# SUPPLEMENTARY

## DECEMBER - 2019

## PAPER - 11 & 18

# STATUTORY UPDATES

**Pending returns to be filed before revocation of cancellation of registration - Circular No. 99/18/2019 dated 23-04-2019**

Rule 23 of the CGST Rules provides the procedure for revocation of cancellation of registration. First proviso to sec. 23(1) provided that if the registration has been cancelled on account of failure of the registered person to furnish returns, no application for revocation of cancellation of registration shall be filed, unless such returns are furnished and any amount in terms of such returns is paid.

Clarification is issued in relation to the procedure for filing of application for revocation of cancellation of registration:

- ***Where the registration has been cancelled*:** First proviso to rule 23(1) provides that if the registration has been cancelled on account of failure of the registered person to furnish returns, no application for revocation of cancellation of registration shall be filed, unless such returns are furnished and any amount in terms of such returns is paid. Thus, where the registration has been cancelled with effect from the date of order of cancellation of registration, all returns due till the date of such cancellation are required to be furnished before the application for revocation can be filed.

  Further, in such cases, in terms of the second proviso to rule 23(1), all returns required to be furnished in respect of the period from the date of order of cancellation till the date of order of revocation of cancellation of registration have to be furnished within a period of 30 days from the date of the order of revocation.

- ***Where the registration has been cancelled with retrospective effect*:** Where the registration has been cancelled with retrospective effect, the common portal does not allow furnishing of returns after the effective date of cancellation. In such cases it was not possible to file the application for revocation of cancellation of registration. Therefore, a third proviso was added to rule 23(1) enabling filing of application for revocation of cancellation of registration, subject to the condition that all returns relating to the period from the effective date of cancellation of registration till the date of order of revocation of cancellation of registration shall be filed within a period of 30 days from the date of order of such revocation of cancellation of registration.

***Illustration***

| Return not furnished from | Date of order of cancellation of registration | Cancellation of registration effective from | Date of filing of application for revocation of cancellation of registration as per RoD (to be filed on or before the 22nd July, 2019) | Returns to be furnished before filing the application for revocation of cancellation of registration | Date of order of revocation of cancellation of registration | Date of furnishing returns for period b/w date of order of cancellation of registration and date of revocation of cancellation of registration (to be filed within thirty days from the date of order of revocation of cancellation of registration) | Returns to be furnished within thirty days from date of order of revocation of cancellation of registration |
|---|---|---|---|---|---|---|---|
| July, 18 | 01st March, 19 | 01st March, 19 | 30th May, 19 | **Returns due till 01st March, 19** (i.e. July, 18 to January, 19) | 01st June, 19 | 01st July, 19 | **Returns due till 01st June, 19** (i.e. February, 19 to April, 19) |
| July, 18 | 22nd March, 19 | 22nd March, 19 | 20th June, 19 | **Returns due till 22nd March, 19** (i.e. July, 18 to February, 19) | 22nd June,19 | 22nd July, 19 | **Returns due till 21st June, 19** (i.e. March, 19 to May, 19) |
| July, 18 | 01st March, 19 | 01st July, 18 | 30th May, 19 | **NA** | 01st June,19 | 01st July, 19 | **Returns due till 01st June, 19** (i.e. July, 18 to April, 19) |

## Verification of applications for grant of new registration – Circular No. 95/13/2019 dated 28-03-2019

A large number of registrations have been cancelled by the proper officer on account of noncompliance of the statutory provisions. In this regard, instances have come to notice that such persons, who continue to carry on business and therefore are required to have registration under GST, are not applying for revocation of cancellation of registration. Instead, such persons are applying for fresh registration. Such new applications might have been made as such person may not have furnished requisite returns and not paid tax for the tax periods covered under the old/cancelled registration. Further, such persons would be required to pay all liabilities due from them for the relevant period in case they apply for revocation of cancellation of registration. Hence, to avoid payment of the tax liabilities, such persons may be using the route of applying for fresh registration.

This circular has been issued to guide the departmental officers to cross check the registration applications properly, to ensure that no such tax payers are provided with a new GSTIN.

## Clarification in respect of utilization of input tax credit under GST – Circular No. 98/17/2019 dated 23-04-2019

Sec. 49 was amended and sec. 49A and sec. 49B were inserted vide Central Goods and Services Tax (Amendment) Act, 2018. The amended provisions came into effect from 1st February 2019.

The newly inserted sec. 49A provides that the input tax credit of Integrated tax has to be utilized completely before input tax credit of Central tax / State tax can be utilized for discharge of any tax liability. Further, as per the provisions of sec. 49 of the CGST Act, credit of Integrated tax has to be utilized first for payment of Integrated tax, then Central tax and then State tax in that order mandatorily. This led to a situation, in certain cases, where a taxpayer has to discharge his tax liability on account of one type of tax (say State tax) through electronic cash ledger, while the input tax credit on account of other type of tax (say Central tax) remains un-utilized in electronic credit ledger.

Trade and industry were facing challenges due to sec. 49A on account of order of utilization of input tax credit of integrated tax in a particular order. Accordingly, rule 88A was inserted in the Central Goods and Services Tax Rules, 2017 in exercise of the power u/s 49B of the CGST Act vide notification No. 16/2019Central Tax, dated29-03-2019. The newly inserted rule 88A allows utilization of input tax credit of Integrated tax towards the payment of Central tax and State tax, or as the case may be, Union territory tax, in any order subject to the condition that the entire input tax credit on account of Integrated tax is completely exhausted first before the input tax credit on account of Central tax or State / Union territory tax can be utilized. It is clarified that after the insertion of the said rule, the order of utilization of input tax credit will be as per the order (of numerals) given below:

| Input tax Credit on account of | Output liability on account of Integrated tax | Output liability on account of Central tax | Output liability on account of State tax / Union Territory tax |
|---|---|---|---|
| **Integrated tax** | (I) | (II) – In any order and in any proportion | |
| **(III) Input tax Credit on account of Integrated tax to be completely exhausted mandatorily** | | | |
| **Central tax** | (V) | (IV) | Not permitted |
| **State tax / Union Territory tax** | (VII) | Not permitted | (VI) |

***Illustration***:

Amount of Input tax Credit available and output liability under different tax heads

| Head | Output Liability | Input tax Credit |
|---|---|---|
| **Integrated tax** | 1000 | 1300 |
| **Central tax** | 300 | 200 |
| **State tax / Union Territory tax** | 300 | 200 |
| **Total** | 1600 | 1700 |

**Option 1**:

| Input tax Credit on account of | Discharge of output liability on account of Integrated tax | Discharge of output liability on account of Central tax | Discharge of output liability on account of State tax / Union Territory tax | Balance of Input Tax Credit |
|---|---|---|---|---|
| **Integrated tax** | 1000 | 200 | 100 | 0 |
| ***Input tax Credit on account of Integrated tax has been completely exhausted*** | | | | |
| **Central tax** | 0 | 100 | - | 100 |
| **State tax / Union territory tax** | 0 | - | 200 | 0 |
| **Total** | 1000 | 300 | 300 | 100 |

**Option 2**:

| Input tax Credit on account of | Discharge of output liability on account of Integrated tax | Discharge of output liability on account of Central tax | Discharge of output liability on account of State tax / Union Territory tax | Balance of Input Tax Credit |
|---|---|---|---|---|
| **Integrated tax** | 1000 | 100 | 200 | 0 |
| ***Input tax Credit on account of Integrated tax has been completely exhausted*** | | | | |
| **Central tax** | 0 | 200 | - | 0 |
| **State tax/Union territory tax** | 0 | - | 100 | 100 |
| **Total** | 1000 | 300 | 300 | 100 |

However, the common portal supports the order of utilization of input tax credit in accordance with the provisions before implementation of the provisions of the CGST (Amendment) Act i.e. pre-insertion of sec. 49A and sec. 49B of the CGST Act. Therefore, till the new order of utilization as per newly inserted Rule 88A of the CGST Rules is implemented on the common portal, taxpayers may continue to utilize their input tax credit as per the functionality available on the common portal.

Consequently, rule 85 and 86 has been amended to include reference to sec. 49A and 49B.

**Clarification in respect of transfer of input tax credit in case of death of sole proprietor – Circular No. 96/15/2019 dated 28-03-2019**

In case of death of sole proprietor if the business is continued by any person being transferee or successor, the input tax credit which remains un-utilized in the electronic credit ledger is allowed to be transferred to the transferee as per provisions and in the manner stated below:

a. ***Registration liability of the transferee / successor***: As per provisions of sec. 22(3), the transferee or the successor, as the case may be, shall be liable to be registered with effect from the date of such transfer or succession, where a business is transferred to another person for any reasons including death of the proprietor. While filing application in FORM

GST REG-01 electronically in the common portal the applicant is required to mention the reason to obtain registration as "death of the proprietor".

b.

c. ***Cancellation of registration on account of death of the proprietor***: Sec. 29(1)(a) allows the legal heirs in case of death of sole proprietor of a business, to file application for cancellation of registration in FORM GST REG-16 electronically on common portal on account of transfer of business for any reason including death of the proprietor. In FORM GST REG-16, reason for cancellation is required to be mentioned as "death of sole proprietor". The GSTIN of transferee to whom the business has been transferred is also required to be mentioned to link the GSTIN of the transferor with the GSTIN of transferee.

d. ***Transfer of input tax credit and liability***: In case of death of sole proprietor, if the business is continued by any person being transferee or successor of business, it shall be construed as transfer of business. Sec. 18(3) allows the registered person to transfer the unutilized input tax credit lying in his electronic credit ledger to the transferee in the manner prescribed in rule 41, where there is specific provision for transfer of liabilities. As per sec. 85(1), the transferor and the transferee / successor shall jointly and severally be liable to pay any tax, interest or any penalty due from the transferor in cases of transfer of business "in whole or in part, by sale, gift, lease, leave and license, hire or in any other manner whatsoever". Furthermore, sec. 93(1) provides that where a person, liable to pay tax, interest or penalty under the CGST Act, dies, then the person who continues business after his death, shall be liable to pay tax, interest or penalty due from such person under this Act. It is therefore clarified that the transferee / successor shall be liable to pay any tax, interest or any penalty due from the transferor in cases of transfer of business due to death of sole proprietor.

e. ***Manner of transfer of credit***: As per rule 41(1), a registered person shall file FORM GST ITC-02 electronically on the common portal with a request for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee, in the event of sale, merger, de-merger, amalgamation, lease or transfer or change in the ownership of business for any reason. In case of transfer of business on account of death of sole proprietor, the transferee / successor shall file FORM GST ITC-02 in respect of the registration which is required to be cancelled on account of death of the sole proprietor. FORM GST ITC-02 is required to be filed by the transferee/successor before filing the application for cancellation of such registration. Upon acceptance by the transferee / successor, the un-utilized input tax credit specified in FORM GST ITC-02 shall be credited to his electronic credit ledger.

**Nature of Supply of Priority Sector Lending Certificates - Circular No. 93/12/2019 dated 08-03-2019**

It is clarified that nature of supply of PSLC between banks may be treated as a supply of goods in the course of inter-State trade or commerce. Accordingly, IGST shall be payable on the supply of PSLC traded over e-Kuber portal of RBI.

**Clarification on various doubts related to treatment of sales promotion schemes - Circular No. 92/11/2019 dated 07-03-2019**

There are several promotional schemes which are offered by taxable persons to increase sales volume and to attract new customers for their products. Some of these schemes have been examined and clarification on the aspects of taxability, valuation, availability or otherwise of Input Tax Credit in the hands of the supplier (hereinafter referred to as the "ITC") in relation to the said schemes are detailed hereunder:

**A. Free samples and gifts**:

(i) It is a common practice among certain sections of trade and industry, such as, pharmaceutical companies which often provide drug samples to their stockists, dealers, medical practitioners, etc. without charging any consideration. As per sec. 7(1)(a), the expression "supply" includes 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. Therefore, the goods or services or both which are supplied free of cost (without any consideration) shall not be treated as "supply" under GST (except in case of activities mentioned in Schedule I). Accordingly, it is clarified that samples which are supplied free of cost, without any consideration, do not qualify as "supply" under GST, except where the activity falls within the ambit of Schedule I of the said Act.

(ii) Further, sec. 17(5)(h) provides that ITC shall not be available in respect of goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples.Thus, it is clarified that input tax credit shall not be available to the supplier on the inputs, input services and capital goods to the extent they are used in relation to the gifts or free samples distributed without any consideration. However, where the activity of distribution of gifts or free samples falls within the scope of "supply" on account of the provisions contained in Schedule I, the supplier would be eligible to avail of the ITC.

**B. Buy one get one free offer**:

(i) Sometimes, companies announce offers like ***'Buy One, Get One free***" For example, 'buy one soap and get one soap free' or 'Get one tooth brush free along with the purchase of tooth paste'. As per sec. 7(1)(a), the goods or services which are supplied free of cost (without any consideration) shall not be treated as "supply" under GST (except in case of activities mentioned in Schedule I). It may appear at first glance that in case of offers like 'Buy One, Get One Free', one item is being 'supplied free of cost' without any consideration. In fact, it is not an individual supply of free goods but a case of two or more individual supplies where a single price is being charged for the entire supply. It can at best be treated as *supplying two goods for the price of one*.

(ii) Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined as per the provisions of sec. 8.

(iii) It is also clarified that ITC shall be available to the supplier for the inputs, input services and capital goods used in relation to supply of goods or services or both as part of such offers.

**C. Discounts including 'Buy more, save more' offers**:

(i) Sometimes, the supplier offers staggered discount to his customers (increase in discount rate with increase in purchase volume). E.g. Get 10 % discount for purchases above ₹ 5,000/-, 20% discount for purchases above ₹ 10,000/- and 30% discount for purchases above ₹ 20,000/-. Such discounts are shown on the invoice itself.

(ii) Some suppliers also offer periodic / year ending discounts to their stockists, etc. E.g. Get additional discount of 1% if you purchase 10000 pieces in a year, get additional discount of 2% if you purchase 15000 pieces in a year. Such discounts are established in terms of an agreement entered into at or before the time of supply though not shown on the invoice as the actual quantum of such discounts gets determined after the supply has been effected and generally at the year end. In commercial parlance, such discounts are colloquially referred to as "volume discounts". Such discounts are passed on by the supplier through credit notes.

(iii) It is clarified that discounts offered by the suppliers to customers (including staggered discount under 'Buy more, save more' scheme and post supply / volume discounts established before or at the time of supply) shall be excluded to determine the value of supply provided they satisfy the parameters laid down in sec. 15(3), including the reversal of ITC by the recipient of the supply as is attributable to the discount on the basis of document(s) issued by the supplier.

(iv) It is further clarified that the supplier shall be entitled to avail the ITC for such inputs, input services and capital goods used in relation to the supply of goods or services or both on such discounts.

**D. Secondary Discounts**

i. These are the discounts which are not known at the time of supply or are offered after the supply is already over. For example, M/s A supplies 10000 packets of biscuits to M/s B at ₹ 10/- per packet. Afterwards M/s A re-values it at ₹ 9/- per packet. Subsequently, M/s A issues credit note to M/s B for ₹ 1/- per packet.

ii. The issue is that whether credit notes(s) u/s 34(1) can be issued in such cases even if the conditions laid down in sec. 15(3)(b) are not satisfied. It is hereby clarified that financial / commercial credit note(s) can be issued by the supplier even if the conditions mentioned in sec. 15(3)(b) are not satisfied. In other words, credit note(s) can be issued as a commercial transaction between the two contracting parties.

iii. It is further clarified that such secondary discounts shall not be excluded while determining the value of supply as such discounts are not known at the time of supply and the conditions laid down in sec. 15(3)(b) are not satisfied.

iv. In other words, value of supply shall not include any discount by way of issuance of credit note(s) as explained above or by any other means, except in cases where the provisions contained in sec. 15(3)(b) are satisfied.

v. There is no impact on availability or otherwise of ITC in the hands of supplier in this case.

**Changes in Circulars issued earlier under the CGST Act, 2017 – Circular No. - 88/07/2019 dated 01-02-2019**

The CGST (Amendment) Act, 2018, SGST Amendment Acts of the respective States, IGST (Amendment) Act, 2018, UTGST (Amendment) Act, 2018 and the GST (Compensation to States) (Amendment) Act, 2018 (hereafter referred to as the GST Amendment Acts) have been brought in force with effect from 01-02-2019. Consequent to the GST Amendment Acts, the following circulars issued earlier are hereby amended with effect from 01-02-2019, to the extent detailed in the succeeding paragraphs.

***Circular No. 38/12/2018 dated 26-03-2018***

The Circular is revised in view of the amendment carried out in sec. 143 vide sec. 29 of the CGST (Amendment) Act, 2018 empowering the Commissioner to extend the period for return of inputs and capital goods from the job worker. Further on account of amendment carried out in sec. 9(4) vide sec. 4 of the CGST (Amendment) Act, 2018 done in relation to reverse charge, certain amendments to the Circular are required.

a. As per sec. 2(68), "job work" means any treatment or process undertaken by a person on goods belonging to another registered person and the expression "job worker" shall be construed accordingly. The registered person on whose goods (inputs or capital goods) job work is performed is called the "Principal" for the purposes of sec. 143. The said section which encapsulates the provisions related to job work, provides that the registered principal may, without payment of tax, send inputs or capital goods to a job worker for job work and, if required, from there subsequently to another job worker and so on. Subsequently, on completion of the job work (by the last job worker), the principal shall either bring back the goods to his place of business or supply (including export) the same directly from the place of business/premises of the job worker within the time specified u/s 143.

b. It may be noted that the responsibility of keeping proper accounts of the inputs and capital goods sent for job work lies with the principal. Moreover, if the time frame specified u/s 143 for bringing back or further supplying the inputs / capital goods is not adhered to, the activity of sending the goods for job work shall be deemed to be a supply by the principal on the day when the said inputs / capital goods were sent out by him. Thus, essentially, sending goods for job work is not a supply as such, but it acquires the character of supply only when the inputs/capital goods sent for job work are neither received back by the principal nor supplied further by the principal from the place of business / premises of the job worker within the specified time period of being sent out. It

may be noted that the responsibility for sending the goods for job work as well as bringing them back or supplying them has been cast on the principal.

c. Doubts have been raised about the requirement of obtaining registration by job workers when they are located in the same State where the principal is located or when they are located in a State different from that of the principal. It may be noted that the job worker is required to obtain registration only if his aggregate turnover, to be computed on all India basis, in a financial year exceeds the specified threshold limit as specified in sec. 22(1), read with clause (iii) of the Explanation to the said section in case both the principal and the job worker are located in the same State. Where the principal and the job worker are located in different States, the requirement for registration flows from sec. 24(i) which provides for compulsory registration of suppliers making any inter-State supply of services. However, exemption from registration has been granted in case the aggregate turnover of the inter-State supply of taxable services does not exceed the specified threshold limit as specified in sec. 22(1) in a financial year vide notification No. 10/2017 – Integrated Tax dated 13.10.2017 as amended vide notification No 3/2019-Integrated Tax, dated 29.01.19. Therefore, it is clarified that a job worker is required to obtain registration only in cases where his aggregate turnover, to be computed on all India basis, in a financial year exceeds the threshold limit regardless of whether the principal and the job worker are located in the same State or in different States.

d. The job worker, as a supplier of services, is liable to pay GST if he is liable to be registered. He shall issue an invoice at the time of supply of the services as determined in terms of sec. 13 read with sec. 31. The value of services would be determined in terms of sec. 15 and would include not only the service charges but also the value of any goods or services used by him for supplying the job work services, if recovered from the principal. Doubts have been raised whether the value of moulds and dies, jigs and fixtures or tools which have been provided by the principal to the job worker and have been used by the latter for providing job work services would be included in the value of job work services. In this regard, attention is invited to sec. 15 which lays down the principles for determining the value of any supply under GST. Importantly, sec. 15(2)(b) provides that any amount that the supplier is liable to pay in relation to the supply but which has been incurred by the recipient will form part of the valuation for that particular supply, provided it has not been included in the price for such supply. Accordingly, it is clarified that the value of such moulds and dies, jigs and fixtures or tools may not be included in the value of job work services provided its value has been factored in the price for the supply of such services by the job worker.

e. If the inputs or capital goods are neither returned nor supplied from the job worker's place of business / premises within the specified time period, the principal would issue an invoice for the same and declare such supplies in his return for that particular month in which the time period of one year / three years has expired. The date of supply shall be the date on which such inputs or capital goods were initially sent to the job worker and interest for the intervening period shall also be payable on the tax. If such goods are returned by the job worker after the stipulated time period, the same would be treated

as a supply by the job worker to the principal and the job worker would be liable to pay GST if he is liable for registration in accordance with the provisions contained in the CGST Act read with the rules made thereunder. Further, there is no requirement of either returning back or supplying the goods from the job worker's place of business/premises as far as moulds and dies, jigs and fixtures, or tools are concerned.

***Circular No. 8/8/2017 dated 04.10.2017***

The circular is revised in view of the amendment carried out in sec. 2(6) of the IGST Act, 2017 vide sec. 2 of the IGST (Amendment) Act, 2018 allowing realization of export proceeds in INR, wherever allowed by the RBI.

a. ***Realization of export proceeds in Indian Rupee*:** Para A (v) Part- I of RBI Master Circular No. 14/2015-16 dated 01stJuly, 2015 (updated as on 05th November, 2015), which states that "there is no restriction on invoicing of export contracts in Indian Rupees in terms of the Rules, Regulations, Notifications and Directions framed under the Foreign Exchange Management Act, 1999. Further, in terms of Para 2.52 of the Foreign Trade Policy (2015-2020), all export contracts and invoices shall be denominated either in freely convertible currency or Indian rupees but export proceeds shall be realized in freely convertible currency. However, export proceeds against specific exports may also be realized in rupees, provided it is through a freely convertible Vostro account of a non-resident bank situated in any country other than a member country of Asian Clearing Union (ACU) or Nepal or Bhutan". Further, amended sec. 2(6) of the IGST Act, 2017 allows realization of export proceeds of services in INR, wherever allowed by the RBI. Accordingly, it is clarified that the acceptance of LUT for supplies of goods or services to countries outside India or SEZ developer or SEZ unit will be permissible irrespective of whether the payments are made in Indian currency or convertible foreign exchange as long as they are in accordance with the applicable RBI guidelines.

***Circular No. 41/15/2018 dated 13.04.2018***

This circular is revised in view of the amendment carried out in sec. 129 of the CGST Act, 2017 vide sec. 27 of the CGST (Amendment) Act, 2018 allowing 14 days for owner/transporter to pay tax/penalty for seized goods.

**GST on Services of Business Facilitator (BF) or a Business Correspondent (BC) to Banking Company – Circular No. 86/05/2019 dated 01-01-2019.**

*Issue 1: Clarification on value of services by BF/BC to a banking company*

As per RBI's Circular No. DBOD.No.BL.BC. 58/22.01.001/2005-2006 dated 25.01.2006 and subsequent instructions on the issue (referred to as 'guidelines' hereinafter), banks may pay reasonable commission/fee to the BC, the rate and quantum of which may be reviewed periodically. The agreement of banks with the BC specifically prohibits them from directly charging any fee to the customers for services rendered by them on behalf of the bank. On the other hand, banks (and not BCs) are permitted to collect reasonable service charges from the customers for such service in a transparent manner. The arrangements of banks with

the Business Correspondents specify the requirement that the transactions are accounted for and reflected in the bank's books by end of the day or the next working day, and all agreements/ contracts with the customer shall clearly specify that the bank is responsible to the customer for acts of omission and commission of the Business Facilitator/Correspondent.
Hence, banking company is the service provider in the business facilitator model or the business correspondent model operated by a banking company as per RBI guidelines. The banking company is liable to pay GST on the entire value of service charge or fee charged to customers whether or not received via business facilitator or the business correspondent.

*Issue 2: Clarification on the scope of services by BF/BC to a banking company with respect to accounts in rural areas*

It is clarified that for the purpose of availing exemption from GST under Sl. No. 39 of 12/2017 dated 28-06-2019, the conditions flowing from the language of the notification should be satisfied. These conditions are that the services provided by a BF/BC to a banking company in their respective individual capacities should fall under the Heading 9971 and that such services should be with respect to accounts in a branch located in the rural area of the banking company. The procedure for classification of branch of a bank as located in rural area and the services which can be provided by BF/BC, is governed by the RBI guidelines. Therefore, classification adopted by the bank in terms of RBI guidelines in this regard should be accepted.

**Clarification on GST rate applicable on supply of food and beverage services by educational institution - Circular No. 85/04/2019 dated 01-01-2019**

Supply of food and beverages by an educational institution to its students, faculty and staff, where such supply is made by the educational institution itself, is exempt under Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, vide Sl. No. 66 w.e.f. 01-07-2017 itself. However, such supply of food and beverages by any person other than the educational institutions based on a contractual arrangement with such institution is leviable to GST@ 5%.

**Applicability of GST on Asian Development Bank (ADB) and International Finance Corporation (IFC) - Circular No. 83/02/2019 dated 01-01-2019**

It is clarified that the services provided by IFC and ADB are exempt from GST in terms of provisions of IFC Act, 1958 and ADB Act. The exemption will be available only to the services provided by ADB and IFC and not to any entity appointed by or working on behalf of ADB or IFC.

**Applicability of GST on various programmes conducted by the Indian Institutes of Managements (IIMs) - Circular No. 82/01/2019 dated 01-01-2019**

Services provided by Indian Institutes of Managements (IIMs) as covered under entry No. 67 of Notification No. 12/2017 were exempt. However, under the amended position, with effect from 01.01.2019, entry No. 67 has been omitted as IIMs are now covered under the definition

of 'educational institution' whose services are exempt under entry No. 66 of the said notification.

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. Such short duration executive programs attract standard rate of GST @ 18% (CGST 9% + SGST 9%)

Summary are as under

| **Programmes offered by Indian Institutes of Management** | **Whether exempt from GST** |
|---|---|
| All long duration programs (one year or more) conferring degree/ diploma as recommended by Board of Governors as per the power vested in them under the IIM Act, 2017 including one- year Post Graduate Programs for Executives | Exempt from tax |
| All short duration executive development programs or need based specially designed programs (less than one year) which are not a qualification recognized by law | Not Exempt from GST |

***Clarification on export of services under GST – Circular No. - 78/52/2018 dated 31-12-2018***

***Issue***: In case an exporter of services outsources a portion of the services contract to another person located outside India, what would be the tax treatment of the said portion of the contract at the hands of the exporter? There may be instances where the full consideration for the outsourced services is not received by the exporter in India.

***Clarification***

Where an exporter of services located in India is supplying certain services to a recipient located outside India, either wholly or partly through any other supplier of services located outside India, the following two supplies are taking place:-

(i) Supply of services from the exporter of services located in India to the recipient of services located outside India for the full contract value;

(ii) Import of services by the exporter of services located in India from the supplier of services located outside India with respect to the outsourced portion of the contract.

Thus, the total value of services as agreed to in the contract between the exporter of services located in India and the recipient of services located outside India will be considered as export of services if all the conditions laid down in section 2(6) of the Integrated Goods and Services Tax Act, 2017 (IGST Act for short) read with section 13(2) of the IGST Act are satisfied.

It is clarified that the supplier of services located in India would be liable to pay integrated tax on reverse charge basis on the import of services on that portion of services which has been provided by the supplier located outside India to the recipient of services located outside India. Furthermore, the said supplier of services located in India would be eligible for taking input tax credit of the integrated tax so paid.

Thus, even if the full consideration for the services as per the contract value is not received in convertible foreign exchange in India due to the fact that the recipient of services located outside India has directly paid to the supplier of services located outside India (for the outsourced part of the services), that portion of the consideration shall also be treated as receipt of consideration for export of services in terms of section 2(6)(iv) of the IGST Act, provided the:

i. integrated tax has been paid by the supplier located in India for import of services on that portion of the services which has been directly provided by the supplier located outside India to the recipient of services located outside India; and
ii. RBI by general instruction or by specific approval has allowed that a part of the consideration for such exports can be retained outside India.

***Illustration***

ABC Ltd. India has received an order for supply of services amounting to $ 5,00,000/- to a US based client. ABC Ltd. India is unable to supply the entire services from India and asks XYZ Ltd. Mexico (who is not merely an establishment of a distinct person viz. ABC Ltd. India, in accordance with the Explanation 1 in Section 8 of the IGST Act) to supply a part of the services (say 40% of the total contract value).

ABC Ltd. India shall be the exporter of services for the entire value if the invoice for the entire amount is raised by ABC Ltd. India. The services provided by XYZ Ltd. Mexico to the US based client shall be import of services by ABC Ltd. India and it would be liable to pay integrated tax on the same under reverse charge and also be eligible to take input tax credit of the integrated tax so paid.

Further, if the provisions contained in section 2(6) of the IGST Act are not fulfilled with respect to the realization of convertible foreign exchange, say only 60% of the consideration is received in India and the remaining amount is directly paid by the US based client to XYZ Ltd. Mexico, even in such a scenario, 100% of the total contract value shall be taken as consideration for the export of services by ABC Ltd. India provided integrated tax on import of services has been paid on the part of the services provided by XYZ Ltd Mexico directly to the US based client and RBI (by general instruction or by specific approval) has allowed that a part of the consideration for such exports can be retained outside India.

In other words, in such cases, the export benefit will be available for the total realization of convertible foreign exchange by ABC Ltd. India and XYZ Ltd. Mexico.

***Clarification on certain issues - Circular No. 76/50/2018 dated 31-12-2018***

***Issue 1***: Whether the supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap by Government departments are taxable under GST?

***Clarification***

a) It may be noted that intra-State and interState supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap made by the Central Government, State Government, Union territory or a local authority is a taxable supply under GST.
b) Vide notification No. 36/2017-Central Tax (Rate) and notification No. 37/2017- Integrated Tax (Rate) both dated 13.10.2017, it has been notified that intraState and inter-State supply respectively of used vehicles, seized and confiscated goods, old and used goods, waste and scrap by the Central Government, State Government, Union territory or a local authority to any registered person, would be subject to GST on reverse charge basis as per which tax is payable by the recipient of such supplies.
c) A doubt has arisen about taxability of intra-State and inter-State supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap made by the Central Government, State Government, Union territory or a local authority to an unregistered person.
d) It was noted that such supply to an unregistered person is also a taxable supply under GST but is not covered under notification No. 36/2017-Central Tax (Rate) and notification No. 37/2017- Integrated Tax (Rate) both dated 13.10.2017.
e) In this regard, it is clarified that the respective Government departments (i.e. Central Government, State Government, Union territory or a local authority) shall be liable to get registered and pay GST on intra-State and inter-State supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap made by them to an unregistered person subject to the provisions of sections 22 and 24 of the CGST Act.

***Issue 2***: Whether penalty in accordance with section 73 (11) of the CGST Act should be levied in cases where the return in FORM GSTR-3B has been filed after the due date of filing such return?

***Clarification***

As per the provisions of sec. 73(11) of the CGST Act, penalty is payable in case self-assessed tax or any amount collected as tax has not been paid within a period of 30 days from the due date of payment of such tax.

A show cause notice (SCN for short) is required to be issued to a person where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised for any reason under the provisions of sec. 73(1) of the CGST Act. The provisions of sec. 73(11) of the CGST Act can be invoked only when the provisions of sec. 73 are invoked.

The provisions of sec. 73 of the CGST Act are generally not invoked in case of delayed filing of the return in FORM GSTR-3B because tax along with applicable interest has already been paid but after the due date for payment of such tax.

It is accordingly clarified that penalty under the provisions of sec. 73(11) of the CGST Act is not payable in such cases.

It is further clarified that since the tax has been paid late in contravention of the provisions of the CGST Act, a general penalty u/s 125 of the CGST Act may be imposed after following the due process of law.

***Issue 3***: In case a debit note is to be issued u/s 142(2)(a) of the CGST Act or a credit note u/s 142(2)(b) of the CGST Act, what will be the tax rate applicable – the rate in the pre-GST regime or the rate applicable under GST?

***Clarification***

It may be noted that as per the provisions of sec. 142(2) of the CGST Act, in case of revision of prices of any goods or services or both on or after the appointed day (i.e., 01.07.2017), a supplementary invoice or debit/credit note may be issued which shall be deemed to have been issued in respect of an outward supply made under the CGST Act.

It is accordingly clarified that in case of revision of prices, after the appointed date, of any goods or services supplied before the appointed day thereby requiring issuance of any supplementary invoice, debit note or credit note, the rate as per the provisions of the GST Acts (both CGST and SGST or IGST) would be applicable.

***Issue 4***: Applicability of the provisions of sec. 51 of the CGST Act (TDS) in the context of notification No. 50/2018-Central Tax dated 13.09.2018.

***Clarification***

It has been clarified that an authority or a board or any other body whether set up by an Act of Parliament or a State Legislature or established by any Government with 51% or more participation by way of equity or control, to carry out any function would only be liable to deduct tax at source.

In other words, the provisions of sec. 51 of the CGST Act are applicable only to such authority or a board or any other body set up by an Act of parliament or a State legislature or established by any Government in which 51% or more participation by way of equity or control is with the Government.

***Issue 5***: What is the correct valuation methodology for ascertainment of GST on Tax collected at source (TCS) under the provisions of the Income Tax Act, 1961?

***Clarification***

Section 15(2) of CGST Act specifies that the value of supply shall include "any taxes, duties cesses, fees and charges levied under any law for the time being in force other than this Act, the SGST Act, the UTGST Act and the GST (Compensation to States) Act, if charged separately by the supplier."

It is clarified that as per the above provisions, taxable value for the purposes of GST shall include the TCS amount collected under the provisions of the Income Tax Act since the value to be paid to the supplier by the buyer is inclusive of the said TCS.

***Issue 6***: Who will be considered as the „owner of the goods" for the purposes of section 129(1) of the CGST Act?

***Clarification***

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

**Rescind of Circular No. 03/01/2018 IGST dated 25-05-2018 relating to the applicability of IGST on goods supplied while being deposited in a customs bonded warehouse – Circular No. 04/1/2019 dated 01-02-2019**

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, 2017 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 has been rescinded.

***Option to Pay concessional tax @ 3% - Notification No. 02/2019 CT (Rate) dated 07-03-2019 (w.e.f. 01-04-2019)***

With effect from 01.04.2019, an option has been given to registered person, whose aggregate turnover in the preceding financial year is upto ₹ 50 lakh and who is not eligible to pay tax under composition scheme, to pay tax @ 6% (3% + 3%) on first supplies of goods and/or services upto an aggregate turnover of ₹ 50 lakh made on or after 1st April in any financial year.

*Conditions to be satisfied*

1. Supplies are made by a registered person:
   a. whose aggregate turnover in the preceding financial year was ₹ 50 lakh or below;
   b. who is not eligible to pay tax u/s 10(1) (i.e. composition levy);

c. who is not engaged in making any supply which is not leviable to tax under the said Act;
d. who is not engaged in making any inter-State outward supply;
e. who is neither a casual taxable person nor a non-resident taxable person;
f. who is not engaged in making any supply through an electronic commerce operator who is required to collect tax at source u/s 52; and
g. who is not engaged in making supplies of the goods being (i) ice cream and other edible ice, whether or not containing cocoa; (ii) Pan masala; and (iii) Tobacco and manufactured tobacco substitutes.

2. The registered person shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.
3. The registered person shall issue, instead of tax invoice, a bill of supply [as referred to in sec. 31(3) (c)].
4. 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*'.

   Further, provisions of sec. 31(3)(c) [relating to Bill or Supply] shall be applicable. [Order 03/2019 CT dated 08-03-2019]

*Other Points*

- Where more than one registered persons are having the same Permanent Account Number, tax on supplies by all such registered persons is paid at the rate specified under this notification.
- The registered person opting to pay tax under this notification shall be liable to pay tax on all outward supplies without considering any exemption notification issued u/s 9(1) or 11.
- Similarly, the registered person opting to pay tax under this notification shall be liable to pay tax on inward supplies on which he is liable to pay tax u/s 9(3) or (4) [i.e., reverse charge]
- "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.
- In computing aggregate turnover in order to determine eligibility of a registered person to pay tax under this notification, 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.

**Clarification regarding composition scheme – Circular No. 97/16/2019 dated 05-04-2019**

Notification No. 02/2019-Central Tax (Rate) dated 07-03-2019 prescribes rate of central tax of 3% on 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 whose

aggregate annual turnover in the preceding financial year was ₹ 50 lakhs or below. The said notification, as amended by notification No. 09/2019-Central Tax (Rate) dated 29-03-2019, provides that Central Goods and Services Tax Rules, 2017, as applicable to a person paying tax as per chapter II (Composition Levy) shall, mutatis mutandis, apply to a person paying tax under the said notification subject to following exceptions:

(i) A registered person who wants to opt for payment of central tax @ 3% by availing the benefit of the said notification, may do so by filing intimation in the manner specified in rule 3(3) in FORM GST CMP-02 by selecting the category of registered person as "Any other supplier eligible for composition levy" as listed at Sl. No. 5(iii) of the said form, latest by 30-04-2019. Such person shall also furnish a statement in FORM GST ITC03 in accordance with the provisions of rule 3(3)

(ii) Any person who applies for registration and who wants to opt for payment of central tax @ 3% by availing the benefit of the said notification, if eligible, may do so by indicating the option at serial no. 5 and 6.1(iii) of FORM GST REG-01 at the time of filing of application for registration.

(iii) The option of payment of tax by availing the benefit of the said notification in respect of any place of business in any State or Union territory shall be deemed to be applicable in respect of all other places of business registered on the same Permanent Account Number.

(iv) The option to pay tax by availing the benefit of the said notification would be effective from the beginning of the financial year or from the date of registration in cases where new registration has been obtained during the financial year.

**Composition taxpayers and tax payers paying tax under Notification No. 2/2019 CT dated 07.03.2019 to file return annually and make payment quarterly [Notification No. 21/2019 CT dated 23-04-2019]**

Following procedure for furnishing of return and payment of tax has been prescribed for:

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.

The said persons shall furnish:

a) a statement, every quarter or, as the case may be, part thereof containing the details of payment of self-assessed tax in FORM GST CMP-08 of the Central Goods and Services Tax Rules, 2017, till the 18th day of the month succeeding such quarter.
b) a return for every financial year or, as the case may be, part thereof in FORM GSTR-4 of the Central Goods and Services Tax Rules, 2017, on or before the 30th day of April following the end of such financial year.

The registered persons paying tax by availing the benefit of the said notification, in respect of the period for which he has availed the said benefit, shall be deemed to have complied with the provisions of section 37 and section 39 of the said Act if they have furnished FORM GST CMP-08 and FORM GSTR-4 as referred above.

***Denial of composition option by tax authorities and effective date thereof - Circular No. 77/51/2018 dated 31-12-2018***

Where the taxpayer has sought withdrawal from the composition scheme, the effective date shall be the date indicated by him in his intimation or application filed in FORM GST-CMP-04 but such date may not be prior to the commencement of the financial year in which such intimation or application for withdrawal is being filed

In case of denial of option by the tax authorities, the effective date of such denial shall be from a date, including any retrospective date as may be determined by tax authorities, but shall not be prior to the date of contravention of the provisions of the CGST Act or the CGST Rules.

***Consequential changes in Rule 61 – Notification No. 20/2019 CT dated 23-04-2019]***

Rule 62 of CGST Rules which prescribed the provisions for quarterly return by the composition supplier has also been amended. The amended rule 62 whose heading has been changed to "Form and manner of submission of statement and return" provides as under:

a. Every registered person paying tax u/s 10 or paying tax by availing the benefit of Notification No. 02/2019 CT (R) dated 07.03.2019 shall electronically furnish –
   - a statement in the prescribed form 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
   - 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.

b. 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.

c. The aforesaid return shall include:
   - invoice wise inter-State and intra-State inward supplies received from registered and un-registered persons; and
   - consolidated details of outward supplies made.

d. A registered person who has opted to pay tax u/s 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. However, 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.

e. 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.

f. 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.

**Turnover limit for determining the eligibility for composition levy – Notification No. 14/2019 CT dated 07-03-2019**

A registered person whose aggregate turnover in the previous financial year did not exceed ₹ 1.5 crore The limits for special category states [(i) Arunachal Pradesh (ii) Uttarakhand (iii) Manipur (iv) Meghalaya (v) Mizoram (vi) Nagaland (vii) Sikkim (viii) Tripura] remains 75 lakhs.

Till 2018-19, Himachal Pradesh and Assam was in the special category states which is not there in the notification 14/2019. Uttarakhand was not there in special category state upto the financial year 2018-19.

Further, the registered person shall not be eligible to opt for composition levy u/s 10(1) if such person is a manufacturer of the following goods:

- Ice cream and other edible ice, whether or not containing cocoa
- Pan masala
- Tobacco and manufactured tobacco substitutes

***Interest income to be excluded while computing aggregate turnover for determining eligibility for composition scheme – Order 01/2019 CT dated 01-02-2019***

A registered person engaged in the supply of services, other than restaurant service, may opt for the composition scheme. Such person may supply services (other than restaurant service) of value not exceeding 10% of turnover in a State or Union territory in the preceding financial year or ₹ 5 lakh, whichever is higher.

In this context, it is clarified that the 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-

a. for determining the eligibility for composition scheme under second proviso to sec. 10(1);
b. in computing aggregate turnover in order to determine eligibility for composition scheme

**Rate of tax in case of composition levy with supply of service - Notification No. 03/2019 CT dated 29-01-2019**

Now a supplier opting for composition scheme has also been permitted to supply services other than restaurant services, with effect from 01-02-2019, tax rate being ½% of turnover of taxable supplies of goods and services in the State or Union territory shall be applicable.

**Turnover limit for Registration – Notification No. 10/2019 CT dated 07-03-2019 (w.e.f. 01-04-2019)**

Any person, who is engaged in ***exclusive*** supply of goods and whose aggregate turnover in the financial year does not exceed ₹ 40 lakhs is exempt from obtaining registration.

***Exceptions***

a. persons required to take compulsory registration u/s 24 of the said Act;
b. persons engaged in making supplies of the following goods:
   - Ice cream and other edible ice, whether or not containing cocoa
   - Pan masala
   - Tobacco and manufactured tobacco substitutes
c. Persons engaged in making intra-State supplies in the States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura, Uttarakhand; and
d. Person who has opted for voluntary registration or such registered persons who intend to continue with their registration under the CGST Act.

| States with threshold limit of ₹ 10 lakh for both goods and services | States with threshold limit of ₹ 20 lakh for both goods and services | States with threshold limit of ₹ 20 lakh for services and ₹ 40 lakh for goods (exclusive) |
|---|---|---|
| •Manipur<br>•Mizoram<br>•Nagaland<br>•Tripura | •Arunachal Pradesh<br>•Meghalaya<br>•Sikkim<br>•Uttrakhand<br>•Puducherry<br>•Telangana | •Jammu and Kashmir<br>•Assam<br>•Himachal Pradesh<br>•All other States |

***Note***

As per section 24(x) of the CGST Act, 2017, every electronic commerce operator has to obtain compulsory registration irrespective of the value of supply made by him. However, this mandatory requirement has been relaxed vide CGST (Amendment) Act 2018. Now, e-Commerce operators who are required to collect tax at source u/s 52 would only be required to obtain compulsory registration.

***Central Goods and Services Tax (Second Amendment) Rules, 2019 – Notification No. 16/2019 CT dated 29-03-2019***

*Substitution of Rule 100 relating to assessment (w.e.f. 01-04-2019)*

a) The order of assessment made u/s 62(1) shall be issued in FORM GST ASMT-13 and a summary thereof shall be uploaded electronically in FORM GST DRC-07.
b) The proper officer shall issue a notice to a taxable person in accordance with the provisions of sec. 63 in FORM GST ASMT-14 containing the grounds on which the assessment is proposed to be made on best judgment basis and shall also serve a summary thereof electronically in FORM GST DRC-01, and after allowing a time of 15 days

to such person to furnish his reply, if any, pass an order in FORM GST ASMT-15 and summary thereof shall be uploaded electronically in FORM GST DRC-07.

c) The order of assessment u/s 64(1) shall be issued in FORM GST ASMT-16 and a summary of the order shall be uploaded electronically in FORM GST DRC-07.
d) The person referred to in sec. 64(2) may file an application for withdrawal of the assessment order in FORM GST ASMT–17.
e) The order of withdrawal or, as the case may be, rejection of the application u/s 64(2) shall be issued in FORM GST ASMT-18.

*Value of assets for the purpose of apportionment of ITC in case of demerger*

Rule 41 prescribes provisions for transfer of credit on sale, merger, amalgamation, lease or transfer of a business. Proviso to sub-rule (1) of the said rule lays down that in the case of de-merger, the ITC shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme.

An explanation has been inserted after the said proviso to clarify that for the purpose of this sub-rule, the "value of assets" means the value of the entire assets of the business, whether or not ITC has been availed thereon.

*Amendments of Rule 42 and 43 (w.e.f. 01-04-2019)*

(i) Rule 42(1)(g) of CGST Rules provides that 'T1', 'T2', 'T3' and 'T4' should be determined and declared by the registered person at the invoice level in GSTR 2. It may be noted that GSTR 2 is not in operation as of now. The said clause has been amended to provide that 'T1', 'T2', 'T3' and 'T4' should be determined and declared by the registered person at the invoice level in GSTR 2 and at summary level in GSTR 3B.

(ii) In rule 42(1)(h), for the brackets and letter "(g)", the brackets and letter "(f)" have been substituted.

(iii) Clause (l) of rule 42(1) provided that the amount of C3 should be computed separately for ITC of CGST, SGST/UTGST and IGST. C3 is the eligible ITC out of common credit that is attributable to the purposes of business and for effecting taxable supplies including zero rated supplies. The said clause has been amended to provide that the amount of C3, D1, and D2 should be computed separately for ITC of CGST, SGST/UTGST and IGST and declared in GSTR 3B or through a prescribed form. D1 is ITC attributable towards exempt supplies. D2 is the ITC attributable to non-business purposes.

(iv) Clause (m) of rule 42(1) provides that the amount equal to aggregate of 'D1' and 'D2' should be added to the output tax liability of the registered person. The said clause has been amended to provide that the amount equal to aggregate of 'D1' and 'D2' should be reversed by the registered person in GSTR 3B or in the prescribed form.

(v) Clause (a) of rule 41(2) provides that where the aggregate of the amounts calculated finally in respect of 'D1' and 'D2' exceeds the aggregate of the amounts determined under sub-rule (1) in respect of 'D1' and 'D2', such excess shall be added to the output tax liability of the registered person in the month not later than the month of September following the end of the financial year to which such credit relates. The said clause has been amended to provide that where the aggregate of the amounts calculated finally in respect of 'D1' and 'D2' exceeds the aggregate of the amounts determined under

sub-rule (1) in respect of 'D1' and 'D2', such excess shall be reversed by the registered person in GSTR 3B or in the prescribed form in the month not later than the month of September following the end of the financial year to which such credit relates.

(vi) Clause (a) of rule 43(1) of CGST Rules provides that the amount of input tax in respect of capital goods used or intended to be used exclusively for non-business purposes or used or intended to be used exclusively for effecting exempt supplies shall be indicated in GSTR 2 and shall not be credited to his electronic credit ledger. The said clause has been amended to provide that the amount of input tax in respect of capital goods used or intended to be used exclusively for non-business purposes or used or intended to be used exclusively for effecting exempt supplies should be indicated in GSTR 2 and GSTR 3B and shall not be credited to his electronic credit ledger. Clause (b) of rule 43(1) has also been amended on the similar lines to provide that the amount of input tax in respect of capital goods used or intended to be used exclusively for effecting taxable supplies including zero-rated supplies shall be indicated in GSTR 2 and GSTR 3B and shall be credited to the electronic credit ledger.

(vii) Clause (g) of rule 43(1) provides that 'F' is the total turnover of the registered person during the tax period. The said clause has been amended to provide that 'F' is the total turnover in the State of the registered person during the tax period.

(viii) Under the amended provisions of rule 43, the amount Te should be computed separately for ITC of CGST, SGST/UTGST and IGST and declared in GSTR 3B.

**Central Goods and Services Tax (Amendment) Rules, 2019 – Notification No. 03/2019 dated 29-01-2019 (w.e.f. 01-02-2019)**

***Separate registration for multiple places of business within a State or a Union territory [Rule 11]***

1. Any person having multiple places of business within a State or a Union territory, requiring a separate registration for any such place of business u/s 25(2) shall be granted separate registration in respect of each such place of business subject to the following conditions:
   a. such person has more than one place of business as defined in sec. 2(85);
   b. such person shall not pay tax u/s 10 (Composition Levy) for any of his places of business if he is paying tax u/s 9 (normal scheme) for any other place of business;
      Where any place of business of a registered person that has been granted a separate registration becomes ineligible to pay tax composition levy, all other registered places of business of the said person shall become ineligible to pay tax under composition levy.
   c. all separately registered places of business of such person shall pay tax on supply of goods or services or both made to another registered place of business of such person and issue a tax invoice or a bill of supply, as the case may be, for such supply.
2. A registered person opting to obtain separate registration for a place of business shall submit a separate application in FORM GST REG-01 in respect of such place of business.
3. The provisions of rule 9 and rule 10 relating to the verification and the grant of registration shall, mutatis mutandis, apply to an application submitted under this rule

*Taxpoint*

Person having a unit in SEZ or being a SEZ developer shall have to apply for a separate registration, as distinct from his *place of business* located outside the SEZ in the same State or Union territory. [The modification has been incorporated as first proviso to rule 8(1) has been omitted]

***Suspension of registration [Rule 21A]***

- 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, pending the completion of proceedings for cancellation of registration under rule 22.
- Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled u/s 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, pending the completion of the proceedings for cancellation of registration under rule 22.
- 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 u/s 39.
- The suspension of registration 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.

***Transfer of credit on obtaining separate registration for multiple places of business within a State or Union territory [Rule 41A]***

- A registered person who has obtained separate registration for multiple places of business in accordance with the provisions of rule 11 and who intends to transfer, either wholly or partly, the unutilised input tax credit lying in his electronic credit ledger to any or all of the newly registered place of business, shall furnish within a period of 30 days from obtaining such separate registrations, the details in FORM GST ITC-02A electronically on the common portal, either directly or through a Facilitation Centre notified in this behalf by the Commissioner.
- The input tax credit shall be transferred to the newly registered entities in the ratio of the value of assets held by them at the time of registration.
  The 'value of assets' means the value of the entire assets of the business whether or not input tax credit has been availed thereon.
- The newly registered person (transferee) shall, on the common portal, accept the details so furnished by the registered person (transferor) and, upon such acceptance, the unutilised input tax credit specified in FORM GST ITC-02A shall be credited to his electronic credit ledger.

***Value of turnover for the purpose of pro rata distribution of ITC by an ISD to exclude CST [Sec. 20]***

Sec. 20 provides the credit of tax paid on input services attributable to more than one recipient should be distributed *pro rata* on the basis of the turnovers in a State/Union Territory of such recipients.

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 **entry 92A**of List I of the Seventh Schedule to the Constitution and entries 51 and 54 of List II of the said Schedule.

Similar changes have also been made in rule 42 and 43 (Reversal of ITC).

***Clause (a) of explanation to rules 42 and 43 of the CGST Rules omitted***

Clause (a) of explanation to rules 42 and 43 provides that the value of exempt supplies exclude the values of services specified in Notification No. 42/2017 IT (R) dated 27.10.2017, i.e. services having place of supply in Nepal or Bhutan, against payment in Indian Rupees. *This clause has been omitted from the explanation with effect from 01.02.2019.*

***New contents prescribed for credit and debit notes [Rule 53(1A)]***

A credit or debit note referred to in sec. 34 shall contain the following particulars, namely

a. name, address and GSTIN of the supplier;
b. nature of the document;
c. a consecutive serial number not exceeding 16 characters, in one or multiple series, containing alphabets or numerals or special characters-hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year;
d. date of issue of the document;
e. name, address and Goods and Services Tax Identification Number or Unique Identity Number, if registered, of the recipient;
f. name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un-registered;
g. serial number(s) and date(s) of the corresponding tax invoice(s) or, as the case may be, bill(s) of supply;
h. value of taxable supply of goods or services, rate of tax and the amount of the tax credited or, as the case may be, debited to the recipient; and
i. signature or digital signature of the supplier or his authorised representative.

***Taxpoint***

- Consequently, reference of credit and debit note from rule 53(1) has been omitted.
- Further, information relating to
  a. nature of document; and
  b. value of taxable supply of goods or services, rate of tax and the amount of the tax credited or debited to the recipient

  - is not required to be mentioned in revised tax invoice.

***GSTP***

- Time period available to a sales tax practitioner/ tax return preparer enrolled as a GSTP to pass the examination conducted by NACIN increased from 18 months to 30 months.

- *Scope of activities undertaken by GSTP*

  A GSTP can undertake any or all of the following activities on behalf of a registered person, if so authorised by him to

  a. furnish the details of outward and inward supplies;
  b. furnish monthly, quarterly, annual or final return;
  c. make deposit for credit into the electronic cash ledger;
  d. file a claim for refund;
  e. file an application for amendment or cancellation of registration;
  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:

  However, 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 GSTP 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.

***Declaration while claiming refund [Rule 89(2)]***

Application for refund should be accompanied with documentary evidence. In this list, clause (f) has been substituted with the following:

*'A declaration to the effect that tax has not been collected from the Special Economic Zone unit or the Special Economic Zone developer, in a case where the refund is on account of supply of goods or services or both made to a Special Economic Zone unit or a Special Economic Zone developer'.*

***Grant of provisional refund (Rule 91)***

The order issued in FORM GST RFD-04 shall not be required to be revalidated by the proper officer. However, the payment advice in FORM GST RFD-05 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.

***Order sanctioning refund (Rule 92)***

The order issued in FORM GST RFD-06 shall not be required to be revalidated by the proper officer. However, the payment advice in FORM GST RFD-05 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.

***Export of goods or services under bond or LUT (Rule 96A)***

Rule 96A(1)(b) provides that any registered person availing the option to supply services for export without payment of integrated tax shall furnish, prior to export, a bond or LUT, binding

himself to pay tax due along with interest within period of 15 days after expiry of one year, or such further period as may be allowed by the Commissioner, from the date of issue of invoice for exports, if the payment of such services is not received by the exporter in convertible foreign exchange.

With effect from 01.02.2019, the payment of such services can be received by the exporter in Indian rupees, wherever permitted by Reserve Bank of India.

***Advance Authorisation – Notification No. 01/2019 CT dated 15/01/2019***

*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:

- 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:
  a. Goods so supplied, when exports have already been made after availing input tax credit 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,
  b. No such certificate shall be required if input tax credit has not been availed on inputs used in manufacture of export goods.
- The definition of advance authorisation has been amended to remove the words "on pre import basis" therefrom

**Central Goods and Services Tax (Fourteenth Amendment) Rules, 2018 – Notification No. 74/2018 dated 31-12-2018**

**A.** ***Manner of furnishing the details of State/UT in application for registration by a TCS collector in a State where he doesn't have a physical presence [Rule 12(1A)***

A person applying for registration to collect tax in accordance with the provisions of sec. 52, in a State or Union territory where he does not have a physical presence, shall mention the name of the State or Union territory in PART A of the application in FORM GST REG-07 and mention the name of the State or Union territory in PART B thereof in which the principal place of business is located which may be different from the State or Union territory mentioned in PART A.

**B.** Details of the challans in respect of goods sent from one job worker to another during a quarter not required to be included in FORM GST ITC- 04 furnished for that period [Rule 45(3)]

**C.** Signature/ digital signature of the supplier/ his authorised representative not required on
  a. electronic tax invoice,
  b. electronic bill of supply,

- Electronic tax invoice and electronic bill of supply need to be issued in in accordance with the provisions of the Information Technology Act, 2000

c. electronic consolidated tax invoice in case of banking companies etc.; and
d. electronic ticket for passenger transportation service

[Rules 46, 49 and 54 of the CGST Rules]

**D.** Filing of departure manifest shall also be deemed to be the application filed for refund of tax paid on export of goods [Rule 96]

**E.** Relevant Period for the purpose of rule 89(5) shall be the period for which the claim has been filed.

**F.** Audit by tax authorities can be conducted for a part of a year [Rule 101 read with sec. 65]

**G.** Notice to person and order of revisional authority in case of revision [Rule 109B]
a. Where the Revisional Authority decides to pass an order in revision u/s 108 which is likely to affect the person adversely, the Revisional Authority shall serve on him a notice in FORM GST RVN-01 and shall give him a reasonable opportunity of being heard.
b. The Revisional Authority shall, along with its order u/s 108(1), issue a summary of the order in FORM GST APL-04 clearly indicating the final amount of demand confirmed.

***Persons not liable to deduct TDS – Notification No. 73/2018 dated 31-12-2018***

The provision relating to TDS shall not be applicable when supply of goods or services or both takes place between one person to another person specified u/s 51(1)(a), (b), (c) and (d).

***Reverse Charge on GTA - Notification No. 29/2018 CT (Rate) dated 31-12-2018 (w.e.f. 01-01-2019)***

The reverse charge mechanism (RCM) shall not apply to services provided by a GTA, by way of transport of goods in a goods carriage by road to:
a. a Department/establishment of the Central Government/ State Government/ Union territory; or
b. local authority; or
c. Governmental agencies,

- which has taken registration only for the purpose of deducting tax u/s 51 and not for making a taxable supply of goods or services.

It may be noted that the said services have been exempted from payment of tax vide Notification No. 28/2018 CT (R) dated 31-12-2018.

***More services under Reverse Charge Mechanism - Notification No. 29/2018 CT (Rate) dated 31-12-2018 & Notification No. 05/2019 CT (Rate) dated 29-03-2019***

| Service | Supplier of service | Recipient of service |
|---|---|---|
| Services provided by business facilitator (BF) to a banking company [w.e.f. 01-01-2019] | Business facilitator (BF) | A banking company, located in the taxable territory |
| Services provided by an agent of business correspondent (BC) to business correspondent (BC) [w.e.f. 01-01-2019] | An agent of business correspondent | A business correspondent, located in the taxable territory. |
| Security services (services provided by way of supply of security personnel) provided to a registered person [w.e.f. 01-01-2019]<br>However, nothing contained in this entry shall apply to:<br>(i) a) a Department or Establishment of the Central Government or State Government or Union territory; or<br>b) local authority; or<br>c) Governmental agencies; which has taken registration only for the purpose of deducting tax u/s 51 and not for making a taxable supply of goods or services; or<br>ii. a registered person paying tax u/s 10 | Any person other than a body corporate | A registered person, located in the taxable territory. |
| 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 [w.e.f. 01-04-2019] | Any person | Promoter |
| 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. [w.e.f. 01-04-2019] | Any person | Promoter |

*Other Points*

W.e.f. 01-01-2019, provisions of reverse charge notification, in so far as they apply to the Central Government and State Governments, shall also apply to the Parliament and State Legislatures.

***GST in Real Estate Sector - Notification no. 7/2019 -Central Tax (Rate), 8/2019 –Central Tax (Rate), 3/2019 -Central Tax (Rate) dated 29-03-2019***

New rate of GST applicable for construction activity carried out on or after 01-04-2019 and for ongoing projects where promoters have opted for concessional rate

| Projects | Residential real estate project (RREP[1]) | Real estate projects (REP) |
|---|---|---|
| | Effective rate of tax | |
| Affordable houses[2] | 1% | 1% |
| Others residential apartment | 5% | 5% |
| Commercial apartments | 5% | 12% |

***Other Points***

- Input tax credit shall not be availed except to the extent prescribed for on-going projects
- For supply of development rights (TDR) or floor space index (FSI), where consideration is in the form of construction of apartments, tax shall be paid by the developer/builder towards supply of construction services to the landlord
- At least 80% of the value of input and input services (other than development rights, electricity, high speed diesel, motor spirit, natural gas) shall be received from a registered supplier.
- On shortfall (if any), promoter/builder shall be liable to pay GST @ 18% under reverse charge mechanism (RCM)
- For cement procured from unregistered dealer, the promoter/builder shall be liable to pay GST @ 28% under RCM.
- Supply of TDR, FSI, long term lease (premium) of land by a landowner to a developer have been 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) has been shifted from land owner to builder under the reverse charge mechanism (RCM)

***Time of supply Notification No.06/2019 CT (Rate) dated 29-03-2019 (w.e.f. 01-04-2019)***

In case of following registered person, being:

(i) a promoter who receives development rights or Floor Space Index (FSI) (including additional FSI) on or after 01-04-2019 for construction of a project against consideration payable or paid by him, wholly or partly, in the form of construction service of commercial or residential apartments in the project or in any other form including in cash;

[1]RREP means a REP in which carpet area of commercial apartments is not more than 15% of the total carpet area of all the apartments in REP

[2]Area 60 sqmt in metro city and in non-metro city 90sqmt and value upto ₹ 45 lakhs

(ii) a promoter, who receives long term lease of land on or after 01-04-2019 for construction of residential apartments in a project against consideration payable or paid by him, in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name),

as the registered persons in whose case the liability to pay tax on,

a. the consideration paid by him in the form of construction service of commercial or residential apartments in the project, for supply of development rights or FSI (including additional FSI);
b. the monetary consideration paid by him, for supply of development rights or FSI (including additional FSI) relatable to construction of residential apartments in project;
c. the upfront amount (called as premium, salami, cost, price, development charges or by any other name) paid by him for long term lease of land relatable to construction of residential apartments in the project; and
d. the supply of construction service by him against consideration in the form of development rights or FSI (including additional FSI),

shall arise on the date of issuance of completion certificate for the project, where required, by the competent authority or on its first occupation, whichever is earlier.

***Exemption***

Following are the amendments

| Type | Entry No. | Nature of supply | Effective from |
|---|---|---|---|
| New | 21A | Services provided by a goods transport agency, by way of transport of goods in a goods carriage, to<br>a) a Department or Establishment of the Central Government or State Government or Union territory; or<br>b) local authority; or<br>c) Governmental agencies;<br>which has taken registration only for the purpose of deducting tax u/s 51 and not for making a taxable supply of goods or services; or | 01-01-2019 |
| New | 27A | Services provided by a banking company to Basic Saving Bank Deposit (BSBD) account holders under Pradhan Mantri Jan Dhan Yojana (PMJDY) | 01-01-2019 |
| Enhanced | 34A | Services supplied by Central Government, State Government, Union territory to their undertakings or Public Sector Undertakings(PSUs) by way of guaranteeing the loans taken by such undertakings or PSUs from the banking companies and financial institutions | 01-01-2019 |
| New | 74A | Services provided by rehabilitation professionals recognised under the Rehabilitation Council of India Act, | 01-01-2019 |

| | | | |
|---|---|---|---|
| | | 1992 by way of rehabilitation, therapy or counselling and such other activity as covered by the said Act at medical establishments, educational institutions, rehabilitation centers established by Central Government, State Government or Union territory or an entity registered u/s 12AA of the Income-tax Act, 1961. | |
| Omitted | 67 | Services provided by IIMs | 01-01-2019 |
| New | 41A& 41B | Supply of TDR, FSI, long term lease (premium) of land by a landowner to a developer subject to the condition that the constructed flats are sold before issuance of completion certificate and tax is paid on them.<br>However, 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. | 01-04-2019 |

**Circular No. 101/20/2019-GST dated 30-04-2019**

Is exemption referred to in Entry No. 41 of Notification No. 12/2017 dated 28-06-2017 available if the premium is decided upfront, but paid in instalments?

***Clarification***

GST exemption on the upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for long term lease (of thirty years, or more) of industrial plots or plots for development of infrastructure for financial business under Entry No. 41 of Exemption Notification 12/2017 – Central Tax (R) dated 28.06.2017 is admissible irrespective of whether such upfront amount is payable or paid in one or more instalments, provided the amount is determined upfront.

**Circular No. 100/19/2019-GST dated 30-04-2019**

**Is charges collected for Seed Certification Tags exempt under Entry 47 of Notification No. 12/2017 dated 28-06-107?**

Seed testing and certification is a multi-stage process, the charges for which are collected from the seed producers at different stages. Supply of seed tags to the seed producer is nothing but an element of the one integrated supply of seed testing and certification. All charges, including those for issue of seed certificates/tags by the Seed Certification Agency of Tamil Nadu and Uttarakhand to the seed producing organization/ companies are collected for the composite supply of seed testing and certification, which is exempt under Notification No. 12/2017-Central Tax (Rate) Sl. No. 47.

This clarification would apply to supply of seed tags by seed testing and certification agencies of other states also following similar seed testing and certification procedure.

However, the State Governments/Seed Certification Agencies may get the tags used in seed certification printed from other departments/ manufacturers outside. Supply of seed tags by the other departments/manufacturers to the State Government/Seed Certification Agencies is a supply of goods liable to tax. Whether such tags would be classified under Chapter 49 as tags made of paper or in Textile chapters as tags made of textile would depend upon the predominant material used in the tags.

***IGST (Amendment) Rules, 2018 - Notification No.04/2018 IT dated 31-12-2018 (w.e.f. 01-01-2019)***

*Rule 3*

In the case of advertisements over internet, the service shall be deemed to have been provided all over India [Rule 3(h)]

*Rule 4*

The supply of services attributable to different States or Union territories u/s 12(3) of the Integrated Goods and Services Tax Act, 2017, in the case of

a. services directly in relation to immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work; or
b. lodging accommodation by a hotel, inn, guest house, home stay, club or campsite, by whatever name called, and including a houseboat or any other vessel; or
c. accommodation in any immovable property for organising any marriage or reception or matters related thereto, official, social, cultural, religious or business function including services provided in relation to such function at such property; or
d. any services ancillary to the services referred above,

where such immovable property or boat or vessel is located in more than one State or Union territory, 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:

(i) in case of services provided by way of lodging accommodation by a hotel, inn, guest house, club or campsite, by whatever name called (except cases where such property is a single property located in two or more contiguous States or Union territories or both) and services ancillary to such services, 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;
(ii) in case of 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., and in cases of supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called where such property is a single property located in two or more contiguous States or Union territories or both, and services ancillary to such services, 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) in case of services provided by way of lodging accommodation by a house boat or any other vessel and services ancillary to such services, the supply of services 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, which shall be determined on the basis of a declaration made to the effect by the service provider.

***Illustration 1*:** A hotel chain X charges a consolidated 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.

***Illustration 2*:** 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.

***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.

***Rule 5***

The supply of services attributable to different States or Union territories u/s 12(7), in the case of:

a. 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
b. 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 consolidated 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.

***Rule 6***

The supply of services attributable to different States or Union territories, u/s 12(11),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 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 in the following manner, namely:

a. 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;
b. 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.

***Rule 7***

The supply of services attributable to different States or Union territories, u/s 13(7),in the case of services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services, or in the case of services supplied to an individual, represented either as the recipient of services 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 maybe, shall be determined in the following manner, namely:

(i) 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;
(ii) 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;
(iii) in the case of services supplied to individuals, by applying the generally accepted accounting principles.

***Illustration1*:** 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.

***Illustration2*:** 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.

***Illustration3*:** 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.

***Rule 8***

The proportion of value attributable to different States or Union territories, u/s 13(7),in the case of supply of services directly in relation to an immovable property, including services supplied in this regard 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.

***Rule 9***

The proportion of value attributable to different States or Union territories, u/s 13(7),in the 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 of services or the location of the recipient of services 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.

***Amended definition of Adjudicating authority [Sec. 2(4)]***

Adjudicating authority means any authority, appointed or authorised to pass any order or decision under this Act, but does not include the **Central Board of Indirect Taxes and Customs (CBIC)**, the Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, the Appellate Authority, the Appellate Tribunal and the **Authority referred to in sec. 171(2).**

**Clarifications on refund related issues – Circular No. 94/13//2019 dated 28-03-2019**

Following has been clarified:

| Issue | Clarification |
|---|---|
| Certain registered persons have reversed, through return in **FORM GSTR-3B** filed for the month of August, 2018 or for a subsequent month, the accumulated input tax credit (ITC) required to be lapsed in terms of notification No. 20/2018 Central Tax (Rate) dated 26.07.2018 read with circular No. 56/30/2018-GST dated 24.08.2018. Some of | a. As a one-time measure to resolve this issue, refund of accumulated ITC on account of inverted tax structure, for the period(s) in which there is reversal of the ITC required to be lapsed in terms of the said notification, is to be claimed under the category "any other" instead of under the category "refund of unutilized |

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| these registered persons, who have attempted to claim refund of accumulated ITC on account of inverted tax structure for the same period in which the ITC required to be lapsed in terms of the said notification has been reversed, are not able to claim refund of accumulated ITC to the extent to which they are so eligible. This is because of a validation check on the common portal which prevents the value of input tax credit in Statement 1A of **FORM GST RFD-01A** from being higher than the amount of ITC availed in **FORM GSTR-3B** of the relevant period minus the value of ITC reversed in the same period. This results in registered persons being unable to claim the full amount of refund of accumulated ITC on account of inverted tax structure to which they might be otherwise eligible. What is the solution to this problem? | ITC on account of accumulation due to inverted tax structure" in **FORM GST RFD-01A**. It is emphasized that this application for refund should relate to the same tax period in which such reversal has been made.<br>b. The application shall be accompanied by all statements, declarations, undertakings and other documents which are statutorily required to be submitted with a "refund claim of unutilized ITC on account of accumulation due to inverted tax structure". On receiving the said application, the proper officer shall himself calculate the refund amount admissible as per rule 89(5), in the manner detailed in para 3 of Circular No. 59/33/2018-GST dated 04.09.2018. After calculating the admissible refund amount and scrutinizing the application for completeness and eligibility, if the proper officer is satisfied that the whole or any part of the amount claimed is payable as refund, he shall request the taxpayer, in writing, to debit the said amount from his electronic credit ledger through **FORM GST DRC-03**. Once the proof of such debit is received by the proper officer, he shall proceed to issue the refund order in **FORM GST RFD-06** and the payment advice in **FORM GST RFD-05**.<br>c. All refund applications for unutilized ITC on account of accumulation due to inverted tax structure for subsequent tax period(s) shall be filed in **FORM GST RFD-01A** under the category "refund of unutilized ITC on account of accumulation due to inverted tax structure". |
| The above clarification applies to registered persons who have already reversed the ITC required to be lapsed in terms of the said notification through return in **FORM GSTR-3B**. | It is hereby clarified that all those registered persons required to make the reversal in terms of the said notification and who have not yet done so, may reverse the said |

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| What about those registered persons who are yet to perform this reversal? | amount through **FORM GST DRC-03** instead of through **FORM GSTR-3B**. |
| What shall be the consequence if any registered person reverses the amount of credit to be lapsed, in terms the said notification, through the return in **FORM GSTR-3B** for any month subsequent to August, 2018 or through **FORM GST DRC-03** subsequent to the due date of filing of the return in **FORM GSTR-3B** for the month of August, 2018? | b. As the registered person has reversed the amount of credit to be lapsed in the return in **FORM GSTR-3B** for a month subsequent to the month of August, 2018 or through **FORM GST DRC-03** subsequent to the due date of filing of the return in **FORM GSTR-3B** for the month of August, 2018, he shall be liable to pay interest u/s 50(1) on the amount which has been reversed belatedly. Such interest shall be calculated starting from the due date of filing of return in **FORM GSTR3B** for the month of August, 2018 till the date of reversal of said amount through **FORM GSTR-3B** or through **FORM GST DRC-03**, as the case may be.<br>c. The registered person who has reversed the amount of credit to be lapsed in the return in **FORM GSTR-3B** for any month subsequent to August, 2018 or through **FORM GST DRC-03** subsequent to the due date of filing of the return in **FORM GSTR-3B** for the month of August, 2018 would remain eligible to claim refund of unutilized ITC on account of accumulation due to inverted tax structure w.e.f. 01.08.2018. However, such refund shall be granted only after the reversal of the amount of credit to be lapsed, either through **FORM GSTR-3B** or **FORM GST DRC-03,** along with payment of interest, as applicable. |
| How should a merchant exporter claim refund of input tax credit availed on supplies received on which the supplier has availed the benefit of the Government of India, Ministry of Finance, notification No. 40/2017-Central Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1320 (E), dated the 23rd October, 2017 or | a. Rule 89(4B) of the CGST Rules provides that where the person claiming refund of unutilized input tax credit on account of zero-rated supplies without payment of tax has received supplies on which the supplier has availed the benefit of the said notifications, the refund of input tax credit, availed in respect of such inputs received under the said notifications for export of goods, shall be |

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| notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i), vide number G.S.R 1321(E), dated the 23rd October, 2017 (hereinafter referred to as the "said notifications")? | granted.<br>b. This refund of accumulated ITC under rule 89(4B) shall be applied under the category "any other" instead of under the category "refund of unutilized ITC on account of exports without payment of tax" in **FORM GST RFD-01A** and shall be accompanied by all supporting documents required for substantiating the refund claim under the category "refund of unutilized ITC on account of exports without payment of tax". After scrutinizing the application for completeness and eligibility, if the proper officer is satisfied that the whole or any part of the amount claimed is payable as refund, he shall request the taxpayer, in writing, to debit the said amount from his electronic credit ledger through **FORM GST DRC-03**. Once the proof of such debit is received by the proper officer, he shall proceed to issue the refund order in **FORM GST RFD-06** and the payment advice in **FORM GST RFD-05**. |
| Vide Circular No. 59/33/2018-GST dated 04.09.2018, it was clarified that after issuance of a deficiency memo, the input tax credit is required to be re-credited through **FORM GST RFD-01B** and the taxpayer is expected to file a fresh application for refund. Accordingly, in several cases, the ITC amounts were recredited after issuance of deficiency memo. However, it was later represented that the common portal does not allow a taxpayer to file a fresh application for the same period after issuance of a deficiency memo. Therefore, the matter was reexamined and it was subsequently clarified, vide Circular No. 70/44/2018GST dated 26.10.2018 that no re-credit should be carried out in such cases and taxpayers should file the rectified application, after issuance of the deficiency memo, under | In such cases, the claimant may resubmit the refund application manually in **FORMGST RFD-01A** after correction of deficiencies pointed out in the deficiency memo, using the same ARN. The proper officer shall then proceed to process the refund application as per the existing guidelines. After scrutinizing the application for completeness and eligibility, if the proper officer is satisfied that the whole or any part of the amount claimed is payable as refund, he shall request the taxpayer, in writing, to debit the said amount from his electronic credit ledger through **FORM GST DRC-03**. Once the proof of such debit is received by the officer, he shall proceed to issue the refund order in **FORM GST RFD-06** and the payment advice in **FORM GST RFD-05**. |

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| the earlier ARN only. It was also further clarified that a suitable clarification would be issued separately for cases in which such re-credit has already been carried out. However, no such clarification has yet been issued and several refund claims are pending on this account. | |

***Clarification on refund amount for claim of refund of accumulated ITC on account of inverted duty structure - Circular No. 79/53/2018 dated 31-12-2018***

Refund of unutilized ITC in case of inverted tax structure, as provided in sec. 54(3) is available where ITC remains unutilized even after setting off of available ITC for the payment of output tax liability. Where there are multiple inputs attracting different rates of tax, in the formula provided in rule 89(5), the term "Net ITC" covers the ITC availed on all inputs in the relevant period, irrespective of their rate of tax.

The calculation of refund of accumulated ITC on account of inverted tax structure, in cases where several inputs are used in supplying the final product/output, can be clearly understood with help of the following example:

a. Suppose a manufacturing process involves the use of an input A (attracting 5% GST) and input B (attracting 18% GST) to manufacture output Y (attracting 12% GST).
b. The refund of accumulated ITC, in the above situation, will be available u/s 54(3) read with rule 89(5), which prescribes the formula for the maximum refund amount permissible in such situations.
c. Further assume that the claimant supplies the output Y having value of ₹ 3,000/- during the relevant period for which the refund is being claimed. Therefore, the turnover of inverted rated supply of goods and services will be ₹ 3,000/-. Since the claimant has no other outward supplies, his adjusted total turnover will also be ₹ 3,000/-.
d. If we assume that Input A, having value of ₹ 500/- and Input B, having value of ₹ 2,000/-, have been purchased in the relevant period for the manufacture of Y, then Net ITC shall be equal to ₹ 385/- (₹ 25/- and ₹ 360/- on Input A and Input B respectively).
e. Therefore, multiplying Net ITC by the ratio of turnover of inverted rated supply of goods and services to the adjusted total turnover will give the figure of ₹ 385/-.
f. From this, if we deduct the tax payable on such inverted rated supply of goods or services, which is ₹ 360/-, we get the maximum refund amount, as per rule 89(5) which is ₹ 25/-.

***Clarification in respect of term input***

***Issue***: On certain occasions, ITC on stores and spares, packing materials, materials purchased for machinery repairs, printing and stationery items are not considered as part of Net ITC on the grounds that these are not directly consumed in the manufacturing process and therefore, do not qualify as input. There are also instances where stores and spares charged to revenue are considered as capital goods and therefore the ITC availed on them

is not included in Net ITC, even though the value of these goods has not been capitalized in his books of account by the claimant.

***Clarification***:
It is clarified that the input tax credit of the GST paid on inputs shall be available to a registered person as long as he/she uses or intends to use such inputs for the purposes of his/her business and there is no specific restriction on the availment of such ITC anywhere else in the GST Act.

The GST paid on inward supplies of stores and spares, packing materials etc. shall be available as ITC as long as these inputs are used for the purpose of the business and/or for effecting taxable supplies, including zero-rated supplies, and the ITC for such inputs is not restricted u/s 17(5). Further, capital goods have been clearly defined in sec. 2(19) as goods whose value has been capitalized in the books of account and which are used or intended to be used in the course or furtherance of business. Stores and spares, the expenditure on which has been charged as a revenue expense in the books of account, cannot be held to be capital goods.

**Guidelines for launching of Prosecution in relation to offences punishable under the Customs Act, 1962**

*Refer Prosecution Guidelines issued vide Board's Circular No. 27/2015 Customs dated 23-10-2015, Circular No. 46/2016 dated 04-10-2016 and Circular No. 07/2017 dated 06-03-2017*
It was brought to the notice of the Board that there has been a steep rise in the cases of outright smuggling of gold and foreign currency by foreign nationals and these accused persons have no interest / assets in India and once released on bail, they are not available to face trial. Therefore, service of Show Cause Notice (SON) to these foreigners also becomes difficult. Accordingly, it was suggested that 'foreign currency' may be added in the list of items mentioned in Para 6 of the Circular dated 23-10-2015 as amended, and where the case relates to foreign nationals, it may be allowed to launch prosecution within 60 days. Accordingly, it has been decided to substitute Para 6 of the aforesaid Circular with the following:

*6. Stage for launching of Prosecution: Normally, prosecution may be launched immediately on completion of adjudication proceedings. However, in respect of cases involving offences relating to items, viz. Gold, Foreign Currency, Fake Indian Currency Notes (FICN), arms, ammunitions and explosives, antiques, art treasures, wild life items and endangered species of flora and fauna, prosecution may preferably be launched immediately after issuance of Show Cause Notice under the Customs Act, 1962. Further, in cases involving Foreign National(s), prosecution may be launched at the earliest, even before issuance of the Show Cause Notice.*

**Phasing out of physical copies of Merchandise Exports from India Scheme (MEIS)/Services Exports from India Scheme (SEIS) Duty Credit Scrips issued with EDI port as Port of registration – Circular No. 11/2019 Customs dated 09-04-2019**

- In order to enhance the ease of doing business for exporters, DGFT has decided to phase out physical copies of MEIS and SEIS Duty Credit Scrips issued with EDI port as port of registration. DGFT has issued Public Notice No. 84/2015-2020 dated 03-04-2019 and Trade Notice No. 03/2015-2020 dated 03-04-2019 notifying this change. This shall come into effect for MEIS/SEIS duty credit scrips issued by DGFT from 10-04-2019 onwards for cases where the port of registration is an EDI port. DGFT has also created a facility vide Trade Notice No. 42/2015-2020 dated 11-01-2019 regarding mandatory recording of information on DGFT website about transfer and current ownership details of MEIS/SEIS scrips issued from 14-01-2019 onwards.
- MEIS/SEIS duty credit scrips shall continue to be transmitted electronically by DGFT to the Customs system. The details of the said scrips would be visible in ICES to concerned officers involved in import of goods i.e. registration of the scrips, assessment of Bill of Entry, giving out of charge to imported goods, etc.
- For registration, assessment and debiting of scrips, the current procedure as per the extant Circular No. 12/2016 Customs dated 28-03-2016 shall continue to be followed except that instead of presenting physical copy of the MEIS/SEIS scrips printed on security paper, the current owner or his authorized representative shall approach the proper officer of Customs with details of the MEIS/SEIS scrip such as IEC number, scrip number etc. As regard verification of ownership of scrip, same will be checked from the DGFT website referred above.
- All debits in respect of the paperless scrips shall be made in ICES only and no physical debits would be required on the copy of scrips. In view of condition in the relevant exemption notifications under the Customs Act, 1962 and Central Excise Act, 1944 prescribing that the scrip shall be produced before proper officer of Customs at the time of clearance and debiting of the duties leviable on the goods, the correctness of the debits made electronically in ICES shall continue to be verified by the proper officer.
- No TRA shall be issued in respect of these paperless scrips issued electronically by DGFT. Consequently, such paperless scrips issued for EDI ports cannot be used for making imports at non-EDI ports. DGFT shall continue to issue scrips in physical form on security paper as per current practice for non-EDI ports. The facility of TRA would be available for such physical scrips for making imports at other EDI/non-EDI ports.

**Scheme for Rebate of State and Central Taxes and Levies on export of garments and made-ups (RoSCTL) – Circular No. 10/2019 Customs dated 12-03-2019**

- Ministry of Textiles (MoT) has notified a new scheme called Scheme for Rebate of State and Central Taxes and Levies on export of garments and made-ups (hereinafter referred to as RoSCTL) vide notification No. 14/26/2016-IT (Vol II) dated 7.3.2019. The scheme has come into effect from 7.3.2019. Existing Rebate of State Levies (RoSL) scheme for garments and made-ups has been discontinued w.e.f. 7.3.2019.
- In view of the above, claims under the erstwhile RoSL scheme are to be processed for shipping bills with Let Export Order (LEO) date upto 06-03-2019 only.
- Under the RoSCTL, the benefit to exporters shall be given by DGFT in form of Merchandise Exports from India Scheme (MEIS) type duty credit scrips.

**Discontinuation of printing of Advance Authorisations/Export Promotion Capital Goods (EPCG) Authorisations on security paper by DGFT for authorisations issued with EDI ports as port of registration - Circular No.07/2019 Customs dated 21-02-2019 [w.e.f. 01-03-2019]**

In order to enhance the ease of doing business for exporters, DGFT has decided to discontinue the issuance of Advance/EPCG Authorisations on security paper as was the practice so far.

Advance/EPCG Authorisations shall continue to be transmitted electronically by DGFT to the Customs server. The details of the said authorisations would be visible in ICES to all officers involved in import/export cycle i.e. registration of the authorisation, assessment of Bill of Entry, examination of imported goods, giving out of charge to imported goods as also assessment of shipping bills, examination of export goods and giving let export order for export goods.

The process of registration of authorisations and taking bond/bank guarantee remains unchanged except that no physical copy of the authorisation shall be presented by the authorisation holder.

**Rescinding Board Circular No. 132/95-Customs dated 22nd December, 1995 – Circular No. 06/2019 dated 20-02-2019**

Circular No. 132/95 Customs dated 22nd December, 1995, on "Warehousing-grant of in-bond manufacture facility u/s 65 of the Customs Act, 1962" prescribes guidelines that need to be kept in view while considering the requests for grant of in-bond manufacture facility u/s 65 of the Customs Act, 1965. It also provides that the Board's policy is to mainly extend the facility to export oriented units so that unnecessary difficulties to pay duty and later claim drawback can be avoided.

However, Board vide Circular No. 35/2016-Customs dated 29th July, 2016, has already removed the mandatory warehousing requirements for EOUs, STPIs, EHTPs etc. Further, the said Circular clarified that all these units shall stand delicensed as warehouses under Customs Act, 1962, with effect from 13th August, 2016. Therefore, sec. 65 is no longer applicable to EOUs, STPIs, EHTPs etc. In view of above, the Circular-132/95-Customs dated 22nd December, 1995, is rescinded to avoid any misinterpretation.

**Rescinding Board Circular No. 46/2017-Customs dated 24th November, 2017 - Circular No. 04 / 2019-Customs dated 01-02-2019**

Circular No. 46/2017-Customs dated 24th November, 2017, clarifying the applicability of IGST/GST on goods transferred/sold while being deposited in a warehouse. The said Circular was superseded by Circular No. 03/01/2018-IGST dated 25th May, 2018 w.e.f. 01st April, 2018. Circular No. 03/01/2018-IGST dated 25.05.2018, is being rescinded with effect from 01.02.2019. It is therefore clarified that the Circular No. 46/2017-Customs dated 24th November, 2017 stands rescinded on the date of supersession by Circular No. 03/01/2018-IGST dated 25th May, 2018 i.e. w.e.f. 1st April, 2018.

**Procedure to be followed in cases of manufacturing or other operations undertaken in bonded warehouses under section 65 of the Customs Act - Circular No. 3 / 2019-Customs dated 31-01-2019**

Representations have been received from the trade and industry with regards to Circular 38/2018-Customs dated 18.10.2018 issued on the above subject, stating that they were hitherto permitted to undertake certain operations to fulfil a statutory obligation such as Labelling/affixing RSP etc. u/s 65 in a public bonded warehouse, licensed u/s 57. However, Circular 38/2018 has clarified that those operations should be undertaken in private bonded warehouses licensed u/s 58 thereby disallowing such operations in a Public Bonded warehouse.

The representations have been examined. They contain the common request to permit operations required for compliance with labelling/ packing requirements under legislations pertaining to legal metrology, FSSAI, DGFT, State Excise laws etc. The request is on the ground of convenience, economies of scale, reducing transaction cost and past practice. In view of the above, Board has decided to allow labelling/ fixing RSP etc. to fulfil statutory compliance requirements in all Customs Bonded Warehouse without the requirement of taking permission u/s 65. Circular 38/2018-Customs dated 18.10.2018 stands modified to the above extent.

**Entitlement under MEIS for export of goods through Courier or Foreign Post Offices**

Export of goods (handicraft items, handloom products, books/periodicals, leather footwear, toys and tailor made fashion garments) through courier or foreign post office of FOB value upto ₹ 5,00,000 per consignment shall be entitled for rewards under MEIS. If the value of exports is more than ₹ 5,00,000 per consignment then MEIS reward would be calculated on the basis of FOB value of ₹ 5,00,000 only.

Exemption of Integrated Goods and Service Tax (IGST) and Compensation Cess under Advance Authorisation, EPCG and EOU scheme is extended upto 31.03.2020. Further, pre-import condition in respect of advance authorisation has been removed.