

# **GOODS & SERVICES TAX / IDT UPDATE – 67**

## **Amendment in the meaning of Advance Authorisation**

The Central Government vide [N No. 1/2019- CT dt 15<sup>th</sup> Jan, 2019](#) made the following amendments in the [N No. 48/2018- CT dated 18<sup>th</sup> Oct, 2019](#) with a view to amend the meaning of Advance Authorisation:-

### **1. Proviso to Serial No. 1**

Serial No. 1 column number (2) provides that the supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation shall be deemed exports. To this, a proviso has been added as under:

*“Provided that 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,;*

*Provided further that no such certificate shall be required if input tax credit has not been availed on inputs used in manufacture of export goods.”*

*Comment: In case of supplies against Advance Authorization, proviso is being inserted to require post-export end-use monitoring based on CA certificate where credit has been availed only. Effect of this amendment will relieve concerns raised by trade since original notification was issued.*

### **2. Omission of words ”pre-import” from Explanation 1**

Explanation 1 earlier defined the term “advance authorisation” as an authorisation issued by the Director General of Foreign Trade under Chapter 4 of the Foreign Trade Policy 2015-20 for import or domestic procurement of inputs **on pre-import basis** for physical exports.

The given notification now aims to omit “on pre-import basis” from the explanation 1 so as to give effect to the above mentioned proviso.

*Comment: Please note that the amendment is by way of ‘omission’ and not ‘repeal’. As per General Clauses Act, a repeal will save acts done previous but not so in case of omission. Whether this was always intended and therefore must be given retrospective effect will be a bone of contention. CGST Act does not empower retrospective exemptions under section 11 but whether the same applies to notification under section 147 is to be seen.*

[\[Notification No. 1/2019- Central Tax dated 15<sup>th</sup> January, 2019\]](#)

## **GST Amendment Act,2018 applicable from 1st day of February, 2019**

The Central Government vide [N No. 02/2019 – CT dated 29th January, 2019](#) has provided that the provisions of the Central Goods and Services Tax (Amendment) Act, 2018 (31 of 2018), except the following shall be applicable from 1<sup>st</sup> February, 2019.

- clause (b) of section 8, section 17, section 18,
- clause (a) of section 20,
- sub-clause (i) of clause (b) and sub-clause (i) of clause (c) of section 28,

*Comment: Please note that these provisions are relatable to the newly inserted section 43A and the changes to section 39 and 140. Care may be taken to identify the effect of the delay in implementation of these provisions as rest of the Amendment Act comes into effect from 1 Feb, 2019.*

*[N No. 02/2019 – CT dated 29th January, 2019]*

## **Central Goods and service tax rules,2017**

The Central Government vide [N No. 03/2019 – CT dated 29th January, 2019](#) has amended CGST Rules, 2017 details of which are explained below:

	<b>Revised</b>	<b>Comment</b>
<b>Omission of proviso to Rule 8</b> [Application for registration]:-	<del>Provided that a person having a unit(s) in a Special Economic Zone or being a Special Economic Zone developer shall make a separate application for registration as a business vertical distinct from his other units located outside the Special Economic Zone.</del>	<i>Therefore, Special Economic Zone developer is no more required to take separate registration as a business vertical distinct from his other units located outside the Special Economic Zone. Please note that SEZ who's supplies may be included in the returns along with non-SEZ supplies, all supplies 'to or by' SEZ continue to be inter-State supplies.</i>

<p><b>Insertion of Rule 21A</b> [Suspension of registration]:-</p>	<p>1) Where a registered person has applied for cancellation of registration under rule 20, the registration shall be deemed to be suspended from the date of submission of the application or the date from which the cancellation is sought, whichever is later.</p> <p>(2) Where the proper officer has reasons to believe that the registration is liable to be cancelled under section 29 or under rule 21, he may, after affording the said person a reasonable opportunity of being heard, suspend the registration of such person with effect from a date to be determined by him</p> <p>(3) A registered person, whose registration has been suspended shall not make any taxable supply during the period of suspension and shall not be required to furnish any return under section 39.</p> <p>(4) The suspension of registration under sub-rule (1) or sub-rule (2) shall be deemed to be revoked upon completion of the proceedings by the proper officer under rule 22 and such revocation shall be effective from the date on which the suspension had come into effect.</p>	<p><i>With this insertion, where cancellation is applied but continues to appear online, please ensure that suspension order is obtained to avoid late fee. The exemption from late fee is only in respect of returns up to Sept 2018.</i></p>
<p><b>Insertion of Rule 41A</b> [Transfer of credit on sale, merger, amalgamation, lease or transfer of a business]:</p>	<p>(1) 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 unutilized ITC lying in his electronic credit ledger to any or all of the newly registered place of business, shall furnish within 30 days from obtaining such separate registrations, the details in FORM GST ITC-02A electronically,</p> <p>Provided that the ITC shall be transferred to the newly registered entities in the ratio of the value of assets (value of the entire assets of the business whether or not input tax credit has been availed thereon.) held by them at the time of registration and upon such acceptance by newly registered person (transferee), the unutilized input tax credit specified in FORM GST ITC-02A shall be credited to his electronic credit ledger.</p>	<p><i>Please note that this rule is especially where separate registration is obtained under the amended section 25(2).</i></p>

<p><b>Insertion in Explanation to Rule 42 and Rule 43</b> [Manner of determination of input tax credit in respect of inputs or input services /capital goods and reversal thereof]</p>	<p>After the word and figures “entry 84”, the word, figures and letter “and entry 92A” shall be inserted. Therefore for the purposes of Rule 42 &amp; 43, the aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 and entry 92 A* of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule</p> <p><i>*Entry 92A levy taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce.</i></p>	
<p><b>Omission in Rule 53 (1)</b> [Revised tax invoice and credit or debit notes]</p>	<p>A revised tax invoice referred to in section 31 <del>and credit or debit notes referred to in section 34</del> shall contain the following particulars:</p> <p>One of the specified particular of revised invoice:</p> <p><del>(e) nature of the document;</del> <del>(i) 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</del></p>	<p><i>Consequential changes in relation to enabling provision inserted note vide Rule 53(1)A for issuance of consolidated credit/debit note for multiple invoices issued</i></p>
<p><b>Insertion of rule 53 (1A)</b></p>	<p>A credit or debit note referred to in section 34 shall contain the following particulars, namely:—name, address and GSTIN of the supplier, nature of document , serial number, date of issue of the document, value of taxable supply of goods or services, rate of tax and the amount of the tax credited; signature or digital signature of the supplier etc.</p>	<p><i>Problem of industry has been considered through this amendment as in many industries one credit note is required to be issued for multiple invoices which was earlier not provided in the law.</i></p>
<p><b>Rule 80 (3)</b> [Annual Return]</p>	<p>Every registered person <b>other than those referred to in the proviso to sub-section (5) of section 35</b>, whose aggregate turnover during a financial year exceeds two crore rupees shall get his accounts audited as specified under sub-section (5) of section 35 and he shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in FORM GSTR-9C, electronically through the common portal either directly or through a</p>	<p><i>Consequential changes provided in rule that audit provisions shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an</i></p>

	Facilitation Centre notified by the Commissioner.	<i>auditor appointed for auditing the accounts of local authorities under any law for the time being in force.</i>
<b>Insertion in Rule 83 (8)</b> [Provisions related to goods and services tax practitioner]	<p>A goods and services tax practitioner can undertake any or all of the following additional activities on behalf of a registered person, if so authorised by him to-</p> <p><b>(f) furnish information for generation of e-way bill;</b>  <b>(g) furnish details of challan in FORM GST ITC-04;</b>  <b>(h) file an application for amendment or cancellation of enrolment under rule 58; and</b>  <b>(i) file an intimation to pay tax under the composition scheme or withdraw from the said scheme</b></p> <p>Provided that where any application relating to a claim for refund or an application for amendment or cancellation of registration <b>or where an intimation to pay tax under composition scheme or to withdraw from such scheme</b> has been submitted by the goods and services tax practitioner authorised by the registered person, a confirmation shall be sought from the registered person and the application submitted by the said practitioner shall be made available to the registered person on the common portal and such application shall not be further proceeded with until the registered person gives his consent to the same.</p>	
<b>Insertion in Rule 85(3)</b> [Electronic liability register]	Subject to the provisions of section 49, <b>section 49A and section 49B</b> , payment of every liability by a registered person as per his return shall be made by debiting the electronic credit ledger maintained as per rule 86 or the electronic cash ledger maintained as per rule 87 and the electronic liability register shall be credited accordingly	
<b>Insertion in Rule 86(2)</b> [Electronic credit ledger]	The electronic credit ledger shall be debited to the extent of discharge of any liability in accordance with the provisions of section 49 or <b>section 49A or section 49B</b> .	<i>Section 49 A and Section 49 B are newly inserted sections vide CGST Amendment Act,2018</i>

		<i>which provides for utilization of ITC and order of utilization of ITC</i>
<b>Insertion of proviso to Rule 91 (2)</b> [Grant of provisional Refund]	Provided that the order issued in FORM GST RFD-04 shall not be required to be revalidated by the proper officer.	<i>Where 90% refund is sanctioned in case of zero-rated supplies, the delay in validation of sanction order is not put to rest</i>
<b>Insertion of proviso to Rule 91 (3)</b>	Provided that 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.	<i>Where payment advice is not encashed within the same year, then revalidation will be required. Since e-payment will be made, this appears to provide trade with a basis to take up delay in crediting refund for any reason</i>
<b>Insertion in Rule 96A</b> [Refund of integrated tax paid on export of goods or services under bond or Letter of Undertaking]	15 days after the expiry of 1 year, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange <b>or in Indian rupees.</b>	<i>Amendment in Rules consequent to amendment of definition of 'export of services' in IGST Act.</i>
<b>Insertion of Form GSTR - 02</b>	<b>Form for declaration of ITC pursuant to registration under sub-section (2) of section 25</b>	

<b>Rule</b>	<b>Existing</b>	<b>Revised</b>	<b>Comment</b>								
<b>Substitution in heading of Chapter-II</b>	Composition Rules	"Composition Levy"									
<b>Substitution in Rule 7:</b>	In the Table, against serial number (3), in column (3), for the word "goods", the words, "goods and services" shall be substituted. <table border="1" data-bbox="462 1787 778 2004"> <tr> <td>Category of registered persons</td> <td>Rate of tax</td> </tr> <tr> <td>Any other supplier eligible for</td> <td>half per cent. of the</td> </tr> </table>	Category of registered persons	Rate of tax	Any other supplier eligible for	half per cent. of the	<table border="1" data-bbox="805 1579 1117 2004"> <tr> <td>Category of registered persons</td> <td>Rate of tax</td> </tr> <tr> <td>Any other supplier eligible for composition levy under section 10 and the provisions of this</td> <td>half per cent. of the turnover of taxable supplies of goods <b>and</b></td> </tr> </table>	Category of registered persons	Rate of tax	Any other supplier eligible for composition levy under section 10 and the provisions of this	half per cent. of the turnover of taxable supplies of goods <b>and</b>	<i>Therefore rate of composition for eligible suppliers other than (manufacturers and Restaurant service providers) is 0.5% of the turnover of taxable supplies of goods <b>and</b> services in the</i>
Category of registered persons	Rate of tax										
Any other supplier eligible for	half per cent. of the										
Category of registered persons	Rate of tax										
Any other supplier eligible for composition levy under section 10 and the provisions of this	half per cent. of the turnover of taxable supplies of goods <b>and</b>										

	composition levy under section 10 and the provisions of this Chapter	turnover of taxable supplies of goods in the State or Union territory	Chapter	services in the State or Union territory	<i>State or Union territory. Extreme care should be taken that this rate of 1% (CGST-SGST) will apply on the entire 'taxable turnover' in the State</i>
<b>Substitution in 2<sup>nd</sup> proviso to Rule 83 (3)</b>	Provided further that no person to whom the provisions of clause (b) of sub-rule (1) apply shall be eligible to remain enrolled unless he passes the said examination within a period of [eighteen months] from the appointed date	Provided further that no person to whom the provisions of clause (b) of sub-rule (1) apply shall be eligible to remain enrolled unless he passes the said examination within a period of [thirty months] from the appointed date			<i>Allows time to complete the exam after enrolment.</i>
<b>Substitution in Rule 89 (2) (f)</b>	(f) a declaration to the effect that the Special Economic Zone unit or the Special Economic Zone developer has not availed the input tax credit of the tax paid by the supplier of goods or services or both, in a case where the refund is on account of supply of goods or services made to a Special Economic Zone unit or a Special Economic Zone developer.	(f) 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;			<i>Determination of question of whether tax incidence has not been passed on, now flows from customer's (SEZ) certificate.</i>

[\[N No. 03/2019 – CT dated 29th January, 2019 \]](#)

### **Change in value of taxable supplies for calculation of tax under composition**

The Central Government vide [N No. 05/2019 – Central Tax dated 29th January, 2019](#) has substituted the rate of tax for suppliers other than (manufacturers and Restaurant service providers) under composition scheme.

<b>Earlier</b>	<b>Revised</b>	<b>Comment</b>
An amount calculated at the rate of half per cent of the	An amount of tax calculated at the rate specified in rule 7	<i>Therefore rate of composition for eligible</i>

turnover in State in case of other suppliers.	of the Central Goods and Services Tax Rules, 2017.  [Rule-7 provides that rate of tax for suppliers other than (manufacturers and Restaurant service providers) is 0.5% of the turnover of taxable supplies of goods <b>and services</b> in the State or Union territory]	<i>suppliers other than (manufacturers and Restaurant service providers) is 0.5% of the turnover of taxable supplies of goods <b>and services</b> in the State or Union territory.</i>
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*[N No. 05/2019 – Central Tax dated 29th January, 2019]*

**Exemption from taking Registration**

The Central Government vide *N No. 06/2019 – Central Tax dated 29th January, 2019 & N NO. 03/2019 – Integrated Tax dated e 29th January, 2019* has provided that for the purpose of exemption from registration by service providers of Jammu & Kashmir ,the threshold limit of aggregate value of supplies, to be computed on all India basis will be 10 lakh rupees.

*[N No. 06/2019 – Central Tax dated 29th January, 2019; N NO. 03/2019 – Integrated Tax dated 29th January, 2019]*

**Extension of due date of filing Form GSTR-7**

The Central Government vide *N NO. 07/2019 –CT dated 31st January, 2019* has extended the due date of filing GSTR-7 (Form for furnishing the return by a registered person who are required to deduct tax at source under the provisions of section 51 of CGST Act,2017) for the months of October, 2018 to December, 2018 from 31<sup>st</sup> Jan,2019 to 28<sup>th</sup> Feb,2019.

*[N NO. 07/2019 –CT dated 31st January, 2019]*

**Notification to exempt tax on goods or services received from Unregistered person rescinded**

The Central Government vide *N NO. 01/2019-CT(R) dated 29th January, 2019* has rescind the N.No. 8/2017-CT (R) dated the 28th June, 2017 which exempts intra-State supplies of goods or services or both received by a registered person from any supplier, who is not registered, from the whole of the central tax leviable thereon.

Therefore, from 1<sup>st</sup> Feb, 2019 such transaction has become taxable in the hands of recipient.

*Comment: However, as per CGST Amendment Act, 2018, Govt. by notification specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge*



basis as recipient of such supply of goods or services or both whereas no notification in this regard has been issued yet therefore, no tax will be liable on such transactions until any notification specifying categories of goods or services or both come into force.

### Exemption from Registration not applicable to specified Job workers

The Central Government vide *N NO. 02/2019 – IT dated 29th January, 2019* has provided that the job workers who are involved in making supply of services in relation to Live poultry i.e fowls of the species Gallus domesticus, ducks, geese, turkeys and guinea fowls are compulsorily required to take registration.

Further, it is also provided that **job workers** who are involved in making supply of services in relation to Jewellery, goldsmiths’ and silversmiths’ wares and other articles are eligible for exemption from registration where such job workers engaged in **making inter-State supply of services** to a registered person.

*This notification will be effective from 1<sup>st</sup> Feb, 2019.*

*[N NO. 02/2019 – IT dated 29th January, 2019]*

## Customs

### Allowance of Manufacturing or other operations undertaken in bonded warehouses

The Central Government vide *Circular no. 3/2019-Customs dated 31st jan,2019* has clarified that certain operations to fulfill statutory obligations such as labeling/affixing RSP etc. to fulfill statutory compliance requirements are allowed in all custom bonded warehouse (whether public warehouse or private) without the requirement of taking permission under Section 65 of the Customs Act.

*[Circular no. 3/2019-Customs dated 31st jan,2019]*

### Changes made in Circulars issued earlier under the CGST, Act,2017 consequent to GST amendment Act,2018

The Central Government vide *Circular No. 88/07/2019-GST dated 1<sup>st</sup> Feb,2019* has amended various circulars issued earlier under the CGST Act, 2017 with effect from 01.02.2019, to the extent detailed in the table below:

Circular No.	Existing	Revised
Circular No. 8/8/2017 dated 04.10.2017	It is clarified that the acceptance of LUT for <b>supplies of goods to countries outside India Nepal or Bhutan or SEZ developer or SEZ unit</b> will be permissible irrespective of whether the	It is clarified that the acceptance of LUT for supplies of <b>goods or services to countries outside India or SEZ developer or SEZ unit</b> will

	<p>payments are made in Indian currency or convertible foreign exchange as long as they are in accordance with the applicable RBI guidelines. It may also be noted that the <b>supply of services to SEZ developer or SEZ unit</b> under LUT will also be permissible on the same lines. The <b>supply of services, however, to Nepal or Bhutan will be deemed to be export of services only if the payment for such services is received by the supplier in convertible foreign exchange.</b></p>	<p>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.</p>
<p>Circular No. 38/12/2018 dated <b>26.03.2018</b></p>	<p><b>Para 2:</b> On completion of the job work, 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 <b>within one year in case of inputs or within three years in case of capital goods.</b></p> <p><b>Para 3:</b> Further, <b>the time frame of one year / three years</b> 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.</p> <p><b>Para 6.1:</b> In case both the <b>principal and the job worker are located in the same State</b>, job worker is required to obtain registration only if his <b>aggregate turnover</b>, to be computed on all India basis, in a financial year exceeds the specified threshold limit.</p> <p>In case both the <b>principal and the</b></p>	<p><b>Para 2:</b> 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 <b>within the time specified under section 143.</b></p> <p><b>Para 3:</b> Further, if the time frame <b>specified under section 143</b> 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.</p> <p><b>Para 6.1:</b> Now, it is clarified that a job worker is required to obtain registration only in cases where his <b>aggregate turnover</b>, to be computed on all India basis, in a financial year exceeds the threshold limit <b>regardless of whether the principal and the job worker are located in the same State</b></p>

**job worker are located in the different States**, job worker is required to obtain registration only if his **aggregate turnover of the inter-State supply** of taxable services exceeds the specified threshold limit.

**Para 9.4:** 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.

**Para 9.6:** If 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

**or in different States.**

**Para 9.4:** 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.

**Para 9.6:** 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**

<p>Circular No. 41/15/2018 dated 13.04.2018</p>	<p><b>Para 2(k):</b> In case the proposed tax and penalty are not paid within <b>7 days</b> from the date of the issue of the order of detention in FORM GST MOV-06, proposing confiscation of the goods and conveyance and imposition of penalty.</p>	<p><b>Para 2(k):</b> In case the proposed tax and penalty are not paid within <b>14 days</b> from the date of the issue of the order of detention in FORM GST MOV-06, proposing confiscation of the goods and conveyance and imposition of penalty.</p> <p>Accordingly, Form GST MOV -08 &amp; 09 has been revised.</p>
<p><b>Circular No. 58/32/2018 dated 04.09.2018</b></p>	<p>Currently, the functionality to record this liability in the electronic liability register is not available on the common portal. Therefore, it is clarified that as an alternative method, taxpayers may reverse the wrongly availed CENVAT credit under the existing law and inadmissible transitional credit through Table 4(B)(2) of <b>FORM GSTR-3B</b></p>	<p>It may be noted that all such liabilities may be discharged by the taxpayers, either voluntarily in FORM GST DRC-03 or may be recovered vide order uploaded in FORM GST DRC-07, and payment against the said order shall be made in FORM GST DRC-03. It is further clarified that the alternative method of reversing the wrongly availed CENVAT credit under the existing law and inadmissible transitional credit through Table 4(B)(2) of FORM GSTR-3B would no longer be available to taxpayers.</p>
<p>. Circular No. 69/43/2018 dated 26.10.2018</p>	<p>Although the provisions of CGST (Amendment) Act, 2018 have not yet been brought into force, it will be <b>prudent for the field formations</b> may not to issue notices for non- filing of return for taxpayers who have already filed an application for cancellation of registration under section 29 of the CGST Act.</p>	<p>Relied to trade that field formations <b>may not issue notices</b> for non- filing of return for taxpayers who have already filed an application for cancellation of registration under section 29 of the CGST Act</p>

[Circular No. 88/07/2019-GST dated 1<sup>st</sup> Feb,2019]

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