of e-invoice for import transactions?

Ans. e-invoicing is not applicable for import Bills of Entry.

16. Which entities/sectors are exempt from the e-invoicing mandate?

Ans. a. Special Economic Zone Units b. insurer or a banking company or a financial institution, including a non-banking financial company c. goods transport agency supplying services in relation to transportation of goods by road in a goods carriage d. Suppliers of passenger transportation service e. Suppliers of services by way of admission to exhibition of cinematograph films in multiplex screens

17. The exemption from e-invoicing is w.r.t the nature of supply/transaction or w.r.t the entity?

Ans. It is for the entity.

18. Do SEZ Developers need to issue e-invoices?

Ans. Yes, if they have the specified turnover and fulfilling other conditions of the notification. In terms of Notification (Central Tax) 61/2020 dt. 30-7-2020, only SEZ Units are exempted from issuing e-invoices.

19. Are Free Trade & Warehousing Zones (FTWZ) exempt from e -invoicing?

Ans. Yes. As per Foreign Trade Policy, Free Trade & Warehousing Zones (FTWZ) are only a special category of Special Economic Zones, with a focus on trading and warehousing.



20. Is e-invoicing applicable for supplies by notified persons to SEZs?

Ans. Yes, e-invoicing is applicable for supplies by notified persons to SEZs. In terms of Notification (Central Tax) 61/2020 dt. 30-7-2020, only SEZ Units are exempt from issuing e-invoices.

21. There is an SEZ unit and a regular DTA unit under same legal entity (i.e. having same PAN). The aggregate total turnover of the legal entity is more than Rs. 500 Crores (considering both the GSTINs). However, the turnover of DTA unit is below Rs. 100 crores for FY 19-20. In this scenario, as SEZ unit is exempt from e -invoicing, whether e-invoicing will be applicable to DTA Unit?

Ans. Yes, because the aggregate turnover of the legal entity in this case is > Rs. 500 Crores. The eligibility is based on aggregate annual turnover on the common PAN.

22. Is e-invoicing applicable to invoices issued by Input Service Distributor (ISD)?

Ans. No.

23. Whether e-invoicing is applicable for supplies involving Reverse Charge?

Ans. If the invoice issued by notified person is in respect of supplies made by him but attracting reverse charge under Section 9(3), e-invoicing is applicable. For example, a taxpayer (say, a Firm of Advocates having aggregate turnover in a FY is more than Rs. 500 Cr.) is supplying services to a company (who will be discharging tax liability as recipient under RCM), such invoices have to be reported by the notified person to IRP.

On the other hand, where supplies are received by notified person from (i) an unregistered person (attracting reverse charge under Section 9(4)) or (ii) through import of services, e-invoicing doesn't arise / not applicable.

Note: w.e.f. 1-1-2021, Government has mandated e-invoicing for taxpayers having aggregate turnover exceeding ₹100 crore (in any preceding financial year from 2017-18 onwards) to be implemented (vide Notification No. 88/2020 CT dated 10-11-2020).

24. How to know a particular supplier is supposed to issue e-invoice (i.e. invoice along with IRN/QR Code)?

Ans. On fulfilment of prescribed conditions, the obligation to issue e-invoice in terms of Rule 48(4) (i.e. reporting invoice details to IRP, obtaining IRN and issuing invoice with QR Code) lies with concerned taxpayer.

However, as a facilitation measure, all the taxpayers who had crossed the prescribed turnover in a financial year from 2017-18 onwards have been enabled to report invoices to IRP.

One can search the status of enablement of a GSTIN on e-invoice portal: <https://einvoice1.gst.gov.in/> > Search > e-invoice status of taxpayer

This listing of GSTINs is solely based on the turnover of GSTR-3B as reported to GST System. It may contain exempt entities or those for whom e-invoicing is not applicable for some other reason. So, it may be noted that enablement status on e-invoice portal doesn't mean that the taxpayer is supposed to do e-invoicing. If e-invoicing is not applicable to a taxpayer, they need not be concerned about the enablement status and may ignore it.



Further, the turnover slab of taxpayer can also be ascertained through “Search Taxpayer” / “Know Your Supplier” Sections on GST portal also.

In case any registered person, is required to prepare invoice in terms of Rule 48(4) but not enabled on the portal, he/she may request for enablement on portal: 'Registration - > e-Invoice Enablement'.

25. What is an Invoice Registration Portal (IRP)?

Ans. Invoice Registration Portal (IRP) is the website for uploading/reporting of invoices by the notified persons. Vide notification no. 69/2019-Central Tax dated 13.12.2019, ten portals were notified for the purpose of preparation of the invoice in terms of Rule 48(4).

The first Invoice Registration Portal (IRP) is active and can be accessed at: <https://einvoice1.gst.gov.in/>

Other portals will be made available in due course

26. Is e-invoicing voluntary, i.e. can entities with aggregate turnover below the prescribed limit also report invoices to IRP, if they wish to do so?

Ans. No, presently, only the notified class of persons will be allowed/enabled to report invoices to IRP.

27. Is there any time window within which I need to report an invoice to IRP, i.e. is there any validation to the effect that the 'document date' (in the payload to IRP) has to be within a specified time window, for reporting to IRP/generation of IRN? No such validation is kept on the portal. 29. Is the signature (DSC) of supplier mandatory while reporting e-invoice to IRP?

Ans. No

28. Can e-commerce operators generate e-invoices on behalf of the sellers on their platforms?

Ans. Yes, if such suppliers, selling through e-Commerce entity are otherwise notified persons and supposed to report invoices under Rule 48(4). For more details, please see this detailed document.

29. What do I need to generate an e -invoice?

Ans. A system/utility to report e-invoice details in JSON format to IRP and to receive signed e-invoice in JSON format from the Portal.

30. Whether any tool is provided to report invoices to IRP?

Ans. Yes. For entities not having their own ERP/Software solutions, they can use the free offline utility ('bulk generation tool') downloadable from the e-invoice portal. Through this, invoice data can be easily reported to IRP and obtain IRN/signed e-invoice.

31. What are various modes for generation of e -invoice?

Ans. Multiple modes are available so that taxpayer can use the best mode based on his/her need:

- a. API based (integration with Taxpayer's System directly)
- b. API based (integration with Taxpayer's System through GSP/ASP)
- c. Free Offline Utility ('Bulk Generation Tool', downloadable from IRP)

Web-based / mobile app-based modes will also be provided in future.

**32. Will it be possible for bulk uploading of invoices to IRP?**

Ans. Yes. It is possible. The offline utility ('bulk generation tool') serves this purpose. Further, the ERP or accounting systems used by large taxpayers can be designed in such a way that they can report invoices in bulk to IRP. However, reporting to IRP and generation of IRN will be one after another (which will not be visible for user). For the user, it will appear like bulk upload and bulk receipt.

33. As many businesses will be reporting invoices, will there be any delay in generation of IRN by IRP? Can the portal take that much load?

Ans. IRP is only a pass through validation portal. Certain key fields will be validated on IRP. So, IRN will be generated in sub-200 millisecond duration. The server capacity is robust enough to handle simultaneous uploads. Further, multiple IRPs will be made available to distribute the load of invoice registration. The IRPs are dedicated portals other than the regular GST common portal (used for filing registration applications, filing returns, making payments etc.)

34. Will IRP store/archive e-invoices?

Ans. No. IRP will only be a pass-through portal which performs prescribed validations on invoice data and generates IRN. It will not store or archive e-invoice data.

35. Will I need to enter invoice details on a government website and obtain IRN?

Ans.

- In e-invoice scenario, what is primarily envisaged is 'machine-to-machine' exchange of invoice data (mainly between taxpayer's system & IRP).
- If the business doesn't have ERP/Accounting/Billing Software or have very few invoices to report, they can download and use the free Offline Tool to enter data and create JSON file, for uploading on IRP.
- Web-based and mobile app-based interfaces will also be made available in future

36. In case of breakdown of internet connectivity in certain areas, will there be any relaxation in the requirement to obtain IRN?

Ans. A localised mechanism to provide relaxation in such contingent situations is prescribed as per proviso to Rule 48(4) of CGST Rules. It reads as: "...Commissioner may, on the recommendations of the Council, by notification, exempt a person or a class of registered persons from issuance of invoice under this sub-rule for a specified period, subj

37. Why is an e-invoice standard/schema required?

Ans.

- Presently, businesses are preparing/generating invoices in their respective ERPs/Accounting/Billing Software. All these software have their own format of storing the data of invoice. Thus, the e-invoice generated by one system is not understood by the other, thereby necessitating data entry efforts and consequent errors and reconciliation problems.

- 'Schema' acts as uniform standard for ERP/ Billing/Accounting software providers to build utility in their solution/package to prepare e-invoice in notified standard thereby ensuring e-invoice generated by any ERP/Accounting and Billing Software is correctly understood by another ERP/Accounting software. This is also required for ensuring uniformity in reporting to IRP.
- Schema ensures e-invoice is 'machine-readable' and 'inter-operable', i.e. the invoice/format can be readily 'picked up', 'read', 'understood' and further processed by different systems like Oracle, Tally, SAP etc.

38. What is the basis of e-invoice schema?

Ans. e-invoice Schema is based on PEPPOL/Universal Business Language (UBL) with certain customizations to cater to Indian business practices and legal requirements.

39. Is there different invoice schema for different sectors/businesses, e.g. Traders, Manufacturers, Service Providers, Professionals etc.?

Ans. No. e-invoice schema is a single standard applicable to all businesses in the country. Many optional fields are available in the schema to cater to the requirements of specific businesses and practices followed by industry and trade in India.

40. What is the file format in which invoice has to be reported to IRP?

Ans. Invoice details in prescribed schema (INV-01) have to be reported to IRP in JSON format. 'JSON' stands for JavaScript Object Notation. It can be thought of as a common language for systems/machines to communicate between each other and exchange data. As the ERP or Accounting software will generate it, taxpayer need not worry about it. This format is also used in GST system for reporting all data to GST System.

41. What are the various types of fields in e-invoice schema?

Ans.

- a. Data for fields marked as 'Mandatory' have to be provided compulsorily.
- b. A mandatory field not having any value can be reported as NIL.
- c. Fields marked as 'Optional' may or may not be filled up. Many of these are relevant for specific businesses (e.g. Batch No., Attributes etc.) and to cater to specific scenarios (e.g. export, e-way bill etc.).
- d. Some sections in the schema are marked as 'Optional'. But, if this section is selected, some of the fields may be mandatory. For example, the section 'e-way Bill Details' is marked as optional. But, if this section is chosen, the field, 'Mode of Transportation' is mandatory.

42. What is 'cardinality', as mentioned in schema?

Ans. In e-invoice schema, for each field, 'Cardinality' is marked as 0..1 / 1..1 / 1..n / 0..n. This is to denote



whether a field is 'mandatory' and whether it is 'repetitive'.

Notation	Meaning
Starts with 0	Optional field
Starts with 1	Mandatory field
Ends with 1	Data for the field can be entered only once
Ends with n	Data for the field can be entered multiple times

43. Can the supplier place their entity logo on e-invoice? Is this part of schema?

Ans. Elements of invoice which are internal to business, such as company logo etc. are not part of e-invoice schema. After reporting invoice details to IRP and receipt of IRN, at the time of issuing invoice to receiver (e.g. generating as PDF and printing as paper copy or forwarding via e-mail etc.), any further customisation, i.e. insertion of company logo, additional text etc., can be made by respective ERP/billing/accounting software providers.

44. What is the maximum number of line items which can be reported in an invoice?

Ans. The limit is kept at 1000 presently. It will be enhanced based on requirement in future.

45. In the e-invoice schema, the amount under 'other charges (item level)' is not part of taxable value. However, some charges to be shown in invoice are leviable to GST. How to mention them?

Ans. Such other charges (taxable), e.g. freight, insurance, packing & forwarding charges etc. may be added as one more line item in the invoice.

46. In e-invoice schema, there is no placeholder for mentioning TCS (Tax Collected at Source) collected by suppliers under Income Tax Act, 1961.

Ans. At present, there is no separate placeholder for this field in schema. Including it in schema will be examined in next round of revision.

However, as a work around, the field of "Other Charges (Invoice Level)" can be used to mention TCS where it doesn't form part of taxable value.

It may further be noted that INV-01 schema is only to report specified invoice particulars to IRP. Once IRN is obtained from the portal, the business may add any other elements not relevant to GST, while issuing invoice finally to buyer.

47. In the current schema, there is no provision to report details of supplies not covered under GST, e.g. a hotel wants to give single invoice for a B2B supply where the supply includes food and beverages (leviable to GST) and Alcoholic beverages (outside GST).

Ans. For items outside GST levy, separate invoice may be given by such businesses.

48. The field "Differential Percentage" of tax rate is not available in schema, which is applicable on "Leasing of vehicles purchased and leased prior to July 1, 2017".

Ans. This is not relevant/applicable after 30.06.2020



49. In case of Credit Note and Debit Note, is there any validation w.r.t referred invoice number?

Ans. No linkage with invoice is built, in view of the amended provisions of GST.

50. Some HSNs which are otherwise valid are not accepted by e -invoice portal.

Ans. HSN directory is being aligned with GST System, so that it is updated and uniform on all systems, viz. Customs (ICES), GST System, e-way bill system and e-invoice system.

51. Is Invoice number same as Invoice Reference Number (IRN)?

Ans. No. Invoice no. (e.g. ABC/1/2019-20) is assigned by supplier and is internal to business. Its format can differ from business to business and also governed by relevant GST rules.

IRN, on other hand, is a unique reference number (hash) generated and returned by IRP, on successful registration of e-invoice.

52. How a typical IRN looks like?

Ans. IRN is a unique 64-character hash, e.g.

35054cc24d97033afc24f49ec4444dbab81f542c555f9d30359dc75794e06bbe

53. Can IRP reject a submitted invoice? On reporting invoice details to IRP, what validations will performed on the portal?

Ans. Yes. IRP can reject an invoice.

IRP will check whether the invoice was already reported and existing in the GST System. (This validation is based on the combination of Supplier's GSTIN - Invoice Number Type Of Document - Fin. Year, which is also used for generation of IRN). In case the same invoice (document) has already been reported earlier, it will be rejected by IRP.

Certain other key validations will also be performed on portal. In case of failure, registration of invoice won't be successful, IRN won't be generated and invoice will be rejected along with relevant error codes (which give idea about reasons for rejection.)

54. On reporting invoice details, what will be returned by IRP? Will it return signed JSON or PDF or both?

Ans. IRP will return only the signed JSON. No PDF will be returned. On receipt of signed JSON, it is for the respective ERP or Accounting & Billing software system to generate PDF, if needed.

55. What is the indication for the supplier that IRP has registered the reported invoice?

Ans. Upon successful registration of invoice on IRP, it will return a signed e-invoice JSON to the supplier with IRN and QR Code.

56. Can I print an e-invoice?

Ans. Yes. Once the IRP returns the signed JSON, your ERP/Accounting/Billing System it into PDF and printed, if required.



Businesses who don't have their own ERP/Accounting Software, will be downloading and using the free offline utility ('bulk generation tool') to upload invoice data on einvoice portal and obtain signed invoice (in JSON). In this scenario also, there is a facility on e-invoice portal to generate 'human-readable' PDF copy of invoice (for save/print/e - mail etc.).

57. Do I need to print IRN on the invoice?

Ans. No. It's optional. IRN is anyway embedded in the QR Code which is one of the mandatory particulars on invoice.

58. How will the QR Code be received?

Ans. The QR code is part of signed JSON, returned by the IRP. It is a string (not image), which the ERP/accounting/billing software shall read and convert into QR Code image for placing on the invoice copy.

59. Do I need to print QR Code on the invoice? If so, what shall be its size and location on the invoice copy?

Ans. Yes. The QR code (containing, inter alia, the IRN) which comes as part of signed JSON from IRP, shall be extracted and printed on the invoice. This is one of the mandatory particulars of invoice under Rule 46 of CGST Rules.

However, printing of QR code on separate paper is not allowed.

While the printed QR code shall be clear enough to be readable by a QR Code reader, the size and its placing on invoice is upto the preference of the businesses.

60. Where e-invoicing is applicable for notified persons, when the invoice is generated/printed by the supplier (for issuance to buyer), what are the mandatory contents of such invoice issued/printed?

Ans. The particulars will be as per Rule 46 of CGST Rules, including QR code, with embedded Invoice Reference Number (IRN).

61. While returning IRN, the IRP is also adding its digital signature, "Acknowledgement No." and "Date". Whether these also need to be printed while issuing invoice?

Ans. No. There is no mandate to print these particulars on invoice copy.

Note that the "Acknowledgement No." and "Date" given by IRP are only for reference. Being a 15-digit number, the acknowledgement number will also come handy for printing e-invoice or for generating e-way bill (instead of keying in the 64-character long IRN).

62. If e-invoice is applicable and issued, am I supposed to issue copies of invoice in triplicate/duplicate?

Ans. Where e-invoicing is applicable, there is no need of issuing invoice copies in triplicate/duplicate. This is clearly specified in Rule 48(6).

63. Will it be possible for invoices that are registered on IRP to be downloaded and saved on handheld devices?

Ans. It depends on the ERP/Accounting/Billing Software, providing you the service. The signed JSON can be stored on handheld devices also. However, signed invoice JSON will not be available for download from IRP or GST System. Hence, it is advisable to properly store the signed e-invoice received from IRP.

64. What is the period of retention/storage/archival, in case of e -invoicing?

Ans. As per Rule 56(16) of CGST Rules, "Accounts maintained by the registered person together with all the invoices, bills of supply, credit and debit notes, and delivery challans relating to stocks, deliveries, inward supply and outward supply shall be preserved for the period as provided in section 36..."

The same applies to e-invoicing also.

65. Are there any penal provisions for not issuing invoice in accordance with GST Law/rules?

Ans. The penal provisions are provided in Section 122 of CGST/SGST Act read with CGST Rules.

66. How to verify an invoice is duly reported to IRP?

Ans. One can verify the authenticity or correctness of e-invoice by uploading the signed JSON file or Signed QR Code (string) on e-invoice portal: einvoice1.gst.gov.in > Search > 'Verify Signed Invoice'

Alternatively, with "Verify QR Code" mobile app which may be downloaded from einvoice1.gst.gov.in > Help > Tools > Verify QR Code App

67. What data is embedded in QR Code?

Ans. The QR code will consist of the following key particulars of e-invoice:

- a. GSTIN of Supplier
- b. GSTIN of Recipient
- c. Invoice number, as given by Supplier
- d. Date of generation of invoice
- e. Invoice value (taxable value and gross tax)
- f. Number of line items
- g. HSN Code of main item (line item having highest taxable value)
- h. Unique IRN (Invoice Reference Number/hash)
- i. IRN Generation Date

68. What is dynamic QR Code? Does it has any relevance for B2B e-invoicing?

Ans. Notification No. 14/2020-Central Tax dated 21st March, 2020 (as amended) mandates entities with aggregate turnover > Rs. 500 crores in any preceding financial year from 2017-18 onwards, to include a dynamic Quick Response Code (QR Code) on their B2C invoices. It is also specified that a Dynamic QR code made available to buyer through digital display (with payment cross-reference) shall be deemed to be having QR code.



The Dynamic QR Code has no relevance or applicability to 'e-invoicing', as envisaged under Rule 48(4). The said rule applies to B2B Supplies and exports by notified class of taxpayers.

69. Is it possible to have more than one QR code on an invoice?

Ans. Yes. Apart from the QR code relating to IRN, the supplier is free to place any other QR Code which is required as per business needs or otherwise mandated by any other statutory requirement.

In such cases, the QR Codes need to be marked clearly so that they can be distinguished easily.

70. On generation of IRN, will the IRP send or e-mail the e-invoice to the receiver?

Ans. No. IRP will not do this. Upon receiving signed JSON from the IRP, it is for the supplier to share the e-invoice (along with QR Code etc.) in agreed format to the receiver.

71. How will the supplier send the e-invoice to the receiver?

Ans. A suggested mechanism may be to exchange the PDF of the JSON received from IRP, (including QR code) as the best authenticated version of the e-invoice for business transactions.

However, a mechanism to enable system-to-system exchange of e-invoices through ecosystem partners will be made available in due course.

72. After obtaining signed JSON (along with IRN/QR Code) from e-invoice portal and while issuing invoice copy to the recipient, whether supplier's signature / digital signature is required on invoice?

Ans. The requirement is governed by the provisions of Rule 46 of CGST Rules, 2017.

73. Taxpayers (for whom e-invoicing is compulsory) will be making supplies to small businesses (for whom e -invoicing is not mandatory). How these small businesses will get the invoice from those big suppliers?

Ans. In the same way as it is being done now. For example, the large taxpayers can convert the signed e-invoice JSON into PDF and share the copy by e-mail or send printed copy by post, courier etc.

However, a mechanism to enable system-to-system exchange of e-invoices will be made available in due course.

74. Where e-invoicing is applicable, is carrying e -invoice print during transportation of goods mandatory?

Ans. No. As per Rule 138A(2) of CGST Rules, where e-invoicing is applicable, "the Quick Reference (QR) code having an embedded Invoice Reference Number (IRN) in it, may be produced electronically, for verification by the proper officer, in lieu of the physical copy of such tax invoice."

75. Can I amend details of a reported invoice for which IRN has already been generated?

Ans. Amendments are not possible on IRP. Any changes in the invoice details reported to IRP can be carried out on GST portal (while filing GSTR-1). In case GSTR-1 has already been filed, then using the mechanism of amendment as provided under GST.

However, these changes will be flagged to proper officer for information.



76. Can an IRN/invoice reported to IRP be cancelled?

Ans. Yes. The cancellation request can be triggered through 'Cancel API' within 24 hours from the time of reporting invoice to IRP.

However, if the connected e-way bill is active or verified by officer during transit, cancellation of IRN will not be permitted.

In case of cancellation of IRN, GSTR-1 also will be updated with such 'cancelled' status.

77. Can an invoice number of a cancelled IRN be used again?

Ans. No. Once an IRN is cancelled, the concerned invoice number cannot be used again to generate another e-invoice/IRN (even within the permitted cancellation window). If it is used again, then the same will be rejected when it is uploaded on IRP.

This is because IRN is a unique string based on Supplier's GSTIN, Document Number, Type of Document & Financial Year.

78. Can I partially cancel a reported invoice?

Ans. No. It has to be cancelled in toto. No partial cancellation of reported e-invoice allowed. Cancellation of invoices is governed by Accounting Standards and other applicable rules/regulations.

79. With the introduction of e-invoicing, is e-way bill still compulsory?

Ans. Yes. While transporting goods, wherever the e-way bill is needed, the requirement continues to be mandatory.

80. Will the e-invoice details be pushed to GST System? Will they populate the return?

Ans. Yes. On successful reporting of invoice details to IRP, the invoice data (payload) including IRN, will be saved in GST System. The GST system will auto-populate them into GSTR-1 of the supplier and GSTR-2A of respective receivers. With source marked as 'e-invoice', IRN and IRN date will also be shown in GSTR-1 and GSTR-2A.

81. Whether the e-way bill get auto-generated?

Ans. In case both Part-A and Part-B of e-way bill are provided while reporting invoice details to IRP, they will be used to generate e-way bill.

In case Part-B details are not provided at the time of reporting invoice to IRP, the same will have to be provided by the user through 'e-way bill' tab in IRP log in or e-Way Bill Portal, so as to generate e-way bill.

HSN Code related changes:

The Central Board of Indirect Taxes & Customs vide Notification No.78/2020-Central Tax dated 15th October, 2020 and Notification No.06/2020-Integrated Tax dated 15th October, 2020 has amended Notification No.12/2017-Central Tax dated 28th July, 2017 and Notification No.5/2017-Integrated Tax



dated 28th July, 2017 relating to HSN Code.

The revised requirement for mentioning HSN code, **with effect from 1st day of April, 2021**, shall be as follows: -

Serial Number	Aggregate Turnover in the preceding Financial Year	Number of Digits of Harmonised System of Nomenclature Code (HSN Code) in the tax invoice:
1.	Up to rupees five crores	4
2.	more than rupees five crores	6

Provided that a registered person **having aggregate turnover up to five crores rupees** in the previous financial year **may not mention the number of digits of HSN Code**, as specified in the corresponding entry in column (3) of the said Table in a tax invoice issued by him under the said rules **in respect of supplies made to unregistered persons**.

Amendments in Central Goods & Services Tax Rules, 2017:

The Central Government vide Notification No.79/2020-Central Tax dated 15th October, 2020 has made the following amendments in the **Central Goods & Services Tax Rules, 2017 :-**

Rule	Amendments
Rule 46: (Tax Invoice)	<p>Substitution of First Proviso</p> <p>"Provided that the Board may, on the recommendations of the Council, by notification, specify-</p> <ol style="list-style-type: none"> i. the number of digits of Harmonised System of Nomenclature code for goods or services that a class of registered persons shall be required to mention; or ii. a class of supply of goods or services for which specified number of digits of Harmonised System of Nomenclature code shall be required to be mentioned by all registered taxpayers; and iii. the class of registered persons that would not be required to mention the Harmonised System of Nomenclature code for goods or services".

As per Finance Act, 2020, under Section 31(2) of CGST Act, 2017

Provided that the Government may, on the recommendations of the Council, by notification,—

- (a) specify the categories of services or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed;
- (b) subject to the condition mentioned therein, specify the categories of services in respect of which—
 - (i) any other document issued in relation to the supply shall be deemed to be a tax invoice; or
 - (ii) tax invoice may not be issued.

The proviso to Section 31(2) of the CGST Act has been amended to widen the powers to the Central Government to notify the categories of services in respect of which a tax invoice shall be issued within such time and in such manner as may be prescribed.



Thus, the Central Government can now even prescribe a different time limit for issuance of tax invoices for such categories of services as may be notified.

Goods sent/taken out of India for exhibition or on consignment basis for export promotion (CBIC Circular No. 108/27/2019-GST dated 18th July 2019):

- Exporter shall maintain a record of such goods.
- Supply treated as sale on approval basis.
- a delivery challan to be issued.
- it is not a zero-rated supply. Hence, no need to execute Bond/LUT.
- Not a supply if the goods are returned ≤ 6 months from the date of removal.
- Goods are sold ≤ 6 months from the date of removal, then it is supply. Shall issue tax invoice

Refund: It is further clarified that refund claim cannot be preferred under rule 96 of CGST Rules as supply is taking place at a time after the goods have already been sent / taken out of India earlier.

However, supplier can claim refund under Sec 54(3) of the CGST Act, 2017

Tax Invoice – Goods being sent or taken out of India on approval for sale or return time limit which falls from 20-3-2020 to 30-10-2020 for issue of Tax Invoice extended upto 31-10-2020 (NT No. 66/2020 CT. dated 21-8-2020).

Credit and Debit Notes

Credit note/Debit Note delinked from Invoice, while reporting them in Form GSTR-1/GSTR-6 of filing refund – One credit/debit note permitted for multiple invoices.

Study Note - 10

ACCOUNTS AND RECORDS UNDER GST



Compulsorily Audit [Section 35(5) of the CGST Act, 2017 read with rule 80(3) of the CGST Rules, 2017]:

Notf no. 16/2020-CT, dated 23.03.2020: Provided that every registered person whose aggregate turnover during the financial year 2018-2019 exceeds five crore rupees shall get his accounts audited as specified under sub-section (5) of section 35 and he shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in FORM GSTR-9C for the financial year 2018-2019, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.

Rule 80(3) of CGST Rules, 2017 (vide [Notification No.79/2020-Central Tax dated 15th October, 2020](#)):

“Provided that for the financial year 2018-2019 and 2019-2020, every registered person whose aggregate turnover exceeds five crore rupees shall get his accounts audited as specified under sub-section (5) of section 35 and he shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in **FORM GSTR-9C** for the said financial year, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.”

Study Note - 11

PAYMENT OF TAX



Form PMT-09: Importance and Use in the Electronic Cash Ledger:

w.e.f. 21 April 2020, The CBIC has recently introduced Form PMT-09 (i.e. a challan) for shifting wrongly paid amount from one head to another head. This enables a registered taxpayer to transfer any amount of tax, interest, penalty, etc. that is available in the electronic cash ledger, to the appropriate tax or cess head under IGST, CGST and SGST in the electronic cash ledger.

Hence, if a taxpayer has wrongly paid CGST instead of SGST, he can now rectify the same using Form PMT-09 by reallocating the amount from the CGST head to the SGST head.

Key points to note about Form GST PMT-09:

1. If the wrong tax has already been utilized for making any payment, then this challan is not useful. This challan only allows shifting of the amounts that are available in the electronic cash ledger.

For instance, in case an amount has been misreported in the GSTR-3B, there is no way to rectify the same as the GSTR-3B is non-editable. In such case, only an adjustment in the next month's return can be made.
2. The amount once utilized and removed from cash ledger cannot be reallocated.
3. Major head refers to- Integrated tax, Central tax, State/UT tax, and Cess.
4. Minor head refers to- Tax, Interest, Penalty, Fee and Others.

Illustration:

Mr. A. had to pay ₹100 as Central Tax under the major head and ₹50 as interest under the minor head and he has wrongly paid ₹50 under Central tax head and Rs.100 as interest under the minor head.

In this case, he can file PMT-09 to shift the amount from the major head (i.e. Central tax) to the minor head (i.e. interest). This shifting of the amount can be done from minor head to major head as well.

An amount can also be transferred from one minor head to another minor head under the same major head.

For example, in the case of interchange of interest and penalty amount under Central Tax can also be rectified by filing PMT-09.

Rule 86A Conditions of use of amount available in electronic credit ledger

- (1) The Commissioner or an officer authorised by him in this behalf, not below the rank of an Assistant Commissioner, having reasons to believe that credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible in as much as—



Payment of Tax

- (a) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36—
 - (i) issued by a registered person who has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or
 - (ii) without receipt of goods or services or both; or
- (b) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36 in respect of any supply, the tax charged in respect of which has not been paid to the Government; or
- (c) the registered person availing the credit of input tax has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or
- (d) the registered person availing any credit of input tax is not in possession of a tax invoice or debit note or any other document prescribed under rule 36,

may, for reasons to be recorded in writing, not allow debit of an amount equivalent to such credit in electronic credit ledger for discharge of any liability under section 49 or for claim of any refund of any unutilised amount.

- (2) The Commissioner, or the officer authorised by him under sub-rule (1) may, upon being satisfied that conditions for disallowing debit of electronic credit ledger as above, no longer exist, allow such debit.
- (3) Such restriction shall cease to have effect after the expiry of a period of one year from the date of imposing such restriction.

(vide Notification No. 75/2019-CT, dated 26.12.2019)

Amendments in rule 87 of the CGST Rules prescribing provisions relating to electronic cash ledger

- (i) The second proviso to sub-rule (2) which gave an option to a person supplying OIDAR services from a place outside India to a non-taxable online recipient, to generate challan through the Board's payment system namely, Electronic Accounting System in Excise and Service Tax has been omitted.
- (ii) Sub-rule (9) provided that any amount deducted under section 51 or collected under section 52 and claimed in Form GSTR-02 by the registered taxable person from whom the said amount was deducted or, as the case may be, collected shall be credited to his electronic cash ledger in accordance with the provisions of rule 87.

The words, letters and figures "in Form GSTR-02" and words and figures "in accordance with the provisions of rule 87" have been omitted from sub-rule (9).

[Notification No. 31/2019 CT dated 28.06.2019]



Refund of tax that has been paid wrongly or in excess by utilising ITC [Rule 86]

A new sub rule (4A) has been inserted in rule 86 of the CGST Rules to provide that where a registered person has claimed refund of any tax that has been paid wrongly or in excess through electronic credit ledger, the said refund, if found admissible, will be credited to the electronic credit ledger.

[Notification No. 16/2020 CT dated 23.03.2020]

Interest rates Notification No. 13/2017 – Central Tax dt. 28th June 2017:

Section	Scenario	Interest rate w.e.f. 1-7-2017
<p>50(1) of the CGST Act, 2017</p> <p>w.e.f. 1-8-2019: "Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger."</p> <p>Recovery of interest on net cash tax liability w.e.f. 1-7-2017 (vide M.F.(D.R.) Instruction F.No. CBEC-20/01/08/2019 GST dated 18-9-2020):</p> <p>Interest to be charged on the net cash tax liability w.e.f. 1-7-2017 amendment of sec 50 of CGST Act retrospectively.</p>	<p>Delayed payment of tax</p>	<p>18% per annum</p>

Relief from interest for late payment of GST and late fee for delay in furnishing of FORM GSTR-3B / FORM GSTR-1 was provided for the tax periods of February, March and April, 2020 (CBIC Circular No.141/11/2020-GST dated the 24th June, 2020):

Manner of calculation of interest for taxpayers having aggregate turnover above ₹5 Cr.

Vide notification No.31/2020- Central Tax, dated 03.04.2020, a conditional lower rate of interest was provided for various class of registered persons for the tax period of February, March and April, 2020. The same was clarified through Circular No. 136/06/2020-GST, dated 03.04.2020 (para 3, sl. No. 3, 4 and 5). It was clarified that in case the return for the said months are not furnished on or before the date mentioned in the notificationNo.31/2020- Central Tax, dated 03.04.2020, interest at 18% per annum shall be charged from the due date of return, till the date on which the return is filed.

The Government, vide notification no 51/2020- Central Tax, dated 24.06.2020 has removed the said condition. Accordingly, a lower rate of interest of NIL for first 15 days after the due date of filing return in FORM GSTR-3B and @ 9% thereafter **till 24.06.2020** is notified. After the specified date, normal rate of interest i.e. 18% per annum shall be charged for any further period of delay in furnishing of the returns.

The calculation of interest in respect of this class of registered persons for delayed filing of return for the month of March, 2020 (due date of filing being 20.04.2020) is as illustrated in the Table below:

S. No.	Date of filing GSTR-3B	No. of days of delay	Interest
1	02.05.2020	12	Zero interest
2	20.05.2020	30	Zero interest for 15 days, thereafter interest rate @9% p.a. for 15 days
3	20.06.2020	61	Zero interest for 15 days, thereafter interest rate @9% p.a. for 46 days
4	24.06.2020	65	Zero interest for 15 days, thereafter interest rate @9% p.a. for 50 days
5	30.06.2020	71	Zero interest for 15 days, thereafter interest rate @9% p.a. for 50 days and interest rate @18% p.a. for 6 days

Manner of calculation of interest for taxpayers having aggregate turnover below ₹ 5 Cr.

For the taxpayers having aggregate turnover below ₹5 Crore, notification No.31/2020- Central Tax, dated 03.04.2020 provided a conditional NIL rate of interest for the tax period of February, March and April, 2020. The Government, vide notification no 52/2020- Central Tax, dated 24.06.2020 provided the NIL rate of interest till specified dates in the said notification and 9% per annum thereafter till 30th September, 2020. **Similar relaxation of reduced rate of interest has been provided for the tax period of May, June and July 2020 also for the said class of registered persons having aggregate turnover below ₹5 Crore in the preceding financial year.** The notification, thus, provides NIL rate of interest till specified dates and after the specified dates lower rate of 9% would apply till 30th September 2020. After 30th September, 2020, normal rate of interest i.e. 18% per annum shall be charged for any further period of delay in furnishing of the returns.

The calculation of interest in respect of this class of registered persons for delayed filing of return for the month of March, 2020 (for registered persons for whom the due date of filing was 22.04.2020) and June, 2020 (for registered persons for whom the due date of filing is 22.07.2020) is as illustrated in the Table below:

S.No.	Tax period	Applicable rate of interest	Date of filing GSTR-3B	No. of days of delay	Interest
1	March 2020	Nil till the 3rd day of July, 2020, and 9 per cent thereafter till the 30th day of September, 2020	22.06.2020	61	Zero interest
2			22.09.2020	153	Zero interest for 72 days, thereafter interest rate @9% p.a. for 81 days
3			22.10.2020	183	Zero interest for 72 days, thereafter interest rate @9% p.a. for 89 days and interest rate @18% p.a. for 22 days
4	June, 2020	Nil till the 23rd day of September, 2020, and 9 per cent thereafter till the 30th day of September, 2020	28.08.2020	37	Zero interest
5			28.09.2020	68	Zero interest for 63 days, thereafter interest rate @9% p.a. for 5 days
6			28.10.2020	98	Zero interest for 63 days, thereafter interest rate @9% p.a. for 7 days and interest rate @18% p.a. for 28 days

Manner of calculation of late fee:

Vide notification No. 32/2020- Central Tax, dated 03.04.2020, a conditional waiver of late fee was provided for the tax period of February, March and April, 2020, if the return in FORM GSTR-3B was filed by the date specified in the said notification. The same was clarified through Circular No. 136/06/2020-GST, dated 03.04.2020.

The Government, vide notification No. 52/2020- Central Tax, dated 24.06.2020 has provided the revised dates for conditional waiver of late fee for the months of February, March and April, 2020 and extended the same for the months of May, June and July, 2020 for the small taxpayers.

It is clarified that the waiver of late fee is conditional to filing the return of the said tax period by the dates specified in the said notification. In case the returns in FORM GSTR3B for the said months are not furnished on or before the dates specified in the said notification, then late fee shall be payable from the due date of return, till the date on which the return is filed.

Interest rates for tax period from February, 2020 to July 2020 reduced (Notification No. 51/2020 – Central Tax dated 24-6-2020):

“Provided that the rate of interest per annum shall be as specified in column (3) of the Table given below for the period mentioned therein, for the class of registered persons mentioned in the corresponding entry in column (2) of the said Table, who are required to furnish the returns in FORM GSTR-3B, but fail to furnish the said return along with payment of tax for the months mentioned in the corresponding entry

in column (4) of the said Table by the due date, namely:--

S.No.	Class of registered persons	Rate of interest	Tax period
1	Taxpayers having an aggregate turnover of more than rupees 5 crores in the preceding financial year	Nil for first 15 days from the due date, and 9% thereafter till 24th day of June, 2020	February, 2020, March 2020, April, 2020
2	Taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year, whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana or Andhra Pradesh or the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands and Lakshadweep	Nil till the 30th day of June, 2020, and 9% thereafter till the 30th day of September, 2020	February, 2020
		Nil till the 3rd day of July, 2020, and 9% thereafter till the 30th day of September, 2020	March, 2020
		Nil till the 6th day of July, 2020, and 9% thereafter till the 30th day of September, 2020	April, 2020
		Nil till the 12th day of September, 2020, and 9% thereafter till the 30th day of September, 2020	May, 2020
		Nil till the 23rd day of September, 2020, and 9% thereafter till the 30th day of September, 2020	June, 2020
		Nil till the 27th day of September, 2020, and 9% thereafter till the 30th day of September, 2020	July, 2020
3	Taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year, whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha or the Union territories of Jammu and Kashmir, Ladakh, Chandigarh and Delhi	Nil till the 30th day of June, 2020, and 9 per cent thereafter till the 30th day of September, 2020	February, 2020
		Nil till the 5th day of July, 2020, and 9 per cent thereafter till the 30th day of September, 2020	March, 2020
		Nil till the 9th day of July, 2020, and 9 per cent thereafter till the 30th day of September, 2020	April, 2020
		Nil till the 15th day of September, 2020, and 9 per cent thereafter till the 30th day of September, 2020	May, 2020
		Nil till the 25th day of September, 2020, and 9 per cent thereafter till the 30th day of September, 2020	June, 2020
		Nil till the 29th day of September, 2020, and 9 per cent thereafter till the 30th day of September, 2020	July, 2020

Study Note - 12

TDS & TCS UNDER GST



As per Finance Act, 2020, Deductor of TDS need not issue certificate of TDS (Sec. 51):

Deductor of GST TDS is not required to issue any TDS certificate. It means the deductee can take credit of tax deducted on the basis of details of tax deducted and uploaded by the deductor under section 39(3) of CGST Act, 2017.

The details are available in the GSTR-7 return filed by the deductor will be auto populated in GSTR-2A of deductee. Hence, any further certificate is not required.

Study Note - 13

RETURNS UNDER GST



Form and manner of furnishing details of outward supplies Form GSTR-1 (Rule 59 of CGST Rules, 2017) -

- (1) Every registered person, other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), required to furnish the details of outward supplies of goods or services or both under section 37, shall furnish such details in FORM GSTR-1 for the month or the quarter, as the case may be, electronically through the common portal, either directly or through a Facilitation Centre as may be notified by the Commissioner.
- (2) The registered persons required to furnish return for every quarter under proviso to subsection (1) of section 39 may furnish the details of such outward supplies of goods or services or both to a registered person, as he may consider necessary, for the first and second months of a quarter, up to a cumulative value of fifty lakh rupees in each of the months,- using invoice furnishing facility (hereafter in this notification referred to as the "IFF") electronically on the common portal, duly authenticated in the manner prescribed under rule 26, from the 1st day of the month succeeding such month till the 13th day of the said month.
- (3) The details of outward supplies furnished using the IFF, for the first and second months of a quarter, shall not be furnished in FORM GSTR-1 for the said quarter.
- (4) The details of outward supplies of goods or services or both furnished in FORM GSTR-1 shall include the—
 - (a) invoice wise details of all –
 - (i) inter-State and intra-State supplies made to the registered persons; and
 - (ii) inter-State supplies with invoice value more than two and a half lakh rupees made to the unregistered persons;
 - (b) consolidated details of all –
 - (i) intra-State supplies made to unregistered persons for each rate of tax; and
 - (ii) State wise inter-State supplies with invoice value upto two and a half lakh rupees made to unregistered persons for each rate of tax;
 - (c) debit and credit notes, if any, issued during the month for invoices issued previously.
- (5) The details of outward supplies of goods or services or both furnished using the IFF shall include the—
 - (a) invoice wise details of inter-State and intra-State supplies made to the registered persons;
 - (b) debit and credit notes, if any, issued during the month for such invoices issued previously."

(vide Notification No. 82 /2020 – Central Tax dated 10th November, 2020)



Form GSTR-3B to be treated as a return furnished under section 39 of the CGST Act [Rule 61(5) of the CGST Rules] vide [Notification No. 49/2019 CT dated 09.10.2019]

Annual Return is optional [Notification No. 47/2019 CT dated 09.10.2019]:

Filing of annual return (GSTR- 9) under section 44(1) of CGST Act, read with rule 80(1) of CGST Rules, in respect of financial years 2017-18 and 2018-19, has been made voluntary for the registered persons whose turnover is less than Rs. 2 crore and who have not furnished the said annual return before the due date. The annual return shall be deemed to be furnished on the due date if it has not been furnished before the due date.

Annual Return related relaxation for MSME for 2019-20

The Central Government vide Notification No.77/2020-Central Tax dated 15th October, 2020 has made the filing of Annual return optional under section 44 (1) of CGST Act for F.Y. 2019-20 also for those registered persons whose aggregate turnover is less than ₹ 2 crores.

[Notification No. 77/2020 -Central Tax dated 15th October,2020]

Annual Return of the succeeding financial year

As per Section 44 of the CGST Act, 2017, every registered taxable person is required to file annual return by 31st December following end of financial year. Thus, for the financial year 2019-20, the annual return is required to be filed by 31st December 2020.

w.e.f 1-8-2019:

“Provided that the Commissioner may, on the recommendations of the Council and for reasons to be recorded in writing, by notification, extend the time limit for furnishing the annual return for such class of registered persons as may be specified therein:

Provided further that any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.”

Due Date for filing of Annual Return & Reconciliation Statement for the FY 2018-19 extended upto 31st December, 2020:

CBIC vide Notification No. 80/2020-Central Tax dated 28th October, 2020 has further extended the time limit for furnishing of the Annual Return in Form GSTR-9 and Reconciliation Statement in Form GSTR- 9C specified under section 44 of the CGST Act read with Rule 80 of the CGST Rules, electronically through the common portal, for the financial year 2018-2019 till the 31st December, 2020 [Notification No.80/2020-Central Tax dated 28th October,2020].

Due Date for filing of Form GSTR-1 & Form GSTR-3B

The Central Government vide Notification No.74/2020, Notification No.75/2020 and Notification No.76/2020-Central Tax all dated 15th October, 2020 has notified the due dates for filing of Form GSTR-1 & Form GSTR-3B for the months of October, 2020 to March, 2021, as under:-

Due dates of filing of Form GSTR-1

Sl. No.	Form GSTR-1 for the Quarter/ Month	Due Date
1.	October, 2020 to December, 2020	13th January, 2021
2.	January, 2021 to March, 2021	13th April, 2021
3.	October, 2020	11th day of November, 2020
4.	November, 2020	11th day of December, 2020
5.	December, 2020	11th day of January, 2021
6.	January, 2021	11th day of February, 2021
7.	February, 2021	11th day of March, 2021
8.	March, 2021	11th day of April, 2021

The time limit for furnishing the details or return, as the case may be, under sub-section (2) of section 38 of the said Act, for the months of October, 2020 to March, 2021 shall be subsequently notified in the Official Gazette.

Due dates of filing of Form GSTR-3B

FORM GSTR- 3B For the Months of:-	Aggregate Turnover in the preceding F.Y. > ₹ 5 Crores	Aggregate Turnover in the preceding F.Y. < = ₹ 5 Crores	
		A*	B*
October, 2020	20th day of November, 2020	22nd day of November, 2020	24th day of November, 2020
November, 2020	20th day of December, 2020	22nd day of December, 2020	24th day of December, 2020
December, 2020	20th day of January, 2021	22nd day of January, 2021	24th day of January, 2021
January, 2021	20th day of February, 2021	22nd day of February, 2021	24th day of February, 2021
February, 2021	20th day of March, 2021	22nd day of March, 2021	24th day of March, 2021
March, 2021	20th day of April, 2021	22nd day of April, 2021	24th day of April, 2021

***A** - Taxpayers whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep.

***B**- Taxpayers whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram,



Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi.

[Notification No.74/2020, 75/2020 & 76/2020 -Central Tax dated 15th October,2020]

By virtue of Notification No. 83/2020 CT dated 10-11-2020, w.e.f. 1-1-2021 extends the time limit for furnishing the details of outward supplies in Form GSTR-1 of the CGST Rules, 2017, for each tax periods, till the 11th day of the month succeeding such tax period:

Provided the time limit for furnishing the details of outward supplies in Form GSTR-1 of the said rules for the class of registered persons required to furnish return for every quarter under sec 39(1) of the CGST Act, 2017, shall be extended till the 13th day of the month succeeding such tax period. This notification superseded NT 74/2020 CT and 75/2020 CT.

Manner of furnishing of return or details of outward supplies by short messaging service (SMS) facility:

As per Rule 67A of the CGST Rules, 2017, “Notwithstanding anything contained in this Chapter, for a registered person who is required to furnish a Nil return under section 39 in **FORM GSTR-3B** or a Nil details of outward supplies under section 37 in **FORM GSTR-1** or a Nil statement in **FORM GST CMP-08** for a tax period, any reference to electronic furnishing shall include furnishing of the said return or the details of outward supplies or statement through a short messaging service using the registered mobile number and the said return or the details of outward supplies or statement shall be verified by a registered mobile number based One Time Password facility.

Explanation - For the purpose of this rule, a Nil return or Nil details of outward supplies or Nil statement shall mean a return under section 39 or details of outward supplies under section 37 or statement under rule 62, for a tax period that has nil or no entry in all the Tables in **FORM GSTR-3B** or **FORM GSTR-1** or **FORM GST CMP-08**, as the case may be” (vide Notification No.79/2020-Central Tax dated 15th October, 2020).

Salient features of Quarterly Return filing & Monthly Payment of Taxes (QRMP) Scheme:

- 1. Who can opt for the scheme:** Following registered person (hereinafter RP) can file quarterly returns and pay tax on monthly basis w.e.f. 01.01.2021 :
 - An RP who is required to file Form GSTR 3B with Aggregate Annual Turn Over (AATO) of up to ₹5 Cr. in the previous financial year is eligible. If AATO crosses ₹5 Cr. during a qtr., RP will become in-eligible for the Scheme from next quarter.
 - Any person obtaining a new registration or opting out of Composition Scheme can also opt for this Scheme.
 - The option to avail this Scheme can be availed GSTIN wise. Therefore, few GSTINs for that PAN can opt for the Scheme and remaining GSTINs can remain out of the Scheme.
- 2. Changes on the GST Portal:** For qtr. Jan., 2021 to March, 2021, all RPs whose AATO for the FY 2019-20 is up to ₹5 Cr. and have furnished the return in Form GSTR-3B for the month of October, 2020 by 30th 2020, will be migrated by default in the GST system as follows:

Sl. No.	Class of RPs with AATO of	Default Return Option
1	Up to ₹ 1.5 Cr., who have furnished Form GSTR-1 on quarterly basis in current FY	Qtrly
2	Up to ₹ 1.5 Cr., who have furnished Form GSTR-1 on monthly basis in current FY	Monthly
3	More than ₹ 1.5 Cr. and up to ₹ 5 Cr. in preceding FY	Qtrly

3. When can a person opt for the scheme:

- Facility can be availed throughout the year, in any quarter.
- Option for QRMP Scheme, once exercised, will continue till RP revises the option or his AATO exceeds ₹5 Cr.
- RPs migrated by default can choose to remain out of the scheme by exercising their option from 5th, 2020 till 31st Jan., 2021.

4. The RPs opting for the scheme can avail the facility of Invoice Furnishing Facility (IFF), so that the outward supplies to registered person is reflected in their Form GSTR 2A & 2B.

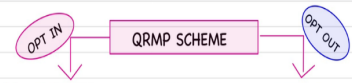
5. Payment of tax under the scheme:

- RPs need to pay tax due in each of first two months (by 25th of next month) in the Qtr, by selecting "Monthly payment for quarterly taxpayer" as reason for generating Challan.
- RPs can either use Fixed Sum Method (pre-filled challan) or Self-Assessment Method (actual tax due), for monthly payment of tax for first two months, after adjusting ITC.
- No deposit is required for the month, if there is nil tax liability.
- Tax deposited for first 02 months can be used for adjusting liability for the qtr. in Form GSTR-3B and can't be used for any other purpose till the filing of return for the qtr.

(source: <https://www.gst.gov.in>, dated 20-11-2020)

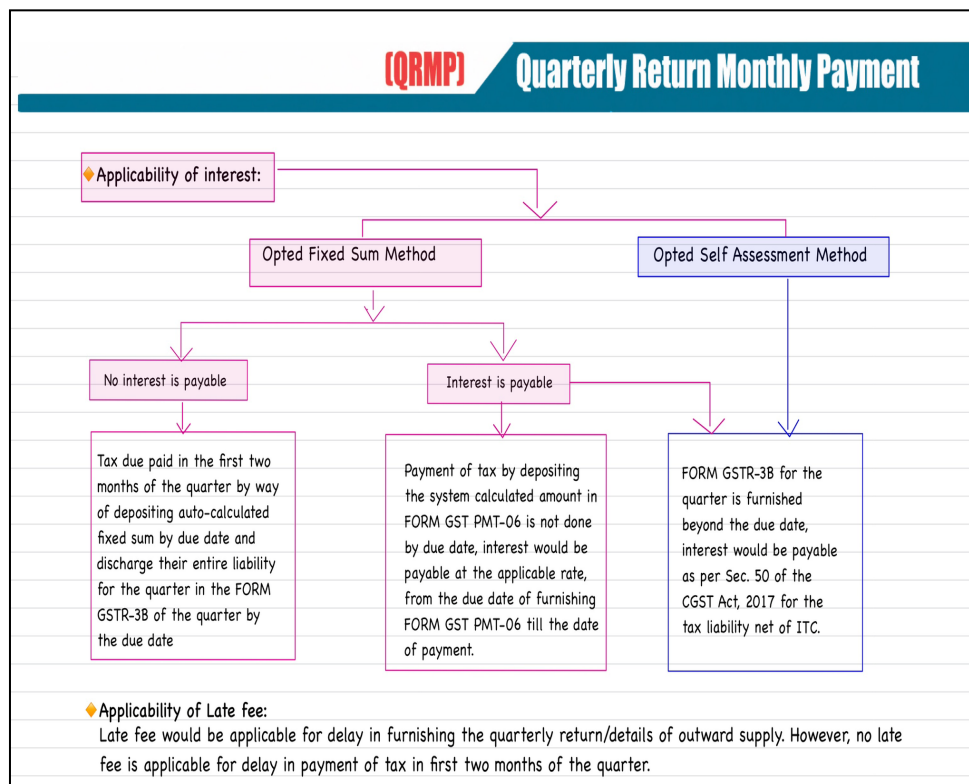
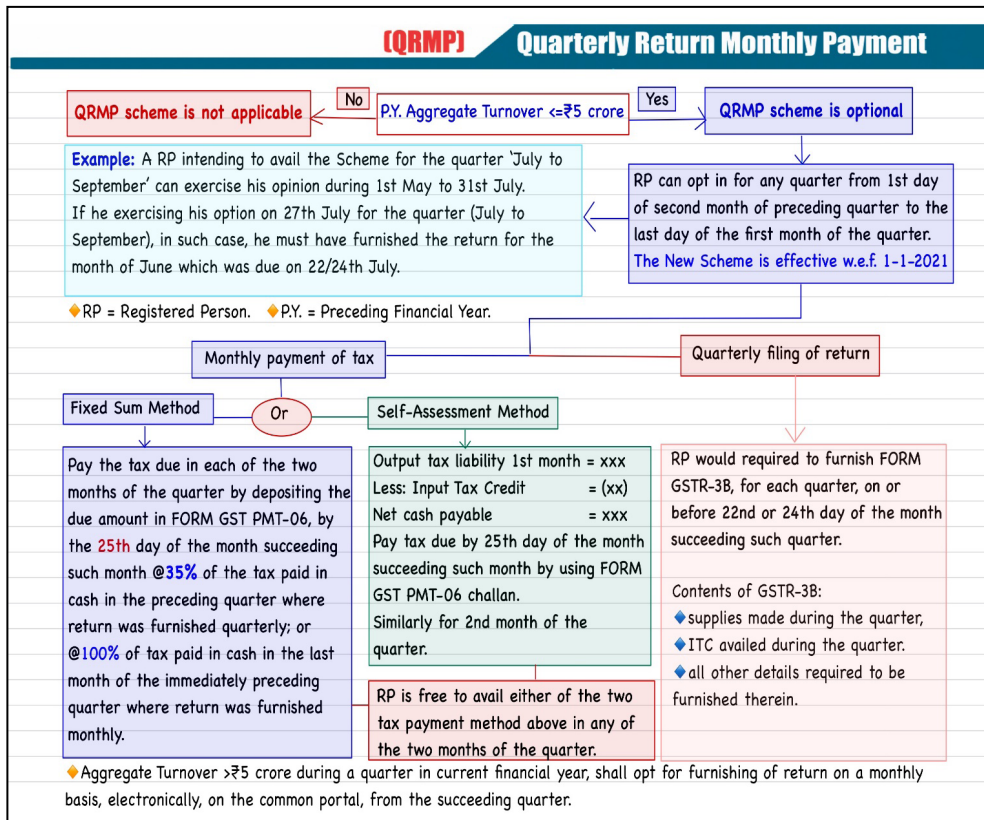
(QRMP) Quarterly Return Monthly Payment

- ◆ Aggregate Turnover >₹5 crore during a quarter in current financial year, shall opt for furnishing of return on a monthly basis, electronically, on the common portal, from the succeeding quarter.
- ◆ Tax payers who are automatically migrated into QRMP Scheme can be opt out between 5th Dec 2020 to 31st Jan 2021.
- ◆ OPT IN & OPT OUT:



RP can opt in for any quarter from 1st day of second month of preceding quarter to the last day of the first month of the quarter.

Persons who obtain registration during any quarter or RP opting out from paying tax u/s 10 of CGST Act, 2017 shall be able to opt for the QRMP Scheme.
- ◆ QRMP Scheme is GSTIN wise.
- ◆ RP opting for the QRMP Scheme would be required to furnish the details of outward supply in FORM GSTR-1 Quarterly.
 - 1st and 2nd months of a quarter, such RP will have "Invoice Furnishing Facility" (IFF) to furnish the details of such outward supplies to a registered person, as he may consider necessary, between the 1st day of the succeeding month till the 13th day of the succeeding month.
 - The said details of outward supplies shall, however not exceed the value of ₹50 lakh in each month.



GSTR-3B – One time amnesty provided by lowering/waiving of late fee for non-furnishing of FORM GSTR-3B from July 2017 to January 2020 and providing relief by conditional waiver of late fee for delay in furnishing FORM GSTR-3B return for the period February, 2020 to July, 2020 (vide NT No. 52/2020 CT dated 24-6-2020):

S. No.	Class of registered persons	Tax period	Condition
1	Taxpayers having an aggregate turnover of more than rupees 5 crores in the preceding financial year	February, 2020, March, 2020 and April, 2020	If return in FORM GSTR-3B is furnished on or before the 24th day of June, 2020
2	Taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year, whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana or Andhra Pradesh or the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands and Lakshadweep	February, 2020	If return in FORM GSTR-3B is furnished on or before the 30th day of June, 2020
		March, 2020	If return in FORM GSTR-3B is furnished on or before the 3rd day of July, 2020
		April, 2020	If return in FORM GSTR-3B is furnished on or before the 6th day of July, 2020
		May, 2020	If return in FORM GSTR-3B is furnished on or before the 12th day of September, 2020
		June, 2020	If return in FORM GSTR-3B is furnished on or before the 23rd day of September, 2020
		July, 2020	If return in FORM GSTR-3B is furnished on or before the 27th day of September, 2020
3	Taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year, whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha or the Union territories of Jammu and Kashmir, Ladakh, Chandigarh and Delhi	February, 2020	If return in FORM GSTR-3B is furnished on or before the 30th day of June, 2020
		March, 2020	If return in FORM GSTR-3B is furnished on or before the 5th day of July, 2020
		April, 2020	If return in FORM GSTR-3B is furnished on or before the 9th day of July, 2020
		May, 2020	If return in FORM GSTR-3B is furnished on or before the 15th day of September, 2020
		June, 2020	If return in FORM GSTR-3B is furnished on or before the 25th day of September, 2020
		July, 2020	If return in FORM GSTR-3B is furnished on or before the 29th day of September, 2020

“Provided also that the total amount of late fee payable for a tax period, under section 47 of the said Act shall stand waived which is in excess of an amount of two hundred and fifty rupees for the registered person who failed to furnish the return in FORM GSTR-3B for the months of July, 2017 to January, 2020, by the due date but furnishes the said return between the period from 01st day of July, 2020 to 30th day of September, 2020: Provided also that where the total amount of central tax payable in the said return is nil, the total amount of late fee payable for a tax period, under section 47 of the said Act shall stand waived for the registered person who failed to furnish the return in FORM GSTR-3B for the months of July, 2017 to January, 2020, by the due date but furnishes the said return between the period from 01st day of July, 2020 to 30th day of September, 2020.”.

GSTR-1: Relief by waiver of late fee for delay in furnishing outward statement in FORM GSTR-1 for tax periods from March 2020 to June 2020 for monthly filers and for quarters from January, 2020 to June 2020 for quarterly filers (vide NT No. 53/2020 CT dated 24-6-2020):

“Provided also that the amount of late fee payable under section 47 of the said Act shall stand waived for the registered persons who fail to furnish the details of outward supplies for the months or quarter mentioned in column (2) of the Table below in FORM GSTR-1 by the due date, but furnishes the said details on or before the dates mentioned in column (3) of the said Table:-

S. No.	Month/Quarter	Dates
1	March 2020	10 th day of July, 2020
2	April 2020	24 th day of July, 2020
3	May 2020	28 th day of July, 2020
4	June 2020	05 th day of August, 2020
5	January to March, 2020	17 th day of July, 2020
6	April to June 2020	03 rd day of August, 2020.”.

Study Note - 15

EXPORTS, IMPORTS AND REFUND UNDER GST



Definition of turnover of zero-rated supplies of goods amended [Rule 89(4)(C)]

[Notification No.16/2020 CT dated 23.03.2020]

Lower of the two shall be taken:

- Zero Rated Value of supply of goods as per GST Invoice
or
- 1.5 times the value of like goods domestically supplied by the same or, similarly placed supplier

Example 1:

Value of ₹

	GST invoice value	Value of like goods supplied Domestically	1.5 times the Value of like goods supplied domestically	Value for purposes of refund claim
Case A	1,00,000	90,000	1,35,000	1,00,000
Case B	2,00,000	60,000	90,000	90,000

Determination of refundable amount in case of refund of unutilised ITC on account of (i) exports without payment of tax, (ii) supplies made to SEZ Unit/SEZ Developer without payment of tax or (iii) accumulation due to inverted tax structure, clarified

[Master Circular on Refunds – Circular No. 125/44/2019 GST dated 18.11.2019]

In case of refund of unutilized input tax credit (ITC) on account of (i) exports without payment of tax, (i) supplies made to SEZ Unit/SEZ Developer without payment of tax or (iii) accumulation due to inverted tax structure, the common portal calculates the refundable amount as the least of the following amounts:

- a) The maximum refund amount as per the formula in rule 89(4) or rule 89(5) of the CGST Rules, 2017 [formula is applied on the consolidated amount of ITC, i.e. Central tax + State tax/Union Territory tax + Integrated tax];
- b) The balance in the electronic credit ledger of the applicant at the end of the tax period for which the refund claim is being filed after the return in Form GSTR-3B for the said period has been filed; and
- c) The balance in the electronic credit ledger of the applicant at the time of filing the refund application.

After calculating the least of the above 3 amounts, as detailed above, the equivalent amount is to be debited from the electronic credit ledger of the applicant in the following order:

- a) Integrated tax, to the extent of balance available;
- b) Central tax and State tax/Union Territory tax, equally to the extent of balance available and in the event of a shortfall in the balance available in a particular electronic credit ledger (say, Central tax), the differential amount is to be debited from the other electronic credit ledger (i.e., State tax/ Union Territory tax, in this case).

Proper officer to issue payment order instead of payment advice for refunds

Proper officer will now issue payment order instead of payment advice for refunds under GST with effect from 24.09.2019. To give effect to this amendment, with effect from 24.09.2019, rule 91(3), rule 92(4), rule 92(5), rule 94 of the CGST Rules have been suitably amended and rule 91(4) and rule 92(4A) have been newly inserted.

[Notification No. 31/2019 CT dated 28.06.2019 and Notification No. 49/2019 CT dated 9.10.2019]

Refund of accumulated ITC on account of reduction in GST rate on goods, not available

[Circular No.135/05/2020 GST dated 31.03.2020]

The issue which arose for consideration is whether an applicant can seek refund of unutilized ITC on account of inverted duty structure, under section 54(3)(ii) of the CGST Act, 2017, in a case where the inversion is due to change in the GST rate on the same goods. For example, an applicant trading in goods has purchased, say goods "X" attracting 18% GST. However, subsequently, the rate of GST on "X" has been reduced to, say 12%.

It is clarified that, in such cases, the input and output being the same, though attracting different tax rates at different points in time, do not get covered under section 54(3)(ii) of the CGST Act, 2017. Thus, refund of accumulated ITC under said clause would not be applicable in cases where the input and the output supplies are the same.

Refund of ITC under section 54(3) restricted to the extent of credit reflected in Form GSTR-2A

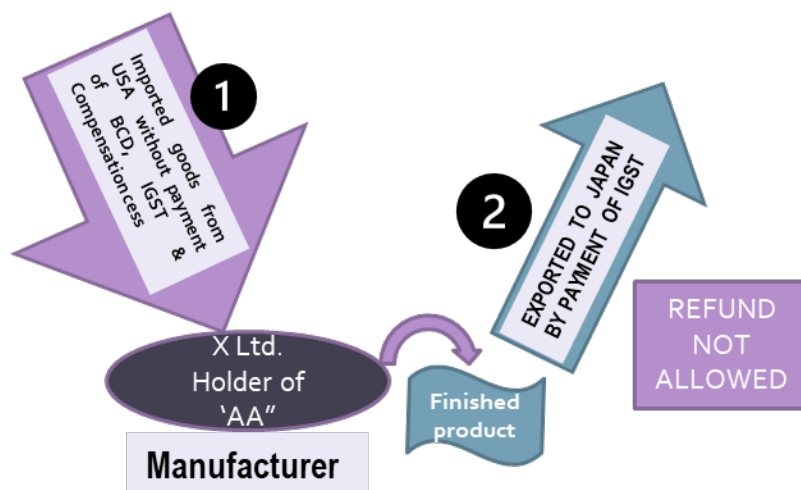
[Circular No.135/05/2020 GST dated 31.03.2020]

In wake of insertion of sub-rule (4) to rule 36 of the CGST Rules, 2017, it has been decided that the refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in Form GSTR-1 and are reflected in the Form GSTR-2A of the applicant.

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

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

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



vide Noff no. 16/2020-CT dt. 23.03.2020:-

Rule 96B. Recovery of refund of unutilised input tax credit or integrated tax paid on export of goods where export proceeds not realised.-

(1) Where any refund of unutilised input tax credit on account of export of goods or of integrated tax paid on export of goods has been paid to an applicant but the sale proceeds in respect of such export goods have not been realised, in full or in part, in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, the person to whom the refund has been made shall deposit the amount so refunded, to the extent of non-realisation of sale proceeds, along with applicable interest within thirty days of the expiry of the said period or, as the case may be, the extended period, failing which the amount refunded shall be recovered in accordance with the provisions of section 73 or 74 of the Act, as the case may be, as is applicable for recovery of erroneous refund, along with interest under section 50:

Provided that where sale proceeds, or any part thereof, in respect of such export goods are not realised by the applicant within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), but the Reserve Bank of India writes off the requirement of realisation of sale proceeds on merits, the refund paid to the applicant shall not be recovered.

(2) Where the sale proceeds are realised by the applicant, in full or part, after the amount of refund has been recovered from him under sub-rule (1) and the applicant produces evidence about such realisation within a period of **3 months** from the date of realisation of sale proceeds, the amount so recovered shall be refunded by the proper officer, to the applicant to the extent of realisation of sale proceeds, provided the sale proceeds have been realised within such extended period as permitted by the Reserve Bank of India

Bunching of refund claims across financial years permitted [Circular No.135/05/2020 GST dated 31.03.2020]

It has been clarified that while filing the refund claim, an applicant may, at his option, file a refund claim for a tax period or by clubbing successive tax periods. Earlier, there was a restriction on bunching of refund claims across financial years; now the said restriction has also been relaxed.

For instance, a registered person opting to file Form GSTR-1 on quarterly basis can apply for refund on a quarterly basis or clubbing successive quarters and these quarters may spread across different financial years. Thus, he can file refund claim for quarters: Jan-Mar, Apr-Jun and July-Sep, while filing the refund claim.

Clarification in respect of certain challenges faced by the registered persons in implementation of provisions of GST Laws [Circular No. 137/07/2020 GST dated 13.04.2020]:

S.No.	Issue	clarification
1	An advance is received by a supplier for a service contract which subsequently got cancelled. The supplier has issued the invoice before supply of service and paid the GST thereon. Whether he can claim refund of tax paid or is he required to adjust his tax liability in his returns?	In case GST is paid by the supplier on advances received for a future event which got cancelled subsequently and for which invoice is issued before supply of service, the supplier is required to issue a "credit note" in terms of section 34 of the CGST Act. He shall declare the details of such credit notes in the return for the month during which such credit note has been issued. The tax liability shall be adjusted in the return subject to conditions of section 34 of the CGST Act. There is no need to file a separate refund claim. However, in cases where there is no output liability against which a credit note can be adjusted, registered persons may proceed to file a claim under " Excess payment of tax, if any " through Form GST RFD-01.
2	An advance is received by a supplier for a Service contract which got cancelled subsequently. The supplier has issued receipt voucher and paid the GST on such advance received. Whether he can claim refund of tax paid on advance or he is required to adjust his tax liability in his returns?	In case GST is paid by the supplier on advances received for an event which got cancelled subsequently and for which no invoice has been issued in terms of section 31(2) of the CGST Act, he is required to issue a " refund voucher " in terms of section 31(3)(e) of the CGST Act read with rule 51 of the CGST Rules. The taxpayer can apply for refund of GST paid on such advances by filing Form GST RFD-01 under the category " Refund of excess payment of tax ".

3	Goods supplied by a supplier under cover of a tax invoice are returned by the recipient. Whether he can claim refund of tax paid or is he required to adjust his tax liability in his returns?	<p>In such a case where the goods supplied by a supplier are returned by the recipient and where tax invoice had been issued, the supplier is required to issue a "credit note" in terms of section 34 of the CGST Act. He shall declare the details of such credit notes in the return for the month during which such credit note has been issued. The tax liability shall be adjusted in the return subject to conditions of section 34 of the CGST Act.</p> <p>There is no need to file a separate refund claim in such a case.</p> <p>However, in cases where there is no output liability against which a credit note can be adjusted, registered persons may proceed to file a claim under "Excess payment of tax, if any" through Form GST RFD-01.</p>
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Refund to be granted both in cash and credit, based on original mode of payment [Rule 92(1A)]

Notification No.16/2020 CT dated 23.03.2020]

Newly inserted sub-rule (1A) to rule 92 stipulates that the refund of tax shall now be made proportionately, in cash and by recrediting the credit, based on original mode of payment. The amount refundable in cash shall be paid by issuance of order in Form GST RFD-06 and the amount attributable to credit as ITC shall be recredited in the electronic credit ledger by issuing Form GST PMT-03.

Rule 92(1A) provides as follows:

Where, upon examination of a refund application, the proper officer is satisfied that a refund under section 54(5) of the CGST Act is due and payable to the applicant:

- (i) the proper officer shall make a refund order in Form GST RFD-06 sanctioning the amount of refund to be paid, **in cash**, proportionate to the amount debited in cash against the total amount paid for discharging tax liability for the relevant period, mentioning therein the amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable and
- (ii) for the remaining amount which has been debited from the electronic credit ledger for making payment of such tax, the proper officer shall issue Form GST PMT-03 **re-crediting the said amount as ITC** in electronic credit ledger.

The above provision shall not apply to the refund of tax paid on zero-rated supplies or deemed export. The consequential amendments have been made in sub-rules (4) and (5) of rule 92.

Study Note - 17

AUDIT UNDER GST



Rule 80(3) of CGST Rules, 2017 (vide **Notification No.79/2020-Central Tax dated 15th October, 2020**):

“Provided that for the financial year 2018-2019 and 2019-2020, every registered person whose aggregate turnover exceeds five crore rupees shall get his accounts audited as specified under sub-section (5) of section 35 and he shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in **FORM GSTR-9C** for the said financial year, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.”

Study Note - 19

ADVANCE CONCEPTS UNDER GST



As per the Finance Act, 2020, sub-section (1A) inserted in Section 122 of CGST Act, 2017:

namely,

Any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of subsection (1) of Section 122 and at whose instance such transaction is conducted, shall be liable to pay penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on.

Note:

Section 122(1)(i): supplies any goods or services or both without issuance of any invoices or issues an incorrect or false invoice with regard to any such supply;

Section 122(1)(ii): issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder;

Section 122(1)(vii): takes or utilises input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder;

Section 122(1)(ix): takes or distributes ITC in contravention of section 20 of the CGST Act, 2017 or the rules made thereunder.

ARREST, PROSECUTION AND COMPOUNDING OF OFFENCE

The person committing the offence will be punishable depending on the amount involved which is as follows; Prosecution is the conducting of legal proceedings against someone in respect of a criminal charge.

Any person committing the following offences (i.e., deliberate intention of fraud) becomes liable to prosecution, i.e., face criminal charges Section 132(1) of the CGST Act, 2017:

The following are cognizable offences if the tax evaded > Rs 500 lakh (section 132(5) of the CGST Act, 2017): Whoever commits any of the following offences (from the Finance Act, 2020 dt. 27-3-2020 read as 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):—

- (a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;
- (b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;
- (c) avails input tax credit using such invoice or bill referred to in clause (b), (this clause shall be substituted from the Finance Act, 2020 dated 27-3-2020 namely- avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill;



- (d) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

Note: all the above offences shall be non-cognizable and bailable where tax evaded \leq ₹ 500 lakh (Section 132(4) of the CGST Act, 2017).

The following are non-cognizable and bailable offences irrespective of the tax amount evaded (Section 132(4) of the CGSG Act, 2017):

Whoever commits any of the following offences, namely (Section 132(1) of the CGST Act, 2017):—

- (e) evades tax, (fraudulently omitted from the Finance Act, 2020 dated 27-3-2020) avails input tax credit or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);
- (f) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act;
- (g) obstructs or prevents any officer in the discharge of his duties under this Act;
- (h) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;
- (i) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;
- (j) tampers with or destroys any material evidence or documents;
- (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; or
- (l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of this section,

Intimation before show cause notice under section 73 or 74 of CGST Act, 2017 [Notification No. 49/2019 CT dated 09.10.2019]:

With effect from 09.10.2019, the proper officer shall, before serving of such a notice, communicate the details of any tax, interest and penalty as ascertained by him, in the prescribed form, to the person chargeable with tax, interest and penalty under section 73 or section 74. Further, where such person has made partial payment of amount communicated to him or desires to file any submission against the proposed liability, he may make such submission in the prescribed form. Taxpayer will be able to take advantage of nil or reduced penalty under sections 73(5) and 74(5) of the CGST Act.

Where any person makes payment of tax, interest, penalty or any other amount due in accordance with the provisions of the Act whether on his own ascertainment or, as communicated by the proper officer as mentioned above, he shall inform the proper officer of such payment and the proper officer shall issue an acknowledgement, accepting the payment made by the said person.

Standard operating procedure to be followed in case of non-filers of returns**[Circular No. 129/48/2019 GST dated 24.12.2019]**

Section 46 of the CGST Act read with rule 68 of the CGST Rules requires issuance of a notice to a registered person who fails to furnish return under section 39 or section 44 or section 45 of the CGST Act requiring him to furnish such return within 15 days. Further, section 62 of the CGST Act provides for assessment of non-filers who fail to file return under section 39 or section 45 even after service of notice under section 46. No separate notice is required to be issued for best judgment assessment under section 62 if the return is not filed within 15 days of issuance of notice under section 46.

CBIC has issued the following guidelines to ensure uniformity in the implementation of the provisions of law in relation to non-filers of returns:

- (i) System generated message would be sent to all the registered persons 3 days before the due date to nudge them about the filing of return by the due date.
- (ii) Once the due date for furnishing return under section 39 is over, a system generated mail/message would be sent to all the defaulters immediately after the due date to the effect that the said registered person has not furnished his return for the said tax period; the said mail/message is to be sent to the authorized signatory as well as the proprietor/partner/director/karta, etc.
- (iii) After 5 days of due date of furnishing the return, notice under section 46 shall be issued electronically to the defaulters requiring them to furnish return within 15 days.
- (iv) If the return is not filed within 15 days of the said notice, the proper officer may proceed to assess the tax liability of the said defaulter under section 62, to the best of his judgment taking into account all the relevant material which is available or which he has gathered and would issue assessment order. The proper officer would upload the summary of such order in the prescribed form.
- (v) For the purpose of assessment of tax liability under section 62, the proper officer may take into account the following:
 - Details of outward supplies available in GSTR-1
 - Details of inward supplies auto-populated in GSTR-2A
 - Information available from e-way bills
 - Any other information available from any other source including inspection under section 71 of the CGST Act
- (vi) If the defaulter furnishes a valid return within 30 days of the service of assessment order under section 62, the said assessment will be deemed to have been withdrawn.
- (vii) If the said return remains unfurnished within the statutory period of 30 days from the service of assessment order under section 62, the proper officer may initiate proceedings under section 78 and recovery under section 79 of the CGST Act.

Based on facts available, in some cases, the Commissioner may resort to provisional attachment to protect revenue under section 83 of the CGST Act before issuance of assessment order under section 62. Further, proper officer would initiate action under section 29(2) of the CGST Act for cancellation of registration in cases where the return has not been furnished for the period specified in section 29.

Liability to pay in certain cases

GST Law has provisions for special cases like transfer of business, where the transferee and transferor are both held liable to pay unpaid GST. These provisions come into force when there is an amount due under GST (tax, interest, penalty) which cannot be recovered from the taxpayer directly. Sections 85 to 94 of the CGST Act, 2017 deals with the liability to pay in certain cases.

Section	Case	Person liable to pay GST	Remarks
85(1) & (2)	Liability in case of transfer of business	<p>The taxable person (transferor) and the person to whom the business is transferred (transferee) will be liable, jointly and severally, wholly or to the extent of such transfer, to pay the GST due.</p> <p><i>Note:</i> The transferee will be liable to pay GST from the date of transfer.</p> <p>As per section 85(1) of the CGST Act, the transferor and the transferee/successor shall jointly and severally be liable to pay any tax, interest or any penalty due from the transferor in cases of transfer of business "in whole or in part, by sale, gift, lease, leave and license, hire or in any other manner whatsoever".</p>	<ul style="list-style-type: none"> It is immaterial if such tax, interest, or penalty has been determined before or after the transfer, as long it is unpaid. If the transferee carries on the business in a new name (which is different from original) then he must apply for amendment of his registration certificate.
86	Liability of agent and principal	If an agent supplies or receives any taxable goods on behalf of his principal, then both the agent and the principal will be liable to pay GST, jointly and severally.	Supply of goods to agent by principal covered under Schedule II of CGST Act, 2017 and the same treated supply of goods even without consideration.
87	Liability in case of amalgamation or merger of companies	the two or more companies are individually responsible for their taxes.	<p>If two or more companies merge/ amalgamate:</p> <p>due to the order of a court/ tribunal</p> <p>the order is to take effect from a date earlier to the date of the order (i.e. retrospective effect)</p> <p>the companies have supplied goods/services to each other during that period (from order date to order effect date)</p>



Section	Case	Person liable to pay GST	Remarks
			<p>Such companies shall be treated as distinct companies under GST till the date of the order (and not order effect date). Their registrations will get cancelled on the date of order.</p> <p><i>Example:</i> X Ltd and Y Ltd has received a court order on 15th December 2017 to merge with effect from 1st October 2017. Under GST they will be treated as distinct companies till 15th December 2017 and each one will be responsible for its own dues until 15th December 2017.</p>
88	Liability in case of company in liquidation	<ul style="list-style-type: none"> • Company • Where dues cannot be recovered from private company then same are to be recovered from its directors who were in office during the period when the tax was due will be held liable for payment of such tax, interest or penalty, unless he proves to the satisfaction of the Commissioner that such non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company [Section 88(3)] 	<p>Section 88(1) when any company is being wound up person appointed as receiver of any assets of such company, is required to inform to the Commissioner, of such appointment within 30 days after his appointment.</p> <p>Section 88(2) the Commissioner is required to notify within 3 months from the date of receipt of intimation, the amount which would be sufficient to provide for any tax and other dues of the company.</p>

Section	Case	Person liable to pay GST	Remarks
89	Liability of directors of private company	Notwithstanding anything contained in the Companies Act, 2013, where any tax, interest or penalty due from a private company cannot be recovered, then, every person who was a director of the private company during such period shall be liable for the payment of such dues unless he proves to the satisfaction of the Commissioner that such non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company [Section 89(1)].	<p>As per Section 89(2), if the company has been converted from a private to a public limited company, then the provisions under Section 89(1) will not apply.</p> <p>Provided that nothing contained in section 89(2) shall apply to any personal penalty imposed on such director. It means penalty leviable on directors of a company will be continue to apply.</p> <p>Important note: Nothing has been mentioned in the GST Act regarding conversion/ transfer of a private company to public company. As a result section 89 provisions does not apply when a private company is converted to a public company, it can be interpreted to mean that this provision does not apply to public companies.</p>
90	Liability of partners of firm to pay tax (firm includes limited liability partnership firm)	<p>where any firm (including LLP) is liable to pay any tax, interest or penalty under this Act, the firm and each of the partners of the firm shall be jointly and severally liable for such payment.</p> <p><i>Important note:</i> Normally, partners have limited liabilities in LLPs. But the GST Act overrides all other laws and the partners become jointly and severally liable for the entire GST dues.</p>	<p>Commissioner must be informed by the firm or the retiring partner in case of retirement of a partner. The retiring partner could be held liable for dues under GST until the date of his retirement.</p> <p>If any intimation regarding the retirement is not given within 1 month, the retiring partner will be continued to be held liable till such intimation is received by the Commissioner.</p>



Section	Case	Person liable to pay GST	Remarks
			<p><i>Example:</i> Nambiar & Co. is a partnership firm with 4 partners. Mr. C retires on 20th August. Nambiar & Co. has GST due amount ₹20,000 till 20th August and Mr. C informs the Commissioner on 30th August about the same, then C is liable for the due amount ₹20,000.</p> <p>Now if neither C nor the firm informs the Commissioner regarding his retirement, and Nambiar & Co. does not pay the dues until it stands at ₹35,000 on 30th September (when they finally inform the Commissioner), then Mr. C would be liable for ₹35,000 even though ₹15,000 was incurred after he had retired.</p>
91	Liability of guardians, trustees, etc.	<p>Tax, interest or penalty shall be levied upon and recoverable from both the guardian/trustee/ agent AND the beneficiary (minor/incapacitated person) will be liable under GST Act.</p> <p>The due amount can be recovered from both parties.</p>	<p>The business owes tax, interest and/or penalty under GST.</p> <p>This becomes applicable when any business is conducted by a guardian/trustee/agent on behalf AND for the benefit of a minor/incapacitated person.</p>
92	Liability of Court of Wards, etc.	<p>If the business owes any amount under GST then the Court of Wards, the Administrator General, the Official Trustee or any receiver or manager will be held liable along with the taxable person.</p>	<p>This is applicable to the estate of a taxable person, which owns a business, is under the control of the Court of Wards, the Administrator General, the Official Trustee or any receiver or manager appointed by a court.</p>



Section	Case	Person liable to pay GST	Remarks
93(1)	Liability after the Death of the Taxpayer	<p>Section 93(1)(a): If the business is carried on only by the legal heir/representative then the heir/representative will be held liable for the unpaid dues under GST.</p> <p>Section 93(1)(b): If the business is discontinued, whether before or after death, the legal heir will be liable to pay the due amount out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the tax, interest or penalty due from such person under this Act, whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.</p>	<p>The legal heir/representative will NOT be personally liable for the pending dues.</p> <p>Example: Mr. F being a dealer of laptops. He owes ₹2,25,000 as GST. But he passes away and his daughter Ms. D takes over the shop.</p> <p>Then, Ms. D is liable to pay the pending amount of ₹2,25,000.</p> <p>However, if Ms. D inherits ₹40,000 and closes down the shop after her father's death, then she would be liable to pay only ₹40,000 as the tax.</p> <p>She cannot be held liable for the balance ₹1,85,000. Since, it is beyond the inherited amount.</p> <p>Furthermore, section 93(1) of the CGST Act provides that where a person, liable to pay tax, interest or penalty under the CGST Act, dies, then the person who continues business after his death, shall be liable to pay tax, interest or penalty due from such person under this Act.</p> <p>It is therefore clarified that the transferee/successor shall be liable to pay any tax, interest or any penalty due from the transferor in cases of transfer of business due to death of sole proprietor.</p>
94	Liability of Partnership Firm on Dissolution	Each partner will be liable jointly and severally for any GST amount due upto the date of dissolution.	
	Liability of HUF/AOP on Partition	When the property of the HUF/AOP is divided amongst the various members, then each member or group of members will be liable for all GST dues upto the time of partition, jointly and severally.	



Section	Case	Person liable to pay GST	Remarks
	Liability when a Trust is Terminated	If the guardianship or trust looks after the business for a beneficiary and pays tax under GST, if terminated then the beneficiary will be held liable for all unpaid GST dues.	
	Liability in cases of Reconstitution of Firm/AOP	In cases of reconstitutions, all the partners/members who were there before the reconstitution will be held liable jointly and severally for all dues before the date of reconstitution.	

Example: M/s X Pvt Ltd. (with 3 directors A, B & C) decided to wind up its affairs on 1st August after suffering losses. It appoints Mr. CMA as liquidator on 15th August.

You are required to answer the following:

- (a) liquidator is required to inform to the Commissioner about his appointment if so, within which period?
- (b) Commissioner is required to specify the liability of the company if so, within which period and to whom he has to inform?
- (c) Who is liable to pay GST dues and what is the time limit?
- (d) If A & B unable to pay GST liability, then who is liable to pay?

Answer:

- (a) Mr. CMA must then inform the Commissioner regarding his appointment within 30 days, i.e., on or before 14th September.
- (b) The Commissioner informs the liquidator within 3 months from the date of receipt of intimation from liquidator, that M/s X Pvt Ltd. owes taxes for tax period. Let us assume the Commissioner intimated tax dues on 20th November.
- (c) M/s X Pvt Ltd. has 3 months to pay, i.e., till 20th February. However, the company fails to pay. In this case, the 3 directors A, B & C will be held liable to pay the full amount.
- (d) If A & B fail to pay, then C alone will have to pay entire due. However, if C proves that the non-payment of taxes was not due to his personal negligence, then he will be exempt from the liability of paying the company's taxes.

Special procedure for corporate debtors undergoing the corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016 [Notification No. 11/2020 CT dated 21.03.2020]:

As per Insolvency Bankruptcy Code (IBC), 2016 once an entity defaults certain threshold amount, Corporate Insolvency Resolution Process (CIRP) gets triggered and the management of such entity (Corporate Debtor) and its assets vest with an interim resolution professional (IRP) or resolution professional (RP). The IRP/RP continues to run the business and operations of the said entity as a going

concern and is responsible for compliance with all the laws till the insolvency proceeding is over and an order is passed by the National Company Law Tribunal (NCLT). The definitions of the terms, corporate debtor, CIRP, IRP and RP can be referred from IBC, 2016.

The Government has prescribed special procedure under section 148 of the CGST Act for the corporate debtors who are undergoing CIRP under the provisions of IBC and the management of whose affairs are being undertaken by IRP/RP.

The corporate debtor who is undergoing CIRP is to be treated as a distinct person of the corporate debtor and shall be liable to take a new registration in each State or Union territory where the corporate debtor was registered earlier, within thirty days of the appointment of the IRP/RP. The IRP/RP will be liable to furnish returns, make payment of tax and comply with all the provisions of the GST law during CIRP period.

CBIC Circular No.134/04/2020-GST, dated 23-3-2020:

S. No.	Issue	Clarification
1	How are dues under GST for pre-CIRP period be dealt?	In accordance with the provisions of the IBC and various legal pronouncements on the issue, no coercive action can be taken against the corporate debtor with respect to the dues for period prior to insolvency commencement date. The dues of the period prior to the commencement of CIRP will be treated as 'operational debt' and claims may be filed by the proper officer before the NCLT in accordance with the provisions of the IBC. The tax officers shall seek the details of supplies made / received and total tax dues pending from the corporate debtor to file the claim before the NCLT. Moreover, section 14 of the IBC mandates the imposition of a moratorium period, wherein the institution of suits or continuation of pending suits or proceedings against the corporate debtor is prohibited.
2	Should the GST registration of corporate debtor be cancelled?	It is clarified that the GST registration of an entity for which CIRP has been initiated should not be cancelled under the provisions of section 29 of the CGST Act, 2017. The proper officer may, if need be, suspend the registration. In case the registration of an entity undergoing CIRP has already been cancelled and it is within the period of revocation of cancellation of registration, it is advised that such cancellation may be revoked by taking appropriate steps in this regard.
3	Is IRP/RP liable to file returns of pre-CIRP period?	No. In accordance with the provisions of IBC, 2016, the IRP/RP is under obligation to comply with all legal requirements for period after the Insolvency Commencement Date. Accordingly, it is clarified that IRP/RP are not under an obligation to file returns of pre-CIRP period.
During CIRP period		

4	Should a new registration be taken by the corporate debtor during the CIRP period?	The corporate debtor who is undergoing CIRP is to be treated as a distinct person of the corporate debtor and shall be liable to take a new registration in each State or Union territory where the corporate debtor was registered earlier, within thirty days of the appointment of the IRP/RP. Further, in cases where the IRP/RP has been appointed prior to the issuance of notification No.11/2020- Central Tax, dated 21.03.2020, he shall take registration within thirty days of issuance of the said notification, with effect from date of his appointment as IRP/RP.
5	How to file First Return after obtaining new registration?	The IRP/RP will be liable to furnish returns, make payment of tax and comply with all the provisions of the GST law during CIRP period. The IRP/RP is required to ensure that the first return is filed under section 40 of the CGST Act, for the period beginning the date on which it became liable to take registration till the date on which registration has been granted.
6	How to avail ITC for invoices issued to the erstwhile registered person in case the IRP/RP has been appointed before issuance of notification No.11/2020- Central Tax, dated 21.03.2020 and no return has been filed by the IRP during the CIRP ?	The special procedure issued under section 148 of the CGST Act has provided the manner of availment of ITC while furnishing the first return under section 40. The said class of persons shall, in his first return, be eligible to avail input tax credit on invoices covering the supplies of goods or services or both, received since appointment as IRP/RP and during the CIRP period but bearing the GSTIN of the erstwhile registered person, subject to the conditions of Chapter V of the CGST Act and rule made thereunder, except the provisions of sub-section (4) of section 16 of the CGST Act and sub-rule (4) of rule 36 of the CGST Rules. In terms of the special procedure under section 148 of the CGST Act issued vide notification No.11/2020- Central Tax, dated 21.03.2020. This exception is made only for the first return filed under section 40 of the CGST Act.
7	How to avail ITC for invoices by persons who are availing supplies from the corporate debtors undergoing CIRP, in cases where the IRP/RP was appointed before the issuance of the notification No.11/2020 - Central Tax, dated 21.03.2020?	Registered persons who are receiving supplies from the said class of persons shall, for the period from the date of appointment of IRP / RP till the date of registration as required in this notification or 30 days from the date of this notification, whichever is earlier, be eligible to avail input tax credit on invoices issued using the GSTIN of the erstwhile registered person, subject to the conditions of Chapter V of the CGST Act and rule made thereunder, except the provisions of sub-rule (4) of rule 36 of the CGST Rules.
8	Some of the IRP/RPs have made deposit in the cash ledger of erstwhile registration of the corporate debtor. How to claim refund for amount deposited in the cash ledger by the IRP/RP?	Any amount deposited in the cash ledger by the IRP/RP, in the existing registration, from the date of appointment of IRP / RP to the date of notification specifying the special procedure for corporate debtors undergoing CIRP, shall be available for refund to the erstwhile registration under the head refund of cash ledger, even though the relevant FORM GSTR-3B/GSTR-1 are not filed for the said period. The instructions contained in Circular No. 125/44/2019-GST dt. 18.11.2019 stands modified to this extent.

Case Law: Mansi Oils and Grains (P) Ltd. (2020) 117 taxmann.com 446 (AAR-WB):

It was held that sale of assets of a corporate debtor by NCLT appointed liquidator is a supply of goods by said liquidator, who is required to take registration under Section 24 of CGST Act.

Facility for registration of IRP/RPs made available on the GST Portal:

1. Insolvency Resolution Professionals/ Resolution Professionals (IRPs/RPs), appointed to undertake corporate insolvency resolution proceedings for Corporate Debtors, in terms of Notification, No 11/2020-CT, dated 21st March, 2020 can apply for new registration on GST Portal, on behalf of the Corporate Debtors, in each of the States or Union Territories, on the PAN and CIN of the Corporate Debtor, where the corporate debtor was registered earlier, within thirty days of their appointment as IRP/RP.
2. They should select the Reason for Registration as “Corporate Debtor undergoing the Corporate Insolvency Resolution Process with IRP/RP” from the drop down menu.
3. The date of commencement of business for IRP/RPs will be the date of their appointment. Their compliance liabilities will also come into effect from the date of their appointment.
4. The person appointed as IRP/RP shall be the Primary Authorized Signatory for the newly registered Company.
5. In the Principal Place of business/ Additional place of business, the details as specified in original registration of the Corporate Debtors, is required to be entered.
6. The new registration application shall be submitted electronically on GST Portal under DSC of the IRP/RP
7. The new registration by IRP/RP will be required only once. In case of a change in IRP/RP, after initial appointment, it would be deemed to be change of authorized signatory and not an appointment of a distinct person requiring a fresh registration.
8. In cases where the RP is not the same as IRP, or in cases where a different IRP/RP is appointed midway during the insolvency process, the change in the GST system may be carried out by a non-core amendment in the registration form.
9. The change in Primary Authorized Signatory details on the portal can be done either by the authorised signatory of the Company or by the concerned jurisdictional officer (if the previous authorized signatory does not share the credentials with his successor) on request of IRP/RP.

Issues relating to Insolvency and Bankruptcy Code, 2016 - CBIC Circular No. 138/08/2020 GST, dated 6-5-2020:

S. No.	Issue	Clarification
1	Notification No. 11/2020–Central Tax dated 21.03.2020, issued under section 148 of the CGST Act provided that an IRP / CIRP is required to take a separate registration within 30 days of the issuance of the notification. It has been represented that the IRP/RP are facing difficulty in obtaining registrations during the period of the lockdown and have requested to increase the time for obtaining registration from the present 30 days limit.	Vide notification No. 39/2020- Central Tax, dated 05.05.2020, the time limit required for obtaining registration by the IRP/RP in terms of special procedure prescribed vide notification No. 11/2020 – Central Tax dated 21.03.2020 has been extended. Accordingly, IRP/RP shall now be required to obtain registration within thirty days of the appointment of the IRP/RP or by 30th June, 2020, whichever is later.
2	The notification No. 11/2020– Central Tax dated 21.03.2020 specifies that the IRP/RP, in respect of a corporate debtor, has to take a new registration with effect from the date of appointment. Clarification has been sought whether IRP would be required to take a fresh registration even when they are complying with all the provisions of the GST Law under the registration of Corporate Debtor (earlier GSTIN) i.e. all the GSTR-3Bs have been filed by the Corporate debtor / IRP prior to the period of appointment of IRPs and they have not been defaulted in return filing.	<p>i. The notification No. 11/2020– Central Tax dated 21.03.2020 was issued to devise a special procedure to overcome the requirement of sequential filing of FORM GSTR-3B under GST and to align it with the provisions of the IBC Act, 2016. The said notification has been amended vide notification No. 39/2020 - Central Tax, dated 05.05.2020 so as to specifically provide that corporate debtors who have not defaulted in furnishing the return under GST would not be required to obtain a separate registration with effect from the date of appointment of IRP/RP.</p> <p>ii. Accordingly, it is clarified that IRP/RP would not be required to take a fresh registration in those cases where statements in FORM GSTR-1 under section 37 and returns in FORM GSTR-3B under section 39 of the CGST Act, for all the tax periods prior to the appointment of IRP/RP, have been furnished under the registration of Corporate Debtor (earlier GSTIN).</p>

3	<p>Another doubt has been raised that the present notification has used the terms IRP and RP interchangeably, and in cases where an appointed IRP is not ratified and a separate RP is appointed, whether the same new GSTIN shall be transferred from the IRP to RP, or both will need to take fresh registration.</p>	<p>i. In cases where the RP is not the same as IRP, or in cases where a different IRP/RP is appointed midway during the insolvency process, the change in the GST system may be carried out by an amendment in the registration form. Changing the authorized signatory is a non-core amendment and does not require approval of tax officer. However, if the previous authorized signatory does not share the credentials with his successor, then the newly appointed person can get his details added through the Jurisdictional authority as Primary authorized signatory.</p> <p>ii. The new registration by IRP/RP shall be required only once, and in case of any change in IRP/RP after initial appointment under IBC, it would be deemed to be change of authorized signatory and it would not be considered as a distinct person on every such change after initial appointment. Accordingly, it is clarified that such a change would need only change of authorized signatory which can be done by the authorized signatory of the Company who can add IRP /RP as new authorized signatory or failing that it can be added by the concerned jurisdictional officer on request by IRP/RP.</p>
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Summary:

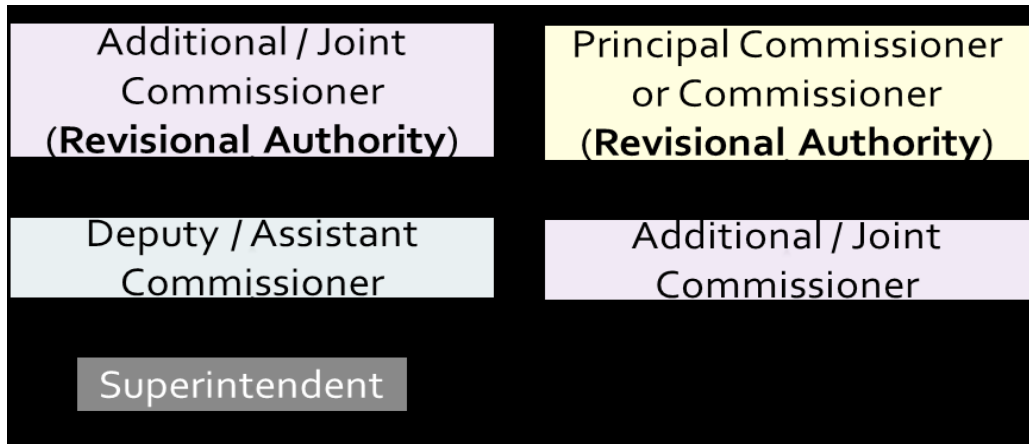
Case	GST is liable to pay by
Business transferred	Both transferor and transferee
Agent and principal	Both agent and principal
Merger	Each company liable for own dues
Liquidation	Company and then directors
Private company	Company and then Directors
Partnership firm (including LLP)	Partners
Guardianship/Trust	Both guardian/trustee And minor
Court of wards	Tax payer AND Court of wards
Death of tax payer	Legal heir
Dissolution of HUF/AOP/Firm	All members/partners

Appeals under GST

Revisional Authority under section 108[Notification No. 05/2020 CT dated 13.01.2020]:

The following officers have been authorised as the Revisional Authority under section 108 of the CGST Act:

- (a) Principal Commissioner or Commissioner for decisions or orders passed by the Additional or Joint Commissioner; and.
- (b) Additional or Joint Commissioner for decisions or orders passed by the Deputy Commissioner or Assistant Commissioner or Superintendent.



Conduct of personal hearing in virtual mode under CGST Act, 2017, IGST Act, 2017, Customs Act, 1962 Revised guidelines (vide CBIC Instruction F.No. 390/Misc./3/2019-JC dated 21-8-2020):

1. In any proceedings before the Commissioner (Appeals)/Additional/Joint Commissioner (Appeals), the authority shall mandatorily indicate that the personal hearing would take place through video conferencing facility. For this purpose he/she shall also indicate the email address for correspondence etc.
2. The date and time of hearing along with a link for the video conference shall be informed to the appellant/ respondent or their authorized representative and the concerned Commissioner representing revenue through the official email, giving the details of officer in-charge who would provide assistance to the party, for conducting the virtual hearing. This link should not be shared with any other person without the approval of the Appellate Authority.
3. The appellant/respondent or authorized representative, appearing in virtual hearing, should file his vakalatnama or authorization letter along with a copy of his photo ID card and contact details to the appellate authority through official e-mail address of the concerned authority after scanning the same.
4. All persons participating in the video conference should be appropriately dressed and maintain the decorum required for such an occasion.
5. Virtual hearing through video conference shall be held from the office of the Appellate authority or any official video conference facility set up in the office of the Commissioner (Appeals).
6. The virtual hearing through video conference will be conducted through available applications like VIDYO, or other secured computer network. The appellant/respondent should download such application in their computer system/laptop/mobile phone beforehand for ready connectivity during virtual hearing, and join the video conference at the time allotted to them, as given in point (2) above
7. In case where the appellant/respondent wishes to participate in the virtual hearing proceeding along with their advocate, they should do so under proper intimation to this office as mentioned at point (2) above. They may participate in virtual hearing along with their advocate/ authorized representative or join the proceedings from their own office.



8. The submissions made by the appellant or their representative through the video conference will be reduced in writing and a statement of the same will be prepared, which shall be known as “record of personal hearing”. A soft copy of such record of personal hearing in PDF format will be sent to the appellant through email ID provided by appellant/ respondent/authorized representative, within one day of such hearing.
9. If the, appellant/their representative wants to modify the contents of emailed record of personal hearing, they can do so and sign the modified record, scan and send back the signed record of personal hearing to the Appellate Authority within 3 days of receipt of such e-mail or else it will be presumed that they agree with the contents of e-mailed record of personal hearing. No modification in e-mailed record of personal hearing will be entertained after 3 days of its receipt by appellant/their authorized representative. The date of receipt of the email by the appellate authority will not be counted for this purpose.
10. The record of personal hearing submitted in this manner shall be deemed to be a document for the purpose of the relevant statute read with Section 4 of the Information Technology Act, 2000.
11. If the appellant/their authorized representative prefers to submit any document including additional submissions during the virtual hearing, he may do so by self-attesting such document and scanned copy of the same may be emailed to the appellate authority immediately after virtual hearing and in no case after 3 days of virtual hearing. The date of the hearing will be excluded for this purpose.
12. Any official representing the Department's side can also participate in the virtual hearing through video conferencing. The Commissionerate concerned shall inform the details in advance regarding such participation, on receipt of intimation as mentioned at point (2) above.
13. While the conduct of personal hearing through video conferencing is being made mandatory, there may yet be rare and accentuating circumstances on the part of the assessee or his authorized representative on account of which this cannot be done. Each such request shall be approved by the appellate authority and the reasons for the same recorded in writing.

Power of Government to extend time limit in special circumstances [Section 168A]

The Central Government has issued Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 on 31.03.2020 which empowers it to extend the due dates for compliances under various tax laws.

The Ordinance has inserted a new section 168A in the CGST Act which enables the Government to extend the time limits provided under the said Act in respect of actions which cannot be completed or complied with due to *force majeure*. Here, *force majeure* means war, epidemic, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the implementations of provisions of the CGST Act. This power can also be exercised retrospectively. The new section has become effective from 31.03.2020.

Study Note - 21

E-WAY BILLS UNDER GST



Validity period of e-way bill/consolidated e-way bill [Rule 138(10)][Notification No. 31/2019-CT, dated 28.06.2019]

Sl. No.	Distance within country	Validity period from relevant date
1.	Upto 100 km	One day in cases other than Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship
2.	For every 100 km or part thereof thereafter	One additional day in cases other than Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship
3.	Upto 20 km	One day in case of Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship
4.	For every 20 km or part thereof thereafter	One additional day in case of Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship

The sub-rule (10) has been further amended to lay down that the validity of the e-way bill can be extended within eight hours from the time of its expiry.

***Relevant date** means the date on which the e-way bill has been generated and the period of validity shall be counted from the time at which the e-way bill has been generated and each day shall be counted as the period expiring at midnight of the day immediately following the date of generation of e-way bill.

****Over dimensional cargo** means a cargo carried as a single indivisible unit and which exceeds the dimensional limits prescribed in rule 93 of the Central Motor Vehicle Rules, 1989, made under the Motor Vehicles Act, 1988.

Restriction on furnishing of information in Part A of Form GST EWB-01

No person (including a consignor, consignee, transporter, an e-commerce operator or a courier agency) shall be allowed to furnish the information in Part A of Form GST EWB-01 in respect of following registered persons, whether as a supplier or a recipient:

- (i) A person paying tax under composition scheme or under *Notification No. 2/2019 CT (R) dated 07.03.2019* has not furnished the statement for payment of self-assessed tax for 2 consecutive quarters, or
- (ii) A person paying tax under regular scheme has not furnished the returns for 2 consecutive months, or
- (iii) A person paying tax under regular scheme has not furnished GSTR-1 (Statement of outward supplies) for any 2 months or quarters, as the case may be.



However, Commissioner (jurisdictional commissioner) may, on receipt of an application from a registered person in prescribed form, on sufficient cause being shown and for reasons to be recorded in writing, by order, in prescribed form allow furnishing of the said information in Part A of Form GST EWB-01, subject to prescribed conditions and restrictions. An order rejecting said request shall not be passed without giving the said person a reasonable opportunity of being heard. The permission granted or rejected by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be granted or, as the case may be, rejected by the Commissioner.

[Notification No. 74/2018 CT dated 31.12.2018 read with Notification No. 36/2019 CT dated 20.08.2019 and Notification No. 75/ 2019 CT dated 26.12.2019]

“Provided also that the said restriction shall not apply during the period from the 20th day of March, 2020 till the 15th day of October, 2020 in case where the return in **FORM GSTR-3B** or the statement of outward supplies in **FORM GSTR-1** or the statement in **FORM GST CMP-08**, as the case may be, has not been furnished for the period February, 2020 to August, 2020” (vide [Notification No.79/2020-Central Tax dated 15th October, 2020](#))

e-way bill generated on or before 24-3-2020 (whose validity has expired on or after 20-3-2020 - validity extended till 30-6-2020 (vide NT No. 47/2020 CT dated 9-6-2020.

Blocking of E-Way Bill (EWB) generation facility for taxpayers with AATO over Rs 5 Cr., after 15th October, 2020

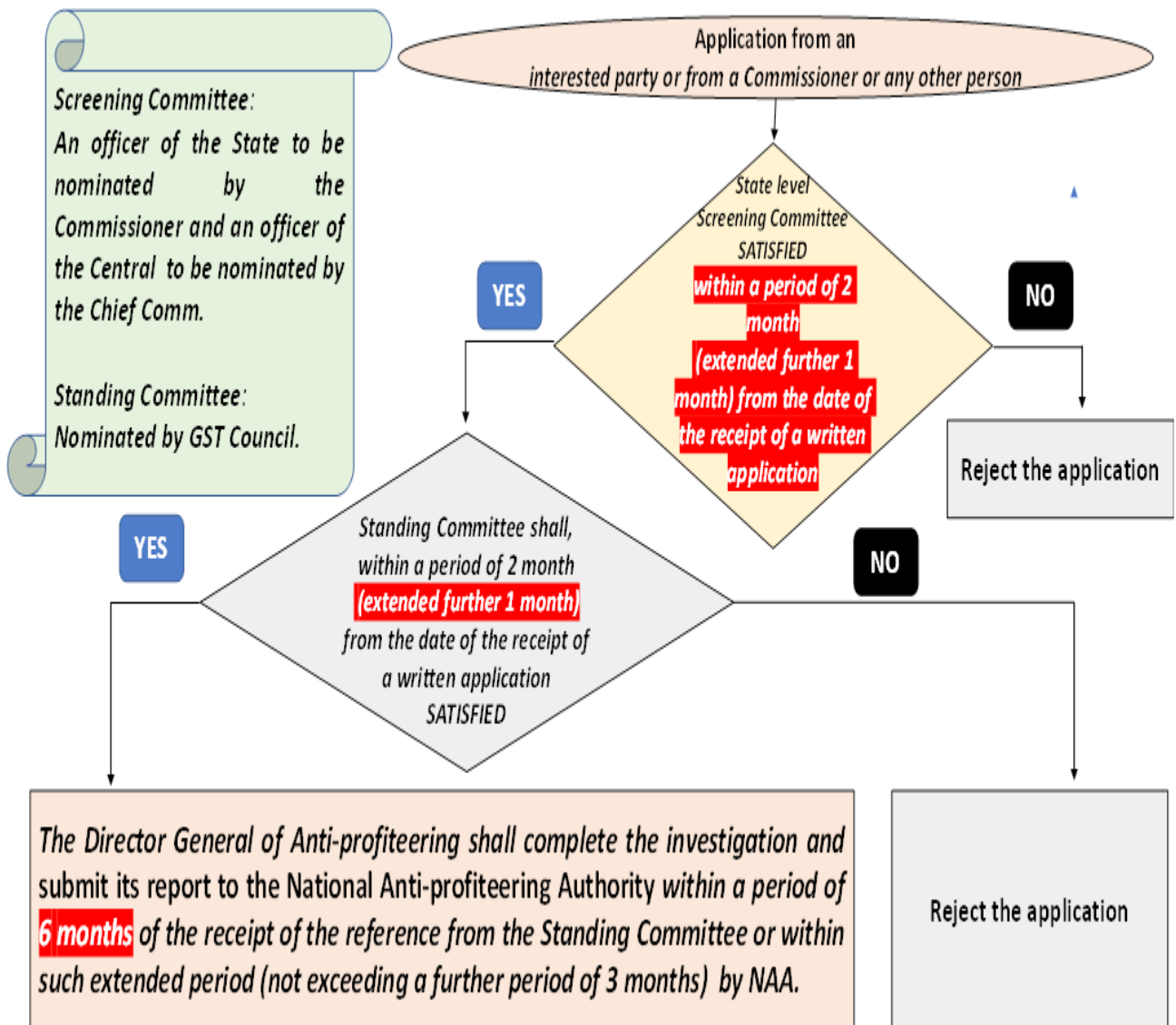
- In terms of Rule 138E(b) of the CGST Rules, 2017, the E Way Bill generation facility of a person is liable to be restricted, in case the person fails to file their GSTR-3B returns, for a consecutive period of two months or more.
- The GST Council has decided that this provision will be made applicable for the taxpayers whose Aggregate Annual Turn Over (AATO, PAN based) is more than Rs 5 Crores.
- Thus, if the GSTIN associated with the respective PAN (with AATO over Rs 5 Cr.) has failed to file their GSTR-3B Return for 02 or more tax periods, up to the month of tax period of August, 2020, their EWB generation facility will be blocked on the EWB Portal. Please note that the EWB generation facility for such GSTINs (whether as consignor or consignee or by transporter) will be blocked on EWB Portal after 15th October, 2020.
- To avail continuous EWB generation facility on EWB Portal, you are therefore advised to file your pending GSTR 3B returns immediately.
- Please ignore this update if:
You are not registered on the EWB portal or
You have already filed your GSTR-3B Return for August, 2020 or
Your AATO (PAN based) is below ₹ 5 Cr.

Study Note - 23

ANTI-PROFITEERING



Application & process flow of Anti profiteering hierarchy mechanism:

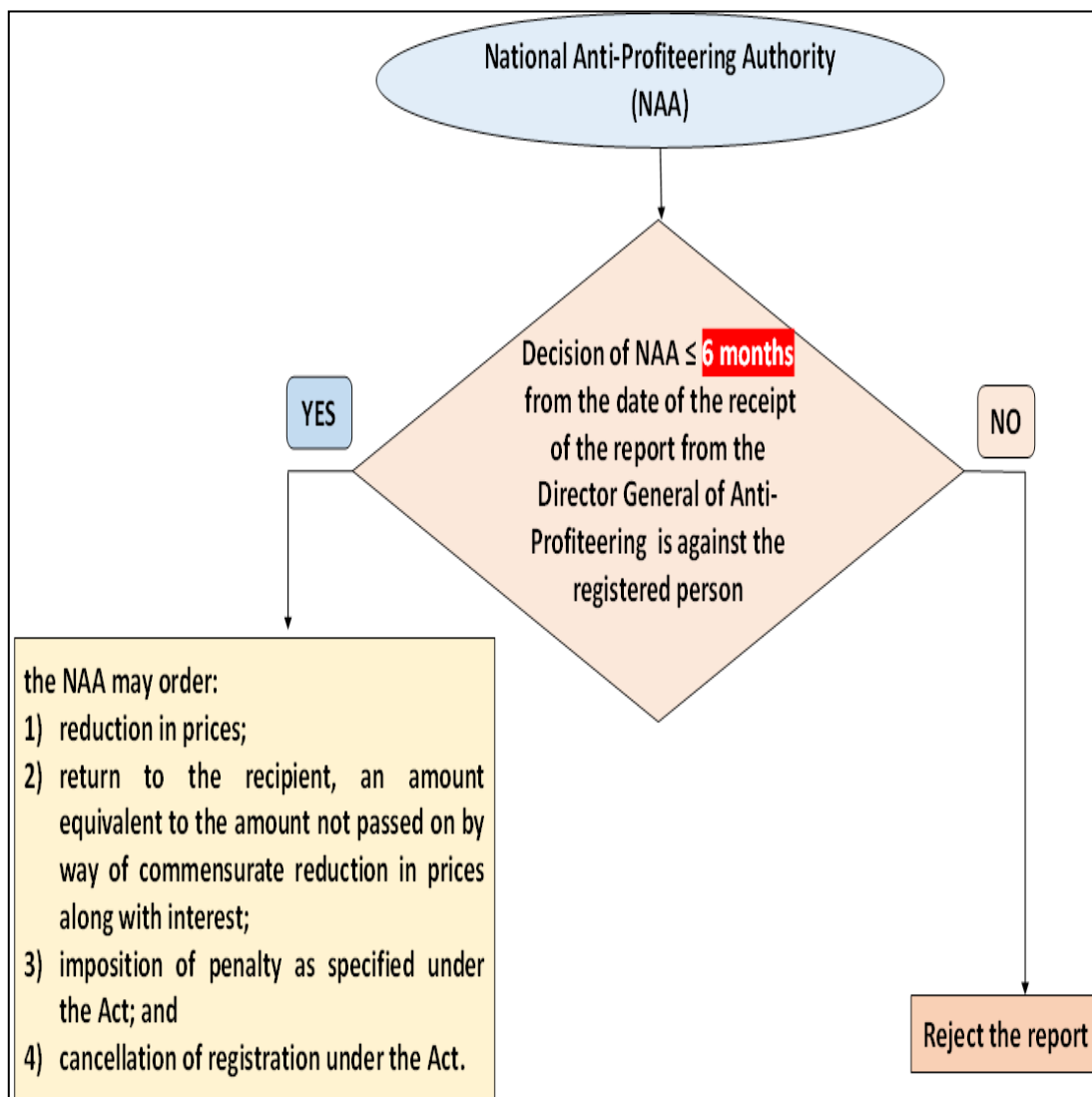


Anti-profiteering measure – Due date of compliance which falls during the period from 20-3-2020 to 29-11-2020 extended upto 30-11-2020:

(vide [Notification No. 65/2020-Central Tax dated 01-09-2020](#))

“Provided that where, any time limit for completion or compliance of any action, by any authority, has been specified in, or prescribed or notified under section 171 of the said Act, which falls during the period from the 20th day of March, 2020 to the 29th day of November, 2020, and where completion or compliance of such action has not been made within such time, then, the time-limit for completion or compliance of such action, shall be extended up to the 30th day of November, 2020.”

With insertion of above proviso said Authority get further breather of three months to complete any action or comply with any action as now any such action falls during the period from the 20th day of March, 2020 to the 29th day of November, 2020 can be completed by the anti profiteering authority by 30-11-2020.





Section B

Customs Law



Study Note - 1

CUSTOMS LAW - BASIC CONCEPTS



As per Finance Act, 2020 w.e.f 27.3.2020, In section 156 of the Customs Act, in sub-section (2), after clause (h), the following clause shall be inserted, namely:— “(i) the form, time limit, manner, circumstances, conditions, restrictions and such other matters for carrying out the provisions of Chapter VAA.”.

As per Finance Act, 2020 w.e.f 27.3.2020, In section 157 of the Customs Act, in sub-section (2), after clause (j), the following clause shall be inserted, namely:— “(ja) the manner of maintaining electronic duty credit ledger, making payment from such ledger, transfer of duty credit from ledger of one person to the ledger of another and the conditions, restrictions and time limit relating thereto;”.

As per Finance Act, 2020, Section 11 of the Customs Act, 1962 in sub-section (2), in clause (f), for the words “gold or siler”, the words “gold, silver or any other goods” shall be substituted.

Study Note - 2

CLASSIFICATION UNDER CUSTOMS



As per the Finance Act, 2020, 'CHAPTER VAA - ADMINISTRATION OF RULES OF ORIGIN UNDER TRADE AGREEMENT 28DA.

- (1) An importer making claim for preferential rate of duty, in terms of any trade agreement, shall,—
 - (i) make a declaration that goods qualify as originating goods for preferential rate of duty under such agreement;
 - (ii) possess sufficient information as regards the manner in which country of origin criteria, including the regional value content and product specific criteria, specified in the rules of origin in the trade agreement, are satisfied;
 - (iii) furnish such information in such manner as may be provided by rules;
 - (iv) exercise reasonable care as to the accuracy and truthfulness of the information furnished.
- (2) The fact that the importer has submitted a certificate of origin issued by an Issuing Authority shall not absolve the importer of the responsibility to exercise reasonable care.
- (3) Where the proper officer has reasons to believe that country of origin criteria has not been met, he may require the importer to furnish further information, consistent with the trade agreement, in such manner as may be provided by rules.
- (4) Where importer fails to provide the requisite information for any reason, the proper officer may,—
 - (i) cause further verification consistent with the trade agreement in such manner as may be provided by rules;
 - (ii) pending verification, temporarily suspend the preferential tariff treatment to such goods:
Provided that on the basis of the information furnished by the importer or the information available with him or on the relinquishment of the claim for preferential rate of duty by the importer, the Principal Commissioner of Customs or the Commissioner of Customs may, for reasons to be recorded in writing, disallow the claim for preferential rate of duty, without further verification.
- (5) Where the preferential rate of duty is suspended under sub-section (4), the proper officer may, on the request of the importer, release the goods subject to furnishing by the importer a security amount equal to the difference between the duty provisionally assessed under section 18 and the preferential duty claimed: Provided that the Principal Commissioner of Customs or the Commissioner of Customs may, instead of security, require the importer to deposit the differential duty amount in the ledger maintained under section 51A.
- (6) Upon temporary suspension of preferential tariff treatment, the proper officer shall inform the Issuing Authority of reasons for suspension of preferential tariff treatment, and seek specific information as may be necessary to determine the origin of goods within such time and in such manner as may be provided by rules.



Classification under Customs

- (7) Where, subsequently, the Issuing Authority or exporter or producer, as the case may be, furnishes the specific information within the specified time, the proper officer may, on being satisfied with the information furnished, restore the preferential tariff treatment.
- (8) Where the Issuing Authority or exporter or producer, as the case may be, does not furnish information within the specified time or the information furnished by him is not found satisfactory, the proper officer shall disallow the preferential tariff treatment for reasons to be recorded in writing: Provided that in case of receipt of incomplete or non-specific information, the proper officer may send another request to the Issuing Authority stating specifically the shortcoming in the information furnished by such authority, in such circumstances and in such manner as may be provided by rules.
- (9) Unless otherwise specified in the trade agreement, any request for verification shall be sent within a period of five years from the date of claim of preferential rate of duty by an importer.
- (10) Notwithstanding anything contained in this section, the preferential tariff treatment may be refused without verification in the following circumstances, namely:—
 - (i) the tariff item is not eligible for preferential tariff treatment;
 - (ii) complete description of goods is not contained in the certificate of origin;
 - (iii) any alteration in the certificate of origin is not authenticated by the Issuing Authority;
 - (iv) the certificate of origin is produced after the period of its expiry, and in all such cases, the certificate of origin shall be marked as 'INAPPLICABLE'.
- (11) Where the verification under this section establishes non-compliance of the imported goods with the country of origin criteria, the proper officer may reject the preferential tariff treatment to the imports of identical goods from the same producer or exporter, unless sufficient information is furnished to show that identical goods meet the country of origin criteria.

Explanation.—For the purposes of this Chapter,—

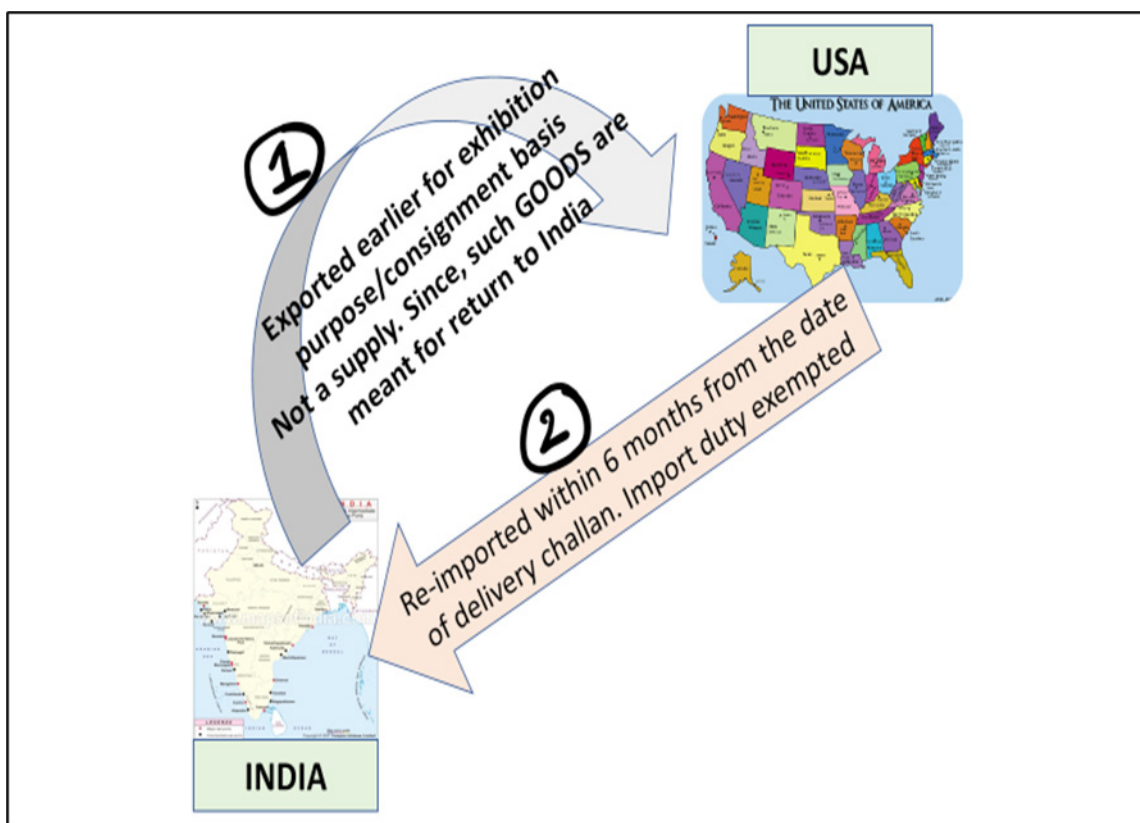
- (a) "certificate of origin" means a certificate issued in accordance with a trade agreement certifying that the goods fulfil the country of origin criteria and other requirements specified in the said agreement;
- (b) "identical goods" means goods that are same in all respects with reference to the country of origin criteria under the trade agreement;
- (c) "Issuing Authority" means any authority designated for the purposes of issuing certificate of origin under a trade agreement;
- (d) "trade agreement" means an agreement for trade in goods between the Government of India and the Government of a foreign country or territory or economic union.'

Study Note - 3

TYPES OF DUTIES



Goods which were exported earlier for exhibition purpose/consignment basis [Circular No. 21/2019-Cus., dated 24.07.2019]



As per Finance Act, 2020, w.e.f 27.3.2020, Power of Central Government to apply safeguard measures under Section 8B of the Customs Tariff Act, 1985:

- (1) If the Central Government, after conducting such enquiry as it deems fit, is satisfied that any article is imported into India in such increased quantity and under such conditions so as to cause or threaten to cause serious injury to domestic industry, it may, by notification in the Official Gazette, apply such safeguard measures on that article, as it deems appropriate.
- (2) The safeguard measures referred to in sub-section (1) shall include imposition of safeguard duty, application of tariff-rate quota or such other measure, as the Central Government may consider appropriate, to curb the increased quantity of imports of an article to prevent serious injury to domestic industry:

Types of Duties

Provided that no such measure shall be applied on an article originating from a developing country so long as the share of imports of that article from that country does not exceed three per cent. or where the article is originating from more than one developing country, then, so long as the aggregate of the imports from each of such developing countries with less than three per cent. import share taken together, does not exceed nine per cent. of the total imports of that article into India:

Provided further that the Central Government may, by notification in the Official Gazette, exempt such quantity of any article as it may specify in the notification, when imported from any country or territory into India, from payment of the whole or part of the safeguard duty leviable thereon.

- (3) Where tariff-rate quota is used as a safeguard measure, the Central Government shall not fix such quota lower than the average level of imports in the last three representative years for which statistics are available, unless a different level is deemed necessary to prevent or remedy serious injury.
- (4) The Central Government may allocate such tariff-rate quota to supplying countries having a substantial interest in supplying the article concerned, in such manner as may be provided by rules.
- (5) The Central Government may, pending the determination under sub-section (1), apply provisional safeguard measures under this sub-section on the basis of a preliminary determination that increased imports have caused or threatened to cause serious injury to a domestic industry:

Provided that where, on final determination, the Central Government is of the opinion that increased imports have not caused or threatened to cause serious injury to a domestic industry, it shall refund the safeguard duty so collected:

Provided further that any provisional safeguard measure shall not remain in force for more than two hundred days from the date on which it was applied.

- (6) Notwithstanding anything contained in the foregoing sub-sections, a notification issued under sub-section (1) or any safeguard measures applied under sub-sections (2), (3), (4) and (5), shall not apply to articles imported by a hundred per cent. export-oriented undertaking or a unit in a special economic zone, unless—
 - (i) it is specifically made applicable in such notification or to such undertaking or unit;
 - (ii) such article is either cleared as such into the domestic tariff area or used in the manufacture of any goods that are cleared into the domestic tariff area, in which case, safeguard measures shall be applied on the portion of the article so cleared or used, as was applicable when it was imported into India.

Explanation.—For the purposes of this section, the expressions “hundred per cent. export-oriented undertaking”, and “special economic zone” shall have the same meaning as assigned to them in Explanation 2 to sub-section (1) of section 3 of the Central Excise Act, 1944.

- (7) The safeguard duty imposed under this section shall be in addition to any other duty imposed under this Act or under any other law for the time being in force.
- (8) The safeguard measures applied under this section shall, unless revoked earlier, cease to have effect on the expiry of four years from the date of such application:

Provided that if the Central Government is of the opinion that the domestic industry has taken measures to adjust to such injury or threat thereof and it is necessary that the safeguard measures should continue to be applied, it may extend the period of such application:

Provided further that in no case the safeguard measures shall continue to be applied beyond a period of ten years from the date on which such measures were first applied.

- (9) The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short-levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.
- (10) The Central Government may, by notification in the Official Gazette, make rules for the purposes of this section, and without prejudice to the generality of the foregoing power, such rules may provide for—
- (i) the manner in which articles liable for safeguard measures may be identified;
 - (ii) the manner in which the causes of serious injury or causes of threat of serious injury in relation to identified article may be determined;
 - (iii) the manner of assessment and collection of safeguard duty;
 - (iv) the manner in which tariff-rate quota on identified article may be allocated among supplying countries;
 - (v) the manner of implementing tariff-rate quota as a safeguard measure;
 - (vi) any other safeguard measure and the manner of its application.
- (11) For the purposes of this section,—
- (a) "developing country" means a country notified by the Central Government in the Official Gazette;
 - (b) "domestic industry" means the producers—
 - (i) as a whole of the like article or a directly competitive article in India; or
 - (ii) whose collective output of the like article or a directly competitive article in India constitutes a major share of the total production of the said article in India;
 - (c) "serious injury" means an injury causing significant overall impairment in the position of a domestic industry;
 - (d) "threat of serious injury" means a clear and imminent danger of serious injury.
- (12) Every notification issued under this section shall be laid, as soon as may be after it is issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or both Houses agree that the notification should not be issued, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.'.

Study Note - 9

ADMINISTRATIVE AND OTHER ASPECTS



As per the Finance Act, 2020, In Chapter VIIA of the Customs Act, in the heading, after the word "LEDGER", the words "AND ELECTRONIC DUTY CREDIT LEDGER" shall be inserted.

As per the Finance Act, 2020, new section 51B inserted in Customs Act, 1962:

- (1) The Central Government may, by notification in the Official Gazette, specify the manner in which it shall issue duty credit,—
 - (a) in lieu of remission of any duty or tax or levy, chargeable on any material used in the manufacture or processing of goods or for carrying out any operation on such goods in India that are exported; or
 - (b) in lieu of such other financial benefit subject to such conditions and restrictions as may be specified therein.
- (2) The duty credit issued under sub-section (1) shall be maintained in the customs automated system in the form of an electronic duty credit ledger of the person who is the recipient of such duty credit, in such manner as may be prescribed.
- (3) The duty credit available in the electronic duty credit ledger may be used by the person to whom it is issued or the person to whom it is transferred, towards making payment of duties payable under this Act or under the Customs Tariff Act, 1975 in such manner and subject to such conditions and restrictions and within such time as may be prescribed."

Confiscation of improperly imported goods – Section 111:

The following goods brought from a place outside India shall be liable to confiscation:

- (a) Any goods imported by sea or air which are unloaded or attempted to be unloaded at any place other than a customs port or customs airport.
- (b) Any goods imported by land or inland water through any route other than a route specified by the Govt.
- (c) Any dutiable or prohibited good brought into any bay, gulf, creek or tidal river for the purpose of being landed at a place other than a customs port.
- (d) Any goods which are imported or attempted to be imported or are brought within the Indian customs waters contrary to the provisions which are in force.
- (e) Any dutiable or prohibited goods found concealed (i.e. hided) in any manner in any conveyance
- (f) Goods not mentioned in the Import manifest or import report
- (g) Goods unloaded in contravention of the provisions of customs law



- (h) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof
- (i) any dutiable or prohibited goods removed or attempted to be removed from a customs area or warehouse without the permission of the proper officer.
- (j) Any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper or contrary to the terms of such permission;
- (k) Any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77.
- (l) Any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77.
- (m) Any dutiable or prohibited goods transited with or without transshipment in contravention of the provisions of customs.
- (n) Any dutiable or prohibited goods transited with or without transshipment or attempted to be so transited in contravention of the provisions of Chapter VIII.
- (o) Any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;
- (p) Any notified goods in relation to which any provisions of Chapter IVA or of any rule made under this Act for carrying out the purposes of that Chapter have been contravened;
- (q) Any goods imported on a claim of preferential rate of duty which contravenes any provision of Chapter VAA or any rule made thereunder (as per Finance Act, 2020 w.e.f 27.3.2020)

Study Note - 12

COMPREHENSIVE ISSUES UNDER CUSTOMS



As per the Finance Act, 2020, In section 28 of the Customs Act, for Explanation 4, the following Explanation shall be substituted and shall be deemed to have been substituted with effect from the 29th day of March, 2018, namely:—

“Explanation 4.—For the removal of doubts, it is hereby declared that notwithstanding anything to the contrary contained in any judgment, decree or order of the Appellate Tribunal or any Court or in any other provision of this Act or the rules or regulations made thereunder, or in any other law for the time being in force, in cases where notice has been issued for non-levy, short-levy, non-payment, shortpayment or erroneous refund, prior to the 29th day of March, 2018, being the date of commencement of the Finance Act, 2018, such notice shall continue to be governed by the provisions of section 28 as it stood immediately before such date.”.

As per the Finance Act, 2020,

In section 28AAA of the Customs Act, in sub-section (1),—

- (a) for the words “by such person”, the words “or any other law, or any scheme of the Central Government, for the time being in force, by such person” shall be substituted;
- (b) after the words “the rules”, the words “or regulations” shall be inserted;
- (c) in Explanation 1, for the words “with respect to”, the words, figures and letter “or duty credit issued under section 51B, with respect to” shall be substituted

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Section C

Foreign Trade Policy 2015-2020

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Study Note - 1

FOREIGN TRADE POLICY 2015-2020



Duration of applicability of FTP 2015-2020 extended till 31.03.2021

The existing Foreign Trade Policy 2015-2020 which was valid till 31.03.2020 has been extended upto 31.03.2021.

IMPORT OF GIFTS

Import of gifts shall be permitted where such goods are otherwise freely importable under Indian Trade Classification (Harmonized System) [ITC (HS)]. In other cases, a Customs Clearance Permit (CCP) shall be required from DGFT.

Import of goods as gifts prohibited except for life saving drugs/medicines and rakhi (but not gifts related to rakhi)

[Notification No. 35/2015-2020 dated 12.12.2019]

Earlier, import of gifts were free where such goods were otherwise freely importable under ITC (HS). In other cases, such imports were permitted against an Authorization issued by DGFT.

However, DGFT vide *Notification No. 35/2015-20 dated 12th December 2019* has amended the said provision and provided that import of goods, including those purchased from e-commerce portals, through post or courier, where customs clearance is sought as gifts, is prohibited except for life saving drugs/medicines and rakhi (but not gifts related to rakhi). Rakhi will be exempted as under section 25(6) of the Customs Act, 1962 that reads "...no duty shall be collected if the amount of duty leviable is equal to, or less than, Rs. 100". Further, import of goods as gifts with payment of full applicable duty is permissible.

Exemption from IGST and GST compensation cess extended upto 31.03.2021 in case of imports under Advance Authorization, EPCG, EOU/EHTP/STP/BTP units

Imports against Advance Authorizations for physical exports were exempted from Integrated Tax and Compensation Cess upto 31.03.2020. Such exemption has now been extended upto 31.03.2021.

Capital goods imported under EPCG Authorization for physical exports were exempted from IGST and Compensation Cess upto 31.03.2020. Such exemption has now been extended upto 31.03.2021.

Goods imported by EOU/EHTP/STP/BTP units from DTA, IGST and GST compensation cess were exempt upto 31.03.2020. Such exemption from has also been extended upto 31.03.2021.

[Notification No. 57/2015-2020 dated 31.03.2020]



Refund of drawback of basic customs duty paid on inputs for deemed exports also allowed on “All Industry Rate” basis [Notification No. 28/2015-2020 dated 31.10.2019]

DGFT vide *Notification No. 28/2015-20 dated 31st October 2019* has amended the said provision and provided that refund of drawback on the inputs used in manufacture and supply under the deemed exports category can be claimed on ‘**All Industry Rate**’ of Duty Drawback Schedule notified by Department of Revenue from time to time provided no CENVAT credit has been availed by supplier of goods on excisable inputs or on ‘**Brand rate basis**’ upon submission of documents evidencing actual payment of basic custom duties. Accordingly, the refund of drawback of duty paid on inputs is also allowed on All Industry Rate basis.

Note: Earlier, the refund of drawback in the form of Basic Customs duty of the inputs used in manufacture and supply under the deemed exports category was given on brand rate basis upon submission of documents evidencing actual payment of basic custom duties.

REWARD SCHEMES (i.e. Duty Credit Schemes)

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

Service Export from India Scheme (SEIS):

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