



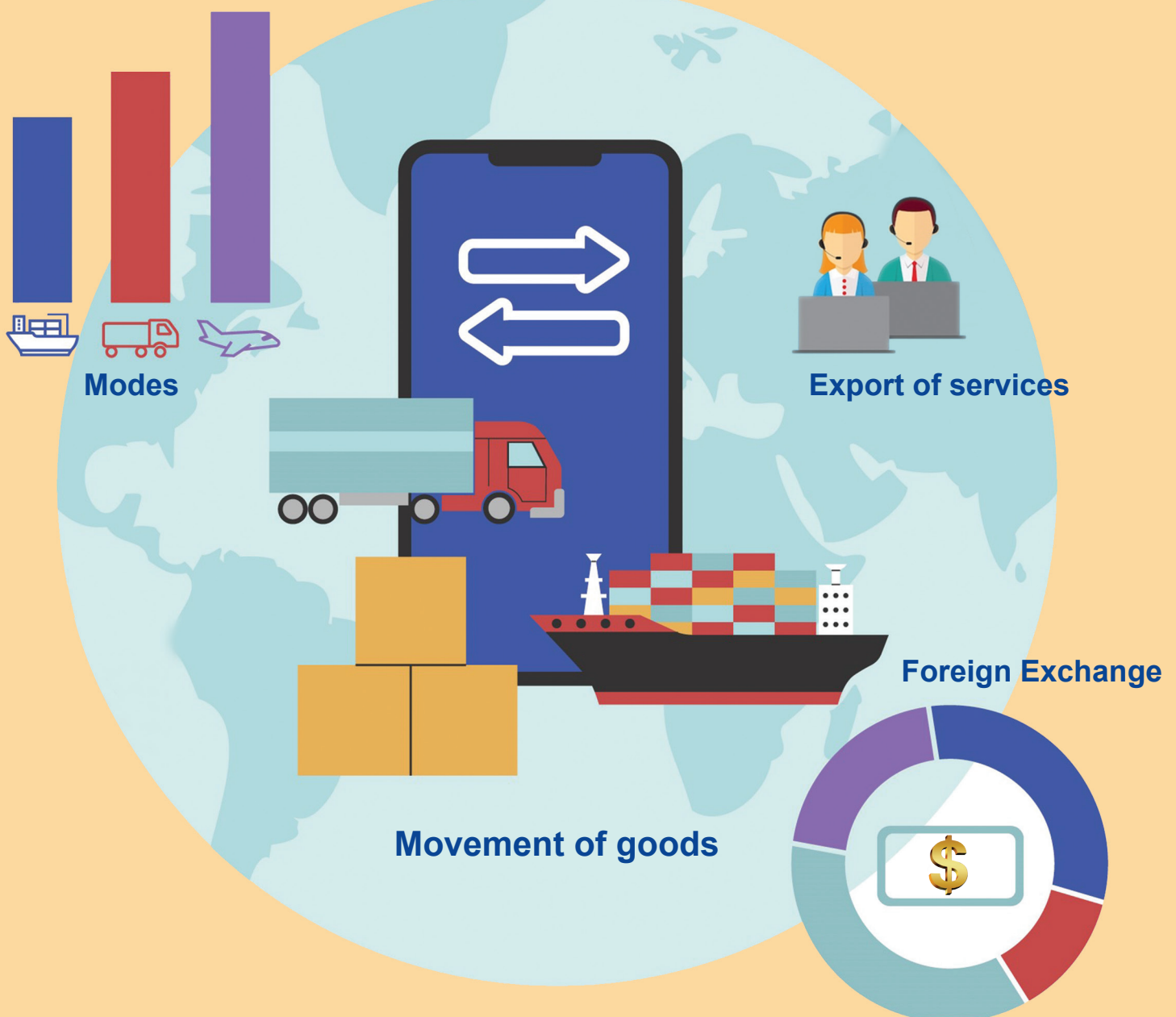
48<sup>th</sup> Edition

# ICAI-GST

**NEWSLETTER**  
October 2024

A Newsletter from The Institute of Chartered Accountants of India on GST

## Exports under GST



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## Invitation to write articles on GST

Chartered Accountants and other experts, with academic passion and flair for writing are invited to share their expertise on GST through ICAI-GST Newsletter. The article may be on any topic related to GST Law. While submitting the articles, please keep the following aspects in mind:

- 1) Article should be of 2000-2500 words.
- 2) An executive summary of about 100 words may accompany the article.
- 3) It should be original and not published/should not have been sent for publishing anywhere else.
- 4) Copyright of the selected article shall vest with the ICAI.

Please send editable soft copy of the article at [gst@icai.in](mailto:gst@icai.in).

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# President's Communication



## Dear Professional Colleagues,

With immense pleasure, I extend my warm greetings to all the dedicated professionals, taxpayers and stakeholders of the Goods and Services Tax (GST) ecosystem.

The GST collections for October 2024 reached ₹ 1.87 lakh crores, marking the second-highest monthly collection since the introduction of GST in July 2017, following the record set in April 2024. Month-on-month, GST collections rose by 8.1% from the previous month, and they were up by 8.9% compared to October 2023, when collections totalled ₹ 1.72 lakh crores. This rise in revenue is primarily driven by increased consumption due to the festive season, which traditionally boosts demand across sectors. Furthermore, improved compliance measures and continued economic recovery have significantly contributed to stronger GST inflows. This uptick highlights the positive economic momentum and a robust revenue base, reinforcing the Government's fiscal position.

The Government remains committed to simplifying GST, as evidenced by the regular amendments in the law to achieve this goal. The 54<sup>th</sup> GST Council Meeting emphasized measures for trade facilitation and streamlining GST compliances. In pursuance of this meeting, various amendments have been made to address the challenges faced by taxpayers. One of the most debated issues concerning input tax credit (ITC) on demo vehicles has been settled vide one such circular. The circular has clarified that ITC on demo vehicles used by dealers is not blocked since they are used to promote sale of similar vehicles. This circular would go a long way in reducing tax costs for a key business expense in the automotive sector and also bringing to rest the ongoing litigation on the matter. Further, renting of any commercial immovable property by an unregistered person to registered person will fall under the reverse charge mechanism.

I am pleased to share with you the newly launched CA Connect Portal which is an indigenous system of listing of CA Firms / Individual CA Practitioners while ensuring strict adherence to ethical standards. It features a centralized search engine that allows clients to easily find Chartered Accountants based on their area of expertise. This initiative will now facilitate the taxpayers in effortlessly connecting with professionals across multiple locations having specialization in GST to manage their monthly compliances or for seeking advice on complex tax issues.

Wishing you positivity, success, and abundance in all that you do.

**CA. Ranjeet Kumar Agarwal**

President

The Institute of Chartered Accountants of India

# RECENT EVENTS



GST ki Pathshala- National Conference on GST at Delhi



Induction Training for Inspectors of GST on GST Audit Manual at NACIN, Shillong



Signing of MoU between ICAI and NACIN Zonal Campus, Kolkata, Bhubaneswar, Patna, and Shillong.



Training on GST for Audit-II Commissionerate, Kolkata



Training on GST for Audit Officers at NACIN Palasamudram, Andhra Pradesh



Training on GST for Inspectors at NACIN, Patna



Meeting with Commissioner of Taxes, Government of Assam



Signing of MoU between ICAI and NACIN, Chennai

# Chairman's Communication



Dear Member,

I am delighted to share with you the 48<sup>th</sup> edition of ICAI GST Newsletter with a hope that you are progressing well in your professional journey. I would like to bring to your attention the importance of promptly reviewing and reconciling input tax credit (ITC) for FY 2023-24 as the deadline for availing ITC for the FY 2023-24, which falls on November 30, 2024, is drawing near. Timely action can prevent any last-minute issues.

Pursuant to the 54<sup>th</sup> GST Council Meeting held on 9<sup>th</sup> September, 2024, various circulars have been issued to clarify doubts relating to availability of ITC on demo vehicles, place of supply of outbound advertising and data hosting services, regularization of IGST refund availed in contravention of rule 96(10) of CGST Rules, 2017, where the exporters had imported certain inputs without payment of IGST and compensation cess but subsequently has paid/willing to pay the same along with interest. Further, *Notification No. 17/2024-CT dated 27.09.2024* has been issued to notify the effective date of the amendments made by the Finance (No. 2) Act, 2024. Most of the amendments shall come into force from November 1, 2024, except a few like amnesty for availing input tax credit, amendments relating to constitution of Appellate Tribunal etc., which have become effective from 27<sup>th</sup> September, 2024.

Based on the recommendation made in the meeting, unregistered metal scarp dealers have been brought under reverse charge mechanism from October 10, 2024. However, such dealers will be required to obtain registration and pay tax under forward charge on crossing the turnover threshold for registration or on becoming liable to compulsory registration. This measure seems to have been taken to curb the evasion in this sector.

From 1<sup>st</sup> October, 2024, a new feature namely, Invoice Management System (IMS) has been implemented in GST portal where the invoices/records saved/filed by the supplier in GSTR-1/1A/IFF, can be accepted, rejected or kept pending by recipients in order to correctly avail ITC. This is an optional facility for the taxpayers to minimize errors in claiming ITC. IMS has been introduced with an objective to reduce notices issued due to ITC mismatches in returns.

The GST and Indirect Taxes Committee of ICAI has demonstrated a proactive approach by undertaking diverse initiatives and consistently conducting training programs for Government officers across different states. The Committee has organised Five-Day Induction Training on Audit and Financial Accounting Module for NACIN Chennai. Further, faculty support was extended for training programme on GST organised by NACIN Kolkata for Audit-II Commissionerate, Four-Day Induction Training for Inspectors of GST at NACIN Shillong, Two-Day Training on GST in Real Estate Sector for NACIN Bhubaneswar, Training on GST for Inspectors at NACIN Patna and Training on GST for Audit Officers at NACIN Palasamudram, Andhra Pradesh.

We hope this edition brings you valuable insights and updates. Stay tuned for more news in our upcoming issues. As always, we welcome your feedback and suggestions on this Newsletter at [gst@icai.in](mailto:gst@icai.in).

**CA. Sushil Kumar Goyal**

Chairman

GST & Indirect Taxes Committee

The Institute of Chartered Accountants of India

# EXPORT OF SERVICES UNDER GST

## Background:

The journey of GST was started on July 01, 2017 and 17 major taxes had been subsumed under GST but still Basic Custom Duty, State Excise duty on alcoholic liquor for human consumption and petroleum products are still outside the preview of GST. The fundamental principle is to tax the value added at each stage of the business process, ensuring a comprehensive and continuous chain of input tax credits from each previous supplier to the final consumer. Ultimately, the tax burden is borne by the final consumer. In other words, GST paid on procurement of goods & services can be set off against tax payable on supply of goods & services.

GST is destination-based taxation. Central Govt. & the States Govt. including UTs have power to make the laws for GST by virtue of Constitution (101<sup>st</sup> Amendment) Act, 2016. However, only Central Govt. has exclusive power to make the laws on GST in course of inter-State trade or commerce.

When we talk about export then, one thing that comes to our mind is that export means only sending the goods and/ or services outside India but it's not that easy in case of services because there are so many conditions under GST and on fulfillment of those conditions, a transaction can be export of services.

If a transaction is to be called an export of service, then supplier can take the benefit of exports like claiming of refund of GST either with payment of IGST or without payment of IGST along with other benefit available under Customs law.

Since export is an inter-State transaction only Central Govt. has an exclusive power to make the laws relating to it. All the provisions for levy and collection of tax on inter-State supply of goods or services or both by the Central Government and for matters connected therewith or incidental thereto are governed by IGST Act, 2017.

Section 2(6) of IGST Act, 2017 that deals with definitions, "export of services" means

*the supply of any service when, —*

- (i) *the supplier of service is located in India;*
- (ii) *the recipient of service is located outside India;*
- (iii) *the place of supply of service is outside India;*
- (iv) *the payment for such service has been received by the supplier of service in convertible foreign exchange \*(or in Indian rupees wherever permitted by the Reserve Bank of India); and*
- (v) *the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8.*

*\*Inserted vide Integrated Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01-02-2019.*

Let's divide all these 5 points in 5 different discussion and discuss one by one: -

## A. Supplier of service is located In India: -

The definition of location of supplier of service will be mentioned in IGST Act, 2017 as mentioned below: -

As per section 2(15) of IGST Act, 2017, (15) "location of the supplier of services" means, -

- (a) *where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;*
- (b) *where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;*
- (c) *where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply; and*
- (d) *in absence of such places, the location of the usual place of residence of the supplier.*

### Analysis

1. If a person doing business from any State/UT for which he had obtained GST registration. In that case such location will be considered as location of supplier of service. Example— A Chartered Accountant practicing in Delhi, registered under GST, provides services to an entity located outside India. So, Delhi will be considered as location of supplier of services.
2. Further, section also specify that if a supplier of service providing services from any place other than any place for which he took the registration then, in that case that other location may also consider as location of supplier of service in India if that is a fixed establishment.

The meaning of fixed establishment is defined under section 2(7) of IGST Act 2017.

*"Fixed Establishment" means a place (other than the registered place of business) which is characterized by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services or to receive and use services for its own needs;*

If any place having the feature of sufficient degree of permanence and suitable structure in terms of human and technical resources to supplying the services that may also considered as location of supplier of services. Example— A Chartered Accountant practicing in Delhi, who is registered under GST, provides services to an entity located at outside India. Although that Chartered Accountant also have one officer in Gurgaon (Haryana) and providing services from this location then in this case, the location of the supplier of services will be considered as Haryana (Gurgaon).

3. If services are supplied from more than one place like some services are from the place for which registration

have obtained and some services are from the fixed establishment then the location directly concerned with the service receiver will be considered as location of supplier of services. Example— A Chartered Accountant practicing in Delhi, who is registered under GST, provides services to an entity located outside India. Although the Chartered Accountant's primary services are delivered from Gurgaon, where he has a fixed establishment, the client places significant emphasis on the Gurgaon location. In this case, the location of the supplier of services will be considered as Haryana (Gurgaon).

4. This category is a residual category to determine the location of supplier of services. So, in that case his residence address will be considered as location of supplier of services. Example—A Chartered Accountant provides services to an entity located at outside India from his residence at Noida (Uttar Pradesh) although, he also has own office in Delhi. In this case, the location of the supplier of services will be considered as Uttar Pradesh (Noida).

#### **B. Recipient of service is located outside India: -**

As per section 2(14) of IGST Act 2017, "location of the recipient of services" means, -

- (a) *where a supply is received at a place of business for which the registration has been obtained, the location of such place of business;*
- (b) *where a supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;*
- (c) *where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and*
- (d) *in absence of such places, the location of the usual place of residence of the recipient.*

#### **Analysis**

Similarly, we can apply the same approach to determine the location of the recipient of services.

#### **Export of services – Location of supplier and location of recipient**

To qualify for the benefit of treating a service as an export of services, it's essential to understand the location of both the supplier and recipient. Specifically, the supplier's location must be in India, and the recipient's location must be outside India.

Therefore, it's crucial to refer to the definition of "India" as outlined in section 2(56) of the CGST Act, 2017.

*"India" means the territory of India as referred to in Article 1 of the Constitution, its territorial waters, seabed and sub-soil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime*

*Zones Act, 1976 (80 of 1976), and the air space above its territory and territorial waters.*

If an exporter is providing the services from India as he covered under section 2(15) of IGST Act, 2017 and providing the services to a recipient who is outside India as covered under section 2(14) of IGST Act, 2017 as discussed above. We can say out of 5 conditions, 2 conditions have been satisfied.

#### **C. Place of supply of services: -**

The provisions of place of supply of services are governed by section 12 and section 13 of the IGST Act, 2017, each applying under different circumstances.

In case of place of supply of services, section 12 applies when both the supplier and recipient are located within India and section 13 applies when either the supplier or recipient is located outside India. For a transaction to called export of services, supplier's location should be in India and the recipient's location should be in outside India.

This situation fulfils the provisions outlined in section 13 of the IGST Act, 2017 as in this case recipient is located outside India.

#### **Let's have a look on provision of section 13 of IGST Act 2017 in summarise way: -**

The provision of section 13 is divided into two parts. One is general provision and other is specific provisions.

1. **General Rule:** The place of supply, unless otherwise specified, is the location of the recipient. If the recipient's location is not available, it defaults to the supplier's location.
2. **Specific provisions** are as follows: -
  - Services related to goods & where physical presence is required: -
    - (i) If service is particularly related to goods where its physical presence is required, the place of supply is where the services are performed. If services are provided remotely via electronic means, it is where the goods are located at the time of supply of services.

However, this provision will not be applicable in case of services supplied in respect of goods which are temporarily imported into India for repairs etc. and are exported after such repairs etc. without being put to any use in India, other than that which is required for such repairs or treatment or process.

Example – If NRI purchase a laptop from India, then it needs some maintenance service and then NRI sent that laptop in India for repair, in that case place of supply will not be considered as India even if that service is rendered in India and here, general provisions will be applicable. So, place of supply will be location of recipient. Supplier of India can take the benefit of export of services.

- (ii) Services supplied to an individual, represented either as the recipient of services or a person acting on behalf of the recipient, which require the physical presence of the recipient or the person acting on his behalf, then the place of supply is where the services are performed.
- **Immovable Property:** Services related to immovable property, including accommodation and construction, have their place of supply where the property is located.
- **Events:** The place of supply for services supplied by way of admission to, or organisation of events (cultural, sporting, etc.) is the location where the event is held.
- **Multiple Locations:** If services are provided at multiple locations, including taxable territories, the place of supply is the location in the taxable territory.
- **Multi-State Services:** For services provided across multiple States or Union Territories, the place of supply is each respective location, apportioned as per the contract.
- **Location-Based Services:** The place of supply for the following is the supplier's location:
  - (i) services by banking companies, financial institutions, and NBFCs to account holders.
  - (ii) intermediary services.
  - (iii) services consisting of hiring of means of transport, including yachts but excluding aircraft and vessels, up to a period of one month.
- **Passenger Transportation:** The place of supply is where the passenger embarks on the conveyance for a continuous journey.
- **Onboard Services:** Where services are provided on board a conveyance during the course of passenger transport service, the place of supply is the first scheduled point of departure.
- **Online Information & Database Services:** The place of supply is the recipient's location, determined by specific criteria (e.g., billing address, IP address).
- **Government Powers:** To prevent double taxation or non-taxation or uniform application of rules, the Government shall have power to notify the place of supply based on the effective use and enjoyment of the service.

To determine whether a transaction qualifies as export of service, one should first identify the applicable entry for the transaction to ascertain its place of supply. In most cases, the place of supply is covered under general provisions, which is the location of the recipient.

For a service to qualify as an export, this location must be outside India. If the place of supply is determined to be outside India, then the third condition for export of services is also satisfied.

#### D. The payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India.

- The key challenge for taxpayers is confirming that payment has been received in convertible foreign exchange or Indian Rupees, wherever permitted by the Reserve Bank of India, as this is crucial for validating the export of services.
- As per master circular issued *Circular No. 125/44/2019-GST dated 18-11-2019* as amended from time to time mentioned that Bank Realization Certificates (BRC) or Foreign Inward Remittance Certificates (FIRC) in case of export of services will be required.

But technically, there is no document specifying the clarity of applicability of BRC/FIRC.

- Foreign Exchange Dealers' Association of India (FEDAI) plays a significant role in regulating and guiding India's foreign exchange market. FEDAI established in 1958 under the guidance of the Reserve Bank of India (RBI), is a self-regulatory organization responsible for setting rules and guidelines for authorized dealers (banks) involved in forex transactions.
- As per the special *circular SPL-04 dated 21<sup>st</sup> April 2016* and *SPL-09/2016 dated 8<sup>th</sup> June 2016* issued by inward remittances involving FDI/FII.

e-FIRC/ FIRC can be issued in case of receipt of export proceeds by a bank other than the one handling export documents. e-FIRC should be issued against a specific application by the exporter. Banks may levy charges for the issuance of e-FIRC, as per their policies. It should be addressed to the bank handling the shipping documents (export of goods).

However, it is silent about the issuance of e-FIRC in case of export of services.

- Further, FEDAI issued *Circular Letter No.16/2016 on October 17, 2016*, addressing FAQs on the enhanced Export Data Processing and Monitoring System (EDPMS) where banks need to report all inward remittances under EDPMS received against export of goods/software only but no discussion regarding other export of services.

However, via this circular, it clarified that inward remittance (IRM) reporting to EDPMS would be done by the bank, when the funds are credited to beneficiary exporter's account, either through NOSTRO, VOSTRO or RTGS/NEFT that will be for export of goods/software.

In this circular, it also clarified that e-FIRC is used to facilitate the adjustment of export documents handled by the one bank against the IRM reported by another bank. There is no need to issue the same in physical form. For all practical purposes, the IRM unique number is the only source to adjust export documents.



This IRM can be utilised by the bank against submission of export documents by the customer. The IRM can be utilised by various banks under the same number till the amount is exhausted.

- For IRM reporting under EDPMS, an Import Export Code (IEC) is mandatory. This means that if a supplier is exporting services, they must apply for an IEC to receive an e-FIRC; otherwise, the reporting cannot be done in EDPMS. However, under GST law including master circular issued for refund, there is no such requirement for an IEC to obtain an e-FIRC.
- There is no notified format available for FIRC/ e-FIRC/BRC.

So, there is no clarity about the issuance of BRC/ FIRC in case of export of services. In practical scenario, banks are issuing Foreign Inward Remittance Advise (FIRA) as it is not required to be reported in EDPMS but FIRA has all the particulars about the payment is received in convertible foreign currency.

- So, GST Authorities should also issue further clarifications on this matter, as large number of taxpayers are facing difficulties in claiming refunds under GST due to this requirement.
- With effect from 01.02.2019, Integrated Goods and Services Tax (Amendment) Act, 2018 there is amendment in said condition and words “or in Indian rupees wherever permitted by the Reserve Bank of India” are added.
- In reference to this point, CBIC via *Circular No. 202/14/2023-GST dt. 27-10-2023*, issued one clarification that if export proceeds are received in INR that will also acceptable but it should be from the Special Rupee Vostro Accounts of correspondent bank(s) of the partner trading country, opened by AD banks, subject to the conditions/ restrictions mentioned in Foreign Trade Policy, 2023 & extant RBI Circulars and without prejudice to the permissions / approvals, if any, required under any other law.

So, even if payments are received in INR, the scope for refund eligibility remains broad. We must consider the Foreign Trade Policy (FTP) 2023 and relevant RBI circulars, as they provide various relaxations.

Under these provisions, payments for exports can also be received in INR, provided certain conditions are met.

Therefore, merely stating that refunds are ineligible for payments not received in INR is incorrect. A thorough review of the applicable policies and circulars is necessary to determine eligibility.

#### **E. The supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8**

**Explanation 1 to Section 8 of IGST Act 2017 is as follows: -**

“For the purposes of this Act, *where a person has, —*

- an establishment in India and any other establishment outside India;*
- an establishment in a State or Union territory and any other establishment outside that State or Union territory; or*
- an establishment in a State or Union territory and any other establishment registered within that State or Union territory, then such establishments shall be treated as establishments of distinct persons.”*

#### **Analysis**

If a person has two establishments, one in India and the other outside India, they are considered distinct entities under GST. However, for the purpose of determining export of services, both establishments will be treated as a single entity and not as distinct persons.

This applies specifically in cases where a branch/head office/distinct person in India provide services to its head office/branch/distinct person located outside India. In such a scenario, the benefit of export of services will not be applicable.

If one is not covered by this explanation, then it can avail benefit of export of services.

#### **Conclusion**

While the GST framework requires payments in convertible foreign exchange or INR (as permitted by the RBI) to validate export refunds, the practical application is often more complex. Taxpayers must ensure their payment documentation complies with RBI and Foreign Trade Policy (FTP) regulations, and further clarification from GST authorities would be beneficial.

Taxpayers should follow the FTP and relevant RBI circulars which allow payments in INR under specific conditions, such as through Special Rupee Vostro Accounts.

One key challenge is the lack of clarity around documents like BRC/FIRC. In many cases, banks issue FIRA instead of FIRC, complicating the refund process for taxpayers.

To address this, exporters can seek confirmation from their bank, on official letterhead, stating that the remittance complies with RBI guidelines and that BRC/ FIRC is not applicable. This allows exporters to benefit from the relevant GST circular as discussed above. Alternatively, if the exporter holds an Import Export Code (IEC) and the bank provides an IRM number for the remittance, the exporter can use this IRM number to generate an e-FIRC through the DGFT portal.

To claim a transaction as an export of services, all the above conditions must be satisfied. Once these conditions are met, one can benefit from export-related advantages, such as GST refunds and other benefits specified under the FTP.

**Contributed by CA. Rishabh Aggarwal**

# GST UPDATES

## 1. Clarification in respect of advertising services provided to foreign clients

A foreign company or firm hires an advertising company/agency in India for advertisement of its goods or services and may enter into a comprehensive agreement with the advertising company/agency encompassing all the issues related to advertising services ranging from media planning, investment planning for the same, creating and designing content, strategizing for maximum customer reach, the identification of media owners, dealing with media owners, procuring media space, etc. for displaying/broadcasting/printing of advertisement including monitoring of the progress of the same. In such a case, the advertising agency provides a one stop solution to the client who outsources the entire activity to the agency.

In this scenario, media owners raise invoice to the advertising agency for inventory costs, which are then paid by the advertising agency. Subsequently, the advertising agency raises invoice to the foreign client for the rendered advertising services and receives the payments in foreign exchange from the foreign client.

### Issue 1- Whether the advertising company can be considered as an “intermediary” between the foreign client and the media owners as per section 2(13) of IGST Act?

The advertising agency, in this case, enters into two agreements-

- i) With the client located outside India for providing a one stop solution starting from designing the advertisement to its display in media as agreed to with the client. The advertising agency raises invoices to its foreign client for the above advertising services and the payments of the same is received from the foreign client in foreign exchange.
- ii) With the media company to procure media space for display of the advertisement and to monitor campaign progress based on data shared by media company. The media company bills the advertising agency and the payment for same is made by the advertising agency to the media company.

Thus, the agreement is in nature of two distinct principal-to-principal supplies and no agreement of supply of services exists between the media company and the foreign client. The advertising company is not acting as an agent but has been contracted by the client to procure and provide certain services. The advertising agency is providing the services to the client on its own account.

In view of above, it is clarified that the advertising company is involved in the main supply of advertising services, including resale of media space, to the foreign client on principal-to-principal basis as detailed above

and does not fulfil the criteria of “intermediary” under section 2(13) of the IGST Act. Thus, the same cannot be considered as “intermediary” in such a scenario. Accordingly, the place of supply in the instant matter cannot be linked with the location of supplier of services in terms of section 13(8)(b) of the IGST Act.

### Issue 2- Whether the representative of foreign client in India or the target audience of the advertisement in India can be considered as the “recipient” of the services being supplied by the advertising company under section 2(93) of CGST Act?

As per section 2(93)(a) of the CGST Act, the “recipient” of the services means the person who is liable to pay consideration where a consideration is payable for the supply of goods or services or both.

In this case, the foreign client is liable to pay the consideration to advertising company for the supply of advertising and not the consumers or the target audience that watches the advertisement in India. In this case, even if a representative of the said foreign client based in India, including a subsidiary or related person of the said foreign client, is interacting with the advertising company on behalf of the said foreign client, the said representative based in India cannot be considered as a recipient of the service, if the agreement is between the foreign client and the advertising company, the invoice is being issued for the said service by the advertising company to the foreign client and the payment for the said service is received by the advertising company directly from the said foreign client.

Therefore, in view of above, it is clarified that the recipient of the advertising services provided by the advertising company in such cases is the foreign client and not the Indian representative of the foreign client based in India or the target audience of the advertisements.

### Issue 3- Whether the advertising services provided by the advertising companies to foreign clients can be considered as performance-based services as per section 13(3) of the IGST Act?

In the instant matter, there does not appear to be any such involvement of goods which are required to be physically available with supplier of advertising services. Therefore, the provisions of section 13(3)(a) cannot be made applicable for determination of place of supply of advertising services.

In the present scenario, the supply of advertising services does not require physical presence of the recipient (foreign client or representative or a person acting on his behalf) with the advertising company for availing the said advertising services. Thus, the said supply of advertising services cannot be considered as being covered under section 13(3)(b) of the IGST Act for being considered as the services actually performed

in India in terms of the said section.

**Place of supply as per section 13(2) of IGST Act:**

The place of supply of the said advertising service being supplied by the advertising company to the foreign clients can only be determined as per the default provision, i.e., section 13(2) of IGST Act, i.e., the location of the recipient of the services. Since the recipient of the advertising services in such scenario is the foreign client, who is located outside India, the place of supply of the said services appears to be the location of the said foreign client i.e., outside India as per section 13(2) of IGST Act, and the said service can be considered to be export of services, subject to the fulfilment of conditions mentioned in section 2(6) of IGST Act.

**Place of supply as per section 13(8)(b) of IGST Act:**

There may be cases where the agreement/ contract for providing the media space and broadcast of the advertisement is directly between media owner and the foreign client. The media owner directly invoices the foreign client for providing the media space and broadcast of the advertisement and the foreign client remits the payment for the said services directly to the media owner. In such instances, the services of providing media space and broadcasting the advertisement are directly provided by the media owner to the foreign client. The advertising company is merely facilitating the provision of the said services of providing media space and broadcasting the advertisement between the foreign client and the media owner and does not provide the said services on its own account. The advertising company invoices the foreign client for the facilitation services provided by it.

Consequently, in such cases, the advertising company is an “intermediary” in accordance with Section 2(13) of the CGST Act, 2017, as elucidated in *Circular No. 159/15/2021-GST dt. 20.09.2021*, in respect of the said services of facilitating the foreign client and accordingly, the place of supply in respect of the said services provided by the advertising company to the foreign client is determinable as per section 13(8)(b) of IGST Act, i.e. the location of the supplier, i.e. the location of the advertising company.

*Circular No. 230/24/2024-GST dt. 10.09.2024*

**2. Clarification on availability of input tax credit in respect of demo vehicles**

The demo vehicles are the vehicles which the authorised dealers for sale of motor vehicles are required to maintain at their sales outlet as per dealership norms and are used for providing trial run and for demonstrating features of the vehicle to the potential buyers. These vehicles are purchased by the authorised dealers from the vehicle manufacturers against tax invoices and are typically reflected as capital assets in books of account of the authorized dealers. As per dealership norms, these vehicles may be required to be held by the authorized dealers as demo vehicle for certain mandatory period and may,

thereafter, be sold by the dealer at a written down value and applicable tax is payable at that point of time.

**A. Availability of input tax credit on demo vehicles, which are motor vehicles for transportation of passengers having approved seating capacity of not more than 13 persons (including the driver), in terms of section 17(5)(a) of CGST Act**

**Scenario when credit is available on Demo Vehicles:**

Demo vehicles are not covered in the exclusions specified in sub-clauses (B) and (C) of clause (a) of section 17(5) of CGST Act. The usage of the words “such motor vehicles” instead of “said motor vehicle”, in sub-clause (A) of the clause (a) of section 17(5) of CGST Act, implies that the intention of the lawmakers was not only to exclude from the blockage of input tax credit, the motor vehicle which is itself further supplied, but also to exclude from the blockage of input tax credit, the motor vehicle which is being used for the purpose of further supply of similar type of motor vehicles. Since demo vehicles promote sale of similar type of motor vehicles, they can be considered to be used by the dealer for making ‘further supply of such motor vehicles’. **Accordingly, input tax credit in respect of demo vehicles is not blocked under clause (a) of section 17(5) of CGST Act, as it is excluded from such blockage in terms of sub-clause (A) of the said clause.**

**Scenarios when credit is blocked on Demo Vehicles:**

- i. When motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver) are used by an authorized dealer for purposes other than for making further supply of such motor vehicles, say for transportation of its staff employees/ management etc., - Such motor vehicles cannot be said to be used for making ‘further supply of such motor vehicles’ and therefore, input tax credit in respect of such motor vehicles would not be excluded from blockage in terms of sub-clause (A) of clause (a) of section 17(5) of CGST Act.
- ii. When the authorized dealer merely acts as an agent or service provider to the vehicle manufacturer for providing marketing service, including providing facility of vehicle test drive to the potential customers of the vehicle on behalf of the manufacturer and is not directly involved in purchase and sale of the vehicles - In such a case, the authorized dealer is merely providing marketing and/or facilitation services to the vehicle manufacturer and is not making the supply of motor vehicles on his own account. Therefore, the said demo vehicle cannot be said to be used by the dealer for making further supply of such motor vehicles. Accordingly, in such cases, input tax credit in respect of such demo vehicle would not be excluded from blockage in terms of sub-clause (A) of clause (a) of section 17(5) of CGST Act and therefore, input tax credit on the same would not be available to the said dealer.

## **B. Availability of input tax credit on demo vehicles where such vehicles are capitalized in the books of account by the authorized dealers.**

Where Demo vehicles are capitalized in the books of accounts by the authorized dealer, the said vehicle falls in the definition of “capital goods” under section 2(19) of CGST Act. As per provision of section 16(1) of CGST Act, subject to such conditions and restrictions as may be prescribed, a recipient of goods is entitled to take input tax credit in respect of tax charged on the inward supply of any goods, which as per definition of “goods” under section 2(52) of CGST Act, includes even capital goods. Further, section 2(19) of CGST Act also recognizes that capital goods are used or intended to be used in the course or furtherance of business. Accordingly, availability of input tax credit on demo vehicles is not affected by way of capitalization of such vehicles in the books of account of the authorized dealers, subject to other provisions of the Act.

In case of capitalization of demo vehicles, availability of input tax credit would be subject to provisions of section 16(3) of CGST Act, which provides that where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed. Further, in case demo vehicle, which is capitalized, is subsequently sold by the authorized dealer, the authorized dealer shall have to pay an amount or tax as per provisions of section 18(6) of CGST Act read with rule 44(6) of the CGST Rules, 2017.

*Circular No. 231/25/2024-GST dt. 10.09.2024*

### **3. Clarification on place of supply of data hosting services provided by service providers located in India to cloud computing service providers located outside India**

**Issue 1 - Whether data hosting service provider qualifies as ‘Intermediary’ between the cloud computing service provider and their end customers/users/subscribers as per section 2(13) of the IGST Act and whether the services provided by data hosting service provider to cloud computing service providers are covered as intermediary services and whether the place of supply of the same is to be determined as per section 13(8)(b) of IGST Act.**

The cloud computing service providers generally enter into contract with data hosting service providers to use their data centres for hosting cloud computing services. Data hosting service provider either owns premises for data centre or operates data centre on leased premises, procures infrastructure and human resource, handles operations like infrastructure monitoring, IT management and equipment maintenance, etc. to provide the said supply of data hosting services to the cloud computing service providers. Importantly, the data hosting service providers do not deal with end

users/consumers of cloud computing services and may not even know about the end users.

There appears to be no contact between data hosting service provider and the end users/ consumers/ subscribers of the overseas cloud computing service provider. The data hosting service provider provides data hosting services to the cloud computing service provider on principal-to-principal basis on his own account and is not acting as a broker or agent for facilitating supply of service between cloud computing service providers and their end users/consumers.

It is clarified that in such a scenario, the services provided by data hosting service provider to its overseas cloud computing service providers cannot be considered as intermediary services and hence, the place of supply of the same cannot be determined as per section 13(8)(b) of IGST Act.

**Issue 2 - Whether the data hosting services are provided in relation to goods “made available” by recipient of services to service provider for supply of such services and whether the place of supply of the same is to be determined as per section 13(3)(a) of the IGST Act, 2017.**

Data hosting service provider, as an independent entity, is providing seamless data hosting services to the overseas cloud computing service providers, through the premises, hardware and personnel at the data centre which not only comprises of hardware but also other essential infrastructure (without which the hardware infrastructure cannot be utilized) like ventilation and cooling system, uninterrupted power supply, software, network connectivity, security protocols, etc. which are owned by the data hosting service providers and are independently handled, operated, monitored and maintained by them. These data hosting service providers are charging their clients (cloud computing service providers), the charges for the services being provided by them to these clients as consideration depending on the specific terms and conditions as per agreements between them. From the above, it is observed that the overseas cloud computing service providers cannot be considered to own the said infrastructure and make the same physically available to the data hosting service provider for supply of the said services.

In view of above, it is clarified that data hosting services provided by data hosting service provider to the said cloud computing service providers cannot be considered in relation to the goods “made available” by the said cloud computing service providers to the data hosting service provider in India and hence, the place of supply of the same cannot be determined under section 13(3)(a) of the IGST Act.

In some cases, some of the hardware required for data hosting service is provided by the recipient of the service, i.e., the cloud computing service provider to the data hosting service provider. Even in these cases, data hosting service provider handles all aspects of

data centre, like arranging for the premises, making available software and other hardware infrastructure, power, net connectivity, security, human resource, maintenance etc., for providing data hosting services to the cloud computing service provider. Accordingly, in such cases, though the data hosting services is being provided by the data hosting service provider inter-alia using the hardware made available by the cloud computing service provider, it cannot be said that data hosting service are being provided in relation to the said goods made available by the cloud computing service provider to them. Accordingly, even in these cases, place of supply cannot be determined under section 13(3)(a) of the IGST Act.

**Issue 3- Whether the data hosting services are provided directly in relation to “immovable property” and whether the place of supply of the same is to be determined as per section 13(4) of the IGST Act.**

Data hosting services are not passive supply of a service directly in respect of immovable property but are regarding supply of a comprehensive service related to data hosting which involves the supply of various services by the data hosting service provider like operating data centre, ensuring uninterrupted power supplies, backup generators, network connectivity, backup facility, firewall services, and monitoring and surveillance service for ensuring continuous operations of the servers and related hardware, etc. which are essential for cloud computing service provider to provide cloud computing services to the end users/customer/subscribers.

It is clarified that in such a scenario, the data hosting services cannot be considered as the services provided directly in relation to immovable property or physical premises and hence, the place of supply of such services cannot be determined under section 13(4) of IGST Act.

Further, the place of supply for the data hosting services provided by data hosting service provider located in India to overseas cloud computing service providers does not appear to fit into any of the specific provisions outlined in sections 13(3) to 13(13) of the IGST Act. Therefore, **the place of supply in such cases needs to be determined according to the default provision under section 13(2) of the IGST Act**, i.e. the location of the recipient of the services. Where the cloud computing service provider receiving the data hosting services are located outside India, the place of supply shall be outside India according to section 13(2) of the IGST Act.

Accordingly, supply of data hosting services being provided by a data hosting service provider located in India to an overseas cloud computing entity can be considered as export of services, subject to the fulfilment of the other conditions mentioned in section 2(6) of IGST Act.

*Circular No. 232/26/2024-GST dt. 10.09.2024*

#### 4. Clarification regarding regularization of refund of IGST availed in contravention of rule 96(10) of CGST Rules, 2017, in cases where the exporters had imported certain inputs without payment of integrated taxes and compensation cess

Sub-rule (10) of rule 96 of CGST Rules, 2017 provides for a bar on availment of the refund of integrated tax (IGST) paid on export of goods or services, if benefits of certain concessional/exemption notifications, as specified in the said sub-rule, have been availed on inputs/raw materials imported or procured domestically.

**Issue - Whether refund of integrated tax paid on exports of goods by a registered person can be regularized in a case where the registered person had initially imported inputs without payment of integrated tax and compensation cess, by availing the benefits under Notification No. 78/2017-Customs dt. 13.10.2017 or Notification No. 79/2017-Customs dt. 13.10.2017, but subsequently, at a later date, the said person has either paid the IGST and compensation cess, along with interest, on such imported inputs or is now willing to pay such IGST and compensation cess, along with interest?**

Vide Notification No. 16/2020-CT dt. 23.03.2020, an Explanation was inserted in sub-rule (10) of rule 96 of CGST Rules retrospectively with effect from 23.10.2017, which reads as follows:

*“Explanation. - For the purpose of this sub-rule, the benefit of the notifications mentioned therein shall not be considered to have been availed only where the registered person has paid Integrated Goods and Services Tax and Compensation Cess on inputs and has availed exemption of only Basic Customs Duty (BCD) under the said notifications.”*

Extension of logic given in the said Explanation may lead to a view that in cases where inputs were initially imported without payment of integrated tax and compensation cess but subsequently, IGST and compensation cess on such imported inputs is paid at a later date, along with interest, then in such cases, it can be considered that the benefits of notifications mentioned in clause (b) of sub-rule (10) of rule 96 of CGST Rules have not been availed for the purpose of said sub-rule. Accordingly, refund of IGST claimed on exports made with payment of Integrated tax in such cases may not be considered to be in contravention of provisions of sub-rule (10) of rule 96 of CGST Rules.

In view of the above, it has been clarified that where the inputs were initially imported without payment of integrated tax and compensation cess by availing benefits under Notification No. 78/2017-Customs dt. 13.10.2017 or Notification No. 79/2017-Customs dt. 13.10.2017, but subsequently, IGST and compensation cess on such imported inputs are paid at a later date, along with interest, and the Bill of Entry in respect of the import of the said inputs got reassessed through the jurisdictional Customs authorities to this effect, then the

IGST, paid on exports of goods, refunded to the said exporter shall not be considered to be in contravention of provisions of sub-rule (10) of rule 96 of CGST Rules.

*Circular No. 233/27/2024-GST dt. 10.09.2024*

#### **5. Amendments made vide the Finance (No.2) Act, 2024 notified**

The amendments made in CGST Act, 2017 vide Section No. 118, 142, 148, 150 of Finance (No.2) Act, 2024 have become effective from 27<sup>th</sup> September, 2024 and all the remaining amendments made in the CGST Act, 2017 shall become effective from 1<sup>st</sup> November, 2024.

The amendments made in IGST Act, 2017 vide Section No. 151 to 154 of Finance (No.2) Act, 2024 shall become effective from 1<sup>st</sup> November, 2024.

The amendments made in UTGST Act, 2017 vide Section No. 155 and 156 of Finance (No.2) Act, 2024 shall become effective from 1<sup>st</sup> November, 2024.

The amendments made in GST (Compensation to States) Act, 2017 vide Section No. 157 shall become effective from 1<sup>st</sup> November, 2024.

#### **6. Principal Bench of GST Appellate Tribunal notified to hear cases of anti-profiteering**

Exercising the powers conferred under section 171(2) read with section 109(1) & 2<sup>nd</sup> proviso to the said section of the CGST Act, 2017, the Central Government has empowered the Principal Bench of the Appellate Tribunal to hear cases of Anti-profiteering and 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 that registered person.

This notification has become effective from 1<sup>st</sup> October, 2024.

*Notification No. 18/2024-CT dated 30.09.2024*

#### **7. Sunset date for Anti-profiteering**

Exercising the power under proviso to section 171(2) of the CGST Act, 2017, the Central Government has appointed 1<sup>st</sup> April, 2025 as the date from which the Anti-Profiteering Authority shall not accept any request for examination as to 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 that registered person.

*Notification No. 19/2024-CT dated 30.09.2024*

#### **8. Changes in GST rates for goods – Amendments in Notification No. 1/2017-CT(R) dated 28.06.2017**

(a) The following items shall attract GST rate of 5% (CGST + SGST):

- Trastuzumab Deruxtecan
- Osimertinib
- Durvalumab

(b) Rate for extruded or expanded products, savoury or salted (other than un-fried or un-cooked snack pellets, by whatever name called, manufactured through process of extrusion) has been reduced from 18% to 12% (CGST + SGST). Un-fried or un-cooked snack pellets, by whatever name called, manufactured through the process of extrusion attracts 5% (CGST + SGST) rate.

(c) Rate of seats of a kind used for motor vehicles has been increased from 18% to 28% (CGST + SGST). This uniform rate of 28% will be applicable prospectively for seats of motor cars in order to bring parity with seats of motorcycles which already attract a GST rate of 28%.

Parallel amendments have been made in *Notification Nos. 1/2017 UTT(R) dt. 28.06.2017 & 1/2017 IT(R) dt. 28.06.2017*.

All the above amendments shall be effective from 10<sup>th</sup> October, 2024.

*Notification No. 05/2024 CT(R) dt. 08.10.2024, Notification No. 05/2024 UTT(R) dt. 08.10.2024 & Notification No. 05/2024 IT(R) dt. 08.10.2024*

#### **9. Amendment in reverse charge for goods - Notification No. 4/2017-CT(R) dt. 28.06.2017**

With effect from 10<sup>th</sup> October, 2024, tax on supply of metal scrap by unregistered person to registered person shall be payable under reverse charge.

Parallel amendment has been made in *Notification Nos. 4/2017 UTT(R) dt. 28.06.2017 & 4/2017 IT(R) dt. 28.06.2017*.

*Notification No. 06/2024-CT(R) dt. 08.10.2024, Notification No. 06/2024-UTT(R) dt. 08.10.2024 & Notification No. 06/2024-IT(R) dt. 08.10.2024*

#### **10. Changes in GST rates for services- Notification No. 11/2017-CT(R) dt. 28.06.2017**

With effect from 10<sup>th</sup> October, 2024, rate of GST on transport of passengers, with or without accompanied baggage, by air, in a helicopter on seat share basis has been reduced from 18% to 5% (CGST + SGST) provided input tax credit on goods used in supplying the service has not been taken.

Parallel amendment has been made in *Notification Nos. 11/2017 UTT(R) dt. 28.06.2017 & 8/2017 IT(R) dt. 28.06.2017*.

*Notification No. 07/2024-CT(R) dt. 08.10.2024, Notification No. 07/2024-UTT(R) dt. 08.10.2024 & Notification No. 07/2024-IT(R) dt. 08.10.2024*

#### **11. Amendments in exemptions for services - Notification No. 12/2017-CT(R) dt. 28.06.2017**

(1) Following services have been exempted with effect from 10<sup>th</sup> October, 2024:

- (a) Supply of services by way of providing metering equipment on rent, testing for meters/transformers/capacitors, application fees for

providing electricity connection, releasing electricity connection, shifting of meters/service lines, issuing duplicate bills etc. which are incidental, ancillary to the supply of transmission and distribution of electricity by transmission and distribution utilities to their consumers.

(b) Supply of research and development services against consideration received in the form of grants supplied by –

- A Government Entity, or
- A research association, university, college or other institution, notified under clauses (ii) or (iii) of section 35(1) of Income Tax Act, 1961 provided that the same are so notified at the time of supply of such service.

(c) Services of affiliation provided by a Central or State Educational board or Council or any other similar body, by whatever name called, to a school established, owned or controlled by a Central Government, State Government, Union Territory, local authority, governmental authority or Government entity.

(2) With effect from 10<sup>th</sup> October, 2024, entry no. 69 has been substituted as under:

Any services provided by –

- (a) the National Skill Development Corporation set up by the Government of India;
- (b) the National Council for Vocational Education and Training;
- (c) an Awarding Body recognized by the National Council for Vocational Education and Training;
- (d) an Assessment Agency recognized by the National Council for Vocational Education and Training;
- (e) a Training Body accredited with an Awarding Body that is recognized by the National Council for Vocational Education and Training,

in relation to-

- (i) the National Skill Development Programme or any other scheme implemented by the National Skill Development Corporation; or
- (ii) a vocational skill development course under the National Skill Certification and Monetary Reward Scheme; or
- (iii) any National Skill Qualification Framework aligned qualification or skill in respect of which the National Council for Vocational Education and Training has approved a qualification package.

(3) With effect from 10<sup>th</sup> October, 2024, in entry no. 71, 'National Council for Vocational Training' has been substituted with 'National Council for Vocational Education and Training'.

(4) With effect from 10<sup>th</sup> October, 2024, the definition of "approved vocational education course" has been amended to substitute 'National Council for Vocational Training' with 'National Council for Vocational Education and Training'.

Parallel amendments have been made in *Notification No. 12/2017 UTT(R) dt. 28.06.2017*.

*Notification No. 08/2024-CT(R) dt. 08.10.2024, Notification No. 08/2024-UTT(R) dt. 08.10.2024 & Notification No. 08/2024-IT(R) dt. 08.10.2024*

### **12. Amendment in IGST exemptions for services - Notification No. 09/2017-IT(R) dt. 28.06.2017**

With effect from 10<sup>th</sup> October, 2024, import of services by an establishment of a foreign company in India, which is an airline company, from a related person or from any of its other establishments outside India, when made without consideration has been exempted from GST subject to the following conditions:

(a) GST at applicable rates is paid by the establishment of the foreign airline company in India on transport of goods and passengers as may be applicable.

(b) Ministry of Civil Aviation certifies that the establishment of the foreign company in India is that of an airline company which has been designated by the foreign Government under the applicable bilateral air services agreement with India.

(c) Ministry of Civil Aviation certifies that on a reciprocal basis, designated Indian airlines are not subject to levy of similar taxes by whatever name called for the same services appearing under the entry, by the Government of the country designating the foreign airline company.

Here, foreign company shall have the same meaning as assigned to it in section 2(42) of the Companies Act, 2013.

Additionally, amendments parallel to the ones made in *Notification No. 12/2017-CT(R)* as detailed in point 4 above, have also been made in *Notification No. 9/2017-IT(R) dt. 28.06.2017*.

*Notification No. 08/2024-IT(R) dt. 08.10.2024*

### **13. Amendment in reverse charge for services - Notification No. 13/2017-CT(R) dt. 28.06.2017**

With effect from 10<sup>th</sup> October 2024, any property rented out by an unregistered person to registered person for commercial use will fall under the reverse charge mechanism, obligating the registered person to pay the applicable GST.

Parallel amendment has been made in *Notification Nos. 13/2017-UTT(R) dt. 28.06.2017 & 10/2017-IT(R) dt. 28.06.2017*.

*Notification No. 09/2024-CT(R) dt. 08.10.2024, Notification No. 09/2024-UTT(R) dt. 08.10.2024 & Notification No. 09/2024-IT(R) dt. 08.10.2024*

## 14. Amendments in CGST Rules, 2017

### (a) Amendment in Rule 36 - Documentary requirements and conditions for claiming input tax credit

Sub-rule (3) of rule 36 lays down that no input tax credit shall be availed by the registered person where tax has been paid in pursuance of any order where demand has been confirmed on account of fraud, wilful misstatement, or suppression of facts. Sub-rule (3) has been amended to specify that said order shall be such where demand has been confirmed on account of fraud, wilful misstatement, or suppression of facts under section 74.

*(Effective from 08.10.2024)*

### (b) Amendment in Rule 46 - Tax invoice

Second proviso to rule 46 lays down that where an invoice is required to be issued under section 31(3)(f) of the CGST Act, 2017, a registered person may issue a consolidated invoice at the end of a month for supplies covered under section 9(4) of the CGST Act, 2017, the aggregate value of such supplies exceeds ₹ 5,000 in a day from any or all the suppliers.

The said second proviso shall be omitted implying thereby that recipients notified under section 9(4) will no longer be able to issue consolidated invoice.

*(To be Effective from 01.11.2024)*

### (c) Insertion of Rule 47A-Time limit for issuing tax invoice in cases where recipient is required to issue invoice

The Finance (No. 2) Act, 2024 had amended section 31(3)(f) of the CGST Act, 2017 to incorporate an enabling provision for prescribing the time period for issuance of invoice by the recipient in case of reverse charge supplies.

Consequently, new rule 47A has been inserted to provide time limit for issuing tax invoice under section 31(3)(f). The new rule lays down that a registered person who is liable to pay tax under reverse charge as per sections 9(3) and 9(4) of the CGST Act, 2017, shall issue tax invoice within a period of 30 days from the date of receipt of the supply of goods or/and services from unregistered persons.

*(To be Effective from 01.11.2024)*

### (d) Amendment in Rule 66 - Form and manner of submission of return by a person required to deduct tax at source

The (Finance No. 2) Act, 2024 had substituted section 39(3) of the CGST Act, 2017 to mandate the electronic furnishing of return for each month by the registered person required to deduct tax at source, irrespective of whether any deductions have been made in the said month or not. Further, the Government was empowered to prescribe by rules, the form, manner and the time within which such return shall be filed.

Accordingly, sub-rule (1) of rule 66 has been amended to provide that every registered person required to deduct tax at source shall furnish return in Form GSTR-7 on or before the 10<sup>th</sup> day of the month succeeding the calendar month.

*(To be Effective from 01.11.2024)*

### (e) Amendment in Rule 89 - Application for refund of tax, interest, penalty, fees or any other amount

Sub-rules (4A) and (4B) of rule 89 have been omitted. Consequently, reference of these sub-rules in clauses (B), (C) and (E) of sub-rule (4) and in explanation to sub-rule (5) have also been omitted.

*(Effective from 08.10.2024)*

### (f) Amendment in Rule 96 - Refund of integrated tax paid on goods or services exported out of India

Sub-rule (10) of rule 96 provides for a bar on availment of the refund of IGST paid on export of goods or services, if benefits of certain concessional/exemption notifications, as specified in the said sub-rule, have been availed on inputs/raw materials imported or procured domestically.

Sub-rule (10) of rule 96 has now been omitted. Accordingly, amendment has also been made in rule 86(4B)(b).

*(Effective from 08.10.2024)*

### (g) Insertion of Rule 164 - Procedure and conditions for closure of proceedings under section 128A in respect of demands issued under section 73

The Finance (No. 2) Act, 2024 had inserted a new section 128A in the CGST Act, 2017 to provide for conditional waiver of interest and/or penalty in respect of demand notices issued under section 73 of the CGST Act, 2017 for the Financial Years 2017-18, 2018-19, 2019-20 if full tax liability is paid before a date to be notified. A new rule 164 has been inserted to provide the procedure and conditions for closure of proceedings under section 128A in respect of demands issued under section 73. Some salient points of the rule are given hereunder:

- ✓ A person eligible for waiver of interest/ penalty in relation to a notice/statement under section 128A(1)(a) can file an application in FORM GST SPL-01 electronically. Details of the notice and payments made through FORM GST DRC-03 must be provided.
- ✓ For orders under section 128A(1)(b) or (c), the application must be filed in FORM GST SPL-02 electronically, providing details of the order and payments made. Payments must be made by crediting the Electronic Liability Register. If payment was made through FORM GST DRC-03, a separate application in FORM GST DRC-03A is required to transfer the amount



to the Electronic Liability Register before filing FORM GST SPL-02.

- ✓ If the demand includes tax due to erroneous refund or relates to multiple periods, an application can only be filed after full payment of the demanded tax. The amount payable under this rule is the balance tax payable after deducting amounts as per section 16(5) or 16(6) from the total demanded tax.
- ✓ Applications for waiver must be filed within three months from the date notified under section 128A(1), with a six-month window for some specific cases involving re-determined tax amounts.
- ✓ Application must be accompanied by evidence showing withdrawal of any appeal/writ petition. If the withdrawal order has not been issued, the application for withdrawal must be submitted, and the order must be uploaded within one month of issuance.
- ✓ Proper officers will review the applications and issue an order either accepting or rejecting the request. If the proper officer is of the view that the applicant is not eligible for a waiver, he will issue a notice in FORM GST SPL-03 within three months. The applicant can respond via FORM GST SPL-04 within one month.
- ✓ If the officer accepts the application, an order is issued in FORM GST SPL-05 concluding the proceedings. If rejected, an order is issued in FORM GST SPL-07. If the proper officer fails to issue an order within the prescribed time, the application will be deemed approved.
- ✓ If no appeal is filed against a rejection, the original withdrawn appeal is restored. If an appeal is filed and upheld, the waiver is granted through FORM GST SPL-06. If the rejection is confirmed, the original appeal is restored. Failure to pay additional taxes under section 128A within the given time will make the waiver granted under FORM GST SPL-05/06 void.

#### (h) Amendment in various rules due to insertion of new section 74A

The Finance (No. 2) Act, 2024 had inserted a new section 74A in the CGST Act, 2017 to provide for determination of tax not paid/short paid/erroneously refunded or ITC wrongly availed/ utilised for both fraudulent and non-fraudulent reasons pertaining to the Financial Year 2024-25 onwards. The new section shall become effective from 01.11.2024. Amendments have been made in rules 88B, 88D, 96B, 121, 142 to incorporate a reference to the new section 74A.

*(To be Effective from 01.11.2024)*

#### (i) Amendments in various forms

Amendments have been made in various forms as specified below-

- a) FORM GST REG-20 has been substituted with a new form.
- b) In FORM GST REG-31, a paragraph has been inserted to provide for suspension of registration due to violations of Rule 10A/ 21.
- c) FORM GSTR-9 has been amended to reconcile the input tax credit as per FORM GSTR-3B and FORM GSTR-2B instead of FORM GSTR-2A.
- d) FORM GST APL-01 and FORM GST APL-05 will be amended w.e.f. 01.11.2024 to provide for the reduced pre-deposit.
- e) FORM INS-01 has been amended to provide for the sections of Bharatiya Nyaya Sanhita, 2023 in place of Indian Penal Code.
- f) FORM DRC-01A will be amended w.e.f. 01.11.2024 to incorporate the reference to new section 74A.
- g) Following new forms will be introduced w.e.f. 01.11.2024 in view of insertion of rule 164:

**FORM GST SPL - 01:** Application for waiver of interest or penalty or both under section 128A in respect of a notice or a statement mentioned in clause (a) of sub-section (1) of the said section.

**FORM GST SPL - 02:** Application for waiver of interest or penalty or both under section 128A, in respect of an order mentioned in clause (b) or clause (c) of sub-section (1) of the said section.

**FORM GST SPL - 03:** Notice in respect to an application filed u/s 128A.

**FORM GST SPL - 04:** Reply to notice issued under rule 164(8).

**FORM GST SPL- 05:** Order by Proper Officer for conclusion of proceedings as per section 128A.

**FORM GST SPL - 06:** Order by Appellate Authority for conclusion of proceedings as per section 128A.

**FORM GST SPL - 07:** Order for Rejection of Application submitted under section 128A.

**FORM GST SPL - 08:** Undertaking submitted under rule 164(15)(b)(ii).

*Notification No. 20/2024 – CT dt. 08.10.2024*

#### 15.Date for payment of tax under section 128A(1) of CGST Act, 2017 notified

The following dates have been notified for the payment of tax payable as per the notice, or statement, or the order referred to in clause (a) or clause (b) or clause (c) of section 128A of the CGST Act, 2017 by different class of registered person, as under:

S. No.	Class of registered person	Date of payment for for waiver of interest, or/and penalty under section 128A
1.	Registered persons to whom a notice or statement or order, referred to in clause (a) or clause (b) or clause (c) of section 128A, has been issued	31.03.2025
2.	Registered persons to whom a notice has been issued under section 74(1), in respect of the period referred to in section 128A(1), and an order is passed or required to be passed by the proper officer in pursuance of the direction of the Appellate Authority, or Appellate Tribunal, or a court, in accordance with the provisions of section 75(2), for determination of the tax payable by such person, deeming as if the notice were issued under section 73(1) of the said Act.	Date ending on completion of six months from the date of issuance of the order by the proper officer re-determining tax under section 73 of the said Act.

This notification shall come into force from 01.11.2024.

*Notification No. 21/2024-CT dt. 08.10.2024*

#### 16. Special procedure for rectification of demand orders issued for contravention of section 16(4) of the CGST Act, 2017

A special procedure has been provided for rectification of orders issued under sections 73, 74, 107, 108 of the CGST Act, 2017 confirming demand for wrong availment of input tax credit (ITC) due to contravention of section 16(4), but where such ITC is now available under sections 16(5) or 16(6), and where appeal against the said order has not been filed.

The person against whom such orders have been issued shall file a rectification application therefore on the portal within 6 months from the date of issuance of notification. Along with the application, information as given in the proforma in Annexure A of *Notification No. 22/2024-CT dt. 08.10.2024* shall also be uploaded.

The proper officer for carrying out rectification of the said order shall be the authority who had issued such order. The said authority shall take a decision on the said application and issue the rectified order, as far as possible, within a period of 3 months from the date of the said application in FORM GST DRC-08 (when order was issued under sections 73/74) or FORM GST APL-04 (when order was issued under sections 107/108).

Where such rectification adversely affects the said person, the principles of natural justice shall be followed by the authority carrying out such rectification.

*Notification No. 22/2024-CT dt. 08.10.2024*

#### 17. Waiver of late fee for delayed filing of Form GSTR-7

*Notification No. 22/2021 CT dt. 01.06.2021* providing the waiver of late fee for delay in filing of Form GSTR-7 has been superseded by *Notification No. 23/2024-CT dt. 08.10.2024*. It has now been provided that the total amount of late fee payable for failure to file the return in FORM GSTR-7 for a month by the due date shall be waived if the total CGST deducted at source in the said month is nil.

The late fee for delayed filing of the return in FORM GSTR-7 for the month of June, 2021 onwards, by the due date continues to be ₹ 50 per day [₹ 25 for CGST & ₹ 25 for SGST] for the period of default. However, the maximum late fee is restricted to ₹ 2,000/- [₹ 1000 for CGST & ₹ 1000 for SGST].

This notification shall be effective from 01.11.2024.

*Notification No. 23/2024-CT dt. 08.10.2024*

#### 18. Mandatory registration for supplier of Metal Scrap

Persons who are only engaged in making supplies of taxable goods or services or both, the total tax on which is liable to be paid on reverse charge basis by the recipient of such goods or services or both under section 9(3) are exempt from obtaining registration under the CGST Act, 2017 vide *Notification No. 5/2017-CT dt. 19.06.2017*.

*Notification No. 5/2017-CT dt. 19.06.2017* has been amended to provide that the above exemption shall not be available to any person engaged in the supply of metal scrap, falling under Chapters 72 to 81 in the first schedule to the Customs Tariff Act, 1975.

This notification shall come into force w.e.f. 10.10.2024.

*Notification No. 24/2024-CT dt. 09.10.2024*

#### 19. TDS on supply of metal scrap

*Notification No. 50/2018-CT dt. 13.09.2018* has been amended to provide that any registered person receiving supplies of metal scrap from other registered person shall deduct tax at source, as required under section 51 of the CGST Act.

It has been further provided that TDS shall be deducted by the recipient on supply of metal scrap even when it is supplied between persons mentioned in clause (a), (b), (c) and (d) of section 51(1).

The above amendment shall come into force w.e.f. 10.10.2024.

*Notification No. 25/2024-CT dt. 09.10.2024*

## 20. Clarifications regarding the applicability of GST on certain services

### i. Affiliation service provided by universities to colleges

The activity of affiliation is to monitor and ensure whether the institution possesses the required infrastructure in terms of space, technical prowess, financial liquidity, faculty strength, etc. and is thereby eligible for the privileges to conduct the course/program of study or the degree/title extended by the University to the students enrolled in such institutions. The affiliation services provided by the universities to colleges are not by way of services related to the admission of students to such colleges or the conduct of examinations by such colleges.

Thus, such affiliation services are not covered within the ambit of exemptions provided to educational institutions in the *Notification No.12/2017-CT(R) dated 28.06.2017* and attracts GST @ 18%.

### ii. Affiliation service provided by Central and State educational boards or Councils, or other similar bodies to schools

Service of affiliation, provided to schools by Central or State educational boards or councils or other similar bodies, by whatever name called, are taxable. However, affiliation service provided by Central and State educational boards or Councils, or other similar bodies, by whatever name called, to Government schools i.e., schools established owned or controlled by the Central Government, State Government, Union Territory, local authority, Governmental authority or Government entity has been exempted w.e.f. 10.10.2024 vide *Notification No.08/2024-Central Tax (Rate) dated 08.10.2024*.

The payment of GST on the services of affiliation provided by Central and State educational boards or Councils, or other similar bodies, to all schools is regularized on 'as is where is' basis for the period from 01.07.2017 to 17.06.2021 which is the date of issuance of *Circular No.151/07/2021-GST* wherein accreditation services of boards are clarified to be taxable at the rate of 18%.

### iii. Directorate General of Civil Aviation (DGCA) approved flying training courses conducted by Flying Training Organizations (FTOs) approved by the DGCA

It has been clarified that the approved flying training courses conducted by FTOs approved by DGCA, wherein the DGCA mandates the requirement of a completion certificate, are covered under Sl.No.66 of *Notification No.12/2017-Central Tax (Rate) dt. 28.06.2024* and are hence, exempt.

### iv. Regularizing payment of GST on transport of passengers by helicopter

Payment of GST on transportation of passengers, with or without accompanied baggage, by air or in helicopter, on seat share basis has been regularized on 'as is where is' basis for the period from 01.07.2017 to 09.10.2024. From 10.10.2024, GST rate of 5% has been notified on such services vide *Notification No.07/2024-Central Tax (Rate) dated 08.10.2024*.

Further, the transport of passengers by helicopter on other than seat-share basis i.e., for charter operations will continue to attract GST at the rate of 18%.

### v. Whether incidental/ancillary services such as loading/unloading, packing, unpacking, transshipment, temporary warehousing etc., provided in relation to transportation of goods by road is to be treated as part of Goods Transport Agency service, being composite supply, or are these services to be treated as separate independent supplies?

It has been clarified that ancillary or incidental services provided by GTA in the course of transportation of goods by road such as loading/unloading, packing/unpacking transshipment, temporary warehousing etc. will be treated as composite supply of transport of goods. The method of invoicing used by GTAs will not generally alter the nature of the composite supply of service. However, if such services are not provided in the course of transportation of goods and are invoiced separately, then these services will not be treated as composite supply of transport of goods.

### vi. Regularizing payment of GST on import of services by an establishment of a foreign airlines company from a related person or any of its establishment outside India, when made without consideration

The payment of GST on import of services by an establishment of a foreign airlines company from a related person or any of its establishment outside India when made without consideration is hereby regularized for the period from 01.07.2017 to 09.10.2024 on 'as is where is' basis. From 10.10.2024, such services have been exempted vide *Notification No.08/2024-IT (R) dt. 08.10.2024*.

### vii. Applicability of GST on Preferential Location Charges (PLC) collected along with consideration for sale/transfer of residential/commercial properties

Location charges or Preferential Location Charges (PLC) paid along with the consideration for the construction services of residential/commercial/ industrial complex forms part of composite supply where supply of construction services is the main service and PLC is naturally bundled with it and are eligible for same tax treatment as the main supply of construction service.

### viii. Regularizing payment of GST on certain support services provided by an electricity transmission or distribution utility

The payment of GST on services provided by an electricity transmission or distribution utility which are incidental or ancillary to the supply of transmission and distribution of electricity by such utility, such as providing metering equipment on rent, testing for meters/transformers/capacitors, etc., releasing electricity connection, shifting of meters/service lines, issuing duplicate bills etc., have been regularized on 'as is where is' basis from 01.07.2017 to 09.10.2024. From 10.10.2024, such services have been exempted vide *Notification No. 08/2024-CT (R) dt. 08.10.2024*.

### ix. Regularizing payment of GST on services of film distributors or sub-distributors who act on a principal basis to acquire and distribute films

The payment of GST on transaction between distributors and exhibitors wherein the distributors grant the theatrical rights to the exhibition centers is regularized for the period from 01.07.2017 to 30.09.2021 on 'as is where is' basis.

*Circular No. 234/28/2024-GST dt. 11.10.2024*

# GST QUIZ

- Mr. A, a dealer in Toyota cars has purchased a demo car for providing test drive to the interested customers. Whether Mr.A is eligible to claim input tax credit on the said demo car?**
  - Yes, as he is engaged in further supply of such motor vehicle.
  - No, as he is not engaged in further supply of said motor vehicle.
  - No, as he is not engaged in further supply of such motor vehicle.
  - Yes, as it is used for imparting training on such motor vehicle.
- Mr. X has applied for payment of self-assessed tax in instalments. After paying 3 instalments, he defaulted in payment of 4<sup>th</sup> instalment. Which of the following statement is correct with regard to the payment of self-assessed tax in instalments?**
  - Mr. X can make the payment of 4<sup>th</sup> instalment on the due date of 5<sup>th</sup> instalment.
  - The whole of the outstanding balance on the date of default shall become due and payable forthwith.
  - The 4<sup>th</sup> defaulted instalment is to be payable at the end after making payment of balance instalments.
  - None of the above
- A local authority has not deducted tax at source on any taxable supplies received as the total value of supplies received from a supplier does not exceed the ₹ 2,50,000/- in the month of September, 2024. Whether it is mandatory for local authority to furnish return of the deductions made during the month?**
  - Yes, as it is to be mandatorily to file GSTR-7 whether deduction is made or not.
  - No, as no deduction is made. It is the discretion of local authority to file GSTR-7 or not.
  - No, as no deduction is made. It is the discretion of local authority to file GSTR-8 or not.
  - Yes, as it is to be mandatorily to file GSTR-8 whether deduction is made or not.
- Is it possible for a registered taxpayer to amend the records reported in earlier GSTR-1 in current GSTR-1A?**
  - Yes, GSTR-1A is for amendments in GSTR-1 after filing GSTR-1 and GSTR-3B.
  - Yes, as GSTR-1A allows to amend the records filed in GSTR-1 of earlier periods only.
  - Yes, as GSTR-1A allows to amend the records filed in GSTR-1 of earlier and current tax period both.
  - No, GSTR-1A allows to amend the records filed in the GSTR-1 of current tax period only.
- Specify the amount up to which notice shall not be issued under section 74A under CGST Act, 2017.**
  - ₹ 500/-
  - ₹ 1,000/-
  - ₹ 2,000/-
  - ₹ 10,000/-
- The non-filers of return to whom notice has been issued in FORM GSTR-3A are required to furnish returns within \_\_\_\_\_.**
  - 15 days
  - 30 days
  - 60 days
  - 90 days
- If the members of the Appellate Authority for Advance Ruling (AAAR) differ in opinion on any point, what is the consequence under GST law?**
  - The matter is referred to the GST Appellate Tribunal.
  - The matter is referred to the GST Council.
  - It shall be deemed that no advance ruling can be issued.
  - The majority view prevails, and the ruling is issued accordingly.
- Who is liable to take GST registration in the case of a company undergoing corporate insolvency resolution process? The company has not filed its returns for the past 8 months?**
  - The Committee of Creditors
  - The Company's Board of Directors
  - The Insolvency Professional or Interim Resolution Professional
  - The Company's employees
- Mr. A, a registered person in Mumbai, is in the manufacturing business of garments. His entity has multiple branches within the State of Maharashtra. Which of the following is correct with respect to registration of branches?**
  - Register for each branch separately.
  - Single registration for all the branches.
  - Multiple or single registration(s) at the option of the taxpayer.
  - Register for each branch separately, if the turnover of each branch exceeds threshold limit.
- The time period for passing final assessment order under section 60(3) can be extended by the Commissioner for a further period up to-**
  - 90 days
  - 6 months
  - 2 years
  - 4 years

The names of first five members who were the top scorers in the last Quiz are as under:

Name	Membership No.
CA. Sunil Rajpurohit	178185
CA. Kunal Agarwal	188778
CA. Shrushti Oswal	184221
CA. Rohit Agarwal	68647
CA. Anoop Kumar Sharma	459460

Please provide reply of the above MCQs in the link given below. **Top five scorers will be awarded hard copy of the publication 'GST Act(s) and Rule(s)- Bare Law' & their names will be published in the next edition of the Newsletter.**

Link to reply: <https://forms.gle/XvHQ7vLy9b4ziTA7>