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48th GST COUNCIL MEETING – SIGNIFICANT DEVELOPMENTS

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President's Communication



Dear Professional Colleagues,

It has been five and a half years since the Goods and Services Tax (GST) was introduced in India. GST has brought with it multifarious advantages for the trade and industry; it amalgamates a large number of Central and State taxes into a single tax, it mitigates cascading of taxes, and it breaks the artificial trade barriers to create a common national market. The end consumers of goods have benefitted from GST in terms of a reduction in the overall tax burden on goods, which was estimated to be around 25%-30% under the earlier indirect taxation regime.

The 48th GST Council meeting held on 17th December, 2022 was another step towards making GST simpler and taxpayer friendly. The significant recommendations made by the Council include decriminalisation of three offences viz., obstruction or preventing any officer in discharge of his duties; deliberate tempering of material evidence; and failure to supply the information. Further, the minimum threshold for initiating prosecution is recommended to be increased from Rs. 1 crore to Rs. 2 crores except for those cases where fake invoices are involved. Decision to clarify that no GST is payable where the residential dwelling is rented to a registered person in his/her personal capacity for use as his/her own residence and on his own account and not on account of his business, will bring much needed clarity on the matter.

The GST & Indirect Taxes Committee of the Institute of

Chartered Accountants of India (ICAI) has been assisting the Government by providing technical inputs and representing on issues in GST policy and procedures. The Committee has also been lending a helping hand to the Government by conducting capacity building programmes on GST for the officers of Central Tax, State Tax and other Government Departments. I am delighted to note that more than 2500 officers have been trained in such programmes. Further, in December 2022, the Committee hosted a National GST Symposium, 2022 for CGST, SGST and UTGST Officers at Chennai to provide a platform to such officers to deliberate and share their GST experiences. The Hon'ble Minister for Finance and Human Resources Management, Government of Tamil Nadu, Dr. Palanivel Thiaga Rajan inaugurated the Symposium. Furthermore, the Committee has also been taking giant strides towards bridging the GST knowledge gap of every stakeholder and in every sector by developing new publications and revising the existing ones, sharing GST Updates, organising seminars, conferences, certificate courses etc.

Extending my best wishes to all the readers!

CA. (Dr.) Debashis Mitra
President, ICAI



Dr. Palanivel Thiaga Rajan, Honourable Minister for Finance and Human Resources Management, Government of Tamil Nadu at the National GST Symposium, 2022 for CGST, SGST and UTGST officers organised at Chennai on 15th and 16th December, 2022 lighting the lamp along with CA. Rajendra Kumar P, Chairman, GST & IDT Committee (to his right) and CA. Umesh Sharma, Vice-Chairman, GST & IDT Committee (to his left)

SIGNIFICANT CHANGES IN INPUT TAX CREDIT

One of the prime objectives of implementation of GST is to ensure a unified flow of Input Tax Credit (ITC) on Goods or Services, and thereby, enable the recipients to claim ITC. Based on the above said objective, ITC through a conditional right under GST Law, the conditions and restrictions enacted by the Government is to administer effective claim of ITC and the said provisions are accordingly amended from time to time.

As GST Law is in nascent stages and being a progressive levy, the said compliance had various challenges associated with it during the initial period of implementation. It was observed that, the compliances which are required to be complied as per the rule book for claim of ITC i.e., as per the relevant section and rules has not been complied with by many taxpayers during the initial stages of implementation of GST.

One of the key compliances as per the provisions of GST Law was matching of ITC by the recipient who claims or takes the ITC. The said provision required the concerned recipient to ensure that the details of outward supply is transmitted through the GST portal by the supplier. The above-mentioned specific compliance had its own challenges on account of various errors committed by the supplier of goods or services or by the recipient who claimed ITC of such goods or services.

The aforesaid mismatch, resulted in issuance of barrage of notices during scrutiny, audit or investigation proceeding by the GST Department. In the 48th GST Council Meeting held on 17th December, 2022, the said issue was discussed by the Council and it was decided to clarify the said issue by way of a Circular. [Circular No.183/15/2022-GST dated 27th December, 2022](#) explains the procedure to be followed, for verification of ITC in cases involving difference in ITC availed in FORM GSTR-3B vis-a-vis available as per FORM GSTR-2A during FY 2017-18 and 2018-19.

Validity of claim of unmatched ITC for FY 2017-18 & 2018-19

Section 16 of the CGST Act, 2017 provides for eligibility and conditions for availing ITC, further the rules prescribe the procedure for claim of ITC. During the FY 2017-18 & 2018-19 many suppliers failed to furnish the correct details of outward supplies in their Form GSTR 1 filed for the respective tax period, which had resulted into non-auto population of data in Form GSTR 2A of the concerned recipient leading to certain deficiencies or discrepancies.

The CBIC has clarified through the above-mentioned circular (supra), about how to deal with differences in ITC availed in Form GSTR 3B as compared to that of details in Form GSTR 2A for the FY 2017-18 & 2018-19.

In this context, the circular seeks to address the following scenarios;

S. No	Scenario Description	Form GSTR 1	Form GSTR 3B
1.	In case supplier has failed to file Form GSTR 1 but has filed Form GSTR 3B.	Not Filed	Filed
2.	In case supplier has filed Form GSTR 1 but has not reported the said supply. However, has filed Form GSTR 3B.	Filed	Filed
3.	In case supplier has filed Form GSTR 1 but has reported the said supply as B2C instead of B2B. However, has filed Form GSTR 3B.	Filed	Filed
4.	In case supplier has filed Form GSTR 1 but has reported the said supply under a wrong GSTIN. However, has filed Form GSTR 3B.	Filed	Filed

In all of the above scenarios, Circular provides necessary relief by way of allowing the claim of ITC in respect of every supply (invoice wise) subject to the fulfilment of following prescribed conditions:

- The concerned recipient is in possession of the Tax Invoice or Debit Note in respect of ITC on the inward supply under question.
- The concerned recipient has received such Goods or Services.
- The concerned recipient has made the payment of Value plus Tax to the concerned supplier.
- The circular requires the Proper Officer to verify, whether any reversal is required to be made in accordance with sections 17 or 18 of the CGST Act, 2017.
- Besides the above, the circular requires the Proper Officer to verify, whether the ITC under question is claimed within the time limit specified under section 16(4) of the CGST Act 2017.
- In case of ITC, being reported under wrong GSTIN by the supplier, the proper officer of the concerned recipient shall also intimate the jurisdictional tax authority of the wrongly reported GSTIN holder, for disallowance of ITC, if any claimed by such registered person.

In order to verify the conditions of section 16(2)(c) of the CGST Act, 2017 that tax on the said supply has been paid by the supplier, the proper officer in case of difference in ITC between Form GSTR 3B and the details of outward supplies available in Form GSTR 2A in respect of a supplier, which are not reflected exceeds Rs.5 Lacs, the proper officer shall ask the concerned recipient to produce a certificate for the concerned supplies issued by Chartered Accountant, certifying that the supplies have been actually made to the concerned recipient and the taxes on such supplies are paid by the supplier in Form GSTR 3B.

Further, in case of difference in ITC between Form GSTR 3B and the details of outward supplies available in Form GSTR 2A in respect of a supplier, which are not reflected does not exceed Rs.5 Lacs, the proper officer shall ask the concerned recipient to produce a certificate from the concerned supplier, certifying that the supplies have been actually made to the concerned recipient and the taxes on such supplies are paid by the supplier in Form GSTR 3B.

The above clarification is applicable only for bonafide errors committed in reporting during FY 2017-18 & 2018-19. This circular shall apply only to ongoing proceedings in scrutiny, audit, adjudication or investigation or appeal for the FY 2017-18 & FY 2018-19, and not applicable to completed proceedings.

Clarification on entitlement of ITC in respect of freight charges on transportation of goods outside India (including ITC on Ocean Freight) - [Circular No.184/16/2022 dated 27-12-2022](#):

The said circular amply clarifies that in case of services by way of transportation of goods to a place outside India wherein both the location of the supplier and recipient is in India, the place of supply shall be governed by proviso to section 12(8) of the CGST Act, 2017. As per proviso to section 12(8), the place of supply shall be the location outside India and it shall be an inter-State supply of services as per section 7(5) of the IGST Act, 2017 and liable for IGST.

Further, from recipient's perspective, the recipient will be eligible for claiming ITC subject to fulfilment of other conditions laid down in section 16 and section 17 of the CGST Act, 2017.

Furthermore, supplier of service shall report the place of supply under state code '96 Foreign Country' from the list of drop-down menu available on the portal in Form GSTR-1.

Rule 37 of the CGST Rules, 2017 – Reversal of ITC in case of non-payment of consideration to the Supplier

Rule 37(1) and (2) of the CGST Rules, 2017 which were substituted vide the [Notification No.19/2022 dated 28.09.2022](#) did not expressly provide for proportionate reversal of ITC in case of part payment of consideration by the recipient to the supplier. Also said rule gave only an option to "pay" an amount equivalent to ITC and did not contain express provision of "reversal" of ITC. It was

a lacuna in the law when the same was inserted via said notification w.e.f. 01.10.2022. Now the said lacuna has been cured via [Notification No. 26/2022 dated 26-12-2022](#) which has substituted the said rule w.e.f. 01.10.2022. The substituted rule 37 provides for "proportionate reversal or proportionate payment of an amount equivalent to ITC" in case of part payment of consideration to the supplier within 180 days from the date issue of invoice.

Rule 37A of the CGST Rules, 2017- Reversal of Input Tax Credit in case of non-payment of tax by the supplier and re-availment thereof:

The said rule is applicable only from 26-12-2022 and it operates on the premise that ITC availed by the recipient is based on reflection of such invoices in Form GSTR-2B. At the same time, the said rule contemplates reversal of ITC by the recipient by 30th November of Financial Year following the FY in which such ITC has been availed, if the supplier fails report the said supply in Form GSTR-3B and fails to pay the taxes by 30th September of Financial Year following the FY in which such invoice was issued.

In case of reversal of ITC by the recipient after 30th November of FY following the relevant FY, the recipient shall be liable to pay interest at the rate of 18% for every day of delay after 30th November of Financial Year following the FY, in addition to reversal of ITC. In addition to the above, where the suppliers have subsequently filed their Form GSTR-3B, the concerned registered person may re-avail the ITC in any of subsequent months in Form GSTR-3B.

Provisions explained above, are the important changes in Input Tax Credit which now provide for a method in matching the unmatched ITC for FY 2017-18 & 2018-19, followed by claim of ITC in case of transportation of goods outside India, reversal of ITC in case of non-payment of tax by supplier or consideration by the recipient, as an outcome of the 48th GST Council Meeting. As provisions related to input tax credit are being continually amended, if the above-mentioned verification method is further extended for FY 2019-20 & FY 2020-21, it will be of an immense benefit to the taxpayers.

Contributed by CA. Ganesh Prabhu



REFUND – BENEFIT EXTENDED TO UNREGISTERED PERSONS

GST, a consumption tax, enshrined with the primary intention to ensure that the tax is paid on consumption. Other side of this coin is that the tax burden should not be present when there is no consumption. This was a systemic issue in GST since its implementation from mid of 2017, where the ultimate taxpayer, being the end consumer who has borne the burden of GST could not get a relief from GST when the consumption does not consummate.

In the 48th GST council meeting this was taken up and a relief has been given to the unregistered taxpayer, being the end consumer. This relief has been given by way of refund provisions under section 54 of CGST / respective State GST Acts, 2017 and a detailed clarification vide [Circular No. 188/20/2022-GST dated 27th December 2022](#) has been provided. This Circular envisages refund to the unregistered persons in the following situations;

- a. where the unregistered buyers, had entered into an agreement/ contract with a builder for supply of services of construction of flats/ building, when the agreement is cancelled.
- b. in cases of long-term insurance policies where premium for the entire period of term of policy is paid upfront along with applicable GST and the policy is subsequently required to be terminated prematurely.

Registration:

The first limitation that had to be overpowered to make this refund possible was the GSTN portal, access to it and interaction through the portal by the unregistered person with the adjudicating officers. This hurdle has been crossed smoothly by allowing such unregistered person to get registered in the portal based on their PAN issued under the Income Tax Act. But the unregistered person shall have to apply for registration in the State where the supplier of the service is located. The key step in such registration is the fulfillment of the requirement of Rule 10B of CGST Rules by way of Aadhar authentication.

If such refund is being applied in respect of different suppliers located in different States, then application for registration shall have to be submitted in every such state. For instance, Mr. A residing in Chennai had booked an apartment in Bengaluru with a builder located in the state of Karnataka and another apartment in Vijayawada with a builder located in Andhra Pradesh. On cancellation of both these contracts, Mr. A being eligible for refund, if wishes to apply for refund shall have to register in the state of Karnataka & Andhra Pradesh separately though he is residing in the state of Tamil Nadu.

Further, separate applications for refund have to be filed in respect of invoices issued by different suppliers.

Refund Application – Legal & Procedural Aspects:

The quintessential legal condition to be fulfilled before making such refund application is that the time limit for issuance of Credit note by the registered supplier under section 34 (2) should have expired and the opportunity to adjust such tax paid by the supplier of such service should have lapsed. Only then the unregistered recipient of such service, who cancels / forecloses such agreement shall embark on this refund process.

The unregistered person shall apply for refund in GST RFD-01 under the category 'Refund for unregistered person'. The applicant shall upload Statement 8 (newly inserted for this purpose) and all the requisite documents as per the provisions of sub-rule (2) of rule 89 of the CGST Rules. Refund application shall be accompanied by a statement containing:

- a. the details of invoices viz. number, date, value, tax paid and details of payment, in respect of which refund is being claimed along with copy of such invoices
- b. proof of making such payment to the supplier
- c. the copy of agreement or registered agreement or contract, as applicable, entered with the supplier for supply of service
- d. the letter issued by the supplier for cancellation or termination of agreement or contract for supply of service
- e. details of payment received from the supplier against cancellation or termination of such agreement along with proof thereof

Also a certificate issued by the supplier to the effect that he has paid tax in respect of the invoices on which refund is being claimed by the applicant; that he has not adjusted the tax amount involved in these invoices against his tax liability by issuing credit note; and also, that he has not claimed and will not claim refund of the amount of tax involved in respect of these invoices, shall be submitted along with the Refund application.

The restrictions around this refund are:

- a. amount claimed shall not exceed the total amount of tax declared on the invoices in respect of which refund is being claimed.
- b. in cases where the amount paid back by the supplier to the unregistered person on cancellation/termination of agreement/contract for supply of services is less than amount paid by such unregistered person to

the supplier, only the proportionate amount of tax involved in such amount paid back shall be refunded to the unregistered person.

- c. the minimum refund amount claimed shall be rupees one thousand, any lesser amount refund application will not be considered.

Such refund will be granted to the unregistered person only when such has borne the liability of tax and has not passed on the incidence in terms of section 54(8) (e) of CGST Act. To facilitate the process, the mandatory requirement of Certificate by a Chartered Accountant or a Cost Accountant in practice where the amount of refund exceeds rupees two lakhs has been specifically dispensed with for this type of applications.

Section 54 lays down a time limit of 2 years from the relevant date for filing of refund application. For this type of refund, the relevant date has been clarified in the circular as date of issuance of letter of cancellation of the contract/ agreement for supply by the supplier. So, the unregistered person can apply for refund within two years from this date. For instance, if an apartment is booked by Mr. B, an unregistered end consumer, on 1st January 2018 under a contract and the same has been cancelled on 31st December 2022 (yet to be completed project) due to disagreements between the builder and the buyer. The money received from Mr. B was refunded in full by the builder excluding GST. Now, Mr. B, can apply for refund within 2 years from 31st December 2022 viz., 30th December 2024.

Expectations:

This is a step in the right direction by providing procedural clarity on the legal entitlement which was available under the law. But the issues are still not completely addressed because the current refund is only for the 2 situations envisaged in the circular. Practically, various other scenarios like, Annual Maintenance Contracts (AMC), software subscriptions to name a few, also pose a similar challenge to the ultimate taxpayer (unregistered person) where the contract is for a long term, the amount involved is paid upfront and later on the contract is terminated prematurely. The unregistered taxpayers wait for more such measures by the law makers to uphold the basic tenet of GST, being a consumption based tax.

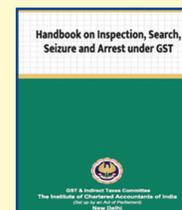
Contributed by CA. Shankara Narayanan V



NEW PUBLICATIONS

Handbook on Inspection, Search, Seizure and Arrest

The provisions relating to inspection, search, seizure and arrest along with legal issues associated with such provisions have been exhaustively discussed in this publication. Further, various suggestive formats for different communications to be made by the taxpayer in relation to the provisions of inspection, search, seizure and arrest have also been included in the Handbook for the guidance of the taxpayers.



Significant Judicial and Advance Rulings in GST – A Compilation

This publication includes summaries of landmark rulings of the Supreme Court and High Courts pertaining to GST law. Further, some widely discussed advance rulings having significant implications have also been included in the publication. As far as possible, contrary rulings of High Courts/AAR on an identical issue have been included in the publication at the same place. The rulings have been categorised topic-wise for easy reference.

Handbook on Blocked Credit under GST

This handbook discusses various situations/supplies in detail where the input tax credit is not available to the registered person, i.e., where the credit is blocked. Significant case laws pertaining to the provisions relating to blocked credit have also been discussed in the handbook for a holistic view.



RECOMMENDATIONS OF THE 48TH GST COUNCIL MEETING

The 48th GST Council meeting held on 17th December 2022 recommended the following:

1. No GST shall be payable where the residential dwelling is rented to a registered person if it is rented in his/her personal capacity for use as his/her own residence and on his account and not on account of his business.
2. Incentive paid to banks by Central Government under the scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions are in the nature of subsidy and thus not taxable.
3. Measures for Trade Facilitation:
 - (i) Decriminalization under GST : The Council recommended to-
 - raise the minimum threshold of tax amount for launching prosecution under GST from Rs. 1 Crore to Rs. 2 Crores, except for the offence of issuance of invoices without supply of goods or services or both;
 - reduce the compounding amount from the present range of 50% to 150% of tax amount to the range of 25% to 100%;
 - decriminalize certain offences specified under clause (g), (j) and (k) of sub-section(1) of section 132 of CGST Act, 2017 viz., obstruction or preventing any officer in discharge of his duties, deliberate tempering of material evidence, failure to supply the information.
 - (ii) Refund to unregistered persons:

There was no procedure for claim of refund of tax borne by the unregistered buyers in cases where the contract/ agreement for supply of services like construction of flat/house and long-term insurance policy is cancelled and the time period of issuance of credit note by the concerned supplier is over. The Council recommended amendment in CGST Rules, 2017, along with issuance of a circular, to prescribe the procedure for filing application of refund by the unregistered buyers in such cases.
 - (iii) Facilitating e-commerce for micro enterprises:

GST Council in its 47th meeting had granted in-principle approval for allowing unregistered suppliers and composition taxpayers to make intra-State supply of goods through E-Commerce Operators (ECOs), subject to certain conditions. Further, considering the time required for development of the requisite functionality on the portal as well as for providing sufficient time for preparedness by the ECOs, Council recommended that the scheme may be implemented w.e.f. 01.10.2023.
- (iv) Paras 7, 8(a) and 8(b) were inserted in Schedule III of CGST Act, 2017 with effect from 01.02.2019 to keep certain transactions/ activities, such as supplies of goods from a place outside the taxable territory to another place outside the taxable territory, high sea sales and supply of warehoused goods before their home clearance, outside the purview of GST. In order to remove the doubts and ambiguities regarding taxability of such transactions/ activities during the period 01.07.2017 to 31.01.2019, the Council recommended to make the said paras effective from 01.07.2017. However, no refund of tax paid shall be available in cases where any tax has already been paid in respect of such transactions/ activities during the period 01.07.2017 to 31.01.2019.
- (v) The Council recommended to amend sub-rule (1) of rule 37 of CGST Rules, 2017 retrospectively with effect from 01.10.2022 to provide for reversal of input tax credit, in terms of second proviso to section 16 of the CGST Act, only proportionate to the amount not paid to the supplier vis a vis the value of the supply, including tax payable.
- (vi) The Council recommended to insert rule 37A in CGST Rules, 2017 to prescribe the mechanism for reversal of input tax credit by a registered person in the event of non-payment of tax by the supplier by a specified date and mechanism for re-availment of such credit if the supplier pays tax subsequently. This would ease the process for complying with the condition for availment of input tax credit under section 16(2)(c) of the CGST Act, 2017.
- (vii) Sub-rule (3) of rule 108 and rule 109 of the CGST Rules, 2017 to be amended to provide clarity on the requirement of submission of certified copy of the order appealed against and the issuance of final acknowledgment by the appellate authority. This would facilitate timely processing of appeals and ease the compliance burden for the appellants.
- (viii) Rule 109C and FORM GST APL-01/03 W to be inserted in the CGST Rules, 2017 to provide the facility for withdrawal of an application of appeal up to certain specified stage.
- (ix) Circular to be issued to clarify that No Claim Bonus offered by the insurance companies to the

insured is an admissible deduction for valuation of insurance services.

- (x) Circular to be issued for clarifying the issue of treatment of statutory dues under GST law in respect of the taxpayers for whom the proceedings have been finalised under Insolvency and Bankruptcy Code, 2016. Rule 161 of CGST Rules, 2017 and FORM GST DRC-25 also to be amended for facilitating the same.
 - (xi) Sub-rule (3) of rule 12 of CGST Rules, 2017 to be amended to provide for facility to the registered persons who are required to collect tax at source under section 52 or deduct tax at source under section 51 of CGST Act, 2017, for cancellation of their registration on their request.
 - (xii) Circular to be issued for clarifying the issues pertaining to the place of supply of services of transportation of goods in terms of the proviso to sub-section (8) of section 12 of the IGST Act, 2017 and availability of input tax credit to the recipient of such supply. It has also been recommended that proviso to sub-section (8) of section 12 of the IGST Act, 2017 may be omitted.
 - (xiii) Issuance of the following circulars in order to remove ambiguity and legal disputes on various issues, thus benefiting taxpayers at large:
 - a) Procedure for verification of input tax credit in cases involving difference in input tax credit availed in FORM GSTR-3B vis a vis that available as per FORM GSTR-2A during FY 2017-18 and 2018-19.
 - b) Clarifying the manner of re-determination of demand in terms of sub-section (2) of section 75 of CGST Act, 2017.
 - c) Clarification in respect of applicability of e-invoicing with respect to an entity.
4. Measures for streamlining compliances in GST:
- (i) Proposal to conduct a pilot in State of Gujarat for Biometric-based Aadhaar authentication and risk-based physical verification of registration applicants. Amendment in rule 8 and rule 9 of CGST Rules, 2017 to be made to facilitate the same. This will help in tackling the menace of fake and fraudulent registrations.
 - (ii) PAN-linked mobile number and e-mail address (fetched from CBDT database) to be captured and recorded in FORM GST REG-01 and OTP-based verification to be conducted at the time of registration on such PAN-linked mobile number and email address to restrict misuse of PAN of a person by unscrupulous elements without knowledge of the said PAN holder.
- (iii) Section 37, 39, 44 and 52 of CGST Act, 2017 be amended to restrict filing of returns/ statements to a maximum period of three years from the due date of filing of the relevant return/ statement.
 - (iv) FORM GSTR-1 be amended to provide for reporting of details of supplies made through ECOs, covered under section 52 and section 9(5) of CGST Act, 2017, by the supplier and reporting by the ECO in respect of supplies made under section 9(5) of CGST Act, 2017.
 - (v) Rule 88C and FORM GST DRC-01B be inserted in CGST Rules, 2017 for intimation to the taxpayer, by the common portal, about the difference between liability reported by the taxpayer in FORM GSTR-1 and in FORM GSTR-3B for a tax period, where such difference exceeds a specified amount and/ or percentage, for enabling the taxpayer to either pay the differential liability or explain the difference. Further, clause (d) to be inserted in sub-rule (6) of rule 59 of CGST Rules, 2017 to restrict furnishing of FORM GSTR-1 for a subsequent tax period if the taxpayer has neither deposited the amount specified in the intimation nor has furnished a reply explaining the reasons for the amount remaining unpaid.
 - (vi) Amendment in definition of “non-taxable online recipient” under section 2(16) of IGST Act, 2017 and definition of “Online Information and Database Access or Retrieval Services (OIDAR)” under section 2(17) of IGST Act, 2017 so as to reduce interpretation issues and litigation on taxation of OIDAR services.
5. Recommendations for changes in GST rates:
- (i) It has been recommended to reduce the rate of Husk of pulses including chilka and concentrates including chuni/churi, khanda from 5% to Nil and Ethyl alcohol supplied to refineries for blending with motor spirit (petrol) from 18% to 5%.
 - (ii) It has also been decided to include supply of Mentha arvensis under reverse charge mechanism.
 - (iii) The higher rate of compensation cess of 22% is applicable to motor vehicle fulfilling all four conditions, namely, it is popularly known as SUV, has engine capacity exceeding 1500 cc, length exceeding 4000 mm and a ground clearance of 170mm or above.
- <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1884399>

GST UPDATES

Empowerment of the Competition Commission of India to handle Anti-Profitereering cases under the CGST Act

Central Government on the recommendations of GST Council has empowered the Competition Commission of India (CCI) established under section 7(1) of the Competition Act, 2002 to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

The above amendment has become effective from 01.12.2022.

Notification No. 23/2022-CT dt. 23.11.2022

Amendments in CGST Rules, 2017

1. Amendments in rule 8 (Application for registration)

- i. Sub-rule (1) has been amended to do away with the requirement of mentioning mobile no. and e-mail address in the application for registration.
- ii. The Permanent Account Number (PAN) shall also be verified through OTP sent to the mobile no. and e-mail address linked to the PAN. Consequently, clause (b) and (c) of sub-rule (2) which required verification of mobile no. and e-mail address have been omitted.
- iii. Sub-rule (4A) has been substituted to provide that registration application by a person who has opted for authentication of Aadhaar number and is identified on the common portal, based on data analysis and risk parameters, shall be followed by biometric-based Aadhaar authentication and taking of photographs of the applicant where the applicant is an individual or of such individuals in relation to the applicant as notified under section 25(6C) where the applicant is not an individual, along with the verification of the original copy of the documents uploaded with the application in FORM GST REG-01 at one of the Facilitation Centres notified by the Commissioner for the purpose of this sub-rule and the application shall be deemed to be complete only after completion of the process laid down under this sub-rule.
- iv. A new sub-rule (4B) has been inserted to provide that the provisions of sub-rule (4A) shall not apply to those States or Union Territories as may be notified by the Government on the recommendations of the Council.

It has been notified vide *Notification No. 27/2022-CT dt. 26.12.2022* that the provisions of sub-rule (4A) of

rule 8 shall not apply in all the States and Union territories except the State of Gujarat. Therefore, biometric based Aadhaar authentication and taking of photograph for completion of registration application is applicable only in Gujarat.

- v. Sub-rule (5) has been amended to provide that on receipt of an application under sub-rule (4A) also, an acknowledgement shall be issued electronically to the applicant in FORM GST REG-02.

2. Amendments in rule 9 (Verification of the application and approval)

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

3. Amendment in rule 12 (Grant of registration to persons required to deduct tax at source or to collect tax at source)

Sub-rule (3) has been amended to specify that TDS and TCS registrations can also now be cancelled by the proper officer on a request made in writing by a person to whom such registration has been granted.

4. Amendment in rule 37 (Reversal of input tax credit in the case of non-payment of consideration)

Sub-rule (1) has been amended to provide that a registered person shall pay or reverse an amount equal to the input tax credit along with interest which is proportionate to the amount not paid to the supplier within the prescribed time limit.

5. New rule 37A (Reversal of input tax credit in the case of non-payment of tax by the supplier and re-availment thereof)

New rule 37A has been inserted to specify the mechanism for reversal of input tax credit in the case of non-payment of tax by the supplier within the prescribed time and the procedure for re-availment of the same if the supplier pays such tax subsequently.

6. Amendment in rule 46 (Tax invoice)

A proviso has been inserted after clause (f) to state that where any taxable service is supplied by or through an electronic commerce operator or by a supplier of online information and database access or retrieval services

to a recipient who is un-registered, irrespective of the value of such supply, a tax invoice issued by the registered person shall contain the name and address of the recipient along with its PIN code and the name of the State and the said address shall be deemed to be the address on record of the recipient.

7. Amendment in rule 46A (Invoice cum bill of supply)

A proviso has been inserted in rule 46A providing that the said single “invoice-cum-bill of supply” shall contain the particulars as specified under rule 46 or rule 54, as the case may be, and rule 49.

8. Amendment in rule 87 (Electronic cash ledger)

A new proviso has been inserted in sub-rule (8) which lays down that where the bank fails to communicate details of Challan Identification Number to the Common Portal, the Electronic Cash Ledger may be updated on the basis of e-Scroll of the Reserve Bank of India in cases where the details of the said e-Scroll are in conformity with the details in challan generated in FORM GST PMT-06 on the Common Portal.

9. New rule 88C (Manner of dealing with difference in liability reported in statement of outward supplies and that reported in return) and amendment in rule 59 (Form and manner of furnishing details of outward supplies)

Sub-rule (1) lays down that where the tax payable by a registered person, in accordance with the statement of outward supplies furnished by him in FORM GSTR-1 or using the Invoice Furnishing Facility in respect of a tax period, exceeds the amount of tax payable by such person in accordance with the return for that period furnished by him in FORM GSTR-3B, by such amount and such percentage, as may be recommended by the Council, the said registered person shall be intimated of such difference in Part A of FORM GST DRC-01B, electronically on the common portal, and a copy of such intimation shall also be sent to his e-mail address provided at the time of registration or as amended from time to time, highlighting the said difference and directing him to—

- (a) pay the differential tax liability, along with interest under section 50, through FORM GST DRC-03; or
- (b) explain the aforesaid difference in tax payable on the common portal, within a period of seven days.

Sub rule (2) provides that the registered person referred to in sub-rule (1) shall, upon receipt of the intimation referred to in that sub-rule, either-

- (a) pay the amount of the differential tax liability, as specified in Part A of FORM GST DRC-01B, fully or partially, along with interest under section 50, through FORM GST DRC-03 and furnish the details thereof in Part B of FORM GST DRC-01B electronically on the common portal; or

- (b) furnish a reply electronically on the common portal, incorporating reasons in respect of that part of the differential tax liability that has remained unpaid, if any, in Part B of FORM GST DRC-01B, within the period specified in the said sub-rule.

Sub-rule (3) provides that where any amount specified in the intimation referred to in sub-rule (1) remains unpaid within the period specified in that sub-rule and where no explanation or reason is furnished by the registered person in default or where the explanation or reason furnished by such person is not found to be acceptable by the proper officer, the said amount shall be recoverable in accordance with the provisions of section 79.

Further, a new clause (d) has been inserted in rule 59(6) to provide that a registered person, to whom an intimation has been issued on the common portal under the provisions of sub-rule (1) of rule 88C in respect of a tax period, shall not be allowed to furnish FORM GSTR-1 or using the invoice furnishing facility for a subsequent tax period, unless he has either deposited the amount specified in the said intimation or has furnished a reply explaining the reasons for any amount remaining unpaid, as required under the provisions of sub-rule (2) of rule 88C.

10. Amendment in rule 89 (Application for refund)

Sub-rule (3) has been substituted as under:

Where the decision or order appealed against is uploaded on the common portal, a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal.

If the decision or order appealed against is not uploaded on the common portal, the appellant shall submit a self-certified copy of the said decision or order within a period of seven days from the date of filing of FORM GST APL-01 and a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf, and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal. However, if the said self-certified copy of the decision or order is not submitted within a period of seven days from the date of filing of FORM GST APL-01, the date of submission of such copy shall be considered as the date of filing of appeal.

11. Substitution of rule 109 (Application to the Appellate Authority)

Sub-rule (1) provides that an application to the Appellate Authority under sub-section (2) of section 107 shall be filed in FORM GST APL-03, along with the relevant documents, either electronically or otherwise as may be notified by the Commissioner and a provisional acknowledgment shall be issued to the appellant immediately.

Sub-rule (2) provides that where the decision or order appealed against is uploaded on the common portal, a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal under sub-rule (1).

Where the decision or order appealed against is not uploaded on the common portal, the appellant shall submit a self-certified copy of the said decision or order within a period of seven days from the date of filing of FORM GST APL-03 and a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf, and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal. However, where the said self-certified copy of the decision or order is not submitted within a period of seven days from the date of filing of FORM GST APL-03, the date of submission of such copy shall be considered as the date of filing of appeal.

12. New rule 109C - Withdrawal of Appeal

The appellant may, at any time before issuance of show cause notice under sub-section (11) of section 107 or before issuance of the order under the said sub-section, whichever is earlier, in respect of any appeal filed in FORM GST APL-01 or FORM GST APL-03, file an application for withdrawal of the said appeal by filing an application in FORM GST APL-01/03W.

Where the final acknowledgment in FORM GST APL-02 has been issued, the withdrawal of the said appeal would be subject to the approval of the appellate authority and such application for withdrawal of the appeal shall be decided by the appellate authority within seven days of filing of such application.

Any fresh appeal filed by the appellant pursuant to such withdrawal shall be filed within the time limit specified in sub-section (1) or sub-section (2) of section 107, as the case may be.

13. Amendment in rule 138 (Information to be furnished prior to commencement of movement of goods and generation of e-way bill)

Annexure to sub-rule (14) has been amended to the effect that e-way bill would be required to be generated for imitation jewellery (7117).

14. Amendment in rule 161 (Continuation of certain recovery proceedings)

Rule 161 has been amended to replace the word 'order' with 'intimation or notice'. Consequently, now the 'intimation or notice' for the reduction or enhancement of any demand under section 84 shall be issued in Form DRC-25.

15. Amendments in Forms

The following forms have been amended:

- i. Form REG-01
- ii. FORM REG-17
- iii. FORM REG-19
- iv. FORM GSTR-1
- v. FORM RFD-01
- vi. FORM APL-02
- vii. FORM APL-03
- viii. FORM DRC-01A
- ix. FORM DRC-03
- x. FORM DRC-25

The detailed amendments can be referred to from [Notification No. 26/2022-CT dt. 26.12.2022](#).

Latest Circulars issued by CBIC

1. Clarification to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for FY 2017-18 and 2018-19.

Circular No. 183/15/2022-GST dt. 27.12.2022 has been issued to provide clarification regarding the manner of dealing with discrepancies between the amount of ITC availed by the registered persons in their FORM GSTR-3B and the amount as available in their FORM GSTR-2A during FY 2017-18 and FY 2018-19, as under:

In the following circumstances:

- a) Where the supplier has failed to file FORM GSTR-1 for a tax period but has filed the return in FORM GSTR-3B for said tax period, due to which the supplies made in the said tax period do not get reflected in FORM GSTR-2A of the recipients.
- b) Where the supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period but has failed to report a particular supply in FORM GSTR-1, due to which the said supply does not get reflected in FORM GSTR-2A of the recipient.
- c) Where supplies were made to a registered person and invoice is issued as per Rule 46 of CGST Rules containing GSTIN of the recipient, but supplier has wrongly reported the said supply as B2C supply, instead of B2B supply, in his FORM GSTR-1, due to which the said supply does not get reflected in FORM GSTR-2A of the said registered person.
- d) Where the supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period, but he has declared the supply with wrong GSTIN of the recipient in FORM GSTR-1.

the proper officer shall seek the details from the registered person regarding all the invoices on which ITC has been availed by the registered person in his FORM GSTR-3B but which are not reflecting in his FORM GSTR 2A. He shall then ascertain fulfillment of the following conditions of section 16 of CGST Act in respect of the input tax credit availed on such invoices by the said registered person:

- i. that he is in possession of a tax invoice or debit note issued by the supplier or such other tax paying documents
- ii. that he has received the goods or services or both
- iii. that he has made payment for the amount towards the value of supply, along with tax payable thereon, to the supplier

Besides, the proper officer shall also check whether any reversal of input tax credit is required to be made in accordance with section 17 or section 18 of CGST Act and also whether the said input tax credit has been availed within the time period specified under sub-section (4) of section 16.

In order to verify the condition of clause (c) of sub-section (2) of section 16 that tax on the said supply has been paid by the supplier, the following action may be taken by the proper officer.

- In case, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year exceeds Rs 5 lakh, the proper officer shall ask the registered person to produce a certificate for the concerned supplier from the Chartered Accountant (CA) or the Cost Accountant (CMA), certifying that supplies in respect of the said invoices of supplier have actually been made by the supplier to the said registered person and the tax on such supplies has been paid by the said supplier in his return in FORM GSTR 3B. Certificate issued by CA or CMA shall contain UDIN. UDIN of the certificate issued by CAs can be verified from ICAI website <https://udin.icai.org/search-udin> and that issued by CMAs can be verified from ICMAI website <https://eicmai.in/udin/VerifyUDIN.aspx>.
- In cases, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year is upto Rs 5 lakh, the proper officer shall ask the claimant to produce a certificate from the concerned supplier to the effect that said supplies have actually been made by him to the said registered person and the tax on said supplies has been paid by the said supplier in his return in FORM GSTR 3B.

In circumstance listed out in point (d), additionally, the proper officer of the actual recipient shall intimate the concerned jurisdictional tax authority of the registered person, whose GSTIN has been mentioned wrongly, that

ITC on those transactions is required to be disallowed, if claimed by such recipients in their FORM GSTR-3B. However, allowance of ITC to the actual recipient shall not depend on the completion of the action by the tax authority of such registered person, whose GSTIN has been mentioned wrongly, and such action will be pursued as an independent action.

It may be noted that for the period FY 2017-18, as per proviso to section 16(4) of CGST Act, the aforesaid relaxations shall not be applicable to the claim of ITC made in the FORM GSTR-3B return filed after the due date of furnishing return for the month of September, 2018 till the due date of furnishing return for March, 2019, if supplier had not furnished details of the said supply in his FORM GSTR-1 till the due date of furnishing FORM GSTR-1 for the month of March, 2019.

It may also be noted that the clarifications given here are case specific and are applicable to the bonafide errors committed in reporting during FY 2017-18 and 2018-19. Further, these guidelines are clarificatory in nature and may be applied as per the actual facts and circumstances of each case and shall not be used in the interpretation of the provisions of law.

These instructions will apply only to the ongoing proceedings in scrutiny/audit/ investigation, etc. for FY 2017-18 and 2018-19 and not to the completed proceedings.

However, these instructions will apply in those cases for FY 2017-18 and 2018-19 where any adjudication or appeal proceedings are still pending.

The complete circular can be accessed at [Circular No. 183/15/2022-GST dt. 27.12.2022](#)

2. Clarification on the entitlement of input tax credit where the place of supply is determined in terms of the proviso to sub-section (8) of section 12 of the IGST Act, 2017.

Proviso inserted in sub-section (8) of section 12 of the IGST Act, w.e.f. 01.02.2019, provides that where the transportation of goods is to a place outside India, the place of supply of the said service shall be the place of destination of such goods.

As the place of supply of services in the above proviso, is the concerned foreign destination and not the State where the recipient is registered under GST, doubts have been raised regarding the availability of input tax credit of the said services to the recipient located in India.

[Circular No. 184/16/2022-GST dt. 27.12.2022](#) has been issued to clarify the said issue as under:

S. No.	Issue	Clarification
1.	In case of supply of services by way of transportation of goods, including by mail or courier, where the transportation of goods is to a place outside India, and where the supplier and recipient of the said supply of services are located in India, what would be the place of supply of the said services?	The place of supply shall be the concerned foreign destination where the goods are being transported.

2.	In the case given in Sl. No. 1, whether the supply of services will be treated as inter-State supply or intra-State supply?	The aforesaid supply of services would be considered as inter-State supply in terms of sub-section (5) of section 7 of the IGST Act since the location of the supplier is in India and the place of supply is outside India. Therefore, integrated tax (IGST) would be chargeable on the said supply of services.
3.	In the case given in Sl. No. 1, whether the recipient of service of transportation of goods would be eligible to avail input tax credit in respect of the said input service of transportation of goods?	Section 16 of the CGST Act lays down the eligibility and conditions for taking input tax credit whereas, section 17 of the said Act provides for apportionment of credit and blocked credits under circumstances specified therein. The said provisions of law do not restrict availment of input tax credit by the recipient located in India if the place of supply of the said input service is outside India. Thus, the recipient of service of transportation of goods shall be eligible to avail input tax credit in respect of the IGST so charged by the supplier, subject to the fulfilment of other conditions laid down in section 16 and 17 of the CGST Act.
4.	In the case mentioned at Sl. No. 1, what state code has to be mentioned by the supplier of the said service of transportation of goods, where the transportation of goods is to a place outside India, while reporting the said supply in FORM GSTR-1?	The supplier of service shall report place of supply, of such service by selecting State code as '96- Foreign Country' from the list of codes in the drop-down menu available on the portal in FORM GSTR-1.

The complete circular can be accessed at [Circular No. 184/16/2022-GST dt. 27.12.2022](#)

3. Clarification with regard to applicability of provisions of section 75(2) of CGST, 2017 and its effect on limitation

[Circular No. 185/17/2022-GST dt. 27.12.2022](#) has been issued to clarify issues with regard to applicability of provisions of section 75(2) as under:

a) Issue:

In some of the cases where the show cause notice has been issued by the proper officer to a noticee under sub-section (1) of section 74 of CGST Act for demand of tax not paid/ short paid or erroneous refund or input tax credit wrongly availed or utilized, the appellate authority or appellate tribunal or the court concludes that the said notice is not sustainable under sub-section (1) of section 74 of CGST Act for the reason that the charges of fraud or any willful-misstatement or suppression of facts to evade tax have not been established against the noticee and directs the proper officer to re-determine the amount of tax payable by the noticee, deeming the notice to have been issued under sub-section (1) of section 73 of CGST Act, in accordance with the provisions of sub-section (2) of section 75 of CGST Act. What would be the time period for re-determination of the tax, interest and penalty payable by the noticee in such cases?

Clarification:

Sub-section (3) of section 75 of CGST Act provides

that an order, required to be issued in pursuance of the directions of the appellate authority or appellate tribunal or the court, has to be issued within two years from the date of communication of the said direction.

Accordingly, in cases where any direction is issued by the appellate authority or appellate tribunal or the court to re-determine the amount of tax payable by the noticee by deeming the notice to have been issued under sub-section (1) of section 73 of CGST Act in accordance with the provisions of sub-section (2) of section 75 of the said Act, the proper officer is required to issue the order of re-determination of tax, interest and penalty payable within the time limit as specified in under sub-section (3) of section 75 of the said Act, i.e., within a period of two years from the date of communication of the said direction by appellate authority or appellate tribunal or the court, as the case may be.

b) Issue:

How the amount payable by the noticee, deeming the notice to have been issued under sub-section (1) of section 73, shall be re-computed/ re-determined by the proper officer as per provisions of sub-section (2) of section 75?

Clarification:

In cases which do not involve fraud or willful-misstatement or suppression of facts to evade payment of tax, the show cause notice in terms of sub-section (1) of section 73 of CGST Act has

to be issued within 2 years and 9 months from the due date of furnishing of annual return for the financial year to which such tax not paid or short paid or input tax credit wrongly availed or utilized relates, or within 2 years and 9 months from the date of erroneous refund.

Therefore, in cases where the proper officer has to re-determine the amount of tax, interest and penalty payable deeming the notice to have been issued under sub-section (1) of section 73 of CGST Act in terms of sub-section (2) of section 75 of the said Act, the same can be re-determined for so much amount of tax short paid or not paid, or input tax credit wrongly availed or utilized or that of erroneous refund, in respect of which show cause notice was issued within the time limit as specified under sub-section (2) of section 73 read with sub-section (10) of section 73 of CGST Act.

Thus, only the amount of tax short paid or not paid, or input tax credit wrongly availed or utilized, along with interest and penalty payable, in terms of section 73 relating to such financial years can be re-determined, where show cause notice was issued within 2 years and 9 months from the due date of furnishing of annual return for the respective financial year. Similarly, the amount of tax payable on account of erroneous refund along with interest and penalty payable can be re-determined only where show cause notice was issued within 2 years and 9 months from the date of erroneous refund.

In case, where the show cause notice under sub-section (1) of section 74 was issued for tax short paid or tax not paid or wrongly availed or utilized input tax credit beyond a period of 2 years and 9 months from the due date of furnishing of the annual return for the financial year to which such demand relates to, and the appellate authority concludes that the notice is not sustainable under sub-section (1) of section 74 of CGST Act thereby deeming the notice to have been issued under sub-section (1) of section 73, the entire proceeding shall have to be dropped, being hit by the limitation of time as specified in section 73.

Similarly, where show cause notice under sub-section (1) of section 74 of CGST Act was issued for erroneous refund beyond a period of 2 years and 9 months from the date of erroneous refund, the entire proceeding shall have to be dropped.

In cases, where the show cause in terms of sub-section (1) of section 74 of CGST Act was issued for tax short paid or not paid tax or wrongly availed or utilized input tax credit or on account of erroneous refund within 2 years and 9 months from the due date of furnishing of the annual return for the said financial year, to which such demand relates to, or from the date of erroneous refund, as the case may be, the entire amount of the said demand in the show cause notice would be covered under re-determined amount.

Where the show cause notice under sub-section (1) of section 74 was issued for multiple financial years, and where notice had been issued before the expiry of the time period as per sub-section (2) of section 73 for one financial year but after the expiry of the said due date for the other financial years, then the amount payable in terms of section 73 shall be re-determined only in respect of that financial year for which show cause notice was issued before the expiry of the time period as specified in sub-section (2) of section 73.

The complete circular can be accessed at [Circular No. 185/17/2022-GST dt. 27.12.2022](#).

4. Clarification on following issues pertaining to GST:

- a) Taxability of No Claim Bonus offered by Insurance companies
 - (i) Whether the deduction on account of No Claim Bonus allowed by the insurance company from the insurance premium payable by the insured, can be considered as consideration for the supply provided by the insured to the insurance company, for agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year (s)?

Ans. As per practice prevailing in the insurance sector, the insurance companies deduct No Claim Bonus from the gross insurance premium amount, when no claim is made by the insured person during the previous insurance period(s). The customer/insured procures insurance policy to indemnify himself from any loss/ injury as per the terms of the policy and is not under any contractual obligation not to claim insurance claim during any period covered under the policy, in lieu of No Claim Bonus.

It is, therefore, clarified that there is no supply provided by the insured to the insurance company

in form of agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s) and No Claim Bonus cannot be considered as a consideration for any supply provided by the insured to the insurance company.

- (ii) Whether No Claim Bonus provided by the insurance company to the insured can be considered as an admissible discount for the purpose of determination of value of supply of insurance service provided by the insurance company to the insured?

Ans. The insurance companies make the disclosure of the fact of availability of discount in form of No Claim Bonus (NCB), subject to certain conditions, to the insured in the insurance policy document itself and also provide the details of the no claim Bonus in the invoices. The pre-disclosure of NCB amount in the policy documents and specific mention of the discount in form of No Claim Bonus in the invoice is in consonance with the conditions laid down for deduction of discount from the value of supply under clause (a) of sub-section (3) of section 15.

It is, therefore, clarified that NCB is a permissible deduction under clause (a) of sub-section (3) of section 15 of the CGST Act for the purpose of calculation of value of supply of the insurance services provided by the insurance company to the insured. Accordingly, where the deduction on account of NCB is provided in the invoice issued by the insurer to the insured, GST shall be leviable on actual insurance premium amount, payable by the policy holders to the insurer, after deduction of No claim bonus mentioned on the invoice.

- b) Clarification on applicability of e-invoicing w.r.t an entity
- (i) Whether the exemption from mandatory generation of e-invoices in terms of Notification No. 13/2020-CT dated 21st March, 2020, as amended, is available for the entity as whole, or whether the same is available only in respect of certain supplies made by the said entity?

Ans. In terms of [Notification No. 13/2020- Central Tax dated 21st March, 2020](#), as amended, certain entities/sectors have been exempted from mandatory generation of e-invoices as per sub-rule (4) of rule 48 of Central Goods and Services Tax Rules, 2017. It is hereby clarified that the said exemption from generation of e-invoices is for the

entity as a whole and is not restricted by the nature of supply being made by the said entity.

Illustration: A Banking Company providing banking services, may also be involved in making supply of some goods, including bullion. The said banking company is exempted from mandatory issuance of e-invoice in terms of [Notification No. 13/2020-Central Tax, dated 21st March, 2020](#), as amended, for all supplies of goods and services and thus, will not be required to issue e-invoice with respect to any supply made by it.

[Circular No. 186/18/2022-GST-dt. 27.12.2022](#)

5. Clarification regarding the treatment of statutory dues under GST law in respect of the taxpayers for whom the proceedings have been finalised under Insolvency and Bankruptcy Code, 2016 (IBC)

As per [Circular No. 134/04/2020-GST dated 23rd March, 2020](#), no coercive action can be taken against the corporate debtor with respect to the dues of the period prior to the commencement of Corporate Insolvency Resolution Process (CIRP). Such dues will be treated as 'operational debt' and the claims may be filed by the proper officer before the NCLT in accordance with the provisions of the IBC.

[Circular No. 187/19/2022-GST dt. 27.12.2022](#) has been issued to clarify on the modalities for implementation of the order of the adjudicating authority under IBC, with respect to demand for recovery against such corporate debtor under the CGST Act as well under the existing laws and the treatment of such statutory dues under CGST Act and existing laws, after finalization of the proceedings under IBC, has been issued.

As per section 84 of CGST Act, if the government dues against any person under CGST Act are reduced as a result of any appeal, revision or other proceedings in respect of such government dues, then an intimation for such reduction of government dues has to be given by the Commissioner to such person and to the appropriate authority with whom the recovery proceedings are pending. Further, recovery proceedings can be continued in relation to such reduced amount of government dues.

The word 'other proceedings' is not defined in CGST Act. It is to be mentioned that the adjudicating authorities and appellate authorities under IBC are quasi-judicial authorities constituted to deal with civil disputes pertaining to insolvency and bankruptcy. For instance, under IBC, NCLT serves as an adjudicating authority for proceedings which are initiated on application from any stakeholder of the entity like the firm, creditors, debtors, employees

etc. and passes an order approving the resolution plan. As the proceedings conducted under IBC also adjudicate the government dues pending under the CGST Act or under existing laws against the corporate debtor, the same appear to be covered under the term 'other proceedings' in section 84.

Rule 161 of CGST Rules, 2017 prescribes FORM GST DRC-25 for issuing intimation for such reduction of demand specified under section 84. Accordingly, in cases where a confirmed demand for recovery has been issued by the tax authorities for which a summary has been issued in FORM GST DRC-07/DRC 07A against the corporate debtor, and where the proceedings have been finalised against the corporate debtor under IBC reducing the amount of statutory dues payable by the corporate debtor to the government under CGST Act or under existing laws, the jurisdictional Commissioner shall issue an intimation in FORM GST DRC-25 reducing such demand, to the taxable person or any other person as well as the appropriate authority with whom recovery proceedings are pending.

6. Manner of filing an application for refund by unregistered persons

Circular No. 188/20/2022-GST dt. 27.12.2022 has been issued to prescribe the procedure for filing of refund application by an unregistered person.

In order to enable unregistered persons to file application for refund under sub-section (1) of section 54, in cases where the contract/agreement for supply of services of construction of flat/ building has been cancelled or where long-term insurance policy has been terminated, and the time period for issuance of credit note has already expired, a new functionality has been made available on the common portal which allows unregistered persons to take a temporary registration and apply for refund under the category 'Refund for Unregistered person'. Further, sub-rule (2) of rule 89 of CGST Rules has been amended and statement 8 has been inserted in FORM GST RFD-01 vide Notification No. 26/2022-CT dt. 26.12.2022 to provide for the documents required to be furnished along with the application of refund by the unregistered persons and the statement to be uploaded along with the said refund application.

For the purpose of determining relevant date in terms of clause (g) of Explanation (2) under section 54 of the CGST Act, date of issuance of letter of cancellation of the contract/agreement for supply by the supplier will be considered as the date of receipt of the services by the applicant.

No refund shall be claimed if the amount is less than one thousand rupees.

Further, in cases, where the amount paid back by the supplier to the unregistered person on cancellation/termination of agreement/contract for supply of services is less than amount paid by such unregistered person to the supplier, only the proportionate amount of tax involved in such amount paid back shall be refunded to the unregistered person.

The complete circular giving the detailed procedure can be accessed at [Circular No. 188/20/2022-GST dt. 27.12.2022](#).

Amendment in GST Rates, Reverse Charge and Exemption

The 48th GST Council meeting held on 17.12.2022 recommended changes in rates of GST on certain goods. Further, it also recommended changes in respect of goods under reverse charge and changes in relation to exemption on goods as well as services.

- 1) In order to give effect to the rate changes on goods, Notification No. 01/2017-CT(R) dt. 28.06.2017 and Notification No. 02/2017-CT(R) dt. 28.06.2017 have been amended vide [Notification No. 12/2022-CT\(R\) dt. 30.12.2022](#) and [Notification No. 13/2022-CT\(R\) dt. 30.12.2022](#) respectively. Changes in rates and exemption include:
 - a) Ethyl alcohol supplied to petroleum refineries for blending with motor spirit (petrol) [9% CGST to 2.5% CGST]
 - b) Husk of pulses including Chilka, Concentrates including chuni or churi, khanda [2.5% CGST to Nil CGST]
- 2) [Notification No. 14/2022-CT\(R\) dt. 30.12.2022](#) has been issued to amend reverse charge Notification No. 04/2017-CT(R) dt. 28.06.2017 to include supply of Mentha arvensis under reverse charge mechanism as has been done for Mentha Oil.
- 3) [Notification No. 15/2022-CT\(R\) dt. 30.12.2022](#) has been issued to amend Notification No. 12/2017-CT(R) dt. 28.06.2017 to –
 - a) clarify that 'services by way of renting of residential dwelling' shall be exempt where the registered person is proprietor of a proprietorship concern and he rents the residential dwelling in his personal capacity for use as his own residence and such renting is on his own account and not that of the proprietorship concern.
 - b) omit entry 23A exempting service by way of access to a road or a bridge on payment of annuity.

SIGNIFICANT RECENT INITIATIVES OF THE GST & INDIRECT TAXES COMMITTEE

1. National GST Symposium

The Committee hosted a National GST Symposium, 2022 for CGST, SGST and UTGST Officers on 15th and 16th December, 2022 at Hotel Crowne Plaza, Chennai. The Hon'ble Minister for Finance and Human Resources Management, Government of Tamil Nadu, Dr. Palanivel Thiaga Rajan inaugurated the Symposium. The Symposium was organised to bring together the Central Tax, State Tax and Union Territory Tax Officers on one platform to foster synergy, discussions and exchange of ideas and to flag issues and brainstorm resolutions. High-ranking officers like Commissioners, Additional Commissioners, Joint Commissioners from GST Council, GSTN, CBIC and Central GST Commissionerates and State Commercial Tax Departments from 20 States and 2 Union Territories participated in the Symposium.

The National GST Symposium, 2022 is a unique initiative of the Committee which enabled the Officers to share their experiences with GST - highlight the benefits accrued and the difficulties faced and deliberate the expectations going forward. The Symposium is a pioneering event that will go a long way in making GST a good and simple tax.

The National GST Symposium 2022 hosted by the Committee, as a part of Azadi Ka Amrit Mahotsav, is its contribution towards nation building and will be a trend setter for the future.

2. Capacity Building Programmes on GST for Officers of Central Tax, State Tax, PSUs and other Government Departments

The Committee has taken concerted efforts to support the Government in its capacity building initiatives. During the Council year, the Committee has successfully conducted 30 Capacity Building Programmes training more than 2600 Officers of Central Tax, State Tax, PSUs and other Government Departments. The programmes have been organised in States of Madhya Pradesh, Bihar, Odisha, Rajasthan, Maharashtra, Goa, Tamil Nadu, Assam, Haryana, Gujarat and Tripura.

3. Certificate Course on GST and UAE VAT

Physical batches of Certificate Course on GST have been organised at Pimpri Chinchwad, Chennai and Bangaluru which were attended by 94 members. The Committee, through Dubai Chapter, organised two batches of Certificate Course on UAE VAT at Dubai and Oman.

Further physical batches of Certificate Course on GST have been announced at Hyderabad from 4th February, 2023 and at Mangaluru from 28th February, 2023.

4. Other CPE events upskilling members

In order to upgrade the skills of members in GST, CPE events with specific focus on GST were organised. 14082 members enhanced their knowledge and skills through 7 National Conferences, 12 Seminars, 6 Virtual CPE Meetings, 1 Webinar and 2 Workshops on various contemporary and relevant topics of GST.

Further, the Committee jointly organised a Stakeholder's Meeting on Reporting and Reversal of ITC in GSTR-3B with the Commercial Taxes Department, Rajasthan at Jaipur.

5. Publications

The Committee has developed 3 new publications and revised 6 of its existing publications to keep the stakeholders abreast with the updated position of GST law. The list is provided below for easy reference of the readers:

New Publications

S. No.	Publications
1.	Handbook on Inspection, Search, Seizure and Arrest under GST
2.	Significant Judicial and Advance Rulings in GST – A Compilation
3.	Handbook on Blocked Credit under GST

Revised Publications

1.	Handbook on Exempted Supplies under GST
2.	Handbook on Invoicing under GST
3.	Handbook on Returns and Payments under GST
4.	Handbook on Annual Return under GST
5.	Handbook on Composition Scheme under GST
6.	Handbook on Accounts & Records under GST



GST QUIZ

- 1) **The due date of rectification of any omission or incorrect particulars furnished in GSTR-8 by an e-commerce operator under section 52 is:**
- 30th September after the end of relevant financial year
 - Due date of furnishing of return of September, following the end of relevant financial year
 - 30th of November following the end of financial year or the actual date of furnishing of annual statement, whichever is earlier
 - The is no time limit defined for such correction/rectification
- 2) **Whether services provided by the guest anchors invited by the TV channels for participating in their shows in lieu of honorarium, attracts GST liability?**
- Yes
 - No
 - Yes, but guest anchors whose aggregate turnover in a financial year does not exceed Rs 20 lakhs (Rs 10 lakhs in case of special category states) shall not be liable to take registration and pay GST.
 - It shall attract GST only if the show is not education based.
- 3) **Cancellation charges of railway tickets for a class shall attract GST**
- At the same rate as applicable to the class of travel at the time of booking
 - At flat 28%
 - At a lower rate than the one levied at the booking of the ticket
 - Being cancellation charges, it shall be exempt
- 4) **As per section 18(6) of the CGST Act, 2017, in case of supply of capital goods, with or without consideration, on which input tax credit has been taken, the registered person shall**
- Pay an amount equal to input tax credit taken on the said capital goods reduced by the prescribed percentage points
 - Pay tax on the transaction value of such capital goods
 - Not pay any tax or any amount
 - Pay an amount which is higher of (a) or (b)
- 5) **Which of the following supplies will come within the purview of supply under GST?**
- Distribution of free samples to customers
 - Import of services by a person from any of his other establishments outside India, without any consideration, in the course or furtherance of business
 - Disposal of scrap without any consideration where input tax credit was not availed on purchase
 - Goods sent for job work without consideration and returned within the specified time limit
- 6) **Rule 4 of the General Rules of Interpretation is also known as**
- Common Parlance Theory
 - Akin Rule
 - Latter the better Rule
 - End Use Theory Rule
- 7) **A Composition Scheme supplier need not maintain the following records**
- Stock details of goods received & supplied
 - Details of ITC claimed
 - Register of tax invoice
 - All of the above
- 8) **Choose the correct option with respect to applicability of GST on passenger baggage**
- It is exempt from GST
 - IGST is levied alongwith Customs Duty
 - IGST shall pe levied only if the baggage contains Jewellery
 - IGST is not levied, however, Compensation Cess is levied
- 9) **The time available for cancellation of e-way bill after its generation is**
- 12 hours
 - 15 hours
 - 24 hours
 - 48 hours
- 10) **Final Return u/s 45 is required to be furnished:**
- Within three months of the date of cancellation or date of order of cancellation, whichever is later
 - Within 15 days of the date of cancellation or date of order of cancellation, whichever is earlier
 - Before September 30 succeeding to the date of cancellation
 - Before the due date of filing annual return for the financial year in which registration is cancelled

The names of first five members who provided all the correct answers of the last Quiz (Sep 22) within 48 hours are as under:

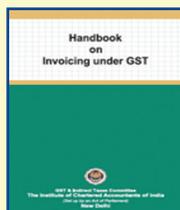
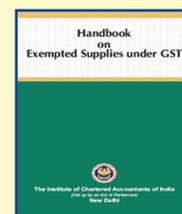
Name	Membership No.
CA Paras Agarwal	566042
CA Vipin Shakya	561749
CA Rahul Tiwari	563045
CA Mohd Asif	552786
CA Vandana Gupta	75542

Please provide reply of the above MCQs in the link given below. The name of the first 5 members who provide all the correct answers within 48 hours of receipt of this Newsletter, would be published in the next edition.

Link to reply: https://docs.google.com/forms/d/1mRM5KIO_9WxqZBa6_rhYw7hfpR3b78aKcbqATsd_nc/edit

REVISED PUBLICATIONS

Several exemptions are available under the GST law. Hence, it is very important to understand the implication of a particular exemption in a specific situation. The Handbook discusses various exemptions relating to goods and services along with their applicability and implication. Considering the significance of the provisions related to exemptions, the GST & Indirect Taxes Committee first published a "Handbook on Exempted Supplies under GST" in the year January 2019 which was then revised in the year February 2020.



The Handbook discusses a variety of aspects relating to invoicing like, type of documents specified under law in relation to invoicing, which document is to be issued and in which situation, prescribed contents of the documents, importance of documents to substantiate ITC claims, and importance of documents in case of movement of goods etc. The provisions related to the chosen topic are collated, explained and analysed in such handbooks for easy comprehension of all the interested stakeholders.

The various forms for filing GST returns and for making payment have been thoroughly discussed in this Handbook. Topics like who is required to file a particular return, what are the due dates to file a particular return and from where details may be captured to fill the fields of a particular return etc. have been analysed in this Handbook.



GST & INDIRECT TAXES COMMITTEE OF ICAI

A ONE STOP DESTINATION FOR ALL INDIRECT TAXES

website: www.idtc.icai.org



The website of GST and Indirect Taxes Committee of ICAI viz. www.idtc.icai.org provides the users a well-set platform for sharing and gaining knowledge on GST and other indirect taxes and easy accessibility to the committee. The committee works relentlessly towards keeping the members abreast with the latest changes in all the indirect taxes laws vide various mediums like organising programmes, updating publications, sending regular updates, etc.

Main features:

- ❖ Regular GST / Indirect Taxes Updates
- ❖ Knowledge Bank of Indirect Taxes/ GST- Articles, Legal Updates etc.
- ❖ Publications on GST and other IDT Law including UAE VAT Law etc.- (Available for free download and online ordering)
- ❖ Recordings of Live Webcasts / E-lectures on GST
- ❖ E-learning on GST
- ❖ Upcoming events
- ❖ Details of Certificate Courses, Programme, Seminars etc. on GST/ Indirect Taxes
- ❖ Links of related important website

Your suggestions on the website are welcome at gst@icai.in

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