STATUTORY UPDATES

GOODS & SERVICES TAX (GST)

SUPPLY

Scope of supply (Section 7 of CGST Act, 2017)

As per Section 7(1) **Supply includes**	As per Section 7(2) **Supply excludes**
(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business; (b) import of services for a consideration whether or not in the course or furtherance of business; (**'and' w.e.f. 29th Aug 2018 inserted retrospectively from 1.7.2017)** (c) the activities specified in **Schedule I**, made or agreed to be made without a consideration; **(w.e.f. 29th Aug 2018 'and' omitted retrospectively from 1.7.2017)** (d) **w.e.f. 29th Aug 2018, omitted retrospectively from 1.7.2017:** the activities to be treated as supply of goods or supply of services as referred to in **Schedule II**. **w.e.f. 29th Aug 2018, applicable retrospectively from 1.7.2017**	(a) activities or transactions specified in **Schedule III**; or (b) such activities or transactions undertaken by the Central Government, a State Government or **(Union territory w.e.f. 27th June 2018)** any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, **Note: Activities specified in Schedule III (i.e. Negative list):** 1. Services by employee to employer in the course of or in relation to his employment. 2. Services by court or Tribunal 3. Services by Member of Parliament and others 4. Services by funeral, burial etc. 5. Sale of land/Building 6. Actionable claim other than lottery, betting and gambling.

(1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (*1*), they shall be treated either as supply of goods or supply of services as referred to in Schedule II."	**w.e.f. 1-2-2019:** 7. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India. 8. (a) Supply of warehoused goods to any person before clearance for home consumption; (b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption."; *Explanation 1*: For the purpose of paragraph 2, the term "court" includes District Court, High Court and Supreme Court. *Explanation 2*: For the purpose of this paragraph, the expression "warehoused goods" shall have the same meaning as assigned to it in the Customs Act, 1962
As per Section 7(3) Subject to the provisions of sub-sections (1), (1A) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as— (*a*) a supply of goods and not as a supply of services; or (*b*) a supply of services and not as a supply of goods.	

w.e.f. 1-10-2019: Alcoholic liquor licence – Grant thereof not to treated as supply of goods/services:

As per section 7(2) of CGST Act, 2017 Central Govt. of India on the recommendation of the GST Council notifies that the following activities or transaction under taken by the State Governments in which they are engaged as public authorities, shall be treated neither as a supply of goods nor a supply of service namely:-

"services by way of grant of alcoholic liquor licence, against consideration in the form of licence fee or application fee or by whatever name it is called"

Section 7(1)(c) of the CGST Act, 2017 the activities specified in Schedule I, made or agreed to be made without a consideration:

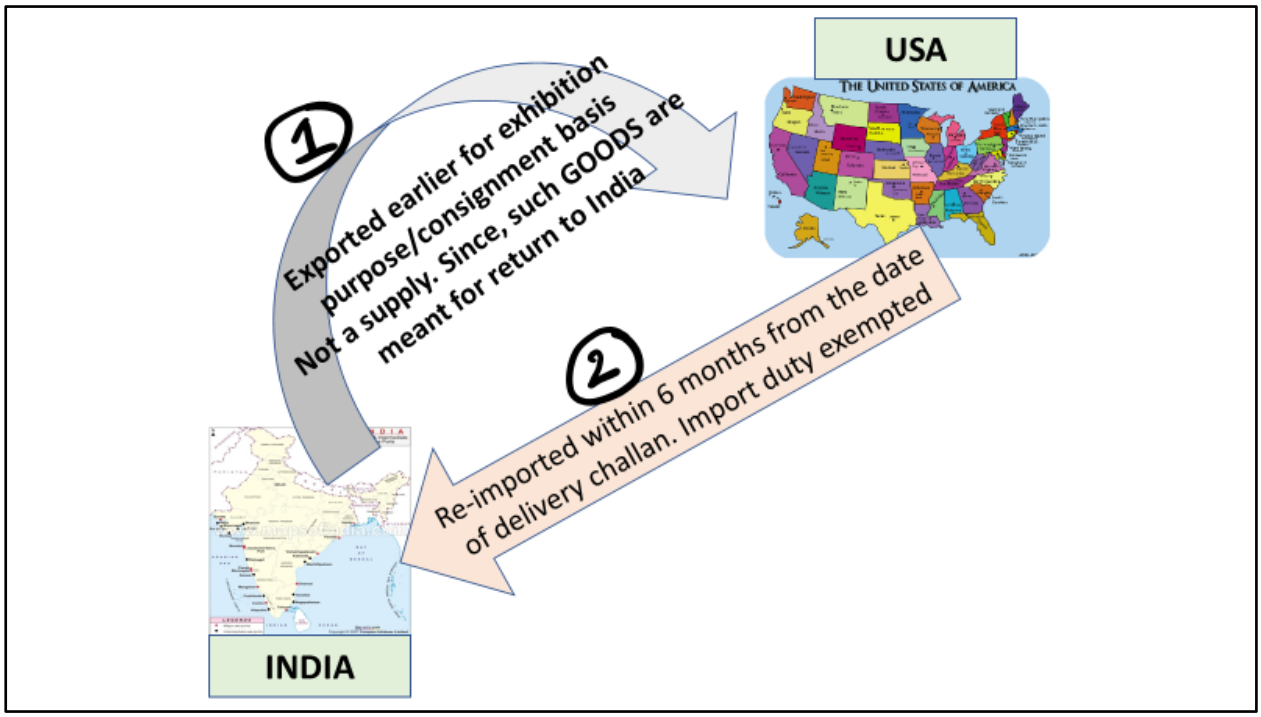
SCHEDULE I

ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

1. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.
2. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business:

   Provided that gifts not exceeding □50,000/- in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.
3. Supply of goods—
   (*a*) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or
   (*b*) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.
4. Import of services by a ~~taxable~~ person **(w.e.f. 1-2-2019 the term taxable omitted)** from a related person or from any of his other establishments outside India, in the course or furtherance of business.

Goods sent/ taken out of India for exhibition or on consignment basis for export promotion [Circular No. 108/27/2019 GST dated 18.07.2019]



Goods sent to related person or distinct person or to principal or agents for participation in exhibition which are going to return to India is not a supply.

As per section 7 of the CGST Act, for any activity or transaction to be considered a supply, it must satisfy twin tests namely-

(i) it should be for a consideration by a person; and

(ii) it should be in the course or furtherance of business.

The exceptions to the above are the activities enumerated in Schedule I of the CGST Act which are treated as supply even if made without consideration. Further, sub-section (21) of section 2 of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as the "IGST Act") defines "supply", wherein it is clearly stated that it shall have the same meaning as assigned to it in section 7 of the CGST Act.

Section 16 of the IGST Act deals with "Zero rated supply". The provisions contained in the said section read as under:

Sec 16 (1) of IGST Act, "zero rated supply" means any of the following supplies of goods or services or both, namely:—

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

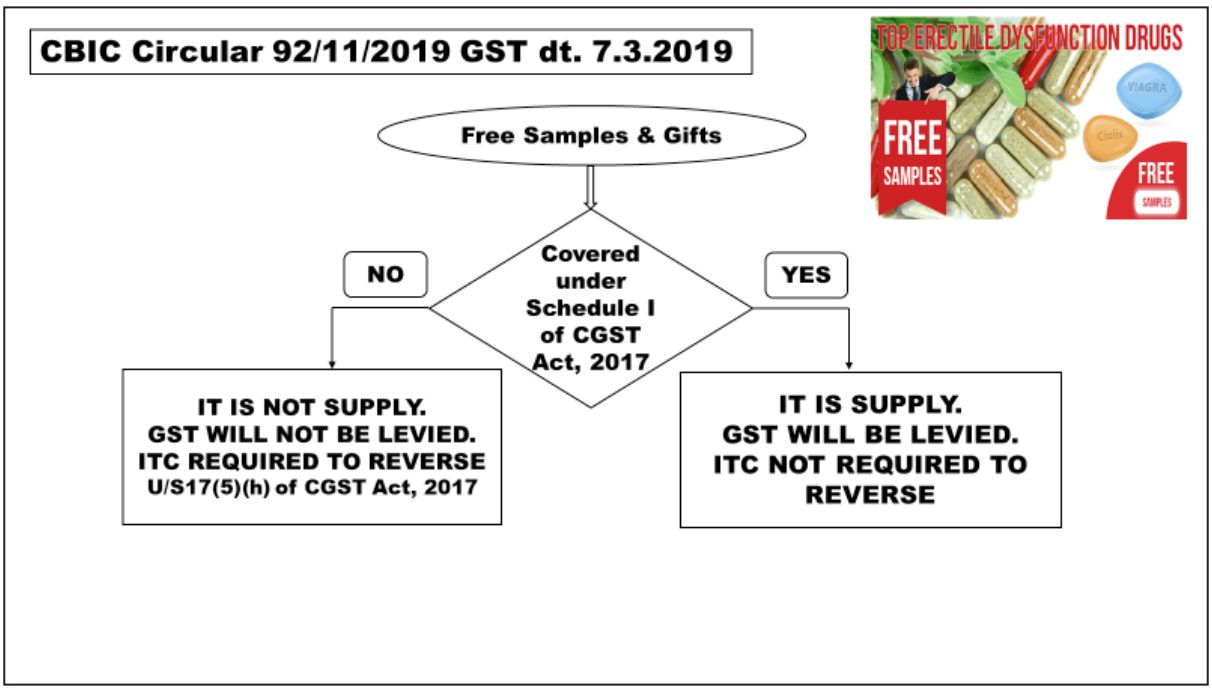
(b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

Therefore, it can be concluded that only such "supplies" which are either "export" or are "supply to SEZ unit / developer" would qualify as zero-rated supply.

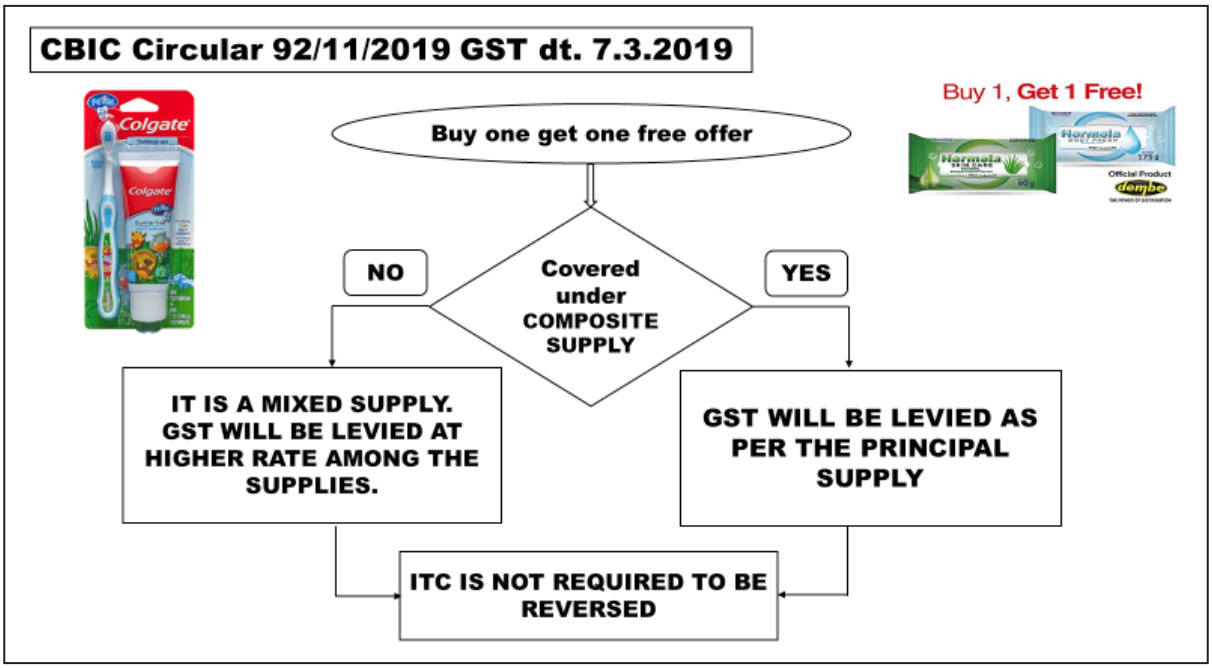
It is, accordingly, clarified that the activity of sending / taking the goods out of India for exhibition or on consignment basis for export promotion, except when such activity satisfy the tests laid down in Schedule I of the CGST Act (hereinafter referred to as the "specified goods"), do not constitute supply as the said activity does not fall within the scope of section 7 of the CGST Act as there is no consideration at that point in time. Since such activity is not a supply, the same cannot be considered as "Zero rated supply" as per the provisions contained in section 16 of the IGST Act.

COMPOSITE AND MIXED SUPPLIES

Free Samples & Gifts:



Buy one get one free offer



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

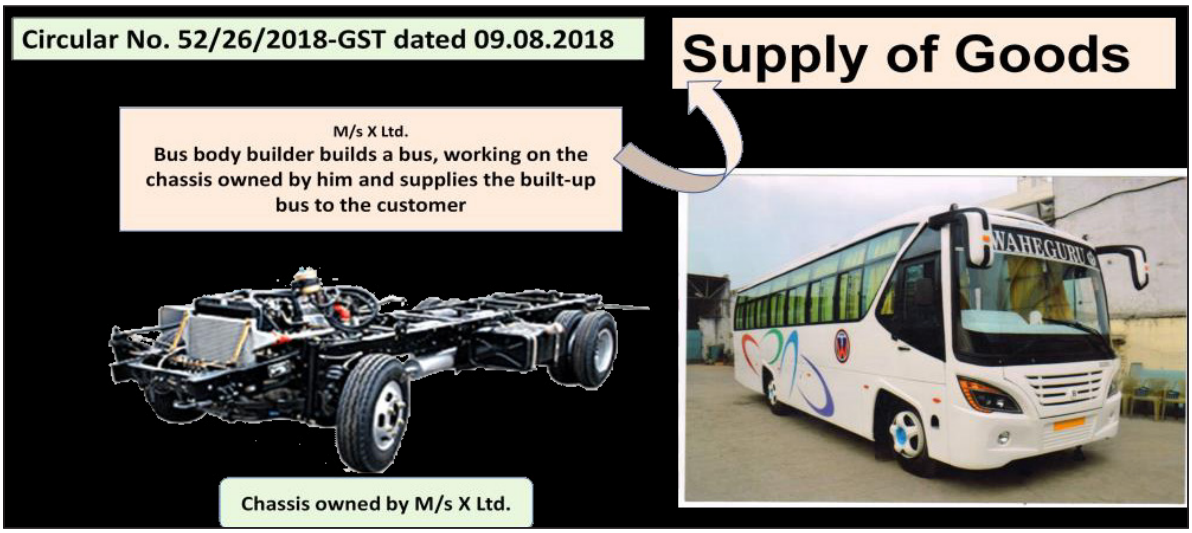
Thus, fabrication of buses may involve the following two situations:

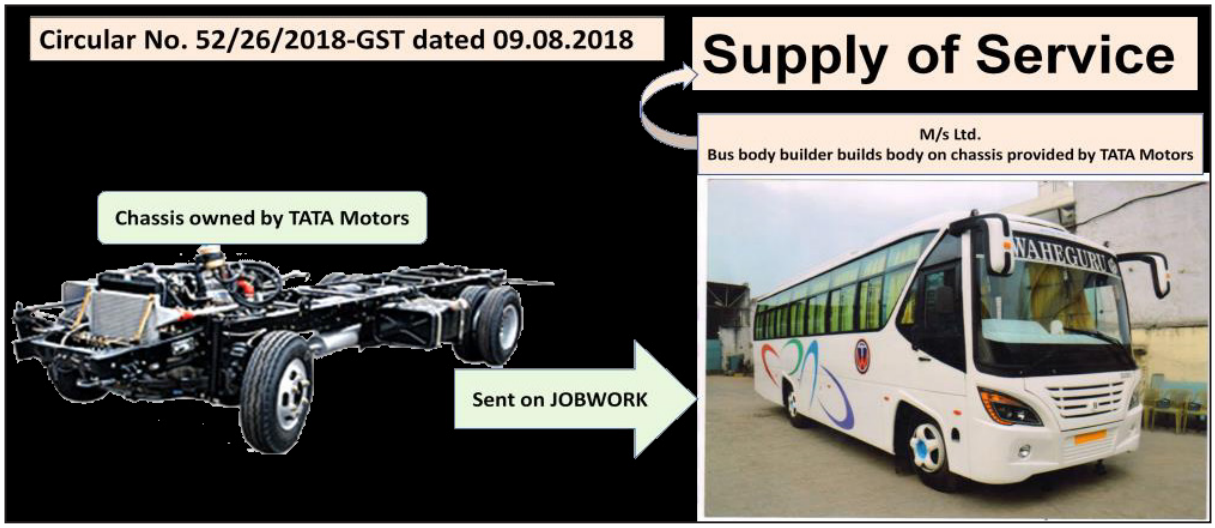
a) Bus body builder builds a bus, working on the chassis owned by him and supplies the built-up bus to the customer, and charges the customer for the value of the bus.

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.





LEVY AND COLLECTION

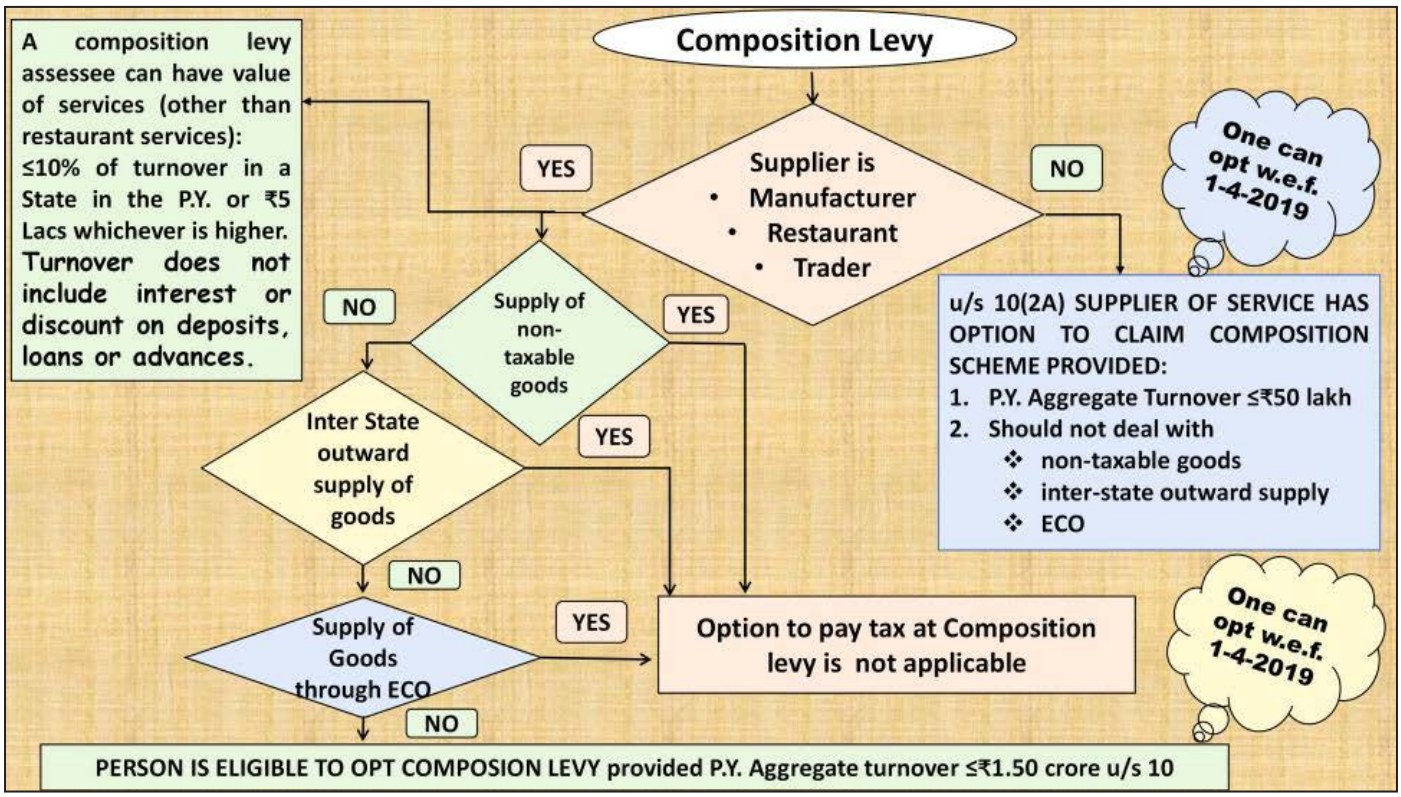
CGST Act, 2017	IGST Act, 2017
Section 9(4): supply by a **not registered person, to a registered person, reverse charge** applicable. Reverse charge provisions would not be applicable if the aggregate value of such supplies of goods or services or both received by a taxable person from any or all the suppliers, who are not registered, does not exceeds ₹5,000 in a day. **This Section 9(4) of the CGST Act, 2017 has been suspended till 30th September 2019 (22/2018-Central Tax (Rate), dated 06-08-2018).** ***Notification to exempt tax on goods or services received from Unregistered person rescinded w.e.f. 1-2019.*** **w.e.f. 1-2-2019:** Section 9(4) of the CGST Act, 2017, The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both".	Section 5(4): supply by a **not registered person, to a registered person, reverse charge** applicable. Reverse charge provisions would not be applicable if the aggregate value of such supplies of goods or services or both received by a taxable person from any or all the suppliers, who are not registered, does not exceeds ₹5,000 in a day. **This Section 9(4) of the CGST Act, 2017 has been suspended till 30th September 2019 (22/2018-Central Tax (Rate), dated 06-08-2018).** ***Notification to exempt tax on goods or services received from Unregistered person rescinded w.e.f. 1-2019.*** **w.e.f. 1-2-2019:** Section 5(4) of the IGST Act, 2017, The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both".

Notified services taken from unregistered person liable to tax on reverse charge basis w.e.f. 1st April, 2019

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

COMPOSITION LEVY



The Central Government vide *Notification No. 14/2019 – Central Tax dated 07th March, 2019* notified that an eligible registered person, whose aggregate turnover in the preceding financial year **did not exceed ₹ 1.5 Crores**, may opt to pay tax under Composition scheme. However, the said aggregate turnover shall be ₹ **75 lakh** in case of persons registered under following States:-

1. Arunachal Pradesh
2. Manipur
3. Meghalaya
4. Mizoram
5. Nagaland
6. Sikkim
7. Tripura
8. Uttarakhand

IMPORTATNT POINTS (Notification No. 01/2020 CT dt 1-1-2020):

(i) For the purposes of computing aggregate turnover of a person for determining his eligibility to pay tax under this section, the expression '**aggregate turnover**´ shall include the value of supplies made by such person from the 1st day of April of a financial year upto the date when he becomes liable for registration under this Act, but shall not include the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

(ii) For the purposes of determining the **tax payable** by a person under this section, the expression turnover in State or turnover in Union territory´ shall not include the value of following supplies, namely

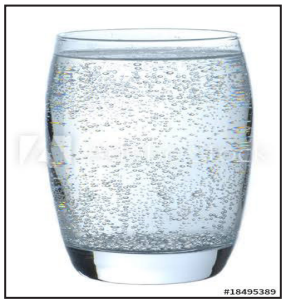
(i) supplies from the first day of April of a financial year upto the date when such person becomes liable for registration under this Act

and

(ii) exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

Manufacture of goods as notified u/s 10(2)(e) of the CGST Act, 2017 during the preceding financial year 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.

S. No.	Tariff item, sub-heading, or heading or Chapter	Description
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

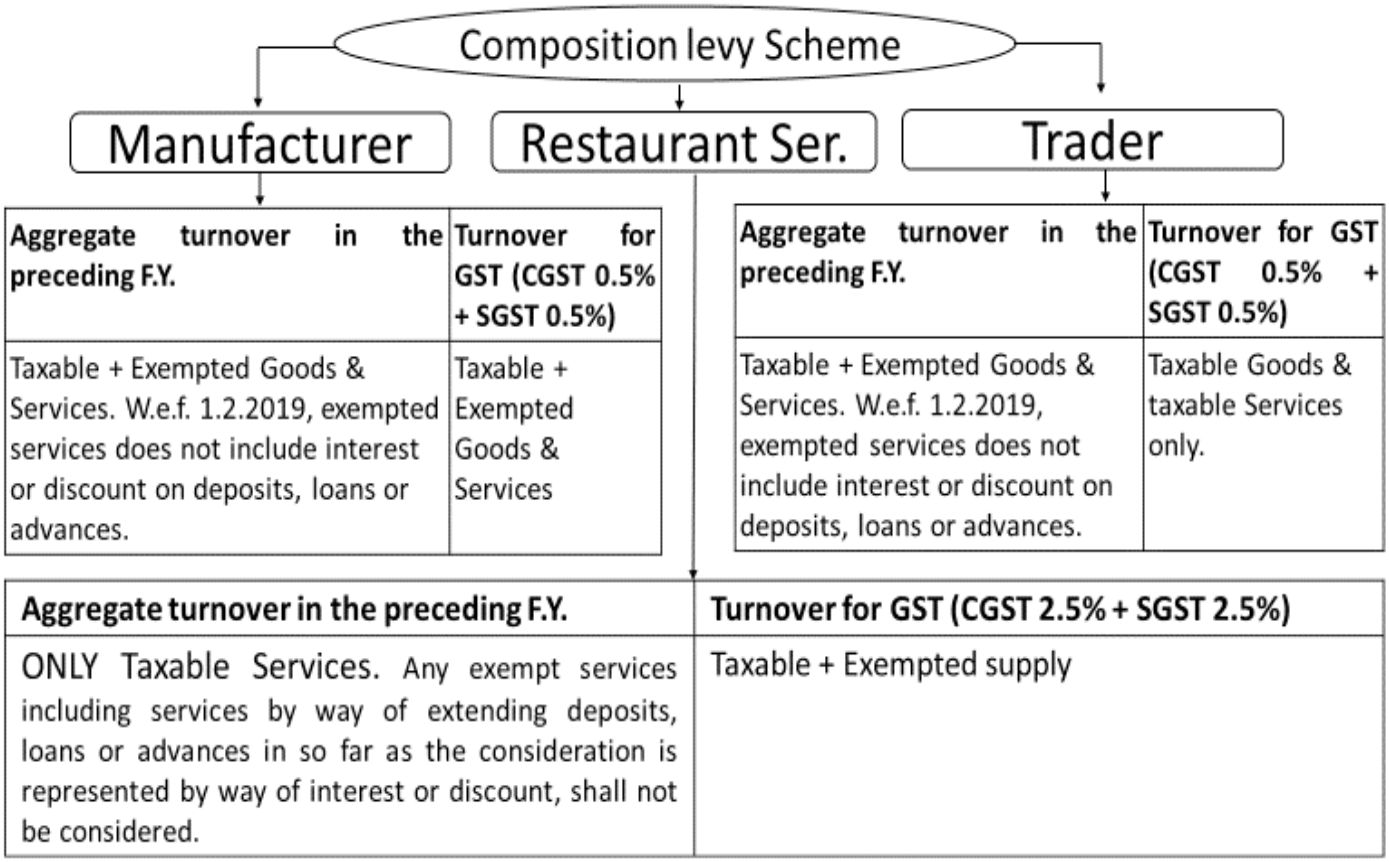
As per *Notification No. 2/2019 CT (R) dated 07.03.2019,* a registered person making supplies of the above goods is also not eligible to pay concessional tax under the said notification.

Thus, now a manufacturer of aerated water (Tariff item 2202 1010) will also not be eligible to opt for composition scheme. Likewise, a supplier of aerated water (Tariff item 2202 1010) will also not be eligible to pay concessional tax under *Notification No. 2/2019 CT (R) dated 07.03.2019.*

[Notification No. 43/2019 CT dated 30.09.2019 & Notification No. 18/2019 CT (R) dated 30.09.2019]

Payment of GST under Composition Scheme:

Simplified Approach:



Composition scheme for supplier of services with a tax rate of CGST 3% AND SGST 3% w.e.f April 1, 2019:

The Central Government vide *Notification No. 2/2019-Central Tax (Rate) dated 07th March, 2019* notified Composition scheme in case of **intra-State supply** of goods or services or both, at the rate along with the conditions specified below:

Description of supply:

First supplies of goods or services or both upto an aggregate turnover of ₹50 lakhs made on or after the 1st day of April in any financial year, by a registered person

Conditions

1. Supplies are made by a registered person, -
   (i) whose aggregate turnover in the preceding financial year was □50 lakh or below;
   (ii) who is **not eligible** to pay tax under sub-section (1) of section 10;
   (iii) who is **not engaged** in making any supply which is **not leviable to tax**;
   (iv) who is **not engaged** in making any **inter-State** outward supply;
   (v) who is neither a casual taxable person nor a non-resident taxable person;
   (vi) who is not engaged in making any supply through an electronic commerce operator who is required to collect tax at source under section 52; and
   (vii) who is not engaged in making supplies of:
      (a) Ice cream and other edible ice, whether or not containing cocoa.
      (b) Pan masala
      (c) Tobacco and manufactured tobacco substitutes
2. Where more than one registered persons are having same PAN, central tax on supplies by all such registered persons is paid at the given rate.
3. The registered person **shall not collect any tax** from the recipient nor shall he be entitled to any credit of input tax.
4. The registered person shall issue, instead of tax invoice, a bill of supply.
5. The registered person shall mention the following words at the top of the bill of supply, namely: -

   'Taxable person paying tax in terms of Notification No. 2/2019-Central Tax (Rate) dated 07.03.2019, not eligible to collect tax on supplies'.
6. Liability to pay central tax at the rate of 3% on all outward supplies **notwithstanding any other notification issued** under section 9 or section 11 of said Act.
7. Liability **to pay central tax on inward supplies** on reverse charge under sub-section (3) or sub-section (4) of section 9 of said Act.

Explanation: For the purposes of this notification, the expression "first supplies of goods or services or both" shall, for the purposes of determining eligibility of a person to pay tax under this notification, include the supplies from the first day of April of a financial year to the date from which he becomes liable for registration under the said Act but for the purpose of determination of tax payable under this notification shall not include the supplies from the first day of April of a financial year to the date from which he becomes liable for registration under the Act.

It may be noted that while computing aggregate turnover in order to determine eligibility of a registered person to pay central tax at the rate of 3%, value of supply of exempt services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, shall not be taken into account.

Amendment in scheme for supplier of services with a tax rate of 6%:

The Central Government vide Notification No. 9/2019-Central Tax (R) dated 29thMarch, 2019 has made following amendments in the Composition scheme in case of intra-State supply of goods or services or both:

- One more condition to avail the scheme has been provided where any registered person who has availed of input tax credit opts to pay tax under this notification, he shall pay an amount, by way of debit in the electronic credit or cash ledger, equivalent to the credit of ITC in respect of inputs held in stock and inputs contained in semi-finished or finished goods in stock and on capital goods as if the supply made under this notification attracts the provisions of section 18(4) of the Act and the rules made there-under and after payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse.

Further explanation has been inserted to provide that the Central Goods and Services Tax Rules, 2017, as applicable to a person paying tax under section 10 of the said Act shall, mutatis mutandis, apply to a person paying tax under this notification.

Various Forms for Composition levy assessee:

The amended rule 62 whose heading has been changed to "Form and manner of submission of statement and return" provides as under:

(i) Every registered person paying tax under section 10 or paying tax by availing the benefit of Notification No. 02/2019 CT (R) dated 07.03.2019 shall electronically furnish -

  (a) a statement in the prescribed form (GST CMP-08) containing details of payment of self-assessed tax, for every quarter (or part of the quarter), by 18th day of the month succeeding such quarter; and

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

(ii) Every registered person furnishing the statement under sub-rule (1) shall discharge his liability towards tax or interest payable by debiting the electronic cash ledger.

(iii) The return furnished under sub-rule (1) shall include the- (a) invoice wise inter- State and intra-State inward supplies received from registered and un- registered persons; and (b) consolidated details of outward supplies made.

(iv) A registered person who has opted to pay tax under section 10 or by availing the benefit of Notification No. 02/2019 CT (R) dated 07.03.2019 from the beginning of a financial year shall,

where required, furnish the details of outward and inward supplies and return under rules 59, 60 and 61 relating to the period during which the person was liable to furnish such details and returns till the due date of furnishing the return for the month of September of the succeeding financial year or furnishing of annual return of the preceding financial year, whichever is earlier.

Here, the person shall not be eligible to avail ITC on receipt of invoices or debit notes from the supplier for the period prior to his opting for the composition scheme or paying tax by availing the benefit of Notification No. 02/2019 CT (R) dated 07.03.2019.

(v) A registered person opting to withdraw from the composition scheme at his own motion or where option is withdrawn at the instance of the proper officer shall, where required, furnish a statement in the prescribed form for the period for which he has paid tax under the composition scheme till the 18th day of the month succeeding the quarter in which the date of withdrawal falls and furnish GSTR 4 for the said period till the 30th day of April following the end of the financial year during which such withdrawal falls.

(vi) A registered person who ceases to avail the benefit of Notification No. 02/2019 CT (R) dated 7.03.2019, shall, where required, furnish a statement in the prescribed form for the period for which he has paid tax by availing the benefit under the said notification till the 18th day of the month succeeding the quarter in which the date of cessation takes place and furnish GSTR 4 for the said period till the 30th day of April following the end of the financial year during which such cessation happens.

[Notification No. 20/2019 CT dated 23.04.2019]

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 • 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 dt. 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		

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.

EXEMPTIONS

Explanation in such notification or order:

As per section 11(3) of the CGST Act, 2017 or section 6(3) of the IGST Act, 2017, Government is empowered to clarify the scope of applicability of any notification or special order by inserting an explanation in such notification or order. Such clarification shall only be issued by notification within ONE year of issuing of notification or special order and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

Example: Assume a notification issued on 28th June 2017 may specify that it will be effective from 1st July 2017. In such case an explanation is inserted (i.e. subsequently) within one year reckoned from 1st July 2017 but not from 28th June 2017. If so such an explanation is effective from 1st July 2017.

Sec. 11(3) of CGST Act, 2017 [Circular No. 120/39/2019 GST dated 11.10.2019]:

Section 11(3) of CGST Act provides that the Government may insert an explanation in any notif ication issued under section 11, for the purpose of clarifying its scope or applicability, at any time within 1 year of issue of the notification and every such explanation shall have effect as if it had always been the part of the first such notification.

It is hereby clarified that the explanation having been inserted under section 11(3) of the CGST Act, is effective from the inception of the entry in notification and not from the date from which the notification (that inserted said explanation) becomes effective.

Example: the principal Notification No. 11/2017 CT (R) dated 28.06.2017 came into force with effect from 1.07.2017. Thereafter, a new entry - Entry no. 10(A) is inserted w.e.f. 21.09.2017. Subsequently, an explanation is also inserted with respect to entry no. 10(A) on 26.07.2018. Although the effective date mentioned in the notification which inserted said explanation is 27.07.2018, said explanation will be effective from the inception of entry in notification i.e. 21.09.2017 and not 27.07.2018.

The following services are exempted from GST:

S. No.	Exempted services Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017)
7	Services provided by the Central Government, State Government, Union territory or local authority to a business entity with an aggregate turnover of upto ₹20 lakh (₹10 lakh in case of a special category state) in the preceding financial year. *Explanation*: For the purposes of this entry, it is hereby clarified that the provisions of this entry shall not be applicable to—

	(a) services,— (i) by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory; (ii) in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) of transport of goods or passengers; and (b) services by way of renting of immovable property. **w.e.f. 1-10-2019:** Services provided by the Central Government, State Government, Union territory or local authority to a business entity with an aggregate turnover of up to "such amount in the preceding financial year as makes it eligible for exemption from registration under the *Central Goods and Services Tax Act, 2017* (12 of 2017)" is exempt. Earlier the turnover was specified as "twenty lakh rupees (ten lakh rupees in case of a special category state) in the preceding financial year" which has now been rationalised.
9AA	**w.e.f. 1-10-2019:** **services provided by and to Federation International de Football Association (FIFA) and its subsidiaries directly or indirectly related to any of the event under FIFA U-17 Women's World Cup 2020 to be hosted in India is exempted from GST.** Provided that Director (Sports), Ministry of Youth Affairs and Sports certifies that the services are directly or indirectly related to any of the events under FIFA U-17 World Cup 2020.
14	Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below ₹1,000 per day or equivalent. **w.e.f. 1-10-2019 clarification given by Govt. of India:** Amendment has been brought under S. No. 14 of Services exemption notification to clarify that services by way of residential or lodging purposes, having value of supply of a unit of accommodation **below or upto one thousand rupees per day is exempt.**
19A	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 granted only till 30th September 2018. Now extended upto 30th September 2019. **w.e.f. 1-10-2019 this exemption further extended upto September 2020**

19B	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 granted only till 30th September 2018 Now extended upto 30th September 2019. **w.e.f. 1-10-2019 this exemption further extended upto September 2020**
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; 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.
24B	**w.e.f. 1-10-2019:** **services provided by way of storage or warehousing of cereals, pulses, fruits, nuts and vegetables, spices, copra, sugarcane, jaggery , raw vegetable fibres, jute etc. indigo, unmanufactured tobacco, betel leaves, tendu leaves, coffee and tea exempted from GST.**
25	Transmission or distribution of electricity by an electricity transmission or distribution utility.
26	Services by the Reserve Bank of India.
27	Services by way of— (a) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services); (b) sale or purchase of foreign currency amongst banks or authorized dealers of foreign exchange or amongst banks and such dealers.
27A	**Notification No. 28/2018-CT (R), dated 31st Dec, 2018:** Services provided by a banking company to Basic Saving Bank Deposit (BSBD) account holders under Pradhan Mantri Jan Dhan Yojana (PMJDY).
28	Services of life insurance business provided by way of annuity under the National Pension System regulated by the Pension Fund Regulatory and Development Authority of India under the Pension Fund Regulatory and Development Authority Act, 2013 (23 of 2013).
29	Services of life insurance business provided or agreed to be provided by the Army, Naval and Air Force Group Insurance Funds to members of the Army, Navy and Air Force, respectively, under the Group Insurance Schemes of the Central Government.
29A	w.e.f. 25.1.2018, Services of life insurance provided or agreed to be provided by the Naval Group Insurance Fund to the personnel of Coast Guard under the Group Insurance Schemes of the Central Government retrospectively w.e.f. 1st July 2017.
29B	**w.e.f. 1-10-2019:** **Services of life insurance provided or agreed to be provided by the Central Armed Police Forces (under Ministry of Home Affairs) Group Insurance Funds to their members under the Group Insurance Schemes of the concerned Central Armed Police Force exempted from GST.**

35	Services of general insurance business provided under following schemes— (a) Hut Insurance Scheme; (b) Cattle Insurance under Swarnajaynti Gram Swarozgar Yojna (earlier known as Integrated Rural Development Programme); (c) Scheme for Insurance of Tribals; (d) Janata Personal Accident Policy and Gramin Accident Policy; (e) Group Personal Accident Policy for Self-Employed Women; (f) Agricultural Pumpset and Failed Well Insurance; (g) premia collected on export credit insurance; (h) Weather Based Crop Insurance Scheme or the Modified National Agricultural Insurance Scheme, approved by the Government of India and implemented by the Ministry of Agriculture; (i) Jan Arogya Bima Policy; (j) National Agricultural Insurance Scheme (Rashtriya Krishi Bima Yojana); (k) Pilot Scheme on Seed Crop Insurance; (l) Central Sector Scheme on Cattle Insurance; (m) Universal Health Insurance Scheme; (n) Rashtriya Swasthya Bima Yojana; (o) Coconut Palm Insurance Scheme; (p) Pradhan Mantri Suraksha BimaYojna; (q) Niramaya Health Insurance Scheme implemented by the Trust constituted under the provisions of the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999). **w.e.f 1-10-2019: exemption notification has been amended to exempt services of general insurance business provided under "Bangla Shasya Bima" scheme.**
41	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.
41A	Service by way of transfer of development rights or Floor Space Index on or after **1st April 2019** for construction of residential apartments. Exemption is available only when promoter or builder paying tax under construction supply of service.
41B	Upfront amount payable in respect of service by way of granting of long-term lease of 30 years, or more, on or after **01.04.2019**, for construction of residential apartments. Exemption is available only when promoter or builder paying tax under construction supply of service.
45	Services provided by— (a) an arbitral tribunal to— (i) any person other than a business entity; or (ii) a business entity with an aggregate turnover upto `20 lakh (`10 lakh in the case of special category states) in the preceding financial year; (iii) w.e.f. 25.1.2018, the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity;

	(b) a partnership firm of advocates or an individual as an advocate other than a senior advocate, by way of legal services to— (i) an advocate or partnership firm of advocates providing legal services; (ii) any person other than a business entity; or (iii) a business entity with an aggregate turnover upto ₹20 lakh (₹10 lakh in the case of special category states) in the preceding financial year; (iv) w.e.f. 25.1.2018, the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity; (c) a senior advocate by way of legal services to— (i) any person other than a business entity; or (ii) a business entity with an aggregate turnover upto ₹20 lakh (₹10 lakh in the case of special category states) in the preceding financial year or (iii) w.e.f. 25.1.2018, the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity. **w.e.f. 1-10-2019:** **aggregate turnover of up to "such amount in the preceding financial year as makes it eligible for exemption from registration under the** *Central Goods and Services Tax Act, 2017* **(12 of 2017)" is exempt.** Earlier the turnover was specified as "twenty lakh rupees (ten lakh rupees in case of a special category state) in the preceding financial year" which has now been rationalised.
67	Services provided by the Indian Institutes of Management, as per the guidelines of the Central Government, to their students, by way of the following educational programmes, except Executive Development Programme:— (a) two year full time Post Graduate Programmes in Management for the Post Graduate Diploma in Management, to which admissions are made on the basis of Common Admission Test (CAT) conducted by the Indian Institute of Management; (b) fellow programme in Management; (c) five year integrated programme in Management.

Entry No. 67 Omitted w.e.f. 1-1-2019 (*vide* CBIC Circular No. 82/01/2019- GST, dated 1-1-2019):

Period	Exemption	Remarks
1-7-2017 to 30-1-2018	IIM's exempted from Entry No. 67 of Notification No. 12/2017 C.T.	IIMs were not covered by the definition of educational institutions as given in notification No. 12/2017 Central Tax (Rate), dated 28.06.2017. Thus, they were not entitled to exemption under Sl. No. 66 of the said notification.
It is further, clarified that with effect from 31st January 2018, all IIMs have become eligible for exemption benefit under Sl. No. 66 of notification No. 12/ 2017- Central Tax (Rate) dated 28.06.2017. As such, specific exemption granted to IIMs *vide* Sl. No. 67 has become redundant. The same has been deleted vide notification No. 28/2018- Central Tax (Rate) dated, 31st December 2018 w.e.f. 1st January 2019.		
31-1-2018 to 31-12-2018	Two exemptions, i.e. under Sl. No. 66 and under Sl. No. 67 of notification No. 12/ 2017- Central Tax (Rate), dated 28.06.2017 are available to the IIMs.	As per Hon'ble Supreme Court of India, if there are two or more exemption notifications available to an assessee, the assessee can claim the one that is more beneficial to him.
Important Note: Indian Institutes of Managements also provide various short duration/ short term programs for which they award participation certificate to the executives/ professionals as they are considered as "participants" of the said programmes. These participation certificates are not any qualification recognized by law. Such participants are also not considered as students of Indian Institutes of Management. Services provided by IIMs as an educational institution to such participants is not exempt from GST.		

82A

w.e.f. 1-10-2019

services by way right to admission to the events organised under FIFA U-17 Women's World Cup 2020 exempted from GST.

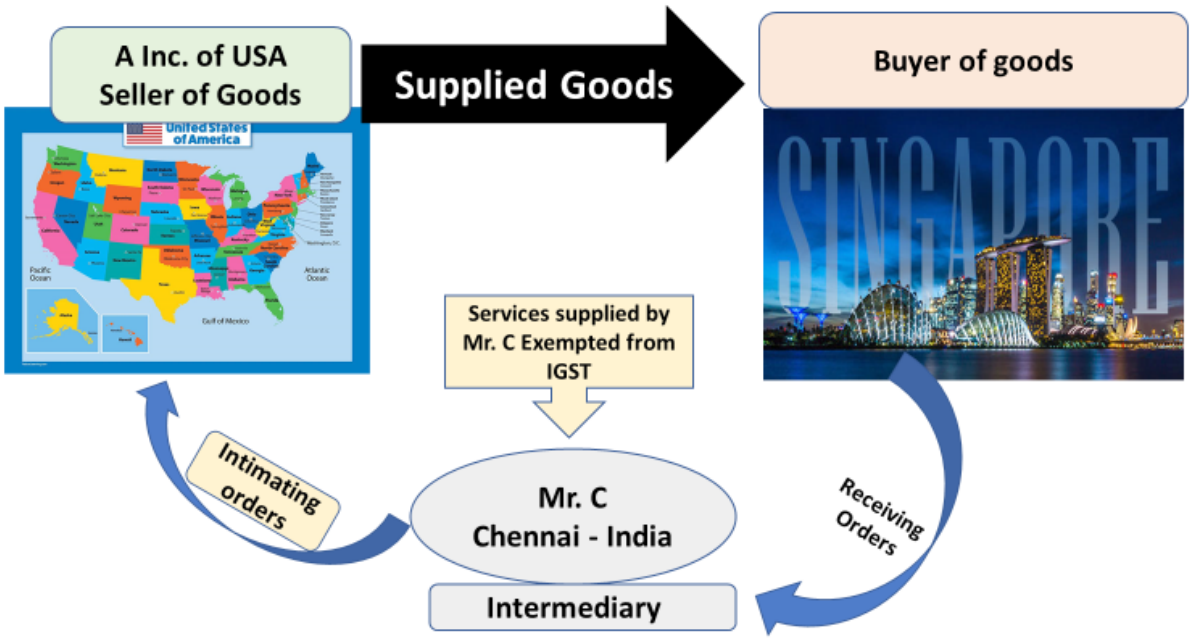
Parallel exemptions from IGST have been extended to supply of specified inter-State services by amending Notification No. 9/2017 IT (R) dated 28.06.2017 vide Notification No. 13/2019 IT (R) dated 31.07.2019/ Notification No. 20/2019 IT (R) dated 30.09.2019/ Notification No. 27/2019 IT (R) dated 31.12.2019.

Clarification on applicability of GST exemption to the DG Shipping approved maritime courses conducted by Maritime Training Institutes of India. (CBIC Circular No. 117/36/2019-GST, dated 11th October, 2019)

Maritime Training Institutes and their training courses are approved by the Director General of Shipping which are duly recognised under the provisions of the Merchant Shipping Act, 1958 read with the Merchant Shipping (standards of training, certification and watch-keeping for Seafarers) Rules, 2014.

Therefore, the Maritime Institutes are educational institutions under GST Law and the courses conducted by them are exempt from levy of GST. The exemption is subject to meeting the conditions specified at Sl. No. 66 of the notification No. 12/ 2017-Central Tax (Rate), dated 28.06.2017.

List of services exempt from IGST

	Apart from above, list of services exempts from IGST by Notification No. 9/2017-Integrated Tax (Rate), dated 28th June, 2017 also include following three services.
	w.e.f. 1-10-2019, Notification No. 20/2019- (IT Rate) dated September 30, 2019 : so as to exempt "Services provided by an intermediary when location of both supplier and recipient of goods is outside the taxable territory". 

Inter State supply of services- Nepal and Bhutan exempt:

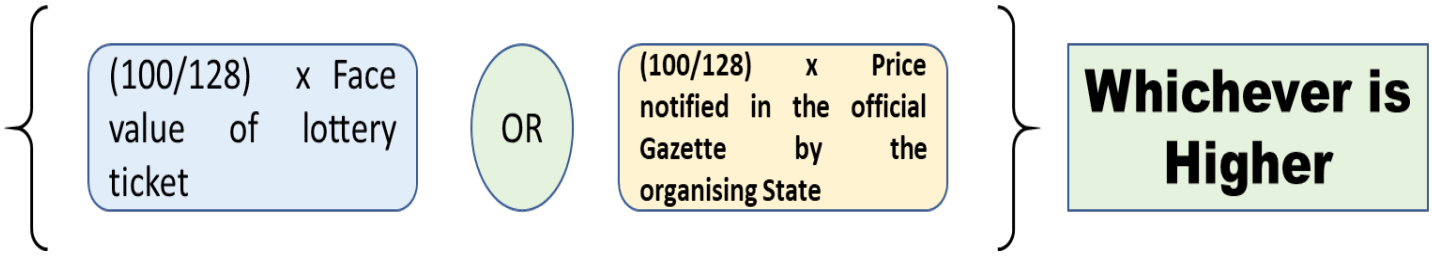
Further, Notification No. 9/2017-IT(R), dated 28.06.2017 has also been amended *vide* Notification No. 42/2017-IT(R), dated 27.10.2017 to exempt inter-State supply of services having place of supply in Nepal or Bhutan, against payment in Indian Rupees.

This exemption has been withdrawn from Integrated Tax for supply of services having place of supply in Nepal and Bhutan, against payment in Indian Rupees. *vide* Notification No. 2/2019-IT, dated 4-2-2019.

REVERSE CHARGE MECHANISM (RCM)

S.No.	Description of supply of goods	Supplier of goods	Recipient of Goods
4	Supply of lottery 	State Government, Union Territory or any local authority	Lottery distributor or selling agent. Distributor or selling agent is liable to pay GST.

w.e.f. 1-3-2020 Value of supply in case of lottery run by the State or authorised by the State as per Rule 31A of the CGST Rules, 2017 is as follows:



Section 9(3) of CGST/Section 5(3) of IGST: Government will decide who is liable to pay GST under Reverse Charge.

w.e.f. 1st July 2017: As per Notification No. 13/2017-Central Tax (Rate), dated 28th June, 2017 and Notification No. 10/2017-Integrated Tax (Rate), dated 28th June, 2017 the following 9 services (are identical under CGST & IGST) on which GST shall be levied under Reverse Charge have been notified.

S. No.	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
1	GTA Services ***w.e.f. 1st January 2019,*** *Services provided by GTA to Government departments/ local authorities exempted which have taken registration only for the purpose of deducting tax under Section 51 not liable under RCM* (N. No. 29/2018-CT(R), dated 31st December 2018).	Goods Transport Agency (GTA)	Any factory, society, co-operative society, registered person, body corporate, partnership firm, casual taxable person; located in the taxable territory.	Recipient

S. No.	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
5B	*w.e.f. 1-4-2019,* Services supplied by any person by way of transfer of development rights or Floor Space Index (FSI) (including additional FSI) for construction of a project by a promoter.	Any person	Promoter.	Promoter
5C	*w.e.f. 1-4-2019,* Long term lease of land (30 years or more) by any person against consideration in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name) and/ or periodic rent for construction of a project by a promoter	Any person	Promoter.	Promoter.
9	**w.e.f.1-10-2019:** Supply of services by music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright covered under section 13(1)(a) of the Copyright Act, 1957 relating to dramatic, musical or artistic works to a music company, producer or the like	music composer, photographer, artist, or the like	music company, producer or the like, located in the taxable territory	Recipient
9A	**w.e.f.1-10-2019:** Supplier of services by an author by way of transfer or permitting the use or enjoyment of a copyright covered under clause (a)of sub-section (1) of section 13 of the Copyright Act, 1957 relating to original literary works to a publisher	Author	Publisher located in the taxable territory: Provided that nothing contained in this entry shall apply where,- (i) the author has taken registration under the CGST and filed a declaration, in the form at Annexure I, within the time limit prescribed therein, with the jurisdictional CGST or	Recipient

			SGST commissioner, as the case may be, that he exercises the option to pay central tax on the services specified (i.e. copyright by author) under forward charge in accordance with Sec 9(1) of CGST Act, 2017 and to comply with all the provisions of CGST Act, 2017 as they apply to a person liable for paying the tax in relation to the supply of any goods or services or both and that he shall not withdraw the said option within a period of ONE year from the date of exercising such option; (ii) the author makes a declaration, as prescribed in Annexure II on the invoice issued by him in the Form GST Inv-I to the publisher.	

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*]:

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service	Comment
(1)	(2)	(3)	(4)	(5)
12	Services provided by business facilitator (BF) to a banking company	Business facilitator (BF)	A banking company, located in the taxable territory	
13	Services provided by an agent of business correspondent (BC) to business correspondent (BC).	An agent of business correspondent (BC)	A business correspondent, located in the taxable territory.	
14	Security services (services provided by way of supply of security personnel) provided to a registered person: Provided that nothing contained in this entry shall apply to,—(i) (a) a Department or Establishment of the Central Government or State Government or Union territory; or (b) local authority; or (c) Governmental agencies; which has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017) only for the purpose of deducting tax under section 51 of the said Act and not for making a taxable supply of goods or services; or (ii) a registered person paying tax under section 10 of the said Act.	Any person other than a body corporate	A registered person, located in the taxable territory.";	Therefore, when Security services are provided to registered persons only then no need to take registration as per Section 23 of CGST Act, 2017. However, when supplier of security services provides services to registered as well as unregistered person then such supplier is required to take registration for supply to unregistered recipient and those under composition.

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service	Comment
(1)	(2)	(3)	(4)	(5)
15	**w.e.f. 1-10-2019:** Services provided by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient, provided to a body corporate.	Any person other than a body corporate, paying central tax at the rate of 2.5% on renting of motor vehicles with input tax credit only of input service in the same line of business.	Any body corporate located in the taxable territory.	Recipient
16	**w.e.f. 1-10-2019:** services of lending of securities under Securities Lending Scheme 1997 of Securities and Exchange Board of India (SEBI), as amended	Lender i.e. a person who deposits the securities registered in his name or in the name of any other person duly authorised on his behalf with an approved intermediary for the purpose of lending under the scheme of SEBI.	Borrower i.e. a person who borrows the securities under the scheme through an approved intermediary of SEBI.	Recipient

Clarification regarding Reverse Charge Mechanism (RCM) on renting of motor vehicles service

Service by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient are taxable at the following two rates:

(i) **@ 5%** (2.5% CGST+2.5% SGST/UTGST or 5% IGST) provided supplier of services has taken only the limited ITC (of input services in the same line of business) or

(ii) **@ 12%** (6% CGST+6% SGST/UTGST or 12% IGST) where supplier of services opts to pay GST at said rate. In this case, there is no restriction on availing ITC on goods and services used in supplying renting of motor vehicles service by the supplier of service.

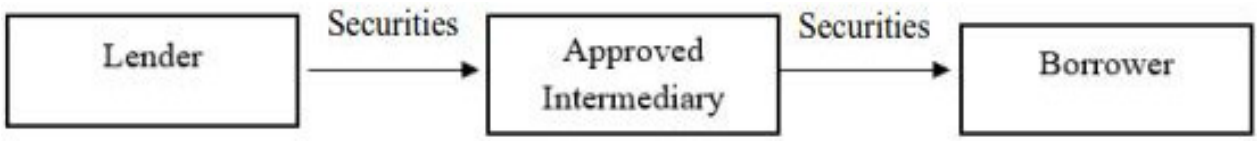
It is important to note here that when any service is placed under RCM, the supplier shall not charge any tax from the service recipient as this is the settled procedure in law under RCM. Thus, in this case, the supplier does not issue an invoice charging GST @12% (6% CGST+6% SGST/UTGST or 12% IGST) from the service recipient.

[Circular No. 130/49/2019 GST dated 31.12.2019]

Clarification regarding taxability of supply of securities under Securities Lending Scheme, 1997

Securities and Exchange Board of India (SEBI) has prescribed the Securities Lending Scheme, 1997 for the purpose of facilitating lending and borrowing of securities. Under the Scheme, lender of securities lends to a borrower through an approved intermediary to a borrower under an agreement for a specified period with the condition that the borrower will return equivalent securities of the same type or class at the end of the specified period along with the corporate benefits accruing on the securities borrowed. The transaction takes place through an electronic screen-based order matching mechanism provided by the recognised stock exchange in India. There is anonymity between the lender and borrower since there is no direct agreement between them.

The lenders earn lending fee for lending their securities to the borrowers. The security lending mechanism is depicted in the diagram below: -



In the above chart:

(i) Lender is a person who deposits the securities registered in his name or in the name of any other person duly authorised on his behalf with an approved intermediary for the purpose of lending under the scheme.

(i) Borrower is a person who borrows the securities under the scheme through an approved iintermediary.

(iii) Approved intermediary is a person duly registered by the SEBI under the guidelines/scheme through whom the lender will deposit the securities for lending and the borrower will borrow the securities;

It may be noted for the purpose of GST Act, "securities" shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 [Section 2(101) of CGST Act]. The definition of services as per Section 2(102) of the CGST Act, is extracted as below:

"services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

Explanation.—For the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities;

Securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 are not covered in the definition of goods under section 2(52) and services under section 2(102) of the CGST Act. Therefore, a transaction in securities which involves disposal of securities is not a supply in GST and hence not taxable.

The explanation added to the definition of services w.e.f. 01.02.2019 i.e., "*includes facilitating or arranging transactions in securities*" is only clarificatory in nature and does not have any bearing on the taxability of the services under discussion (lending of securities) in past since 01.07.2017 but relates to facilitating or arranging transactions in securities.

The activity of lending of securities is not a transaction in securities as it does not involve disposal of securities. The Scheme under the Securities Lending Scheme, 1997 doesn't treat lending of securities as disposal of securities and therefore is not excluded from the definition of services.

The lender temporarily lends the securities held by him to a borrower and charges lending fee for the same from the borrower. The borrower of securities can further sell or buy these securities and is required to return the lended securities after stipulated period of time. The lending fee charged from the borrowers of securities has the character of consideration and this activity is taxable in GST since 01.07.2017.

Apart from above, the activities of the intermediaries facilitating lending and borrowing of securities for commission or fee are also taxable separately.

For the past period i.e. from 01.07.2017 to 30.09.2019, GST is payable under forward charge by the lender and request may be made by the lender (supplier) to SEBI to disclose the information about borrower for discharging GST under forward charge. The nature of tax payable shall be IGST.

With effect from 1st October 2019, the borrower of securities shall be liable to discharge GST under reverse charge mechanism. The nature of GST to be paid shall be IGST under reverse charge mechanism.

[Circular No. 119/38/2019 GST dated 11.10.2019]

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

TIME OF SUPPLY

The following treatment shall apply to TDR/FSI and Long-term lease for projects commencing after 1-4-2019:

The supply of TDR, FSI, long term lease (premium) of land by a land owner to a developer shall be exempted subject to the condition that the constructed flats are sold before issuance of completion certificate and tax is paid on them. Exemption of TDR, FSI, long term lease (premium) shall be withdrawn in case of flats sold after issue of completion certificate, but such withdrawal shall be limited to 1% of value in case of affordable houses and 5% of value in case of other than affordable houses.

The liability to pay tax on TDR, FSI, long term lease (premium) shall be shifted from landowner to builder under the Reverse Charge Mechanism (RCM).

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.

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.

PLACE OF SUPPLY

Section 12 of IGST Act, 2017:

Services by way of Transportation of goods including by mail or courier (Section 12(8) of IGST Act, 2017)	**Place of supply of services:** Provided to a registered person: • Location of recipient of Service. Provided to an un-registered person: • Location at which such goods are handed over for their transportation. **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.

Section 13 of IGST Act, 2017:

(i) Place of supply of research and development services related to pharmaceutical sector services:

In order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, the Govt. of India shall have the power to notify any description of service or circumstances in which the place of supply shall be the place of effective use and enjoyment of a service. Section 13(13) of IGST Act, 2017	**Place of supply of services:** **w.e.f. 1-10-2019:** The CBIC **vide Notification No. 04/2019- (IT) dated September 30, 2019** has notified the place of supply of R&D services related to pharmaceutical sector provided by Indian pharma companies to foreign service recipients, as the place of effective use and enjoyment of a service i.e. location of the service recipient.

w.e.f. 1-10-2019:

The CBIC vide Notification No. 04/2019-(IT), dated September 30, 2019 has notified the place of supply of R&D services related to pharmaceutical sector provided by Indian pharma companies to foreign service recipients, as the place of effective use and enjoyment of a service i.e. location of the service recipient subject to fulfilment of the following conditions:

(i) supply of services from the taxable territory are provided as per a contract between the service provider located in taxable territory and service recipient located in non-taxable territory.

(ii) Such supply of services fulfils all other conditions in the definition of export of services, except sub-clause (iii) provided at clause (6) of section 2 of Integrated Goods and Services Tax, Act, 2017.

(ii) Place of supply of research and development services related to pharmaceutical sector and B2B maintenance, repair or overhaul services:

With effect from 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

[Notification No. 2/2020 IT dated 26.03.2020]

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

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

(i) Services provided by Ports - place of supply in respect of various cargo handling services provided by ports to clients;

(ii) Services rendered on goods temporarily imported in India - place of supply in case of services rendered on unpolished diamonds received from abroad, which are exported after cutting, polishing etc.

(i) **Issue:** Various services are being provided by the port authorities to its clients in relation to cargo handling. Some of such services are in respect of arrival of wagons at port, haulage of wagons inside port area up-to place of unloading, siding of wagons inside the port, unloading of wagons, movement of unloaded cargo to plot and staking hereof, movement of unloaded cargo to berth, shipment/loading on vessel etc.

Whether the place of supply for such services would be determined in terms of the provisions contained in section 12(2) or section 13(2) of the IGST Act, as the case may be, or the same shall be determined in terms of the provisions contained in section 12(3) of the IGST Act?

Clarification: It is hereby clarified that such services are ancillary to or related to cargo handling services and are not related to immovable property. Accordingly, the place of supply of such services will be determined as per the provisions contained in section 12(2) or section 13(2) of the IGST Act, as the case may be, depending upon the terms of the contract between the supplier and recipient of such services.

(ii) **Issue:** What would be the place of supply in case of supply of various services on unpolished diamonds such as cutting and polishing activity which have been temporarily imported into India and are not put to any use in India?

Clarification: Place of supply in case of performance-based services is to be determined as per the provisions contained in section 13(3)(a) of the IGST Act and generally the place of services is where the services are actually performed. But an exception has been carved out in case of services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process. In case of cutting and polishing activity on unpolished diamonds which are temporarily imported into India are not put to any use in India, the place of supply would be determined as per the provisions contained in section 13(2) of the IGST Act.

Clarification regarding determination of place of supply in case of software/design services related to Electronics Semi-conductor and Design Manufacturing (ESDM) industry (CBIC Circular No. 118/37/2019-GST, dated 11th October, 2019.)

In contracts where service provider is involved in a composite supply of software development and design for integrated circuits electronically, testing of software on sample prototype hardware is often an ancillary supply, whereas, chip design/software development is the principal supply of the service provider. The service provider is not involved in software testing alone as a separate service. The testing of software/design is aimed at improving the quality of software/design and is an ancillary activity. The entire activity needs to be viewed as one supply and accordingly treated for the purposes of taxation. Artificial vivisection of the contract of a composite supply is not provided in law. These cases are fact based and each case should be examined for the nature of supply contracted.

Therefore, it is clarified that the place of supply of software/design by supplier located in taxable territory to service recipient located in **non-taxable territory** by using sample prototype hardware/test kits in a composite supply, where such testing is an ancillary supply, is the location of the service recipient as per Section 13(2) of the IGST Act. Provisions of Section 13(3)(a) of IGST Act do not apply separately for determining the place of supply for ancillary supply in such cases.

IGST Rules, 2017:

w.e.f. 1st January 2019, Integrated Goods and Services Tax (Amendment) Rules, 2018

Central Government vide **N. No. 04/2018-Integrated Tax, dated 31st December, 2018** notified the following rules as Integrated Goods and Services Tax (Amendment) Rules, 2018:—

1. **Rule 3 in clause (h):**

The words **"the service shall be deemed to have been provided all over India and"** inserted after

the words "in the case of advertisements over internet" to clarify that the services provided over internet is not specific to 1 or more State or Union territory and shall be deemed to be provided all over India.

2. Insertion of Rule 4:

The place of supply in case of the supply of services attributable to different States or Union territories, under sub section (3) of section 12 of the IGST Act, 2017 shall be:—

1. Where such immovable property or boat or vessel is located in more than one State or Union territory- each of the respective States or Union territories and
2. In the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State or Union territory- to be determined in the following manner namely:-

(i) **Services provided by way of lodging accommodation by a hotel, inn, guest house, club or campsite, by whatever name called and services ancillary to such services**:

1. Where such property is a single property located in two or more contiguous States or Union territories or both: the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the area of the immovable property lying in each State or Union territory.

Illustration: There is a piece of land of area 20,000 square feet which is partly in State S1 say 12,000 square feet and partly in State S2, say 8000 square feet. Site preparation work has been entrusted to T. The ratio of land in the two states works out to 12:8 or 3:2 (simplified). The place of supply is in both S1 and S2. The service shall be deemed to have been provided in the ratio of 12:8 or 3:2 (simplified) in the States S1 and S2 respectively. The value of the service shall be accordingly apportioned between the States.

2. Cases except where such property is a single property located in two or more contiguous States or Union territories or both: the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the number of nights stayed in such property.

Illustration: A hotel chain X charges a consolidt. sum of ₹30, 000/- for stay in its two establishments in Delhi and Agra, where the stay in Delhi is for 2 nights and the stay in Agra is for 1 night. The place of supply in this case is both in the Union territory of Delhi and in the State of Uttar Pradesh and the service shall be deemed to have been provided in the Union territory of Delhi and in the State of Uttar Pradesh in the ratio 2:1 respectively. The value of services provided will thus be apportioned as ₹20, 000/- in the Union territory of Delhi and ₹10,000/- in the State of Uttar Pradesh.

ii. All other services in relation to immovable property including services by way of accommodation in any immovable property for organising any marriage or reception etc : the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the area of the immovable property lying in each State or Union territory

iii. **services provided by way of lodging accommodation by a house boat or any other vessel and services ancillary to such services:** the supply shall be treated as made in each of the respective States or Union territories, in proportion to the time spent by the boat or vessel in each such State or Union territory, determined on the basis of a declaration made to the effect by the service provider.

Illustration 3: A company C provides the service of 24 hours accommodation in a houseboat, which is situated both in Kerala and Karnataka inasmuch as the guests board the house boat in Kerala and stay there for 22 hours but it also moves into Karnataka for 2 hours (as declared by the service provider). The place of supply of this service is in the States of Kerala and Karnataka. The service shall be deemed to have been provided in the ratio of 22:2 or 11:1 (simplified) in the states of Kerala and Karnataka, respectively. The value of the service shall be accordingly apportioned between the States.

3. Insertion of Rule 5:

The place of supply in case of supply of services attributable to different States or Union territories, under subsection (7) of section 12 of the said Act, in the case of-

1. services provided by way of organisation of a cultural, artistic, sporting, scientific, educational or entertainment event, including supply of services in relation to a conference, fair exhibition, celebration or similar events; or
2. services ancillary to the organisation of any such events or assigning of sponsorship to such events,

where the services are supplied to a person other than a registered person, the event is held in India in more than one State or Union territory and a consolidated amount is charged for supply of such services, shall be taken as being in each of the respective States or Union territories, and in the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State or Union territory, as the case maybe, shall be determined by application of the generally accepted accounting principles.

Illustration: An event management company E has to organise some promotional events in States S1 and S2 for a recipient R. 3 events are to be organised in S1 and 2 in S2. They charge a consolidt. amount of ₹10,00,000 from R. The place of supply of this service is in both the States S1 and S2. Say the proportion arrived at by the application of generally accepted accounting principles is 3:2. The service shall be deemed to have been provided in the ratio 3:2 in S1 and S2 respectively. The value of services provided will thus be apportioned as ₹6,00,000/- in S1 and ₹4,00,000/- in S2.

4. Insertion of Rule 6: Supply under section 12(11) of the IGST Act

In the case of supply of services relating to a leased circuit, where the leased circuit is installed in more than one State or Union territory and a consolidt. amount is charged for supply of such services, shall be taken as being in **each of the respective States or Union territories**, and in the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State or Union territory, as the case maybe, shall be determined in the following manner, namely:—

1. The number of points in a circuit shall be determined in the following manner:

(i) in the case of a circuit between two points or places, the starting point or place of the circuit and the end point or place of the circuit will invariably constitute two points;

(ii) any intermediate point or place in the circuit will also constitute a point provided that the benefit of the leased circuit is also available at that intermediate point;

2. the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the number of points lying in the State or Union territory.

Illustration 1: A company T installs a leased circuit between the Delhi and Mumbai offices of a company C. The starting point of this circuit is in Delhi and the end point of the circuit is in Mumbai. Hence one point of this circuit is in Delhi and another in Maharashtra. The place of supply of this service is in the Union territory of Delhi and the State of Maharashtra. The service shall be deemed to have been provided in the ratio of 1:1 in the Union territory of Delhi and the State of Maharashtra, respectively.

Illustration 2: A company T installs a leased circuit between the Chennai, Bengaluru and Mysuru offices of a company C. The starting point of this circuit is in Chennai and the end point of the circuit is in Mysuru. The circuit also connects Bengaluru. Hence one point of this circuit is in Tamil Nadu and two points in Karnataka. The place of supply of this service is in the States of Tamil Nadu and Karnataka. The service shall be deemed to have been provided in the ratio of 1:2 in the States of Tamil Nadu and Karnataka, respectively.

Illustration 3: A company T installs a leased circuit between the Kolkata, Patna and Guwahati offices of a company C. There are 3 points in this circuit in Kolkata, Patna and Guwahati. One point each of this circuit is, therefore, in West Bengal, Bihar and Assam. The place of supply of this service is in the States of West Bengal, Bihar and Assam. The service shall be deemed to have been provided in the ratio of 1:1:1 in the States of West Bengal, Bihar and Assam, respectively.

5. Insertion of Rule 7

In the case of **services supplied in respect of goods** which are required to be made physically available by the recipient to the supplier, or to a person acting on behalf of the supplier, or in the case of **services supplied to an individual**, represented either as the recipient or a person acting on behalf of the recipient, which require the physical presence of the recipient or the person acting on his behalf, where the location of the supplier of services or the location of the recipient of services is outside India, and where such services are supplied in more than one State or Union territory,

shall be taken as being in each of the respective States or Union territories, and the proportion of value attributable to each such State and Union territory in the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State or Union territory, as the case may be, shall be determined in the following manner, namely:-

1. in the case of services supplied on the same goods, by equally dividing the value of the service in each of the States and Union territories where the service is performed;
2. in the case of services supplied on different goods, by taking the ratio of the invoice value of goods in each of the States and Union territories, on which service is performed, as the ratio of the value of the service performed in each State or Union territory;

3. in the case of services supplied to individuals, by applying the generally accepted accounting principles.

Illustration-1: A company C which is located in Kolkata is providing the services of testing of a dredging machine and the testing service on the machine is carried out in Orissa and Andhra Pradesh. The place of supply is in Orissa and Andhra Pradesh and the value of the service in Orissa and Andhra Pradesh will be ascertained by dividing the value of the service equally between these two States.

Illustration-2: A company C which is located in Delhi is providing the service of servicing of two cars belonging to Mr. X. One car is of manufacturer J and is located in Delhi and is serviced by its Delhi workshop. The other car is of manufacturer A and is located in Gurugram and is serviced by its Gurugram workshop. The value of service attributable to the Union Territory of Delhi and the State of Haryana respectively shall be calculated by applying the ratio of the invoice value of car J and the invoice value of car A, to the total value of the service.

Illustration-3: A makeup artist M has to provide make up services to an actor A. A is shooting some scenes in Mumbai and some scenes in Goa. M provides the makeup services in Mumbai and Goa. The services are provided in Maharashtra and Goa and the value of the service in Maharashtra and Goa will be ascertained by applying the generally accepted accounting principles.

6. Insertion of Rule 8

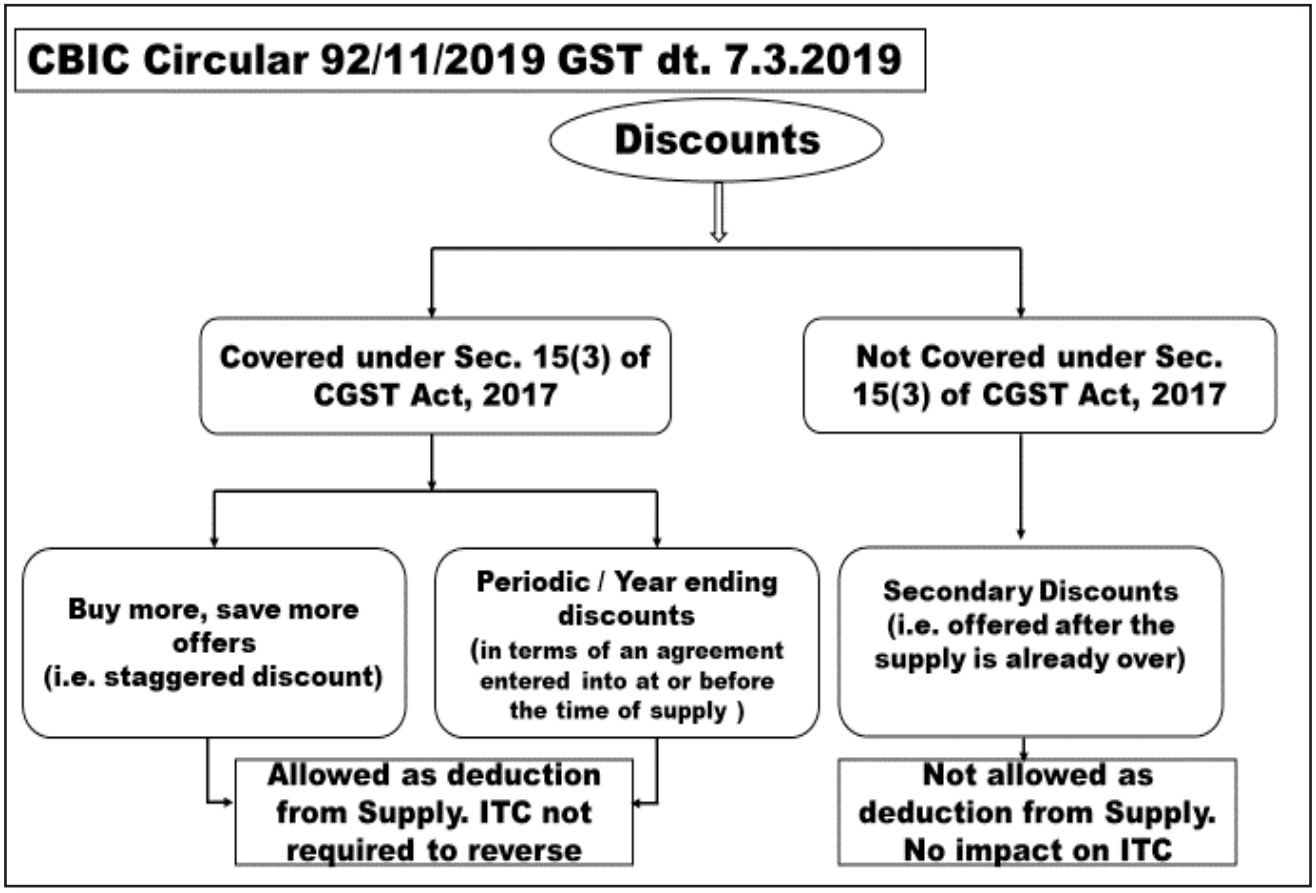
In case of supply of services directly in relation to an immovable property, including services supplied by experts and estate agents, supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property, services for carrying out or co-ordination of construction work, including that of architects or interior decorators, where the location of the supplier of services or the location of the recipient of services is outside India, and where such services are supplied in more than one State or Union territory, in the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State or Union territory, as the case maybe, shall be determined by applying the provisions of rule 4, mutatis mutandis.

7. Insertion of Rule 9

In case of supply of services by way of admission to, or organisation of a cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organisation, where the location of the supplier or the location of the recipient is outside India, and where such services are provided in more than one State or Union territory, in the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State or Union territory, as the case maybe, shall be determined by applying the provisions of rule 5, mutatis mutandis".

VALUE OF SUPPLY

Discounts:



TCS would not be includible in the value of supply under GST:

The Central Government *vide Corrigendum to Circular No. 76/50/2018-GST, dated 31st December, 2018* has clarified that Tax collection at source (TCS) is not a tax on goods but an interim levy on the possible "income" arising from the sale of goods by the buyer and to be adjusted against the final income- tax liability of the buyer. Accordingly, for the purpose of determination of value of supply under GST, Tax collected at source (TCS) under the provisions of the Income Tax Act, 1961 would not be includible as it is an interim levy not having the character of tax.

Donation or gifts from individual donors – Levy of GST on service display of name plates or donor in premises of charitable organisation (CBIC Circular No. 116/35/2019 GST, dated 11-10-2019):

Individual donors provide financial help or any other support in the form of donation or gift to institutions such as religious institutions, charitable institutions, schools, hospitals, orphanages, old age homes etc. the recipient institutions place a name plate or similar such acknowledgement in their premises to express gratitude.

When the name of the donor is displayed in recipient institution premises, in such a manner, which can be said to be an expression of gratitude and public recognition of donor's act of philanthropy and is not aimed at giving publicity to the donor in such manner that it would be an advertising or promotion of his business, then it can be said that there is no supply of service for a consideration (in the form of donation). There is no obligation (quid pro quo) on part of recipient of the donation or gift to do anything (supply a service). Therefore, there is no **GST liability on such consideration.**

Example 1: "Good wishes from Mr. Rajesh" printed underneath a digital blackboard donated by Rajesh to a charitable Yoga institution.

Example 2: "Donated by Smt. Malati Devi in the memory of her father" written on the door or floor of a room or any part of a temple complex which was constructed from such donation.

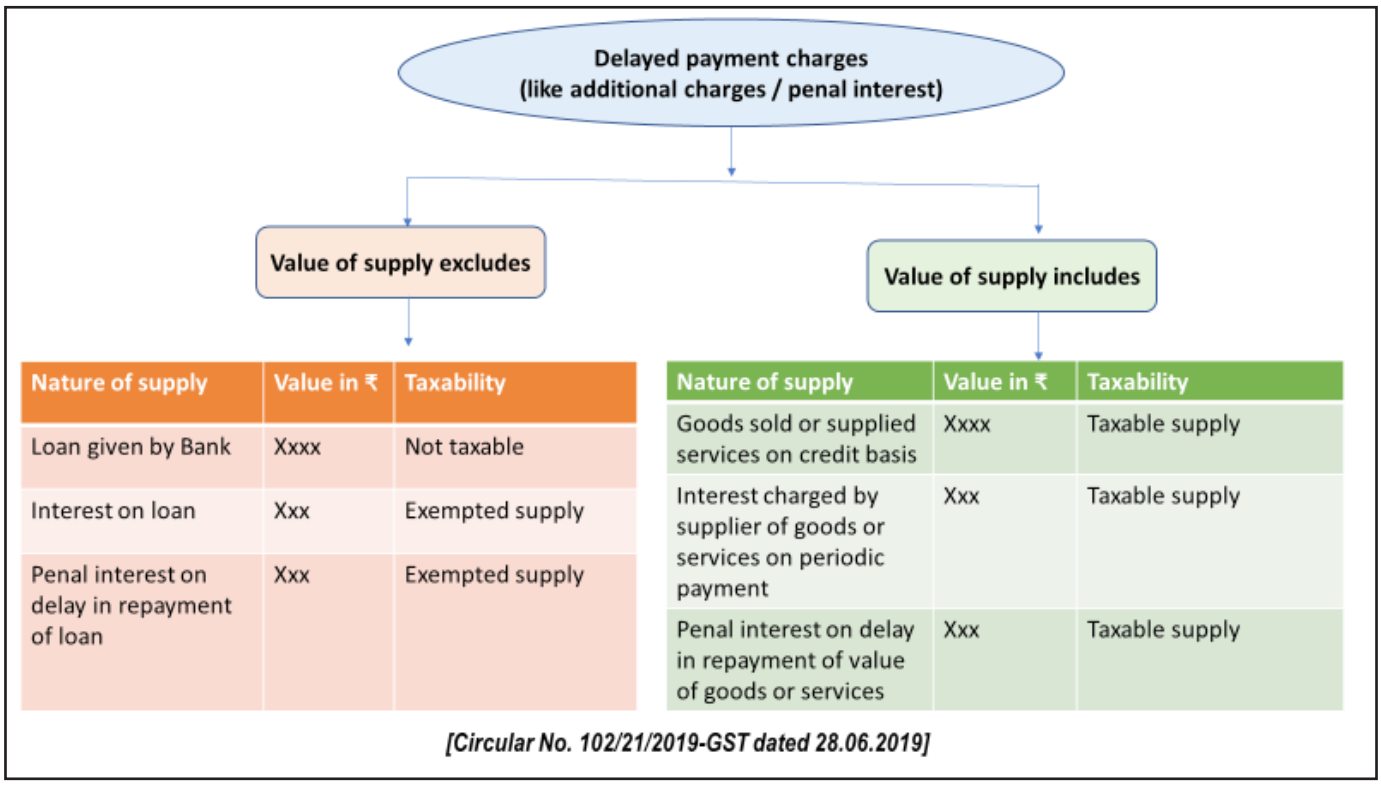
Airport levies under GST (CBIC Circular No. 115/34/2019-GST, dated 11-10-2019):

Passenger Service Fee (PSF) or User Development Fee (UDF) levied by airport operator for services provided to passengers, are collected by the air lines as an agent and is not a consideration for any service provided by the airlines. Airlines may act as a pure agent for the supply of airport services in accordance with rule 33 of the CGST Rules, 2017.

The airport operators (like Mumbai International Airport Ltd., or Airport Authority of India or Delhi International Airport Ltd. etc) shall pay GST on the PSF and UDF collected by them from the passengers through the airlines. Since, the airport operators are collecting PSF and UDF inclusive of GST, there is no question of their not paying GST collected by them to the Government.

Collection charges paid by the airport operator to airlines are a consideration for the services provided by the airlines to the airport operator and airlines shall be liable to pay GST on the same under forward charge. ITC of the same will be available with the airport operator.

GST on delayed payment charges in case of late payment of Equated Monthly Instalments



Nature of supply	Value in ₹	Taxability
Loan given by Bank	Xxxx	Not taxable
Interest on loan	Xxx	Exempted supply
Penal interest on delay in repayment of loan	Xxx	Exempted supply

Nature of supply	Value in ₹	Taxability
Goods sold or supplied services on credit basis	Xxxx	Taxable supply
Interest charged by supplier of goods or services on periodic payment	Xxx	Taxable supply
Penal interest on delay in repayment of value of goods or services	Xxx	Taxable supply

[Circular No. 102/21/2019-GST dated 28.06.2019]

Example 1: X sells a mobile phone to Y. The cost of mobile phone is ₹ 40,000/-. However, X gives Y an option to pay in installments, ₹ 11,000/- every month before 10th day of the following month, over next four months (₹ 11,000/- × 4 = ₹ 44,000/-). As per the contract, if there is any delay in payment by Y beyond the scheduled date, Y would be liable to pay additional/ penal interest amounting to ₹500/- per month for the delay.

In some instances, X is charging Y ₹40,000/- for the mobile and is separately issuing another invoice for providing the services of extending loans to Y, the consideration for which is the interest of 2.5% per month and an additional/ penal interest amounting to ₹500/- per month for each delay in payment.

In this case, the amount of penal interest is to be included in the value of supply [in terms of section 15(2)(d)]. The transaction between X and Y is for supply of taxable goods i.e. mobile phone. Accordingly, the penal interest would be taxable as it would be included in the value of the mobile, irrespective of the manner of invoicing.

Example 2: X sells a mobile phone to Y. The cost of mobile phone is ₹40,000/-. Y has the option to avail a loan at interest of 2.5% per month for purchasing the mobile from M/s. ABC Ltd. The terms of the loan from M/s. ABC Ltd. allows Y a period of four months to repay the loan and an additional/ penal interest @ 1.25% per month for any delay in payment.

Here, the additional/ penal interest is charged for a transaction between Y and M/s. ABC Ltd., and the same is getting covered under exemption Entry 27. Consequently, in this case the 'penal interest' charged thereon on a transaction between Y and M/s. ABC Ltd. would not be subject to GST as the same would be covered under said exemption entry. However, any service fee/ charge or any other charges, if any, are levied by M/s. ABC Ltd. in respect of the transaction related to extending deposits, loans or advances does not qualify to be interest as defined in exemption notification, and accordingly will not be exempt.

Moreover, the value of supply of mobile by X to Y would be ₹40,000/- for the purpose of levy of GST.

It is further clarified that the transaction of levy of additional/ penal interest does not fall within the ambit of entry 5(e) of Schedule II of the CGST Act as this levy of additional/ penal interest satisfies the definition of "interest" as contained in exemption notification [elaborated above].

[Circular No. 102/21/2019-GST dated 28.06.2019]

Issues related to GST on monthly subscription/contribution charged by a Residential Welfare Association from its members. (CBIC Circular No. 109/28/2019-GST, dated 22nd July, 2019)

S.No.	Issue	clarification
1	Are the maintenance charges paid by residents to the Resident Welfare Association (RWA) in a housing society exempt from GST and if yes, is there an upper limit on the amount of such charges for the exemption to be available?	Supply of service by RWA (unincorporated body or a non- profit entity registered under any law) to its own members by way of reimbursement of charges or share of contribution up to an amount of Rs. 7500 per month per member for providing services and goods for the common use of its members in a housing society or a residential complex are exempt from GST. Prior to 25th January 2018, the exemption was available if the charges or share of contribution did not exceed Rs 5000/- per month per member. The limit was increased to Rs. 7500/- per month per member with effect from 25th January 2018. [Refer clause (c) of Sl. No. 77 to the Notification No. 12/2018- Central Tax (Rate), dated 28.06.2019]

<table>
<tr><th>S.No.</th><th>Issue</th><th>clarification</th></tr>
<tr><td>2</td><td>A RWA has aggregate turnover of ₹20 lakh or less in a financial year. Is it required to take registration and pay GST on maintenance charges if the amount of such charges is more than ₹7500/- per month per member?</td><td>No. If aggregate turnover of an RWA does not exceed ₹ 20 Lakh in a financial year, it shall not be required to take registration and pay GST even if the amount of maintenance charges exceeds ₹7500/- per month per member. RWA shall be required to pay GST on monthly subscription/ contribution charged from its members, only if such subscription is more than ₹ 7500/- per month per member and the annual aggregate turnover of RWA by way of supplying of services and goods is also ₹ 20 lakhs or more.
<table>
<tr><th>Annual turnover of RWA</th><th>Monthly maintenance charge</th><th>Whether exempt?</th></tr>
<tr><td rowspan="2">More than Rs. 20 lakhs</td><td>More than ₹ 7500/-</td><td>No</td></tr>
<tr><td>₹7500/- or less</td><td>Yes</td></tr>
<tr><td rowspan="2">Rs. 20 lakhs or less</td><td>More than ₹7500/-</td><td>Yes</td></tr>
<tr><td>₹500/- or less</td><td>Yes</td></tr>
</table></td></tr>
<tr><td>3</td><td>Is the RWA entitled to take input tax credit of GST paid on input and services used by it for making supplies to its members and use such ITC for discharge of GST liability on such supplies where the amount charged for such supplies is more than ₹7,500/- per month per member?</td><td>RWAs are entitled to take ITC of GST paid by them on capital goods (generators, water pumps, lawn furniture etc.), goods (taps, pipes, other sanitary/ hardware fillings etc.) and input services such as repair and maintenance services.</td></tr>
<tr><td>4</td><td>Where a person owns two or more flats in the housing society or residential complex, whether the ceiling of ₹7500/- per month per member on the maintenance for the exemption to be available shall be applied per residential apartment or per person?</td><td>As per general business sense, a person who owns two or more residential apartments in a housing society or a residential complex shall normally be a member of the RWA for each residential apartment owned by him separately. The ceiling of ₹7500/- per month per member shall be applied separately for each residential apartment owned by him. For example, if a person owns two residential apartments in a residential complex and pays ₹15,000/- per month as maintenance charges towards maintenance of each apartment to the RWA (₹7,500/- per month in respect of each residential apartment), the exemption from GST shall be available to each apartment.</td></tr>
</table>

S.No.	Issue	clarification
5	How should the RWA calculate GST payable where the maintenance charges exceed ₹7500/- per month per member? Is the GST payable only on the amount exceeding ₹7500/- or on the entire amount of maintenance charges?	The exemption from GST on maintenance charges charged by a RWA from residents is available only if such charges do not exceed ₹7500/- per month per member. In case the charges exceed ₹7500/- per month per member, the entire amount is taxable. For example, if the maintenance charges are ₹9000/- per month per member, GST @18% shall be payable on the entire amount of ₹9000/- and not on [₹9000 - ₹7500] = ₹1500/- .

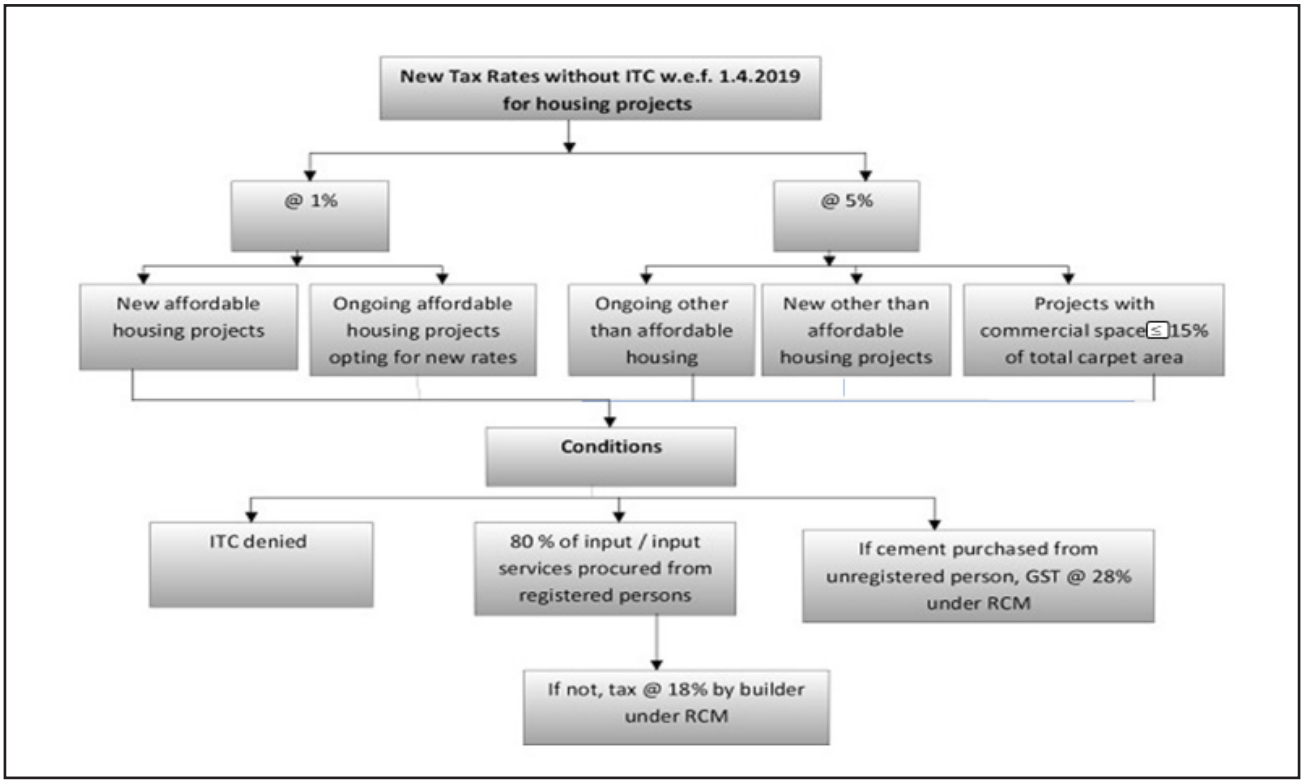
Rule 31A. Value of supply in case of lottery, betting, gambling, and horse racing	
Supply	**Value**
W.E.F. 1.3.2020 **Supply of lottery run by State Govt. (OR)** **Supply of lottery authorised by State Govt.**	**Higher of the two amounts to be deemed as value:** **100/128 of the face value of ticket** **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

Construction service vs works contract service – valuation

W.e.f. 1-4-2019 REAL ESTATE SECTORS are summarized as under:

Conditions for the new tax rates:

- At least 80% of the material to be procured from registered dealers. Further, on shortfall of purchases from 80%, tax shall be paid by the builder @ 18% on RCM basis.
- However, Tax on cement purchased from unregistered person shall be paid @ 28% under RCM, and on capital goods under RCM at applicable rates.
- Input tax credit shall not be available.



Applicability of new tax rates:

The new tax rates which shall be applicable as follows:

1% without input tax credit (ITC) on construction of affordable houses shall be available for:

- Houses having area of 60 sqm in metros/90 sqm in non-metros and value upto ₹45 lakhs
- Under construction affordable houses presently eligible for concessional rate of 8% GST (after 1/3rd land abatement)

5% without input tax credit shall be applicable on construction of:

- Under construction houses other than affordable houses presently booked prior to or after 01.04.2019. For houses booked prior to 01.04.2019, new rate shall be available on instalments payable on or after 01.04.2019.
- Commercial apartments having carpet area of not more than 15% of total carpet area of all apartments.

The following treatment shall apply to TDR/FSI and Long term lease for projects commencing after 1-4-2019:

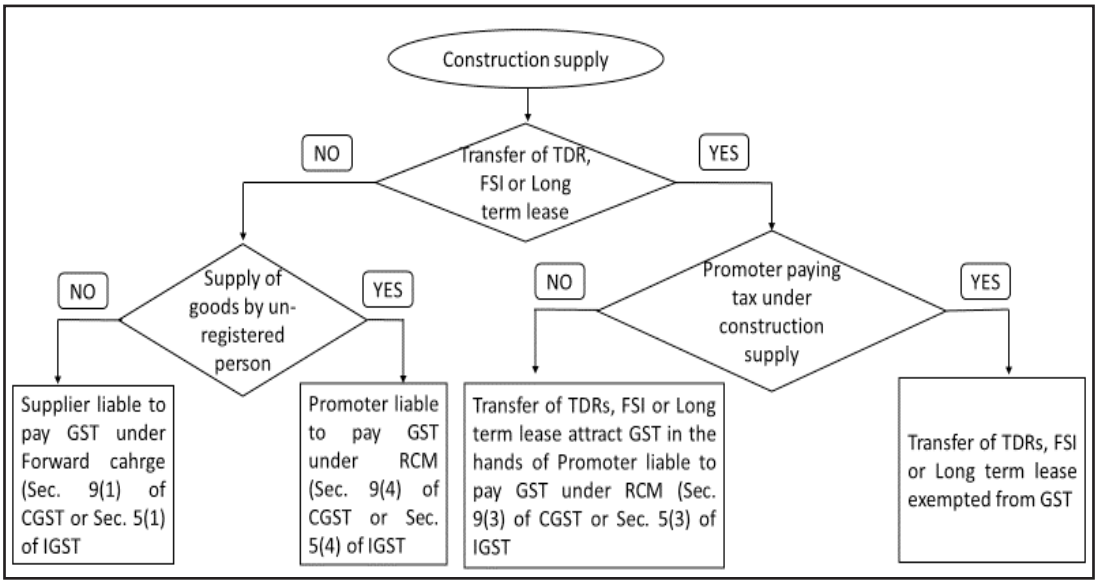
The supply of TDR, FSI, long term lease (premium) of land by a land owner to a developer shall be exempted subject to the condition that the constructed flats are sold before issuance of completion certificate and tax is paid on them. Exemption of TDR, FSI, long term lease (premium) shall be withdrawn in case of flats sold after issue of completion certificate, but such withdrawal shall be limited to 1% of value in case of affordable houses and 5% of value in case of other than affordable houses.

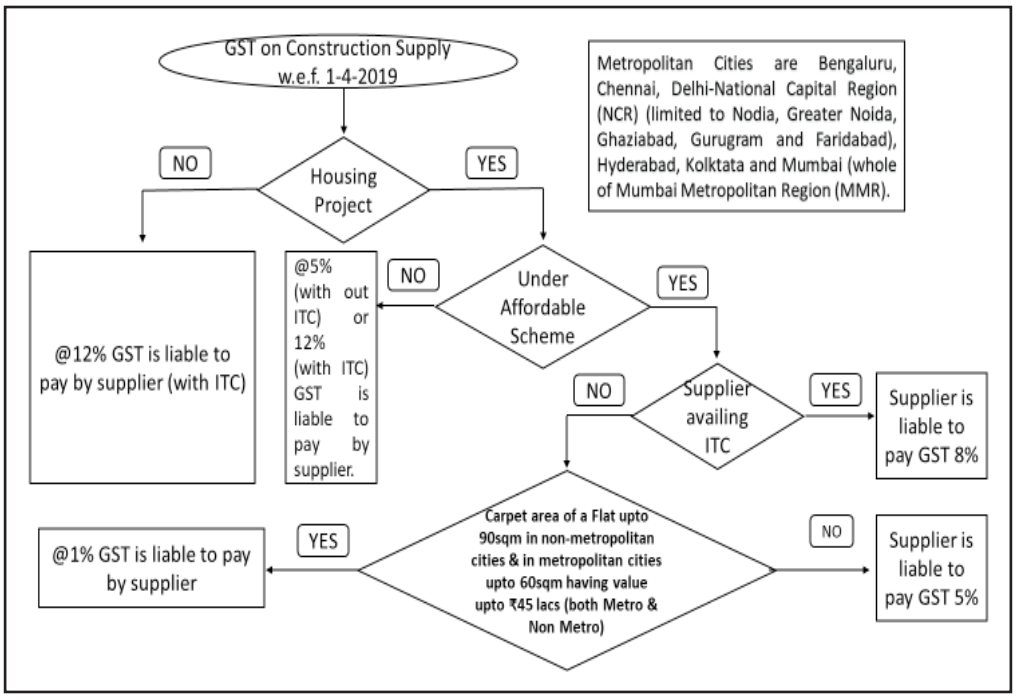
The liability to pay tax on TDR, FSI, long term lease (premium) shall be shifted from landowner to builder under the Reverse Charge Mechanism (RCM).

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.

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.

Simplified Approach:





REGISTRATION UNDER GST

Section 22(1) of the CGST Act, 2017:

Registration is mandatory if aggregate turnover exceeds threshold limit.

Exemption from obtaining registration w.e.f April 1, 2019:

Sr. No.	States	**w.e.f 1 April 2019** (Notification No.-10/2019-Central Tax)
*FOR SUPPLIER ENGAGED EXCLUSIVELY IN "**SUPPLY OF GOODS**"*		
1	Manipur, Mizoram, Nagaland, Tripura	₹10 Lakh
2	Uttarakhand, Meghalaya, Sikkim, Arunachal Pradesh, Puducherry, Telangana	₹20 Lakh
3	Rest States of India	₹40 Lakh
*FOR SUPPLIER ENGAGED IN "**SUPPLY OF SERVICES**" OR BOTH "GOODS AND SERVICES"*		
1	Manipur, Mizoram, Nagaland, Tripura	₹10 Lakh
2	Rest States of India	₹20 Lakh

For the purpose of Section 22(1) of CGST Act, 2017 a person shall be considered to be engaged exclusively in the supply of goods even if he is engaged in exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

Any person engaged in exclusive supply of goods and whose turnover in the financial year does not exceeds ₹40 Lakh exempted from registration. Exceptions to this exemption are as follows:

(a) persons required to take compulsory registration under section 24 of the CGST Act, 2017

(b) person engaged in making supplies of ice cream and other edible ice and tobacco and manufactured tobacco substitutes.

Registration Procedure under GST u/s 25 of CGST Act, 2017:

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.]

As Section 25(6) of the CGST Act, 2017, Every person shall have a PAN issued under the Income Tax Act, 1961 in order to be eligible for grant of registration;

provided that a person required to deduct tax under section 51 of the CGST Act, may have, in lieu of PAN, a Tax Deduction and Collection Account Number issued under the Income Tax Act, in order to be eligible for grant of registration.

w.e.f 1-8-2019, Authentication or furnish proof of possession of Adhaar Numbe:

In section 25 of the Central Goods and Services Tax Act, after sub-section (6), the following sub-sections shall be inserted, namely:—

"(6A) Every registered person shall undergo authentication, or furnish proof of possession of Aadhaar number, in such form and manner and within such time as may be prescribed:

Provided that if an Aadhaar number is not assigned to the registered person, such person shall be offered alternate and viable means of identification in such manner as Government may, on the recommendations of the Council, prescribe:

Provided further that in case of failure to undergo authentication or furnish proof of possession of Aadhaar number or furnish alternate and viable means of identification, registration allotted to such person shall be deemed to be invalid and the other provisions of this Act shall apply as if such person does not have a registration.

(6B) On and from the date of notification, every individual shall, in order to be eligible for grant of registration, undergo authentication, or furnish proof of possession of Aadhaar number, in such manner as the Government may, on the recommendations of the Council, specify in the said notification: Provided that if an Aadhaar number is not assigned to an individual, such individual shall be offered alternate and viable means of identification in such manner as the Government may, on the recommendations of the Council, specify in the said notification.

(6C) On and from the date of notification, every person, other than an individual, shall, in order to be eligible for grant of registration, undergo authentication, or furnish proof of possession of Aadhaar number of the Karta, Managing Director, whole time Director, such number of partners, Members of Managing Committee of Association, Board of Trustees, authorised representative, authorised signatory and such other class of persons, in such manner, as the Government may, on the recommendations of the Council, specify in the said notification:

Provided that where such person or class of persons have not been assigned the Aadhaar Number, such person or class of persons shall be offered alternate and viable means of identification in such manner as the Government may, on the recommendations of the Council, specify in the said notification.

(6D) The provisions of sub-section (6A) or sub-section (6B) or sub-section (6C) shall not apply to such person or class of persons or any State or Union territory or part thereof, as the Government may, on the recommendations of the Council, specify by notification.

Explanation.—For the purposes of this section, the expression "Aadhaar number" shall have the same meaning as assigned to it in clause (a) of section 2 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016.".

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).

Compulsory registration in certain cases

Section 24: the following categories of persons shall be required to be registered under GST:

Every electronic commerce operator **"who is required to collect tax at source under section 52"** shall be inserted as per the Finance Act, 2018 w.e.f. 1-2-2019

Furnishing of Bank Account Details.- (*Notification No. 31/2019 CT dated 28.06.2019)*

As per Rule 10A of CGST Rules, 2017, After a certificate of registration in FORM GST REG-06 has been made available on the common portal and a Goods and Services Tax Identification Number has been assigned, the registered person, except those who have been granted registration under rule 12 or, as the case may be rule 16, shall as soon as may be, but not later than **forty five days** from the date of grant of registration or the date on which the return required under section 39 is due to be furnished, whichever is earlier, furnish information with respect to details of bank account, or any other information, as may be required on the common portal in order to comply with any other provision.".

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

In other words, a registered person has an option to give his bank account details after obtaining registration, within 45 days from the date of grant of registration or the due date of furnishing return, whichever is earlier.

However, if a person violates the provisions of rule 10A, his GST registration is liable to be cancelled [Rule 21].

Manner of furnishing the details of State/UT in application for registration by a TDS deductor in a State/UT where he doesn't have a physical presence [Rule 12(1A) of the CGST Rules] [Notification No. 33/2019 CT dated 18.07.2019]

Hitherto, there was specific provision for furnishing details of State/ UT in the application for registration by a TCS collector in a State where he doesn't have a physical presence, prescribed under rule 12(1A).

Rule 12(1A) has been amended to extend to said provisions to a TDS deductor also.

Resultantly, when a person is applying for registration to deduct TDS in a State/UT **where he does not have a physical presence**, he shall **mention name of said State/UT in Part A** of prescribed application form for registration.

Further, the name of the **State/UT in which his principal place of business is located** is to be mentioned **in Part B** of the application form. States/UTs mentioned in Part A and Part B of the application form may be different.

Registered person required to issue revised tax invoice and file first return for supplies during suspension period [Rule 21A of the CGST Rules] [Notification No. 49/2019 CT dated 09.10.2019]

Rule 21A provides that once a registered person has applied for cancellation of registration or the proper officer seeks to cancel his registration, his registration shall remain suspended during pendency of the proceedings relating to cancellation of registration filed. Such person **shall not make any taxable supply** during the period of suspension and shall not be required to file any return [Rule 21A(3)].

An explanation has been inserted to this sub-rule (3) to rule 21A clarifying that the expression **"shall not make any taxable supply"** shall mean that the registered person shall not issue a tax invoice and, accordingly, not charge tax on supplies made by him during the period of suspension.

Further, a new sub-rule (5) has been inserted in said rule to provide that where any order having the effect of revocation of suspension of registration has been passed, the provisions of section 31(3)(a) [revised tax invoices] and section 40 [first return] in respect of the supplies made during the period of suspension and the procedure specified therein shall apply.

Cancellation (or suspension w.e.f. 1-2-2019) of GST Registration under Section 29 of the CGST Act, 2017:

The following persons are allowed to cancel a GST registration:

(1) The registered person himself

(2) By a GST officer

(3) The legal heir of the registered person

w.e.f. 1-2-2019, *the following proviso shall be inserted under section 29(1), namely:—*

"Provided that during pendency of the proceedings relating to cancellation of registration filed by the registered person, the registration may be suspended for such period and in such manner as may be prescribed".

w.e.f. 1st February 2019, The Central Government vide *N No. 03/2019-CT, dated 29th January 2019* has amended CGST Rules, 2017 details of which are explained below:

	Revised	Comment
Insertion of Rule 21A [Suspension of registration]:-	(1) Where a registered person has applied for cancellation of registration under rule 20, the registration shall be deemed to be suspended from the date of submission of the application or the date from which the cancellation is sought, whichever is later. (2) Where the proper officer has reasons to believe that the registration is liable to be cancelled under section 29 or under rule 21, he may, after affording the said person a reasonable opportunity of being heard, suspend the registration of such person with effect from a date to be determined by him (3) A registered person, whose registration has been suspended shall not make any taxable supply during the period of suspension and shall not be required to furnish any return under section 39. (4) The suspension of registration under sub-rule (1) or sub-rule (2) shall be deemed to be revoked upon completion of the proceedings by the proper officer under rule 22 and such revocation shall be effective from the date on which the suspension had come into effect.	*With this insertion, where cancellation is applied but continues to appear online, please ensure that suspension order is obtained to avoid late fee. The exemption from late fee is only in respect of returns upto Sept 2018.*

2nd & 3rd Proviso to Rule 23(1) of CGST Rules, 2017 (Inserted *vide* Notification No. 20/2019-CT, dated 23.04.2019):

Provided further that all returns due for the period from the date of the order of cancellation of registration till the date of the order of revocation of cancellation of registration shall be furnished by

the said person within a period of thirty days from the date of order of revocation of cancellation of registration:

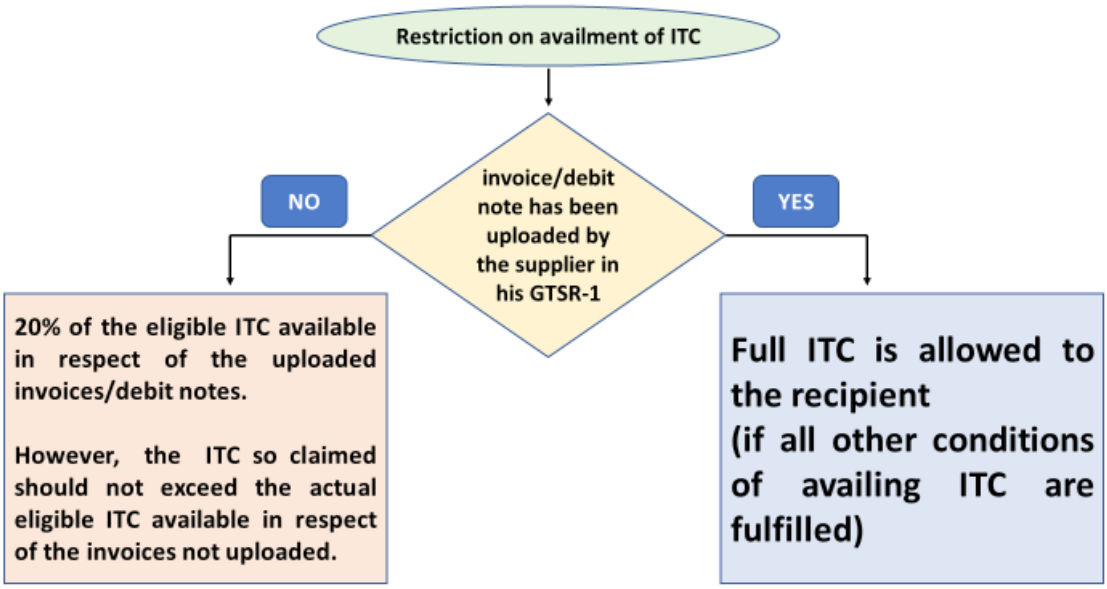
Provided also that where the registration has been cancelled with retrospective effect, the registered person shall furnish all returns relating to period from the effective date of cancellation of registration till the date of order of revocation of cancellation of registration within a period of thirty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

Notification No. 39/2018 dated 4.9.2018:

Where the person instead of replying to the notice served under sub-rule (1) of rule 22 (i.e. **Cancellation of Registration)** for contravention of provisions contained in clause (b) or (c) of sub-section (2) of section 29 (namely a person paying tax under section 10 has not furnished returns for 3 consecutive tax periods or a person has not furnished returns for a continuous period of 6 months) furnishes all the pending returns and makes full payment of the tax dues along with applicable interest and late fee, the proper officer shall drop the proceedings and pass an order in FORM GST-REG 20 (i.e. If the proper officer is satisfied with the explanation, he can use this form to drop the cancellation proceeding and pass a formal order).

INPUT TAX CREDIT (ITC)

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%.**

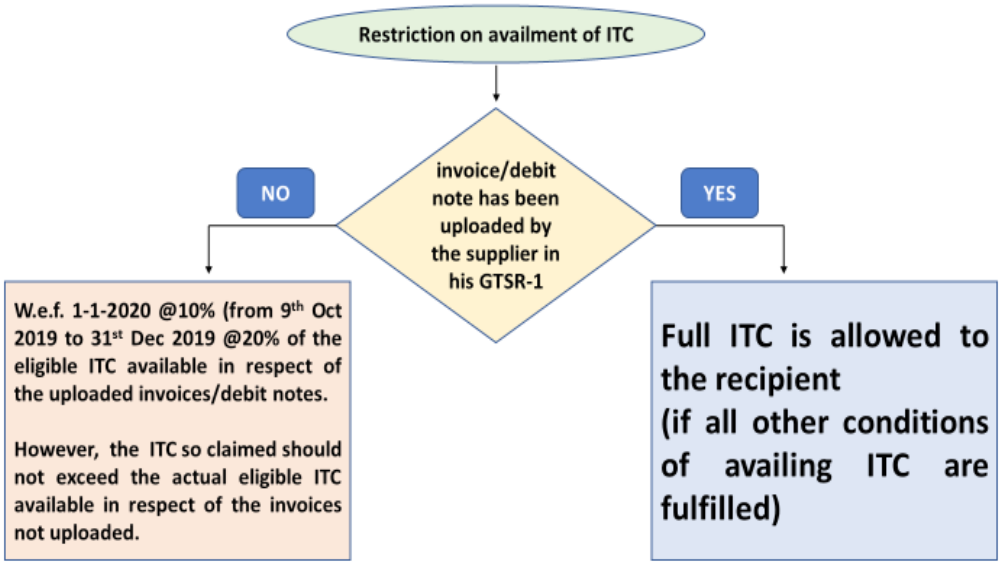


Illustration 1:

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. 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.

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 assuming that GST of ₹ 10 lakh is otherwise eligible for ITC:

Answer

ITC to be claimed by Mr. Vijay in his GSTR-3B for the month of October 20XX to be filed by 20th November 20XX will be computed as under-

Invoices	Amount of ITC involved in the invoices (₹)	Amount of ITC that can be availed (₹)
80 invoices uploaded in GSTR-1s	6 lakh	6 lakh [Refer Note 1]
20 invoices not uploaded in GSTR-1s	4 lakh	₹ 0.6 lakh [Refer Note 2]
Total	**10 lakh**	**6.6 lakh**

Notes:

(1) 100% ITC can be availed on invoices uploaded by the suppliers in their GSTR-1s.

(2) As per rule 36(4), the ITC in respect of invoices not uploaded by the suppliers in their GSTR-1s is restricted to 10% of eligible ITC in respect of invoices uploaded in GSTR-1s. Thus, in respect of 20 invoices not uploaded in GSTR-1s, the ITC has been restricted to ₹ 0.6 lakh [10% of ₹ 6 lakh].

Illustration 2

In the above Illustration, 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.

Illustration 3

Mr. Ajay, 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. Out of 100 invoices, 85 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.

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 assuming that GST of ₹ 10 lakh is otherwise eligible for ITC:

Answer

ITC to be claimed by Mr. Ajay in his GSTR-3B for the month of October 20XX to be filed by 20th November 20XX will be computed as under-

Invoices	Amount of ITC involved in the invoices (₹)	Amount of ITC that can be availed (₹)
85 invoices uploaded in GSTR-1	9.5 lakh	9.5 lakh [Refer Note 1]
15 invoices not uploaded in GSTR-1	0.5 lakh	0.5 lakh [Refer Note 2]
Total	**10 lakh**	**10 lakh**

Notes:

(1) 100% ITC can be availed on invoices uploaded by the suppliers in their GSTR-1s.

(2) As per rule 36(4), the ITC in respect of invoices not uploaded by the suppliers in their GSTR-1s is restricted to 10% of eligible ITC in respect of invoices uploaded in GSTR-1s. However, since in this case, 10% of the eligible ITC in respect of invoices uploaded in GSTR-1s [₹ 0.95 lakh (10% of ₹ 9.5 lakh)], exceeds the actual ITC [₹ 0.5 lakh] in respect of 15 invoices not uploaded in GSTR-1s, ITC availed should be limited to actual amount of ITC.

20% (now 10%) ITC restrictions clarified by CBIC Circular No. 123/42/2019– GST dated 11.11.2019:

Sl. No	Issue	Clarification
1.	What are the invoices / debit notes on which the restriction under rule 36(4) of the CGST Rules shall apply?	The restriction of availment of ITC is imposed only in respect of those invoices / debit notes, details of which are required to be uploaded by the suppliers under sub-section (1) of section 37 and which have not been uploaded. Therefore, taxpayers may avail full ITC in respect of IGST paid on import, documents issued under RCM, credit received from ISD etc. which are outside the ambit of sub-section (1) of section 37, provided that eligibility conditions for availment of ITC are met in respect of the same. The restriction of 36(4) will be applicable only on the invoices / debit notes on which credit is availed after 09.10.2019.
2.	Whether the said restriction is to be calculated supplier wise or on consolidated basis?	The restriction imposed is not supplier wise.The credit available under sub-rule (4) of rule 36 is linked to total eligible credit from all suppliers against all supplies whose details have been uploaded by the suppliers. Further, the calculation would be based on only those invoices which are otherwise eligible for ITC. Accordingly, those invoices on which ITC is not available under any of the provision (say under sub-section (5) of section 17) would not be considered for calculating 20 per cent. of the eligible credit available.
3.	**FORM GSTR-2A** being a dynamic document, what would be the amount of input tax credit that is admissible to the taxpayers for a particular tax period in respect of invoices / debit notes whose details have not been uploaded by the suppliers?	The amount of input tax credit in respect of the invoices / debit notes whose details have not been uploaded by the suppliers shall not exceed 20% of the eligible input tax credit available to the recipient in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37 **as on the due date of filing of the returns in FORM GSTR-1 of the suppliers for the said tax period**. The taxpayer may have to ascertain the same from his auto populated **FORM GSTR 2A as available on the due date of filing of FORM GSTR-1 under sub-section (1) of section 37.**
4.	How much ITC a registered tax payer can avail in his **FORM GSTR-3B** in a month in case the details of some of the invoices have not been uploaded by the suppliers under sub- section (1) of section 37.	Sub-rule (4) of rule 36 prescribes that the ITC to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed 20 per cent. 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. The eligible ITC that can be availed is explained by way of illustrations, in a tabulated form, below.

In the illustrations, say a taxpayer "R" receives 100 invoices (for inward supply of goods or services) involving ITC of ₹ 10 lakhs, from various suppliers during the month of Oct, 2019 and has to claim ITC in his **FORM GSTR-3B** of October, to be filed by 20th Nov, 2019.

	Details of suppliers' invoices for which recipient is eligible to take ITC	**20% of eligible credit where invoices are uploaded**	**Eligible ITC to be taken in GSTR-3B to be filed by 20th Nov.**
Case 1	Suppliers have furnished in **FORM GSTR-1** 80 invoices involving ITC of ₹ 6 lakhs as on the due date of furnishing of the details of outward supplies by the suppliers.	₹1,20,000/-	₹ 6,00,000 (i.e. amount of eligible ITC available, as per details uploaded by the suppliers) + ₹1,20,000 (i.e. 20% of amount of eligible ITC available, as per details uploaded by the suppliers) = ₹ 7,20,000/-
Case 2	Suppliers have furnished in **FORM GSTR-1** 80 invoices involving ITC of ₹ 7 lakhs as on the due date of furnishing of the details of outward supplies by the suppliers.	₹ 1,40,000/-	Rs 7,00,000 + ₹ 1,40,000 = ₹ 8,40,000/-
Case 3	Suppliers have furnished in **FORM GSTR-1** 75 invoices having ITC of ₹ 8.5 lakhs as on the due date of furnishing of the details of outward supplies by the suppliers.	₹ 1,70,000/-	₹ 8,50,000/- + ₹1,50,000/-* = ₹ 10,00,000

* The additional amount of ITC availed shall be limited to ensure that the total ITC availed does not exceed the total eligible ITC.

<table>
<tr>
<td>5.</td>
<td>When can balance ITC be claimed in case availment of ITC is restricted as per the provisions of rule 36(4)?</td>
<td>The balance ITC may be claimed by the taxpayer in any of the succeeding months provided details of requisite invoices are uploaded by the suppliers. He can claim proportionate ITC as and when details of some invoices are uploaded by the suppliers provided that credit on invoices, the details of which are not uploaded (under sub-section (1) of section 37) remains under 20 per cent of the eligible input tax credit, the details of which are uploaded by the suppliers. Full ITC of balance amount may be availed, in present illustration by "R", in case total ITC pertaining to invoices the details of which have been uploaded reaches ₹ 8.3 lakhs (Rs 10 lakhs /1.20). In other words, 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/ 1.2. The same is explained for Case No. 1 and 2 of the illustrations provided at Sl.No. 3 above as under:
<table>
<tr><td>Case 1</td><td>"R" may avail balance ITC of ₹ 2.8 lakhs in case suppliers upload details of some of the invoices for the tax period involving ITC of ₹ 2.3 lakhs out of invoices involving ITC of ₹ 4 lakhs details of which had not been uploaded by the suppliers. [₹ 6 lakhs + ₹ 2.3 lakhs = ₹ 8.3 lakhs]</td></tr>
<tr><td>Case 2</td><td>"R" may avail balance ITC of ₹ 1.6 lakhs in case suppliers upload details of some of the invoices involving ITC of ₹ 1.3 lakhs out of outstanding invoices involving ₹ 3 lakhs. [₹ 7 lakhs + ₹ 1.3 lakhs = ₹ 8.3 lakhs]</td></tr>
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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

With effect from 01.04.2020, 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 has been amended as under:

(i) Clause (c) of sub-rule (1) of rule 43 has been substituted.

(ii) Clause (d) of sub-rule (1) of rule 43 has been substituted.

(iii) An explanation has been inserted in clause (e) of sub-rule (1).

(iv) Clause (f) has been omitted.

The implications of the above amendments can be understood as under-

(1) Input tax on capital goods used/intended to be used commonly for making taxable and/or zero rated supplies as well as exempt supplies and/or non-business purposes shall be denoted as 'A'. Such amount (as reflected on the invoice) will be credited to electronic credit ledger. The useful life of such capital goods will be taken as 5 years from the date of invoice.

Example 1: Azure Pvt. Ltd., a registered supplier, manufactures paints and other chemicals. While paints are taxable, other chemicals are exempt from GST. It has purchased a machinery on October 1, 20XX for making both paints and other chemicals. The invoice for the machinery shows the value of the machinery to be ₹ 1 crore and GST payable thereon to be ₹ 12 lakh [12%]. Input tax of ₹ 12 lakh will be denoted as 'A' and credited to electronic credit ledger. The useful life of the machinery will end on 30.09.20XX+5.

(2) When capital goods which were initially used only for non-business purpose/exempt supplies are subsequently used commonly for exempt supplies and/or non-business purposes as well as taxable and/or zero rated supplies, input tax in respect of the same should be denoted as 'A' and credited in the electronic credit ledger.

The ineligible credit attributable to the period during which such capital goods were used for non-business purpose/making exempt supplies shall be computed @ 5% per quarter or part thereof and be denoted as 'Tie'. Such 'Tie' shall be added to the output tax liability of the tax period in which credit on such capital goods is claimed.

Example 2: Continuing the facts of Example 1, from October 1, 20XX, Azure Pvt. Ltd. started using one of its old machines, which was being used for the manufacture of other chemicals, for manufacture of paints as well. The said machine was purchased on October 1, 20XX-2 for ₹ 60 lakh (exclusive of GST @ 12%). Input tax of ₹ 7.2 lakh will be denoted as 'A' and credited in the electronic credit ledger in the month of October 20XX. Out of ₹ 7.2 lakh, ITC of ₹ 2,88,000 will be the ineligible credit, 'Tie' [₹ 7.2 lakh x 5% x 8 quarters], and will be added to the output tax liability of Azure Pvt. Ltd. for the month of October 20XX.

(3) The amounts of 'A' credited to electronic credit ledger in respect of common capital goods whose useful life remains during the tax period shall be added together to arrive at common credit 'Tc'.

Example 3: Continuing the facts of Examples 1 & 2, common credit 'Tc' will be ₹ 12 lakh ['A' for first machinery] plus ₹ 7.2 lakh ['A' for second machine], i.e. ₹ 19.2 lakh.

(4) When capital goods which were initially used only for taxable and/or zero rated supplies are subsequently used commonly for taxable and/or zero rated supplies as well as exempt supplies and/or non-business purposes, input tax claimed in respect of the same shall be added to the aggregate value of 'Tc'.

Example 4: Continuing the facts of Examples 1, 2 & 3, Azure Pvt. Ltd. started using one of its old machines, which was being used for the manufacture of paints, for manufacture of other chemicals as well. The said machine was purchased on October 1, 20XX-2 for ₹ 2 crore (exclusive of GST @12%). Input tax of ₹ 24 lakh will be added to the common credit 'Tc', i.e. to ₹ 19.2 lakh. Thus, total common credit will be ₹ 43.2 lakh.

(5) 'Tm' which is the common credit for a tax period [Tc / 60] is to be computed during the useful life of capital goods which is five years from the date of invoice.

Example 5: Continuing the facts of Examples 1, 2, 3 & 4, 'Tm' will be ₹ 43.2 lakh/60, i.e ₹ 72,000.

(6) Clause (g) provides the formula for determining 'Te', i.e. amount of common credit attributable to exempt supplies, as Te = (E/F) x Tr. The term *'Tr'* which is used in the said formula was defined in

clause (f). Omission of clause (f) has thus, rendered the formula given in clause (g) otiose as now the term (*'Tr')* which is used in the formula is nowhere defined in the rule.

[Notification No. 16/2020 CT dated 23.03.2020]

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

Section 18(3) of the CGST Act provides that where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, the said registered person shall be allowed to transfer the ITC which remains unutilized in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed.

Further, rule 41(1) of the CGST Rules requires a registered person to furnish the details of sale, merger, demerger, amalgamation, lease or transfer, in FORM GST ITC-02 with a request for transfer of unutilized ITC lying in his electronic credit ledger to the transferee. However, in case of demerger, the ITC shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme. Further, "value of assets" means the value of the entire assets of the business, whether or not ITC has been availed thereon.

CBIC has clarified the following issues relating to apportionment of ITC in cases of business reorganization under section 18(3) read with rule 41(1) as under:

(1) For the purpose of apportionment of ITC pursuant to a demerger under rule 41(1), 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. The transferor would be required to file FORM GST ITC-02 only in those States where both transferor and transferee are registered.

Example 6: A company XYZ is registered in two States of M.P. and U.P. Its total value of assets is worth ₹ 100 crore, while its assets in State of M.P. and U.P are Rs 60 crore and Rs 40 crore respectively. It demerges a part of its business to company ABC. As a part of such demerger, assets of XYZ amounting to Rs 30 Crore are transferred to company ABC in State of M.P, while assets amounting to Rs 10 crore only are transferred to ABC in State of U.P. (Total assets amounting to Rs 40 crore at all-India level are transferred from XYZ to ABC).

The unutilized ITC of XYZ in State of M.P. shall be transferred to ABC on the basis of ratio of value of assets in State of M.P., i.e. 30/60 = 0.5 and not on the basis of all -India ratio of value of assets, i.e. 40/100=0.4. Similarly, unutilized ITC of XYZ in State of U.P. will be transferred to ABC in ratio of value of assets in State of U.P, i.e. 10/40 = 0.25.

(2) The formula for apportionment of ITC, as prescribed under proviso to rule 41(1) of the CGST Rules, shall be applicable for **all** forms of business re-organization that results in partial transfer of business assets along with liabilities and not just demerger as mentioned in the proviso to rule 41(1).

(3) The ratio of value of assets, as prescribed under proviso to rule 41(1) shall be applied to the total amount of unutilized ITC of the transferor, i.e. sum of CGST, SGST/ UTGST and IGST credit. The said

formula need not be applied separately in respect of each heads of ITC (CGST/ SGST/ IGST). Further, the said formula shall also be applicable for apportionment of cess between the transferor and transferee.

Example 7: The ITC balances of transferor X in the State of Maharashtra under CGST, SGST and IGST heads are 5 lakh, 5 lakh and 10 lakh respectively. Pursuant to a scheme of demerger, X transfers 60% of its assets to transferee B.

Accordingly, the amount of ITC to be transferred from A to B shall be 60% of 20 lakh (total sum of CGST, SGST and IGST credit) i.e. 12 lakh.

(4) 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) [Refer point (3) above]. 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.

Example 8:

(1)	(2)	(3)	(4)	(5)	(6)
State	**Asset Ratio of Transfe ree**	**Tax Heads**	**ITC balance of Transferor (pre-apportionment) as on the date of filing FORM GST ITC–02)**	**Total amount of ITC transferred to Transferee under FORM GST ITC02**	**ITC balance of Transferor (post-apportionment) after filing of FORM GST ITC– 02) [Col (4) – Col (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**	**22,00,000**
		IGST	**20,00,000**	**20,00,000**	**0**
		Total	**70,00,000**	**28,00,000**	**42,00,000**

(1) The apportionment formula shall be applied on the ITC balance of the transferor as available in electronic credit ledger on the date of filing of **FORM GST ITC – 02** by the transferor.

(2) For the purpose of apportionment of ITC under rule 41(1), the ratio of the value of assets should be taken as on the "appointed date of demerger" as specified in the respective scheme for demerger.

Thus, for the purpose of apportionment of ITC under rule 41(1), the ratio of the value of assets taken as on the "appointed date of demerger" should be applied on the ITC balance of the transferor on the date of filing FORM GST ITC – 02.

[Circular No. 133/3/2020 GST dated 23.03.2020]

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."

Common inputs and input services for taxable and exempted supplies [Section 17 of the CGST Act, 2017]

Section 17(1) of the CGST Act, 2017 where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.

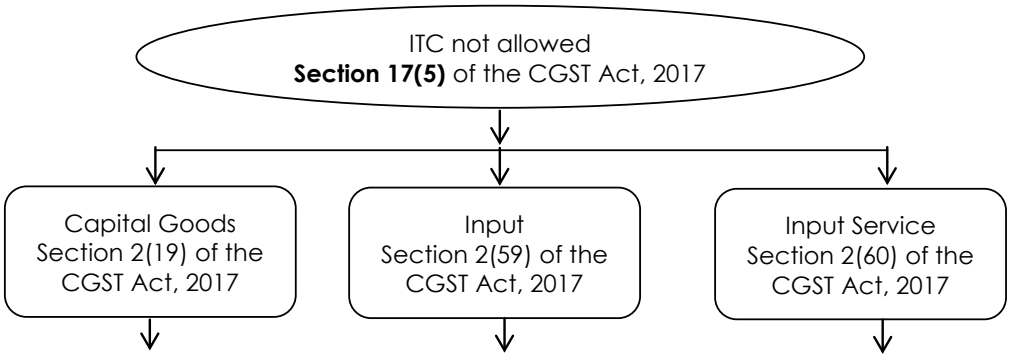
Section 17(2) of the CGST Act, 2017 where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

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

w.e.f. 1-2-2019 Explanation: For the purposes of this sub-section, the expression "value of exempt supply" shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule.

Input Tax Credit (ITC) not applicable goods and services Section 17(5) of the CGS Act, 2017

Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following:



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

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

(A) further supply of such vehicles; or

(B) transportation of passengers; or

(C) imparting training on driving such motor vehicles;

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

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

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

(B) Transportation of passengers or

(C) Imparting training on navigating such vessel or

(D) Imparting training on flying such aircraft

(ii) For transportation of goods;

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

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

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

(ii) Where received by a taxable person engaged-

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

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

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

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

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

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

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

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

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

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

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

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

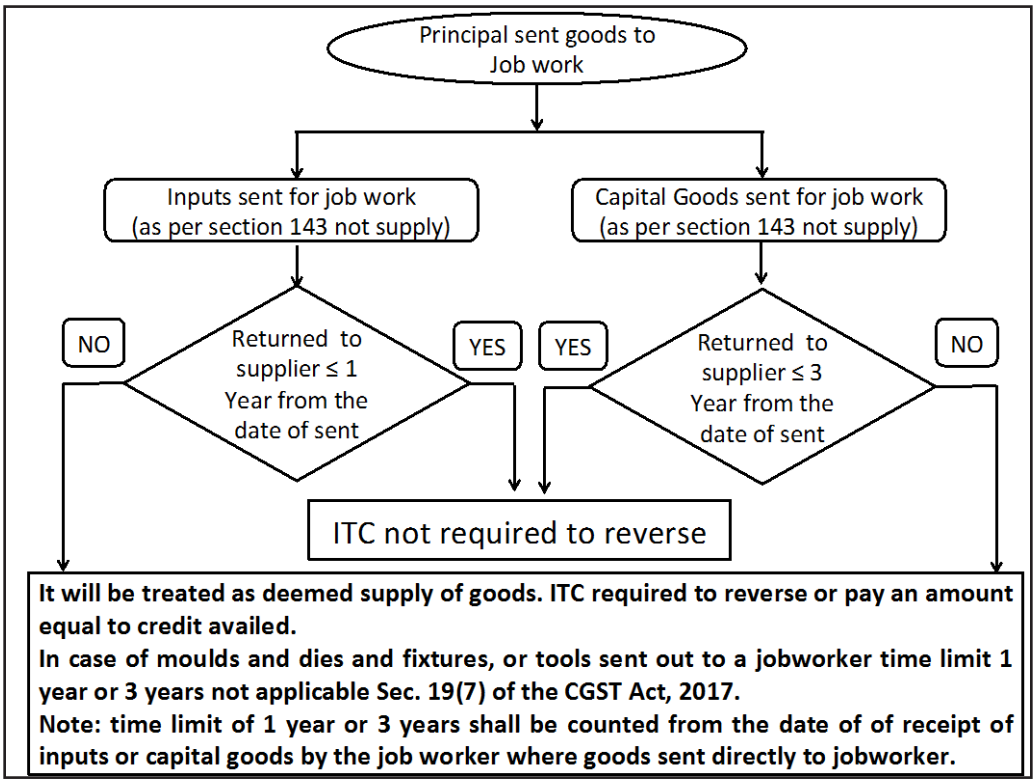
(*g*) goods or services or both used for personal consumption;

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

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

Taking input tax credit in respect of inputs and capital goods sent for job work Section 19 of the CGST Act, 2017:

As per Section 19(3)/19(6) of the CGST Act, 2017:



w.e.f. 1-2-2019: 2nd Proviso to section 143 of the CGST Act, 2019:

the period of one year and three years may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding one year and two years respectively.

Manner of distribution of credit by Input Service Distributor [Section 20 of the CGST Act, 2017]

w.e.f. 1-2-2019, the term "turnover", in relation to any registered person engaged in the supply of taxable goods as well as goods not taxable under this Act, means the value of turnover, reduced by the amount of any duty or tax levied (under entry 84 and 92A) of List I of the Seventh Schedule to the Constitution and entries 51 and 54 of List II of the said Schedule.

TAX INVOICE, CREDIT AND DEBIT NOTES

Facility of Electronic payment to recipient w.e.f. 1-8-2019

As per section 31A of the CGST Act, 2017, The Government may, on the recommendations of the Council, prescribe a class of registered persons who shall provide prescribed modes of electronic payment to the recipient of supply of goods or services or both made by him and give option to such recipient to make payment accordingly, in such manner and subject to such conditions and restrictions, as may be prescribed."

Electronic ticket w.e.f. 1-9-2019

A registered person supplying services by way of admission to exhibition of cinematograph films in multiplex screens shall be required to issue an electronic ticket and the said electronic ticket shall be deemed to be a tax invoice for all purposes of the Act, even if such ticket does not contain the details of the recipient of service but contains the other information as mentioned under rule 46:

Provided that the supplier of such service in a screen other than multiplex screens may, at his option, follow the above procedure (*vide* NT 33/2019-Central Tax, dated 18-7-2019).

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.

*Following Invoice Registration Portals (IRPs) has been notified as Common GST Electronic Portal for the purpose of preparation of e-invoices:

- www.einvoice1.gst.gov.in
- www.einvoice2.gst.gov.in
- www.einvoice3.gst.gov.in
- www.einvoice4.gst.gov.in
- www.einvoice5.gst.gov.in

- www.einvoice6.gst.gov.in
- www.einvoice7.gst.gov.in
- www.einvoice8.gst.gov.in
- www.einvoice9.gst.gov.in
- www.einvoice10.gst.gov.in

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]

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):

Since the activity of sending / taking specified goods out of India is not a supply, doubts have been raised by the trade and industry on issues relating to maintenance of records, issuance of delivery challan / tax invoice etc. These issues have been examined and the clarification on each of these points is as under: -

Issue 1: Whether any records are required to be maintained by registered person for sending / taking specified goods out of India?

Clarification: The registered person dealing in specified goods shall maintain a record of such goods.

Issue 2: What is the documentation required for sending / taking the specified goods out of India?

Clarification:

a) The activity of sending / taking specified goods out of India is not a supply.

b) The said activity is in the nature of "sale on approval basis" wherein the goods are sent / taken outside India for the approval of the person located abroad and it is only when the said goods are approved that the actual supply from the exporter located in India to the importer located abroad takes place. The activity of sending / taking specified goods is covered under the provisions of sub-section (7) of section 31 of the CGST Act read with rule 55 of Central Goods & Services Tax Rules, 2017 (hereinafter referred to as the "CGST Rules").

c) The specified goods shall be accompanied with a delivery challan issued in accordance with the provisions contained in rule 55 of the CGST Rules.

d) The activity of sending / taking specified goods out of India is not a zero-rated supply. That being the case, execution of a bond or LUT, as required under section 16 of the IGST Act, is not required.

Issue 3: When is the supply of specified goods sent / taken out of India said to take place?

Clarification:

a) The specified goods sent / taken out of India are required to be either sold or brought back within the stipulated period of six months from the date of removal as per the provisions contained in sub-section (7) of section 31 of the CGST Act.

b) The supply would be deemed to have taken place, on the expiry of six months from the date of removal, if the specified goods are neither sold abroad nor brought back within the said period.

c) If the specified goods are sold abroad, fully or partially, within the specified period of six months, the supply is effected, in respect of quantity so sold, on the date of such sale.

Issue 4: Whether invoice is required to be issued when the specified goods sent / taken out of India are not brought back, either fully or partially, within the stipulated period?

Clarification:

a) When the specified goods sent / taken out of India have been sold fully or partially, within the stipulated period of six months, as laid down in sub-section (7) of section 31 of the CGST Act, the sender shall issue a tax invoice in respect of such quantity of specified goods which has been sold abroad, in accordance with the provisions contained in section 12 and section 31 of the CGST Act read with rule 46 of the CGST Rules.

b) When the specified goods sent / taken out of India have neither been sold nor brought back, either fully or partially, within the stipulated period of six months, as laid down in sub-section (7) of section 31 of the CGST Act, the sender shall issue a tax invoice on the date of expiry of six months from the date of removal, in respect of such quantity of specified goods which have neither been sold nor brought back, in accordance with the provisions contained in section 12 and section 31 of the CGST Act read with rule 46 of the CGST Rules.

Issue 5: Whether the refund claims can be preferred in respect of specified goods sent / taken out of India but not brought back?

Clarification:

a) The activity of sending / taking specified goods out of India on sale or approval basis is not a zero-rated supply. That being the case, the sender of goods cannot prefer any refund claim when the specified goods are sent / taken out of India.

b) It has further been clarified in answer to question no. 3 above that the supply would be deemed to have taken place:

   (i) on the date of expiry of six months from the date of removal, if the specified goods are neither sold nor brought back within the said period; or

   (ii) on the date of sale, in respect of such quantity of specified goods which have been sold abroad within the specified period of six months.

c) It is clarified accordingly that the sender can prefer refund claim even when the specified goods were sent / taken out of India without execution of a bond or LUT, if he is otherwise eligible for refund as per the provisions contained in sub-section (3) of section 54 the CGST Act read with sub-rule (4) of rule 89 of the CGST Rules, in respect of zero rated supply of goods after he has issued the tax invoice on the dates as has been clarified in answer to the question no. 4 above. 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.

The above position is explained by way of illustrations below:

Illustrations:

(i) M/s ABC sends 100 units of specified goods out of India. The activity of merely sending / taking such specified goods out of India is not a supply. No tax invoice is required to be issued in this case but the specified goods shall be accompanied with a delivery challan issued in accordance with the provisions contained in rule 55 of the CGST Rules. In case the entire quantity of specified goods is brought back within the stipulated period of six months from the date of removal, no tax invoice is required to be issued as no supply has taken place in such a case. In case, however, the entire quantity of specified goods is neither sold nor brought back within six months from the date of removal, a tax invoice would be required to be issued for entire 100 units of specified goods in accordance with the provisions contained in section 12 and section 31 of the CGST Act read with rule 46 of the CGST Rules within the time period stipulated under sub-section (7) of section 31 of the CGST Act.

(ii) M/s ABC sends 100 units of specified goods out of India. The activity of sending / taking such specified goods out of India is not a supply. No tax invoice is required to be issued in this case but the specified goods shall be accompanied with a delivery challan issued in accordance with the provisions contained in rule 55 of the CGST Rules. If 10 units of specified goods are sold abroad say after one month of sending / taking out and another 50 units are sold say after two months of sending / taking out, a tax invoice would be required to be issued for 10 units and 50 units, as the case may be, at the time of each of such sale in accordance with the provisions contained in section 12 and section 31 of the CGST Act read with rule 46 of the CGST Rules. If the remaining 40 units are not brought back within the stipulated period of six months from the date of removal, a tax invoice would be required to be issued for 40 units in accordance with the provisions contained in section 12 and section 31 of the CGST Act read with rule 46 of the CGST Rules. Further, M/s ABC may claim refund of accumulated input tax credit in accordance with the provisions contained in subsection (3) of section 54 of the CGST Act read with sub-rule (4) of rule 89 of the CGST Rules in respect of zero-rated supply of 60 units

Credit and Debit Notes [Section 34 of the CGST Act, 2017]

Credit note

In cases where (w.e.f. 1-2-2019, one or more tax invoices) have been issued for a supply and subsequently it is found that the value or tax charged in that invoice is more than what is actually

payable/chargeable or where the recipient has returned the goods, the supplier can issue one or more credit notes to the recipient.

A registered person who issues such a credit note has to declare details of such credit note in the return for the month during which such credit note has been issued but not later than

- **September** following the end of the financial year in which such supply was made

  or

- the date of furnishing of the relevant annual return, whichever is earlier.

The tax liability of the registered person will be adjusted in accordance with the credit note issued, however no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.

Debit note

In cases where (w.e.f. 1-2-2019 one or more tax invoices) have been issued for a supply and subsequently it is found that the value or tax charged in that invoice is less than what is actually payable/chargeable, the supplier can issue one or more debit notes to the recipient. Any registered person who issues a debit note in relation to a supply of goods or services or both, shall declare the details of such debit note in the return for the month during which such debit note has been issued and the tax liability shall be adjusted in such manner as may be prescribed.

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 not 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]

PAYMENT OF TAX

Utilization of input tax credit:
Section 49(5) of the CGST Act, 2017

Section 49(5)	Input	Offset option available against	Not available	Order of Set off
(a)	IGST	✓ IGST ✓ CGST ✓ SGST ✓ UTGST	–	W.e.f. 1-4-2019 section 49A of CGST Act, 2017 read with Rule 88A of CGST Rules, 2017: IGST credit can be adjusted equally between CGST and SGST or any other proportion at the option of the assessee.
(b)	CGST	✓ CGST ✓ IGST	× SGST × UTGST	1. CGST 2. IGST
(c)	SGST	✓ SGST ✓ IGST	× CGST × UTGST	1. SGST 2. IGST
(d)	UTGST	✓ UTGST ✓ IGST	× CGST × SGST	1. UTGST 2. IGST

Section 49A of CGST (w.e.f. 1-2-2019) read with rule 88A of CGST Rules, 2017:

Utilisation of Input tax credit subject to certain conditions:

Notwithstanding anything contained in section 49, the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully towards such payment.

w.e.f. 1-4-2019, The Central Government vide *N No. 16/2019-CT, dated 29th March, 2019* has amended Central Goods and Services Tax Rules, 2017. Amendments made are explained below:

Insertion of Rule 88A **(Order of utilization of input tax credit)**	Input tax credit on account of integrated tax shall first be utilised towards payment of integrated tax, and the amount remaining, if any, may be utilised towards the payment of central tax and State tax or Union territory tax, as the case may be, in any order: Provided that the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully.	*Comment: As per Section 49 ITC can be utilised in a particular series and 49A provides that credit of CGST/ SGST/UTGST can be utilised only after IGST ITC has been utilised fully. Therefore, combine reading of sec 49 and 49 A, IGST shall be utilised in a given series only.* *However, with this rule it has been provided that IGST shall be utilised for IGST first than in any order convenient to taxpayer.*

Note: As per amendment act the order of utilization after the setoff of IGST liability was compulsory CGST and then SGST/UGST. Now the order has been relaxed wherein either of CGST or SGST/UGST liability can be set off.

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]

As per Finance Act, 2019, w.e.f. 1-8-2019:

As per Section 49(10) of the CGST Act, 2019, A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under this Act, to the electronic cash ledger for integrated tax, central tax, State tax, Union territory tax or cess, in such form and manner and subject to such conditions and restrictions as may be prescribed and such transfer shall be deemed to be a refund from the electronic cash ledger under this Act.

As per Section 10(11) of the CGST Act, 2019, Where any amount has been transferred to the electronic cash ledger under this Act, the same shall be deemed to be deposited in the said ledger as provided in sub-section (1)."

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 ledge**r, 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 and 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 ₹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-

   (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 Notf no. 75/2019 – CT dt 26.12.2019)

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 ON DELAYED PAYMENT OF TAX

Interest on late payment of tax by taxpayer [Section 50 of the CGST Act, 2017]

The two scenarios where a taxpayer will be liable to pay interest are:

1. Delayed payment of tax
2. credit has been claimed in excess or where it was not eligible to be claimed/ Tax liability has been shown to be less than the actual

Interest rates Notification No. 13/2017-Central Tax, dated 28th June 2017

Section	Scenario	Interest rate w.e.f. 1-7-2017
50(1) of the CGST Act, 2017 **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.".	Delayed payment of tax **Relief measures during COVID-19:** Interest charges reduced to 9% p.a (instead of 18% p.a.) for taxpayers with an annual aggregate turnover more than Rs 5 crore in the previous financial year, if the file beyond 15 days from the original due dates. The reduced interest charge will apply for the tax payments made between 20th March 2020 and 30th June 2020. For the rest of the taxpayers, interest will not be levied.	18% **per annum**
50(3) of the CGST Act, 2017	A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 of the CGST Act, 2017 or undue or excess reduction in output tax liability under sub-section (10) of section 43 of the CGST Act, 2017, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be,	24% **per annum**

As per Section 50(2) of the CGST Act, 2017 the interest under sub-section 50(1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid. Payments even made after 8 pm will be credited on the same day to the taxpayer's account. While there will be no physical challan accepted for the GST payment while the challans will be generated from the gst.gov.in only for all the payments of taxes, fees, penalty, interest.

RELEVANT DATE TO CLAIM REFUND u/s 54 of CGST Act, 2017

w.e.f. 1-2-2019 in the case of refund of unutilised input tax credit under clause (ii) of the first proviso to sub-section (3), the due date for furnishing of return under section 39 for the period in which such claim for refund arises

OFFENCES AND PENALTIES UNDER GST

Detention, seizure and release of goods and conveyances in transit Section 129 of the CGST Act, 2017:

Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within 7 days **(w.e.f. 1-2-2019, 14 days)** of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130:

Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of seven days may be reduced by the proper officer.

RETURNS UNDER GST

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.]*

Following table lists the various types of returns under GST Law:

Return Form	Particulars	Frequency	Due Date
GSTR-9	Annual Return (section 44 of the CGST Act, 2017) (a) Who Files: Registered Person other than an ISD, TDS/TCS Taxpayer, Casual Taxable Person and Non-resident Taxpayer. (b) In this return, the taxpayer needs to furnish details of expenditure and details of income for the entire Financial Year. (c) The persons who are non-residents and are providing OIDAR service in India to unregistered persons have been exempted from submitting GSTR-9 and GSTR-9C (vide NT 30/2019 CT dated 28/6/2019)	Annually	31st December of next financial year

Details of tax deducted and tax collected to be made available to the deductee and collectee respectively on the common portal after filing of GSTR-7 and GSTR-8 respectively [Rule 66(2) of the CGST Rules] [Notification No. 31/2019 CT dated 28.06.2019]

Sub-rule (2) of rule 66 has been amended to lay down that the details of TDS furnished by the deductor in GSTR-7 shall be made available electronically to each of the deductees on the common portal after filing of Form GSTR-7 for claiming the amount of tax deducted in his electronic cash ledger after validation.

Similarly, the details of TCS furnished by operator in GSTR-8 were made available to each supplier in Part C of Form GSTR-2A on the common portal after the due date of filing of Form GSTR-8 under rule 67(2) of the CGST Rules.

Sub-rule (2) of rule 67 has been amended to provide that the details of TCS furnished by the deductor in GSTR-8 is made available electronically to each of the deductees on the common portal after filing of Form GSTR-8 for claiming the amount of tax collected in his electronic cash ledger after validation.

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]*

Section 39(1) of the CGST Act prescribes a monthly return in Form GSTR-3 for every registered person, other than input service distributor, a non-resident taxable person, a composition taxpayer, person deducting tax at source, person collecting tax at source i.e., an electronic commerce operator and supplier of OIDAR services. However, filing of GSTR-3 has been deferred by the GST Council.

Rule 61(5) of CGST Rules provided that where the time limit for furnishing of details in Form GSTR-1 under section 37 has been extended and the circumstances so warrant, the Commissioner may, by notification, specify the manner and conditions subject to which the return shall be furnished in Form GSTR-3B. The said rule has been amended retrospectively **with effect from 01.07.2017**, to specify that the return in Form GSTR-3B is the return under section 39(1) and that where a return in GSTR-3B is furnished by a person then such person shall not be required to furnish the return in Form GSTR -3.

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 ₹ 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.

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.

Taxpayers with annual aggregate turnover upto ₹1.5 crore to file GSTR-1 on quarterly basis and taxpayers with annual aggregate turnover greater than ₹1.5 crore to file GSTR-1 on monthly basis.

Composition taxpayers and tax payers paying tax under *Notification No. 2/2019-CT, dated 01.03.2019* to file return annually and make payment quarterly

A special procedure for furnishing of return and payment of tax has been prescribed for the following persons:

(i) registered persons paying composition tax

(ii) registered person paying tax by availing the benefit of *Notification No. 02/2019 CT (R) dated 07.03.2019*.

Such persons will:

(i) furnish a statement in the prescribed form (Form GST CMP-08) containing details of payment of self - assessed tax, for every quarter (or part of the quarter), by 18th day of the month succeeding such quarter.

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

The registered persons paying tax by availing the benefit of *Notification No. 02/2019-CT(R), dated 07.03.2019* will be deemed to have complied with the provisions of section 37 and section 39 of the CGST Act if they have furnished the prescribed statement and GSTR 4 as mentioned above.

Details of tax deducted and tax collected to be made available to the deductee and collectee respectively on the common portal after filing of GSTR-7 and GSTR-8 respectively [Rule 66(2) of the CGST Rules] [Notification No. 31/2019 CT dated 28.06.2019]

Sub-rule (2) of rule 66 has been amended to lay down that the details of TDS furnished by the deductor in GSTR-7 shall be made available electronically to each of the deductees on the common portal after filing of Form GSTR-7 for claiming the amount of tax deducted in his electronic cash ledger after validation.

Similarly, the details of TCS furnished by operator in GSTR-8 were made available to each supplier in Part C of Form GSTR-2A on the common portal after the due date of filing of Form GSTR-8 under rule 67(2) of the CGST Rules.

Sub-rule (2) of rule 67 has been amended to provide that the details of TCS furnished by the deductor in GSTR-8 is made available electronically to each of the deductees on the common portal after filing of Form GSTR-8 for claiming the amount of tax collected in his electronic cash ledger after validation.

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 ₹ 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.

Due dates for CMP-08, CMP-02, GSTR-4, ITC-04, GSTR-5, GSTR-5A, GSTR-6, GSTR-7 and GSTR-8 for specific tax periods have been extended due to COVID-19 induced lockdown. The late fee has been waived off for delayed filing of GSTR-3B for specific months.

The due date of GSTR-1 and GSTR-3B for February, March and April 2020 is extended to the last week of June 2020. CMP-02 due date is extended to 30th June 2020. Further, CMP-08 and GSTR-4 filing is also extended up to 30th June 2020.

Taxpayers with an annual turnover of less than Rs 5 crore need not pay interest, late fee or penalty for late filing of GST returns.

FORM GSTR-1 is waived off for FY 2019-20 for taxpayers who could not opt for availing the option of special composition scheme under notification No. 2/2019-Central Tax (Rate).

GSTR-1 and GSTR-3B have been notified for the months April 2020 till September 2020.

w.e.f 1-8-2019 Furnishing of returns Section 39 amended:

Section 39(1) of the CGST Act, 2017 Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars, in such form and manner, and within such time, as may be prescribed:

Provided that the Government may, on the recommendations of the Council, notify certain class of registered persons who shall furnish a return for every quarter or part thereof, subject to such conditions and restrictions as may be specified therein.

Section 39(2) of the CGST Act, 2017, A registered person paying tax under the provisions of section 10, shall, for each financial year or part thereof, furnish a return, electronically, of turnover in the State or Union territory, inward supplies of goods or services or both, tax payable, tax paid and such other particulars in such form and manner, and within such time, as may be prescribed.;

Section 39(7) of the CGST Act, 2017, Every registered person who is required to furnish a return under sub-section (1), other than the person referred to in the proviso thereto, or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return:

Provided that every registered person furnishing return under the proviso to sub-section (1) shall pay to the Government, the tax due taking into account inward and outward supplies of goods or services or both, input tax credit availed, tax payable and such other particulars during a month, in such form and manner, and within such time, as may be prescribed:

Provided further that every registered person furnishing return under sub-section (2) shall pay to the Government, the tax due taking into account turnover in the State or Union territory, inward supplies of goods or services or both, tax payable, and such other particulars during a quarter, in such form and manner, and within such time, as may be prescribed."

Standard operating procedure to be followed in case of non-filers of returns

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 then 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.

[Circular No. 129/48/2019 GST dated 24.12.2019]

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)

w.e.f. 1st February 2019, The Central Government vide *Notification No. 03/2019-CT, dated 29th January 2019* has amended CGST Rules, 2017 details of which are explained below:

	Revised	Comment
Rule 80 (3) [Annual Return]	Every registered person **other than those referred to in the proviso to sub-section (5) of section 35**, whose aggregate turnover during a financial year exceeds two 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, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.	*Consequential changes provided in rule that audit provisions shall NOT apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force.*

Notf no. 16/2020-CT dt. 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.

REFUND

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]

Supplies against Advance Authorisation scheme not to be used in supply of nil rated/fully exempted supplies, when exports have already been made after availing ITC on inputs used in manufacture of such exports

Notification No. 48/2017-CT, dated 18.10.2017 specifies the supplies which shall be treated as deemed exports. The said notification has been amended as under:

(i) Supply of goods by a registered person against Advance Authorisation is a deemed export in terms of the said notification. The following conditions have been prescribed in this regard:

1. the goods so supplied, when exports have already been made after availing ITC on inputs used in manufacture of such exports, shall be used in manufacture and supply of taxable goods (other than nil rated or fully exempted goods) and a certificate to this effect from a chartered accountant is submitted to the jurisdictional commissioner of GST or any other officer authorised by him within 6 months of such supply. 2. No such certificate shall be required if ITC has not been availed on inputs used in manufacture of export goods.

2. Thus, supplies against Advance Authorisation scheme cannot be used in manufacture and supply of nil rated or fully exempted supplies.

(ii) The definition of advance authorisation has been amended to remove the words "on pre import basis" therefrom. The amended definition reads as under:

"Advance Authorisation means an authorisation issued by the Director General of Foreign Trade under Chapter 4 of the Foreign Trade Policy 2015-20 for import or domestic procurement of inputs for physical exports".

[*Notification No. 01/2019-CT, dated 15.01.2019*]

Filing of departure manifest shall be deemed to be the application filed for refund of tax paid on export of goods (*vide* Notification No. 74/2018-CT, dated 31.12.2018)

Amendments in provisions relating to grant of provisional refund [Rule 91]

Rule 91(2) provides that the proper officer, after scrutiny of the claim and the evidence submitted in support thereof and on being *prima facie* satisfied that the amount claimed as refund is due to the applicant in accordance with the provisions of section 54(6), shall make an order in prescribed form, sanctioning the amount of refund due to the said applicant on a provisional basis within a period not exceeding 7 days from the date of the acknowledgement.

With effect from 01.02.2019, a proviso is inserted in this sub-rule that the order issued under this sub-rule shall not be required to be revalidated by the proper officer.

Further, rule 91(3) stipulates that the proper officer shall issue a payment advice for the amount so sanctioned and the same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.

With effect from 01.02.2019, a new proviso has been inserted in this sub-rule also that the payment advice shall be required to be revalidated where the refund has not been disbursed within the same financial year in which the said payment advice was issued.

[*Notification No. 03/2019-CT, dated 29.01.2019*]

***Circular No. 03/1/2018 IGST dated 25.5.2018* which clarified on the applicability of IGST on goods supplied while being deposited in a customs bonded warehouse, rescinded**

The provisions of the CGST (Amendment) Act, 2018 and SGST Amendment Acts of the respective States have been brought into force w.e.f. 01.02.2019. Schedule III of the CGST Act has been amended vide section 32 of the CGST (Amendment) Act, 2018 so as to provide that the "supply of warehoused goods to any person before clearance for home consumption" shall be neither a supply of goods nor a supply of services.

Accordingly, *Circular No. 03/01/2018 IGST dated 25.05.2018* which clarified on the applicability of IGST on goods supplied while being deposited in a customs bonded warehouse, has been rescinded.

[Circular No. 04/01/2019 IGST dated 01.02.2019]

Refund of taxes to the retail outlets established in departure area of an international Airport beyond immigration counters making tax free supply to an outgoing international tourist.

As per Rule 95A of CGST Rules, 2017, w.e.f. 1-7-2019 (*vide* NT 31/2019-CT, dated 28/6/2019)

(1) Retail outlet established in departure area of an international airport, beyond the immigration counters, supplying indigenous goods to an outgoing international tourist who is leaving India shall be eligible to claim refund of tax paid by it on inward supply of such goods.

(2) Retail outlet claiming refund of the taxes paid on his inward supplies, shall furnish the application for refund claim in FORM GST RFD- 10B on a monthly or quarterly basis, as the case may be, through the common portal either directly or through a Facilitation Centre notified by the Commissioner.

(3) The self-certified compiled information of invoices issued for the supply made during the month or the quarter, as the case may be, along with concerned purchase invoice shall be submitted along with the refund application.

(4) The refund of tax paid by the said retail outlet shall be available if—

(a) the inward supplies of goods were received by the said retail outlet from a registered person against a tax invoice;

(b) the said goods were supplied by the said retail outlet to an outgoing international tourist against foreign exchange without charging any tax;

(c) name and Goods and Services Tax Identification Number of the retail outlet is mentioned in the tax invoice for the inward supply; and

(d) such other restrictions or conditions, as may be specified, are satisfied.

(5) The provisions of rule 92 shall, mutatis mutandis, apply for the sanction and payment of refund under this rule.

Explanation.—For the purposes of this rule, the expression "outgoing international tourist" shall mean a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purposes.".

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

Rule 89(4) provides the formula for determining the refund of ITC in the case of zero-rated supply of goods or services or both without payment of tax under bond/LUT in accordance with the provisions of section 16(3) of the IGST Act, 2017. The formula is as follows:

$$\text{Refund Amount} = \frac{\text{(Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services)}}{\text{Adjusted Total Turnover}} \times \text{Net ITC}$$

The term 'Turnover of zero-rated supply of goods' used in the above formula has been redefined to restrict the same to 1.5 times the value of like goods domestically supplied by the same/similarly placed supplier/as declared by the supplier. The new definition is as follows:

Turnover of zero-rated supply of goods means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both.

[Notification No.16/2020 CT dated 23.03.2020]

Refund to be granted both in cash and credit, based on original mode of payment [Rule 92(1A)]

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.

[Notification No.16/2020 CT dated 23.03.2020]

Explanation to rule 96(10)(b) inserted

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.

[Notification No.16/2020 CT dated 23.03.2020]

vide Notf 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.

Specialized agencies notified under section 55 of CGST Act entitled to refund of IGST paid on import of goods [Circular No. 23/2019 Cus. dated 01.08.2019]

Section 55 of the CGST Act provides refund of taxes paid on the notified supplies of goods and/or services by notified specialized agencies like United Nations or a specified international organisation. Section 3(7) of Customs Tariff Act, 1975 provides for a parity between the integrated tax rate attracted on imported goods and the integrated tax applicable on the domestic supplies of goods. Therefore, on this principle of parity, specialized agencies ought to get the refund of the IGST paid on imported goods.

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

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

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**

In case of refund of unutilized input tax credit (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, 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 17:

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).

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

Bunching of refund claims across financial years permitted

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.

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

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

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.

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

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

In wake of insertion of sub-rule (4) to rule 36 of the CGST Rules, 2017 *[Refer Chapter 8 – Input Tax Credit]*, 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.

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

Clarification in respect of certain challenges faced by the registered persons in implementation of provisions of GST Laws

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?	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. There is no need to file a separate refund claim in such a case. 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.

[Circular No. 137/07/2020 GST dated 13.04.2020]

TDS UNDER GST

Details of tax deducted and tax collected to be made available to the deductee and collectee respectively on the common portal after filing of GSTR-7 and GSTR-8 respectively [Rule 66(2) of the CGST Rules] [Notification No. 31/2019 CT dated 28.06.2019]

Sub-rule (2) of rule 66 has been amended to lay down that the details of TDS furnished by the deductor in GSTR-7 shall be made available electronically to each of the deductees on the common portal after filing of Form GSTR-7 for claiming the amount of tax deducted in his electronic cash ledger after validation.

Similarly, the details of TCS furnished by operator in GSTR-8 were made available to each supplier in Part C of Form GSTR-2A on the common portal after the due date of filing of Form GSTR-8 under rule 67(2) of the CGST Rules.

Sub-rule (2) of rule 67 has been amended to provide that the details of TCS furnished by the deductor in GSTR-8 is made available electronically to each of the deductees on the common portal after filing of Form GSTR-8 for claiming the amount of tax collected in his electronic cash ledger after validation.

TCS UNDER GST

Annual Statement:

The operator who collects tax at source shall furnish an annual Statement, electronically, containing all the details, under sub-section (3) of Section 52 of the Act, regarding:

(a) Outward supplies of Goods and Services

(b) Return of goods and services during the Financial Year,

Before 31st December following the end of such Financial Year.

w.e.f. 1-4-2019:

"Provided that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the statement 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.";

the following provisos shall be inserted, namely:— "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 statement 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.".

Details of tax deducted and tax collected to be made available to the deductee and collectee respectively on the common portal after filing of GSTR-7 and GSTR-8 respectively [Rule 66(2) of the CGST Rules] [Notification No. 31/2019 CT dated 28.06.2019]

Sub-rule (2) of rule 66 has been amended to lay down that the details of TDS furnished by the deductor in GSTR-7 shall be made available electronically to each of the deductees on the common portal after filing of Form GSTR-7 for claiming the amount of tax deducted in his electronic cash ledger after validation.

Similarly, the details of TCS furnished by operator in GSTR-8 were made available to each supplier in Part C of Form GSTR-2A on the common portal after the due date of filing of Form GSTR-8 under rule 67(2) of the CGST Rules.

Sub-rule (2) of rule 67 has been amended to provide that the details of TCS furnished by the deductor in GSTR-8 is made available electronically to each of the deductees on the common portal after filing of Form GSTR-8 for claiming the amount of tax collected in his electronic cash ledger after validation.

GST PRACTITIONERS

w.e.f. 1st February 2019, The Central Government vide *Notification No. 03/2019-CT, dated 29th January, 2019* has amended CGST Rules, 2017 details of which are explained below:

	Revised	Comment
Insertion in Rule 83(8) [Provisions related to goods and services tax practitioner]	A goods and services tax practitioner can undertake any or all of the following additional activities on behalf of a registered person, if so authorised by him to- **(f) furnish information for generation of e-way bill;** **(g) furnish details of challan in FORM GST ITC-04;** **(h) file an application for amendment or cancellation of enrolment under rule 58; and** **(i) file an intimation to pay tax under the composition scheme or withdraw from the said scheme** Provided that where any application relating to a claim for refund or an application for amendment or cancellation of registration **or where an intimation to pay tax under composition scheme or to withdraw from such scheme** has been submitted by the goods and services tax practitioner authorised by the registered person, a confirmation shall be sought from the registered person and the application submitted by the said practitioner shall be made available to the registered person on the common portal and such application shall not be further proceeded with until the registered person gives his consent to the same.	

Application to register as GST Practitioner

- A person desirous of becoming GST Practitioner has to submit an application in the form GST PCT-1
- The application shall be scrutinised and GST practitioner certificate shall be granted in the form GST PCT-2.
- In case, the application is rejected, proper reasons shall have to be mentioned in the form GST PCT-4

The enrolment once done remains valid till it is cancelled. But no person enrolled as a goods and services tax practitioner shall be eligible to remain enrolled unless he passes such examination conducted at such periods and by such authority as may be notified by the Council.

Any person who has been enrolled as goods and services tax practitioner by virtue of him being enrolled as a sales tax practitioner or tax return preparer under the existing law shall remain enrolled only for a period of one year from the appointed date unless he passes the said examination within the said period of one year.

w.e.f. 1st February 2019, [*Notification No. 03/2019-CT, dated 29th January 2019*]**:**

Substitution in heading of Chapter-II	Composition Rules	"Composition Levy"	
Substitution in 2nd proviso to Rule 83 (3)	Provided further that no person to whom the provisions of clause (b) of sub-rule (1) apply shall be eligible to remain enrolled unless he passes the said examination within a period of [eighteen months] from the appointed date	Provided further that no person to whom the provisions of clause (b) of sub-rule (1) apply shall be eligible to remain enrolled unless he passes the said examination within a period of [**thirty months**] from the appointed date	*Allows time to complete the exam after enrolment.*

DEMAND AND ADJUDICATION

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 .

The taxpayers and/or the tax authorities have got an extended time limit of up to 30th June 2020, where the time limit for the following compliance matter expires between 20th March 2020 and 29th June 2020:

- Issue of notice/notification/approval order/sanction order
- Filing of an appeal/furnishing of a return/statements/applications/reports or any other documents

APPEALS AND REVISIONS UNDER GST

Revisional Authority under section 108

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.

[Notification No. 05/2020 CT dated 13.01.2020]

ADVANCE RULING

"advance ruling" means a decision provided by the Authority or the Appellate Authority **(or the National Appellate Authority w.e.f. 1-8-2019**) to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;

W.e.f. 1-8-2019 "National Appellate Authority" means the National Appellate Authority for Advance Ruling referred to in section 101A.'.

Constitution of National Appellate Authority for Advance Ruling w.e.f. 1-8-2019:

"Section 101A of the CGST Act, 2017, —

(1) The Government shall, on the recommendations of the Council, by notification, constitute, with effect from such date as may be specified therein, an Authority known as the National Appellate Authority for Advance Ruling for hearing appeals made under section 101B.

(2) The National Appellate Authority shall consist of—

(i) the President, who has been a Judge of the Supreme Court or is or has been the Chief Justice of a High Court, or is or has been a Judge of a High Court for a period not less than five years;

(ii) a Technical Member (Centre) who is or has been a member of Indian Revenue (Customs and Central Excise) Service, Group A, and has completed at least fifteen years of service in Group A;

(iii) a Technical Member (State) who is or has been an officer of the State Government not below the rank of Additional Commissioner of Value Added Tax or the Additional Commissioner of State tax with at least three years of experience in the administration of an existing law or the State Goods and Services Tax Act or in the field of finance and taxation.

(3) The President of the National Appellate Authority shall be appointed by the Government after consultation with the Chief Justice of India or his nominee:

Provided that in the event of the occurrence of any vacancy in the office of the President by the reason of his death, resignation or otherwise, the senior most Member of the National Appellate Authority shall act as the President until the date on which a new President, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office:

Provided further that where the President is unable to discharge his functions owing to absence, illness or any other cause, the senior most Member of the National Appellate Authority shall discharge the functions of the President until the date on which the President resumes his duties.

(4) The Technical Member (Centre) and Technical Member (State) of the National Appellate Authority shall be appointed by the Government on the recommendations of a Selection Committee consisting of such persons and in such manner as may be prescribed.

(5) No appointment of the Members of the National Appellate Authority shall be invalid merely by the reason of any vacancy or defect in the constitution of the Selection Committee.

(6) Before appointing any person as the President or Members of the National Appellate Authority, the Government shall satisfy itself that such person does not have any financial or other interests which are likely to prejudicially affect his functions as such President or Member.

(7) The salary, allowances and other terms and conditions of service of the President and the Members of the National Appellate Authority shall be such as may be prescribed:

Provided that neither salary and allowances nor other terms and conditions of service of the President or Members of the National Appellate Authority shall be varied to their disadvantage after their appointment.

(8) The President of the National Appellate Authority shall hold office for a term of three years from the date on which he enters upon his office, or until he attains the age of seventy years, whichever is earlier and shall also be eligible for reappointment.

(9) The Technical Member (Centre) or Technical Member (State) of the National Appellate Authority shall hold office for a term of five years from the date on which he enters upon his office, or until he attains the age of sixty-five years, whichever is earlier and shall also be eligible for reappointment.

(10) The President or any Member may, by notice in writing under his hand addressed to the Government, resign from his office:

Provided that the President or Member shall continue to hold office until the expiry of three months from the date of receipt of such notice by the Government, or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(11) The Government may, after consultation with the Chief Justice of India, remove from the office such President or Member, who— (a) has been adjudged an insolvent; or (b) has been convicted of an offence which, in the opinion of such Government involves moral turpitude; or (c) has become physically or mentally incapable of acting as such President or Member; or (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President or Member; or (e) has so abused his position as to render his continuance in office prejudicial to the public interest:

Provided that the President or the Member shall not be removed on any of the grounds specified in clauses (d) and (e), unless he has been informed of the charges against him and has been given an opportunity of being heard.

(12) Without prejudice to the provisions of sub-section (11), the President and Technical Members of the National Appellate Authority shall not be removed from their office except by an order made by the Government on the ground of proven misbehaviour or incapacity after an inquiry made

by a Judge of the Supreme Court nominated by the Chief Justice of India on a reference made to him by the Government and such President or Member had been given an opportunity of being heard.

(13) The Government, with the concurrence of the Chief Justice of India, may suspend from office, the President or Technical Members of the National Appellate Authority in respect of whom a reference has been made to the Judge of the Supreme Court under sub-section (12)

(14) Subject to the provisions of article 220 of the Constitution, the President or Members of the National Appellate Authority, on ceasing to hold their office, shall not be eligible to appear, act or plead before the National Appellate Authority where he was the President or, as the case may be, a Member.

Appeal to National Appellate Authority.

Section 101B. (1) Where, in respect of the questions referred to in sub-section (2) of section 97, conflicting Advance Rulings are given by the Appellate Authorities of two or more States or Union territories or both under sub-section (1) or sub-section (3) of section 101, any officer authorised by the Commissioner or an applicant, being distinct person referred to in section 25 aggrieved by such Advance Ruling, may prefer an appeal to National Appellate Authority:

Provided that the officer shall be from the States in which such Advance Rulings have been given.

(2) Every appeal under this section shall be filed within a period of thirty days from the date on which the ruling sought to be appealed against is communicated to the applicants, concerned officers and jurisdictional officers:

Provided that the officer authorised by the Commissioner may file appeal within a period of ninety days from the date on which the ruling sought to be appealed against is communicated to the concerned officer or the jurisdictional officer:

Provided further that the National Appellate Authority may, if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the said period of thirty days, or as the case may be, ninety days, allow such appeal to be presented within a further period not exceeding thirty days.

Explanation.—For removal of doubts, it is clarified that the period of thirty days or as the case may be, ninety days shall be counted from the date of communication of the last of the conflicting rulings sought to be appealed against.

(3) Every appeal under this section shall be in such form, accompanied by such fee and verified in such manner as may be prescribed.

Order of National Appellate Authority

Section 101C. (1) The National Appellate Authority may, after giving an opportunity of being heard to the applicant, the officer authorised by the Commissioner, all Principal Chief Commissioners, Chief Commissioners of Central tax and Chief Commissioner and Commissioner of State tax of all States and Chief Commissioner and Commissioner of Union territory tax of all Union territories, pass such order as it thinks fit, confirming or modifying the rulings appealed against.

(2) If the members of the National Appellate Authority differ in opinion on any point, it shall be decided according to the opinion of the majority.

(3) The order referred to in sub-section (1) shall be passed as far as possible within a period of ninety days from the date of filing of the appeal under section 101B.

(4) A copy of the Advance Ruling pronounced by the National Appellate Authority shall be duly signed by the Members and certified in such manner as may be prescribed and shall be sent to the applicant, the officer authorised by the Commissioner, the Board, the Chief Commissioner and Commissioner of State tax of all States and Chief Commissioner and Commissioner of Union territory tax of all Union territories and to the Authority or Appellate Authority, as the case may be, after such pronouncement."

Orders of Appellate Authority [Section 101 of CGST Act, 2017]

(1) The Appellate Authority may, after giving the parties to the appeal or reference an opportunity of being heard, pass such order as it thinks fit, confirming or modifying the ruling appealed against or referred to.

(2) The order referred to in sub-section (1) shall be passed **within a period of ninety days** from the date of filing of the appeal under section 100 or a reference under sub-section (5) of section 98.

(3) Where the members of the Appellate Authority differ on any point or points referred to in appeal or reference, it shall be deemed that no advance ruling can be issued in respect of the question under the appeal or reference.

(4) A copy of the advance ruling pronounced by the Appellate Authority duly signed by the Members and certified in such manner as may be prescribed shall be sent to the applicant, the concerned officer, the jurisdictional officer and to the Authority after such pronouncement.

w.e.f 1-8-2019:

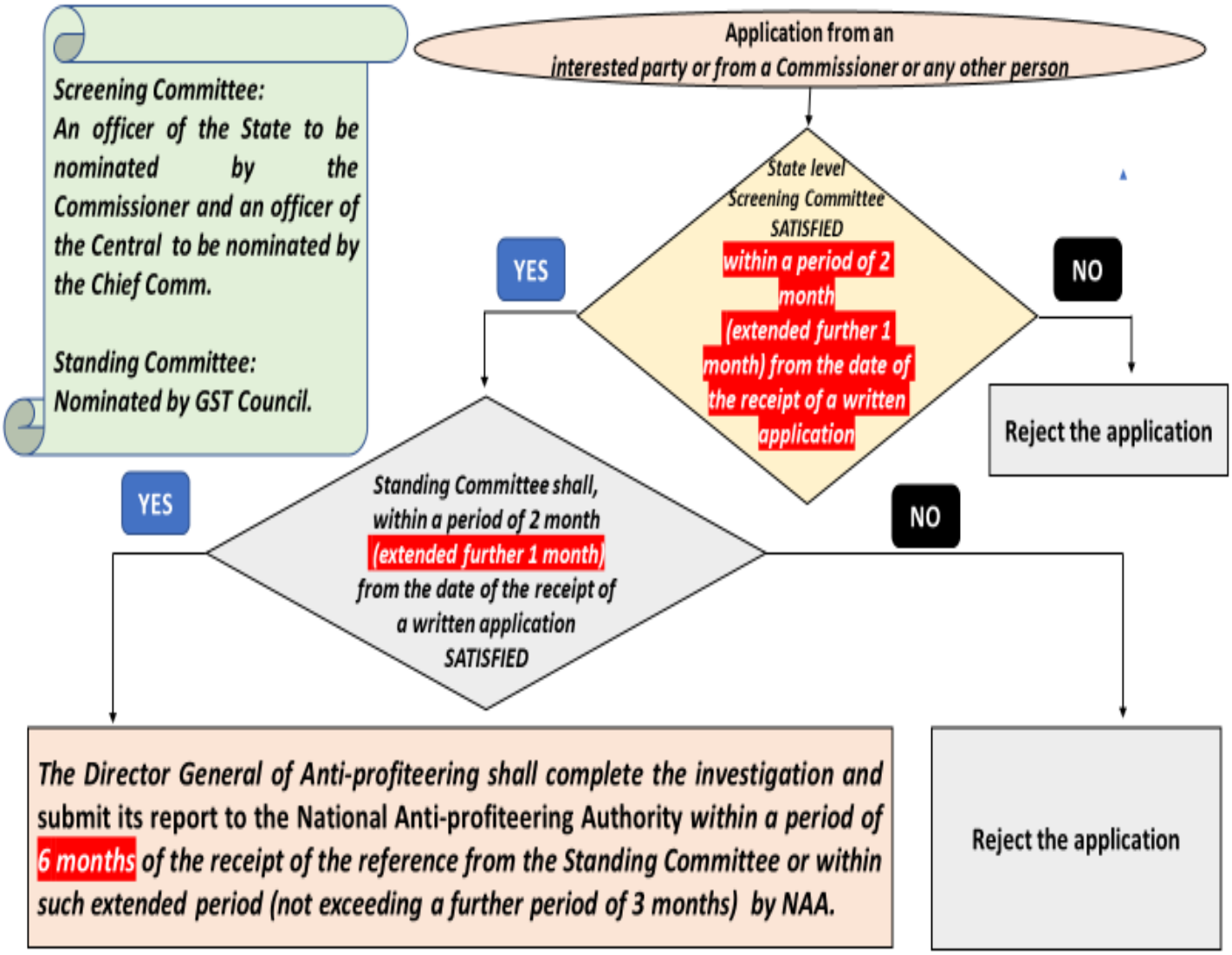
"(1A) The Advance Ruling pronounced by the National Appellate Authority under this Chapter shall be binding on—

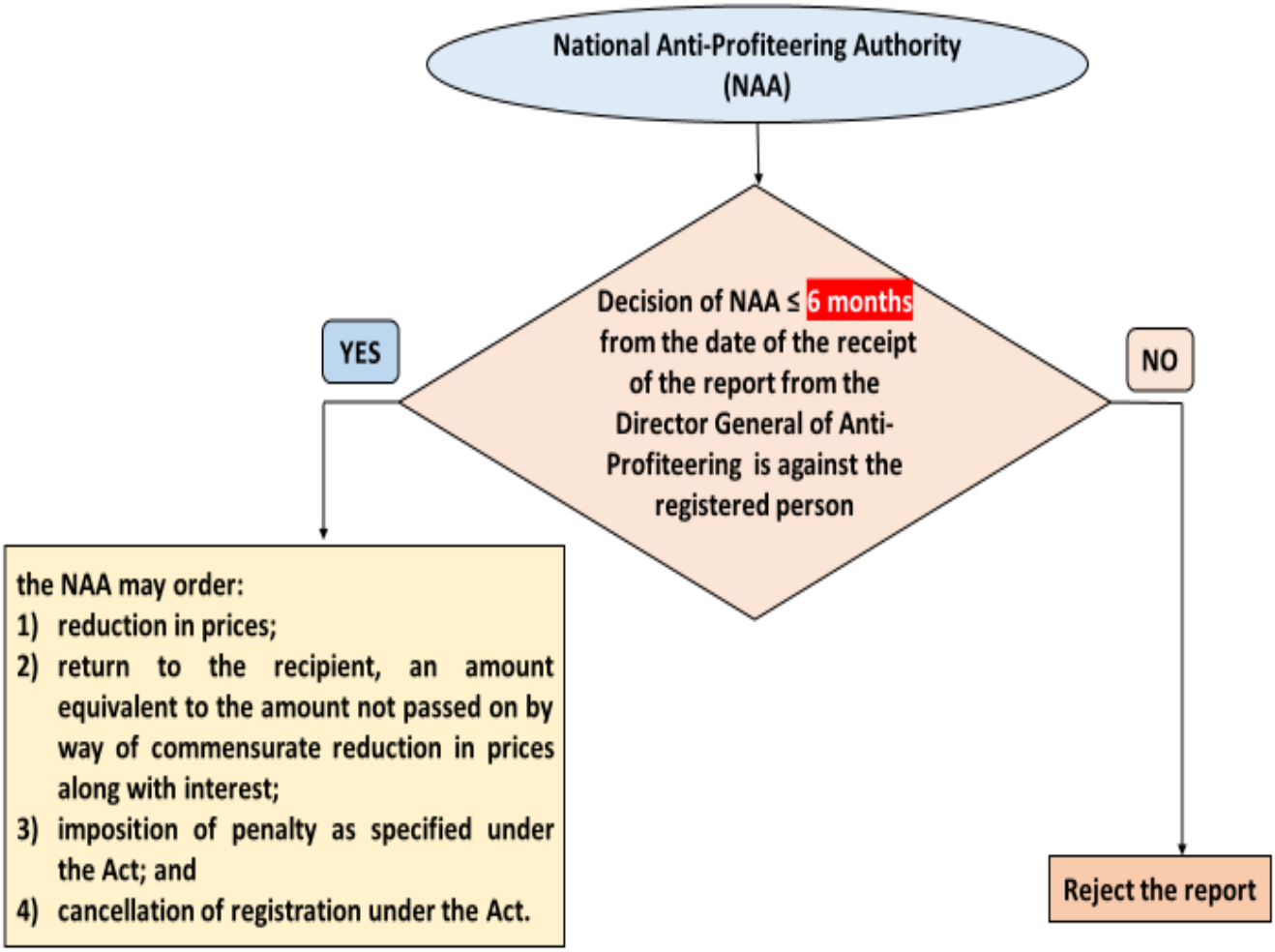
(a) the applicants, being distinct persons, who had sought the ruling under sub-section (1) of section 101B and all registered persons having the same Permanent Account Number issued under the Income-tax Act, 1961;

(b) the concerned officers and the jurisdictional officers in respect of the applicants referred to in clause (a) and the registered persons having the same Permanent Account Number issued under the Income-tax Act, 1961.";

ANTI-PROFITEERING

The procedure followed in decision making/investigation:





Vide Notification No. 31/2019 CT dated 28.06.2019:

Time period of 2 months available with the Standing Committee for examination of an application under rule 128 can be extended up to a further period of 1 month.

Rule 128 has been amended to provide that all applications from interested parties on issue of local nature **as well as those forwarded by Standing Committee** shall first be examined by the State level Screening Committee and the Screening Committee shall, **within 2 months from the date of receipt of a written application** (**further extendable up to 1 month**), upon being satisfied that the supplier has contravened the provisions of section 171, forward the application with its recommendations to the Standing Committee for further action.

Earlier, Screening Committee used to examine application on issues of local nature only and there was no time limit for forwarding the application to Standing Committee for further action.

Rule 129 provides that where Standing Committee is satisfied that there is a *prima facie* evidence to show that the supplier has not passed on the benefit to the recipient, it shall refer the matter to the

Director General of Anti-Profiteering [DGAP] for detailed investigation.

Earlier, DGAP had to complete the investigation within a period of **3 months** of the receipt of the reference from the Standing Committee. Now the said period of **3 months has been extended to 6 months**.

Therefore, now DGAP has to complete the investigation within a period of 6 months of the receipt of the reference from the Standing Committee which is further extendable up to 3 months.

In addition to DGAP and an officer authorized by him in this behalf, **the Authority has also been empowered to summon any person** whose attendance he considers necessary either to give evidence or to produce a document or any other thing under section 70 of the CGST Act and shall have power in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908 [Rule 132].

As per rule 133, the Authority had to determine as to whether the registered person has passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of ITC to the recipient by way of commensurate reduction in prices, within **3 months** from the date of receipt of investigation report from DGAP. The said period of **3 months has now been extended to 6 months**.

In terms of rule 133, the **Authority can now seek a clarification from DGAP on the Investigation report** submitted by it during the process of determining as to whether the benefit of reduction in rate of tax or benefit of ITC has been passed on to the recipient by way of commensurate reduction in prices.

As per rule 133, the Authority may, *inter-alia,* order to deposit an amount equivalent to 50% of the amount not passed on by way of commensurate reduction in prices, in the Consumer Welfare Fund of the Centre and remaining 50% in the Consumer Welfare Fund of the concerned State* where the eligible person does not claim return of the amount or is not identifiable.

The rule has been amended to provide that the **said amount shall now be deposited along with interest @ 18% from the date of collection of the higher amount till the date of deposit of such amount**.

*Here, the expression "concerned State" means the State **or Union Territory** in respect of which the Authority passes an order.

A new sub-rule (5) has been inserted in rule 133 to provide that where upon receipt of the report of the DGAP, the Authority has reasons to believe that there has been contravention of the provisions of section 171 in respect of goods and/or services other than those covered in the said report, it may, for reasons to be recorded in writing, within a period of six months, direct the DGAP to cause investigation or inquiry with regard to such other goods and/or services.

Such investigation or enquiry shall be deemed to be a new investigation or enquiry and all the provisions of rule 129 shall *mutatis mutandis* apply to such investigation or enquiry.

As per rule 137, the Authority ceases to exist after the expiry of 2 years from the date on which the Chairman enters upon his office unless the GST Council recommends otherwise. Rule 137 has been amended to increase the said period of 2 years to 4 years.

Special procedure for corporate debtors undergoing the corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016

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.

[Notification No. 11/2020 CT dated 21.03.2020]

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.

MISCELLANEOUS

Clarification in respect of certain challenges faced by the registered persons in implementation of provisions of GST Laws:

Sl. No.	Issue	Clarification
Issues related to Insolvency and Bankruptcy Code, 2016		
	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.
	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	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.

		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).
	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.	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. 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

Other COVID-19 related representations.		
	As per notification no. 40/2017-Central Tax (Rate) dated 23.10.2017, a registered supplier is allowed to supply the goods to a registered recipient (merchant exporter) at 0.1% provided, inter-alia, that the merchant exporter exports the goods within a period of ninety days from the date of issue of a tax invoice by the registered supplier. Request has been made to clarify the provision vis-à-vis the exemption provided vide notification no. 35/2020-Central Tax dated 03.04.2020.	i. Vide notification No. 35/2020-Central Tax dated 03.04.2020, time limit for compliance of any action by any person which falls during the period from 20.03.2020 to 29.06.2020 has been extended up to 30.06.2020, where completion or compliance of such action has not been made within such time. ii. Notification no. 40/2017-Central Tax (Rate) dated 23.10.2017 was issued under powers conferred by section 11 of the CGST Act, 2017. The exemption provided in notification No. 35/2020-Central Tax dated 03.04.2020 is applicable for section 11 as well. iii. Accordingly, it is clarified that the said requirement of exporting the goods by the merchant exporter within 90 days from the date of issue of tax invoice by the registered supplier gets extended to 30th June, 2020, provided the completion of such 90 days period falls within 20.03.2020 to 29.06.2020.

	Sub-rule (3) of that rule 45 of CGST Rules requires furnishing of FORM GST ITC-04 in respect of goods dispatched to a job worker or received from a job worker during a quarter on or before the 25th day of the month succeeding that quarter. Accordingly, the due date of filing of FORM GST ITC-04 for the quarter ending March, 2020 falls on 25.04.2020. Clarification has been sought as to whether the extension of time limit as provided in terms of notification No. 35/2020-Central Tax dated 03.04.2020 also covers furnishing of FORM GST ITC-04 for quarter ending March, 2020	Time limit for compliance of any action by any person which falls during the period from 20.03.2020 to 29.06.2020 has been extended up to 30.06.2020 where completion or compliance of such action has not been made within such time. Accordingly, it is clarified that the due date of furnishing of FORM GST ITC-04 for the quarter ending March, 2020 stands extended up to 30.06.2020.

(Circular No. 138/08/2020-GST dt 06th May, 2020)

CUSTOMS ACT

BASIC CONCEPTS

W.e.f. 29.03.2019:

Section 11(3) of the Customs Act, 1962, Any prohibition or restriction or obligation relating to import or export of any goods or class of goods or clearance thereof provided in any other law for the time being in force, or any rule or regulation made or any order or notification issued thereunder, shall be executed under the provisions of that Act only if such prohibition or restriction or obligation is notified under the provisions of this Act, subject to such exceptions, modifications or adaptations as the Central Government deems fit.".

TYPES OF DUTIES

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.

Clarification regarding duty drawback allowed in cases of short realisation of export proceeds due to bank charges deducted by foreign banks. Circular No. 33/2019-Customs dated 19th September 2019:

In view of the above, it is clarified that duty drawback may be permitted on FoB value without deducting foreign bank charges. It is further clarified that since agency commission up to the limit of 12.5% of the FoB value has been allowed, such deduction on account of foreign bank charges is allowed within this overall limit of 12.5% of the FoB value. From the average rates of agency commission and foreign bank charges in respect of export shipments, it is seen that these deductions fall within the aforesaid overall limit of 12.5% of FoB value allowed by the Board. Agency commission and foreign bank charges, separately or jointly, exceeding this limit should be deducted from the FoB value for granting duty drawback.

w.e.f. 1-10-2019 Clarification regarding taxability of goods imported under lease (vide Notification No. 34/2019 Customs, dated 30-09-2019)

In respect of goods imported on temporary basis, aircrafts, aircraft engines and other aircraft parts imported into India under a transaction covered by item 1(b) or 5(f) of Schedule II of the CGST Act, 2019 are exempted from IGST under Customs Act, 1962.

Similarly, rigs and ancillary items imported for oil or gas exploration and production taken on lease by the importer for use after import have also been exempted from IGST. Subsequently, all goods vessels, ships (other than motor vehicles) imported under lease, by the importer for use after importation, were also exempted from IGST.

This exemption is available only if the importer, by the execution of bond, in such form and for such sum as may be specified by the Commissioner of Customs, binds himself:

(a) to pay IGST under section 5(1) of the IGST Act, 2017 on supply of service covered by item 1(b) or 5(f) of Schedule II of the CGST Act, 2017;

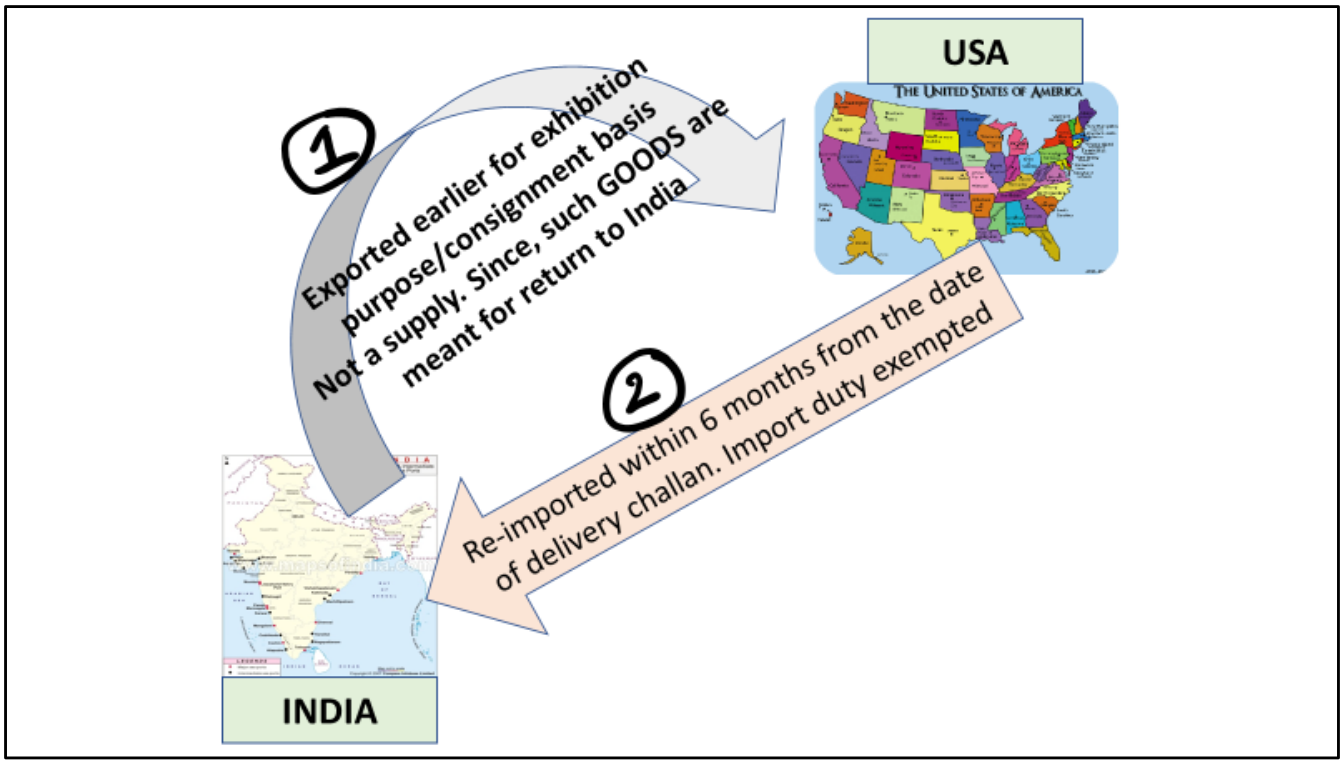
(b) not to sell or part with the goods, without the prior permission of the Commissioner of Customs of the port of importation;

(c) to re-export the goods within 3 months of the expiry of the period for which they were supplied under a transaction covered by time 1(b) or 5(f) of Schedule II of CGST Act, 2017

(d) to pay on demand an amount equal to the IGST payable on the said goods but for the exemption under this Notification in the event of violation of any of the above conditions.

IMPORT AND EXPORT PROCEDURE

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



***Export General Manifest now called as* departure manifest or an export manifest**

w.e.f. 1-8-2019, "The person-in-charge of a conveyance carrying export goods or imported goods or any other person as may be specified by the Central Government, by notification, shall, before departure of the conveyance from a customs station, deliver to the proper officer in the case of a vessel or aircraft, a departure manifest or an export manifest by presenting electronically, and in the case of a vehicle, an export report, in such form and manner as may be prescribed and in case, such person-in-charge or other person fails to deliver the departure manifest or export manifest or the export report or any part thereof within such time, and the proper officer is satisfied that there is no sufficient cause for such delay, such person-incharge or other person shall be liable to pay penalty not exceeding **fifty thousand rupees**".

w.e.f. 1-8-2019 VERIFICATION OF IDENTITY AND COMPLIANCE

The proper officer, authorised in this behalf by the Principal Commissioner of Customs or the Commissioner of Customs, as the case may be, may, for the purposes of ascertaining compliance of the provisions of this Act or any other law for the time being in force, require a person, whose verification he considers necessary for protecting the interest of revenue or for preventing smuggling etc.,

Search and Seizure:

w.e.f. 1-8-2019 section 110(1) of the Customs Act, 1962:

"Provided that where it is not practicable to remove, transport, store or take physical possession of the seized goods for any reason, the proper officer may give custody of the seized goods to the owner of the goods or the beneficial owner or any person holding himself out to be the importer, or any other person from whose custody such goods have been seized, on execution of an undertaking by such person that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:

Provided further that where it is not practicable to seize any such goods, the proper officer may serve an order on the owner of the goods or the beneficial owner or any person holding himself out to be importer, or any other person from whose custody such goods have been found, directing that such person shall not remove, part with, or otherwise deal with such goods except with the previous permission of such officer.";

Where the proper officer, during any proceedings under the Act, is of the opinion that for the purposes of protecting the interest of revenue or preventing smuggling, it is necessary so to do, he may, with the approval of the Principal Commissioner of Customs or Commissioner of Customs, by order in writing, provisionally attach any bank account for a period not exceeding six months:

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, for reasons to be recorded in writing, extend such period to a further period not exceeding six months and inform such extension of time to the person whose bank account is provisionally attached, before the expiry of the period so specified."

Penalty for availing instruments (like duty drawback, MEIS, SEIS etc.) fraudulently **w.e.f. 1-8-2019 As per Section 114AB of the Customs Act, 2019:**

Where any person has obtained any instrument by fraud, collusion, willful misstatement or suppression of facts and such instrument has been utilised by such person or any other person for discharging duty, the person to whom the instrument was issued shall be liable for penalty not exceeding the face value of such instrument.

Explanation.—For the purposes of this section, the expression "instrument" shall have the same meaning as assigned to it in the Explanation 1 to section 28AAA.'.

Residual Penalty Section 117:

As per section117 of the Customs Act, 1962, if no penalty has been prescribed for contravenes, then the penalty would be □1,00,000 can be levied (w.e.f. 10.5.2008).

w.e.f. 1-8-2019 In section 117 of the Customs Act, for the words "one lakh rupees", the words "four lakh rupees" shall be substituted.

Redemption Fine (Section 125)

Provisos to section 125(1) of the Customs Act, 1962 (w.e.f. 29.3.2018):

"Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, the provisions of this section shall not apply:

w.e.f. 1-8-2019 In section 125 of the Customs Act, in sub-section (1), in the first proviso, for the words "the provisions of this section shall not apply", the words "no such fine shall be imposed" shall be substituted.

Offences under Customs

***w.e.f. 1-8-2019* In section 135 of the Customs Act, following sub-item shall be inserted:**

obtaining an instrument from any authority by fraud, collusion, willful misstatement or suppression of facts and such instrument has been utilised by any person, where the duty relatable to utilisation of the instrument exceeds fifty lakh rupees,".

Goods liable to confiscation secreted inside his body w.e.f. 1-8-2019 section 103 of the Customs Act, 1962:

(i) "(1) Where the proper officer has reason to believe that any person referred to in sub-section (2) of section 100 has any goods liable to confiscation secreted inside his body, he may detain such person and shall,—

(a) with the prior approval of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as soon as practicable, screen or scan such person using such equipment as may be available at the customs station, but without prejudice to any of the rights available to such person under any other law for the time being in force, including his consent for such screening or scanning, and forward a report of such screening or scanning to the nearest magistrate if such goods appear to be secreted inside his body; or

(b) produce him without unnecessary delay before the nearest magistrate.";

(ii) in sub-section (6), after the words "Where on receipt of a report", the words, brackets, letter and figure "from the proper officer under clause (a) of sub-section (1) or" shall be inserted.

Non-bailable offence:

w.e.f 1-8-2019 non-bailable offence includes:

Fraudulently obtaining an instrument for the purposes of this Act or the Foreign Trade (Development and Regulation) Act, 1992, and such instrument is utilised under this Act, where duty relatable to such utilisation of instrument exceeds fifty lakh rupees,"

'*Explanation*.—For the purposes of this section, the expression "instrument" shall have the same meaning as assigned to it in *Explanation* 1 to section 28AAA.'.

FOREIGN TRADE POLICY 2015 - 2020

FOREIGN TRADE POLICY 2015-2020

Notification No. 08/2019-Customs, dated 25th March, 2019:

The Directorate General of Foreign Trade (DGFT) has said that exemption from integrated GST and compensation cess under advance authorisation scheme, EOU, and EPCG scheme of foreign trade policy 2015-20 "is extended **up to March 31, 2020**".

These exemptions have been extended for exporters buying inputs domestically or importing for export purposes under export oriented unit (EOU) scheme, Export Promotion Capital Goods (EPCG) scheme and advance authorisation.

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.

Levy and collection of Social Welfare Surcharge (SWS) on imports under various schemes such as Merchandise Exports from India Scheme (MEIS), Services Exports from India Scheme (SEIS) etc. vide CBIC Circular No. 02/2020 Customs dated 10th January 2020:

Social Welfare Surcharge (SWS) cannot be debited through duty credit scrips and therefore has to be paid by the importer in cash.

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

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 lif e 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.

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

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]