

सह नावतु ।
सह नौ भुनक्तु ।
सह वीर्यं करवावहै ।
तेजस्वि नावधीतमस्तु मा विद्विषावहै ।
ॐ शान्तिः शान्तिः शान्तिः ॥

Om, May God Protect us Both (the Teacher and the students),

May God Nourish us Both,

May we Work Together with Energy and Vigour,

May our Study be Enlightening and not give rise to Hostility,

Om, Peace, Peace, Peace.

**Critical Analysis of
Notifications & Circulars
issued pursuant to 47th GST
Council Meeting**

TOO MANY
NOTIFICATION



Transfer of cash balance amongst distinct person

- Section 49(10) of the Act substituted w.e.f. 5th July 2022
- A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the **electronic cash ledger** under this Act, to the electronic cash ledger for,—
 - (a) integrated tax, central tax, State tax, Union territory tax or cess; or **(Same GSTIN)**
 - (b) integrated tax or central tax of a distinct person as specified in sub-section (4) or, as the case may be, subsection (5) of section 25, **(Different GSTIN but same PAN)**
- in such form and manner and subject to such conditions and restrictions as may be prescribed and such transfer shall be deemed to be a refund from the electronic cash ledger under this Act:
- Provided that no such transfer under clause (b) shall be allowed if the said registered person has any unpaid liability in his electronic liability register.

Demand stayed ≠
payment of liability

Transfer of cash balance amongst distinct person

- Rule 87 (14) - Prescribed manner for transfer of balance in electronic cash ledger to distinct person (Distinct person) - inserted w.e.f. 5th July 2022
- Prescribes mechanism for the transfer of any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger
- to the electronic cash ledger for central tax or integrated tax of a distinct person
- by way of filing FORM GST PMT-09:
- **Only if no unpaid liability in the electronic liability register of the transferor**

Interest is very much interesting!!!

- Substituted on 5th July 2022 w.e.f. 1st July 2017
- “Where the input tax credit has been wrongly availed and utilised, the registered person shall pay interest on such input tax credit wrongly availed and utilized, at such rate not exceeding twenty-four per cent. as may be notified by the Government, on the recommendations of the Council, and the interest shall be calculated, in such manner as may be prescribed.”.
- Prescribed Rule 88B – inserted w.e.f. 5th July 2022

Situation	Interest as per Rule 88B
GSTR-3B is filed after its due date but before issuance of SCN u/s 73 or 74	Interest payable only on tax paid by debiting electronic cash ledger for actual days of delay in filing GSTR-3B @ 18% p.a
Outward supply not paid / short paid in GSTR-3B of the respective month [Outward supply either not shown or shown at wrong rate]	Interest payable on unpaid tax (without considering unutilized ITC available in the electronic credit ledger) for actual days of delay in making tax payment @ 18% p.a

Interest is very much interesting!!!

Situation	Interest as per Rule 88B
ITC is wrongly availed and utilised	Interest payable only on ITC wrongly availed and utilized from date of utilization till the date of reversal @ 18% p.a.
ITC wrongly availed but not utilized	No Interest
GSTR-3B is filed after issuance of SCN u/s 73 or 74	Interest payable only on Gross Tax liability without considering ITC
Tax paid by way of DRC-03	Interest payable only on Gross Tax liability (without considering unutilized ITC available in the electronic credit ledger)

Interest is very much interesting!!!

Pauser

- What if cash payments are made in more than one tranche? Whether interest is still payable on the entire amount debited from the cash ledger from due date of GSTR-3B till actual date of filing Return or interest liability would stop on the date of payment?

How to ascertain whether wrongly availed ITC is actually utilized?

- When the balance in the electronic credit ledger falls below the amount of ITC wrongly availed it is deemed that wrongly availed ITC is actually utilized. For example: In April 2022, wrongly availed ITC is of Rs. 3,00,000 and the balance in the credit ledger in May 2022 falls to Rs. 1,00,000 then it will be deemed that wrongly availed ITC of Rs. 2,00,000 is utilized.

Situation	Date of utilisation
If ITC wrongly utilised in GSTR-3B	Actual date of filing of GSTR-3B or due date of filing whichever is earlier
Other case (e.g. DRC-03)	Date of debit in the electronic credit ledger

Deemed Revocation

- Automatic Revocation of cancellation of registration in certain cases
- Rule 21A(4) inserted w.e.f. 5th July 2022
- If Registration is suspended for non-filing of Returns [3/6 months]
- Post suspension of Registration but before actual cancellation, taxpayer has filed all pending Returns
- automatic revocation of suspension of Registration.



No ITC Reversal for duty scrips

- Clause (d) added to Explanation 1 to rule 43 w.e.f 5th July 2022
- Value of exempt supply for Rule 42 and 43 to exclude the value of supply of Duty Credit Scrips viz. RODTEP/SEIS/ROSCTL etc
- Impact: No ITC reversal required u/r 42 /43 for the exempted supply of duty scrips
- Amendment whether Prospective or Retrospective?
- Amendment whether not curative in Nature?



Better late
than never

Declaration on Invoice for E-invoicing exemption

- Rule 46(s) inserted w.e.f. 5th July 2022
- To be given by only those taxpayer whose aggregate turnover in any preceding financial year from 2017-18 onwards is more than the aggregate turnover notified for E-invoicing (20 Crores) &
- Enjoying exemption from E-Invoicing
- E.g. Banks, NBFC, SEZ, GTA etc.
- ***“I/We hereby declare that though our aggregate turnover in any preceding financial year from 2017-18 onwards is more than the aggregate turnover notified under sub-rule (4) of rule 48, we are not required to prepare an invoice in terms of the provisions of the said sub-rule.”***



Recredit of Electronic Credit Ledger

- Rule 86(4B) inserted w.e.f. 5th July 2022
- If a registered person deposits the amount (payback)
- Of erroneous refund in cash along with interest and penalty through DRC-03
- on his own or on being pointed out by the department
- amount equivalent to the amount of erroneous refund deposited shall be re-credited to the electronic credit ledger by the proper officer by an order made in FORM GST PMT-03A

Whether all types of Erroneous Refunds are eligible for recredit?

- Not all. As of now only the following erroneous refunds are eligible for recredit:
 - ITC Refund on zero-rated supply of goods or services on LUT (Export + SEZ)
 - Inverted duty ITC refund
 - IGST refund obtained in contravention of sub-rule (10) of rule 96

IGST paid export of
Services??

Process of Recredit

- CBIC Circular No. 174/06/2022-GST dated 6th July 2022
- Taxpayer to first make cash payment of erroneous refund in cash + interest + penalty (if applicable)
- While filing DRC-03 mention the reason as a **deposit of erroneous refund of unutilized ITC, or the deposit of erroneous refund of IGST obtained in contravention of sub-rule (10) of rule 96 of the CGST Rules**
- As of now manual request for recredit to be made in the format provided as Annexure A to Circular 174 to Jurisdictional officer
- Officer shall re-credit an amount in electronic credit ledger, equivalent to the amount of erroneous refund so deposited by the registered person, by passing an order in **FORM GST PMT-03A**, preferably within a period of 30 days from the date of receipt of the request.

Refund linked to FOB Value

Explanation added in Rule 89(4) w.e.f. 5th July 2022

- For the purposes of this sub-rule, the value of goods exported out of India shall be taken as –
 - (i) the Free on Board (FOB) value declared in the Shipping Bill or Bill of Export form, as the case may be, as per the Shipping Bill and Bill of Export (Forms) Regulations, 2017; or
 - (ii) the value declared in tax invoice or bill of supply,
whichever is less.
- **Whether phrase value of goods exported out of India and 'Turnover of zero-rated supply of goods is one and same? Value of goods exported out of India is not part of the formula?**
- **Whether corresponding changes to be made for Adjusted Total Turnover? Whether clarification issued in Circular No.147/03//2021-GST dated 12th March 21 applies?**
- Like all other export benefits, GST Refund u/r 89(4) is now linked to FOB Value
- Quantum of Refund may be reduced on case to case basis
- Prospective or Retrospective – **CIT vs Vatika Township P Ltd.**

Not applicable
to IGST paid
export of goods

Formula for Inverted duty modified

- Supreme Court in ***VKC Footsteps India Private Limited*** acknowledged that the formula in Rule 89(5) of the CGST Rules 2017 is inequitable and therefore, urged the GST Council to take the necessary corrective action.
- **Net ITC** for Rule 89(5) shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both
- No changes are made in the definition of Net ITC. Rule 89(5) formula is modified as under:

Pre Amendment	Post Amendment
$\{(\text{Turnover of inverted rated supply of goods and services}) \times \text{Net ITC} \div \text{Adjusted Total Turnover}\} - \text{tax payable on such inverted rated supply of goods and services.}$	$\{(\text{Turnover of inverted rated supply of goods and services}) \times \text{Net ITC} \div \text{Adjusted Total Turnover}\} - \{\text{tax payable on such inverted rated supply of goods and services} \times (\text{Net ITC} \div \text{ITC availed on inputs and input services})\}$

Formula for Inverted duty modified

Illustration

- Turnover of inverted duty goods/services: 1 Crore subject to 5% GST
- Turnover without inverted duty goods/services: 2 Crore -18% GST
- Total ITC on Inputs: 18 Lakh
- Total ITC on Services: 10 Lakh

Inverted duty Refund working (Pre amendment)

- $[1 \text{ Crore}/3 \text{ Crore} * 18 \text{ Lakh}] - 5 \text{ Lakh}$
- **Inverted duty Refund = Rs 1 Lakh**

Inverted duty Refund working (Post amendment)

- $[1 \text{ Crore}/3 \text{ Crore} * 18 \text{ Lakh}] - [5 \text{ Lakh} * \mathbf{18 \text{ Lakh}/28 \text{ Lakh}}]$
- **Inverted duty Refund = 2,78,571**



Something
is better
than
nothing

Amendments in rules relating to IGST paid export of goods

- **Proviso added in Rule 96(1) to explain the point in time when automatic refund application is deemed to have been filed in case of mismatch**
- In case of mismatch between Shipping Bill and GSTR-1, such application for refund of integrated tax paid on the goods exported out of India shall be deemed to have been filed on such date when such mismatch in respect of the said shipping bill is rectified by the exporter.
- **IGST paid refund on export of goods can now be withheld on the ground of **Risky Exporter** – Rule 96(4)(c)**
- Claim of IGST Refund shall be withheld if Commissioner in the Board or an officer authorized by the Board, on the basis of data analysis and risk parameters, is of the opinion that verification of credentials of the exporter, including the availment of ITC by the exporter, is considered essential before grant of refund, in order to safeguard the interest of revenue.



Perils of Risky
expoters
verification

Amendments in rules relating to IGST paid export of goods

- Rule 96(5A) inserted w.e.f. 5th July 2022
- Where refund is withheld in accordance with the provisions of clause (a) or clause (c) of sub-rule (4), such claim shall be transmitted to the proper officer of Central tax, State tax or Union territory tax, as the case may be, electronically through the common portal in a system generated FORM GST RFD-01 and the intimation of such transmission shall also be sent to the exporter electronically through the common portal, and notwithstanding anything to the contrary contained in any other rule, the said system generated form shall be deemed to be the application for refund in such cases and shall be deemed to have been filed on the date of such transmission.
- Clause (a) - Withholding of refund on request from Commissioner
- Clause (c) - Withholding of refund on the grounds of Risky exporter

Transmission of refund application from Customs to Jurisdictional officer

Amendments in rules relating to IGST paid export of goods

- Rule 96(5B) inserted 5th July 2022
- Where refund is withheld in accordance with the provisions of clause (b) of sub-rule (4) and the proper officer of the Customs passes an order that the goods have been exported in violation of the provisions of the Customs Act, 1962, then, such claim shall be transmitted to the proper officer of Central tax, State tax or Union territory tax, as the case may be, electronically through the common portal in a system generated FORM GST RFD-01 and the intimation of such transmission shall also be sent to the exporter electronically through the common portal, and notwithstanding anything to the contrary contained in any other rule, the said system generated form shall be deemed to be the application for refund in such cases and shall be deemed to have been filed on the date of such transmission.
- Rule 96(5C) inserted
- The application for refund in FORM GST RFD-01 transmitted electronically through the common portal in terms of sub-rules (5A) and (5B) shall be dealt in accordance with the provisions of rule 89.

Changes in 3B reporting

Figures reported in Table 3.1 (a) below shall not include figures to be reported in Table 3.1.1

3.1 Details of Outward Supplies and inward supplies liable to reverse charge (other than those covered in 3.1.1)

Nature of Supplies	IGST	CGST	SGST/UT	Cess
(a) Outward taxable supplies (other than zero rated, nil rated and exempted)				
(b) Outward taxable supplies (zero rated)				
(c) Other outward supplies (Nil rated, exempted)				
(d) Inward supplies (liable to reverse charge)				
(e) Non-GST outward supplies				

Changes in 3B reporting

New Table 3.1.1 added for reporting details of supplies covered under Section 9(5) CGST/5(5) IGST Act – Supplies made through E-commerce Operator

3.1.1 Details of supplies notified under 9(5) of CGST Act and corresponding provisions in IGST/UTGST/SGST Acts

Nature of Supplies	Total Taxable value	IGST	CGST	SGST	Cess
1	2	3	4	5	6
(i) Taxable supplies on which electronic commerce operator pays tax under sub-section(5) of section 9 [to be furnished by the electronic commerce operator]					
(ii) Taxable supplies made by the registered person through electronic commerce operator, on which electronic commerce operator is required to pay tax under sub-section (5) of section 9 [to be furnished by the registered person making supplies through an electronic commerce operator]					

Advisory for Table 3.2 of GSTR-3B

- Taxpayers are either not reporting or reporting wrong details in respect of Inter-State supplies made to -
 - unregistered persons,
 - registered person paying tax under section 10 of the CGST Act (composition taxable persons) and
 - UIN holders
- GST being destination-based tax, the respective government is not getting their share of tax on account of such non/misreporting.
- Taxpayers are advised to report interstate supply to an unregistered person place of supply wise in Table 3.2 of GSTR-3B. [Relevant Table in GSTR-1 Table 5,7B,9, and 10].
- Taxpayers are advised to report interstate supply to composition dealer and Consulate/Embassy etc place of supply wise in Table 3.2 of GSTR-3B. [Relevant Table in GSTR-1 Table 4A and 4C].
- Further effects of any amendments made in GSTR-1 Table 9,10 and 11 shall also be considered while reporting figures in Table 3.2 of GSTR-3B.

Changes in 3B reporting

Table 3.2

Of the supplies shown in 3.1 (a) above, details of inter-State supplies made to unregistered persons, composition taxable persons and UIN holders

Description	Place of Supply (State/UT)	Total Taxable Value	IGST
Supplies made to Unregistered Persons			
Supplies made to Composition Taxable Persons			
Supplies made to UIN Holders			

Changes in 3B reporting

Table 4. Eligible ITC

Details	IGST	CGST	SGST	Cess
(A) ITC Available (whether in full or part)				
(1) Import of goods	Auto	Frozen	Frozen	Auto
(2) Import of services	Manual	Frozen	Frozen	Manual
(3) Inward supplies liable to reverse charge (other than 1 & 2 above)	Auto	Auto	Auto	Auto
(4) Inward supplies from ISD	Auto	Auto	Auto	Auto
(5) All other ITC	Auto	Auto	Auto	Auto
<ul style="list-style-type: none"> • Temporary ITC reversal offered in Table 4B(2) to be reclaimed on fulfillment of conditions in Table 4A(5) • Figures in Table 4A(1) to 4A(5) to include temporary and permanent reversible ITC. 				

Changes in 3B reporting

Details	IGST	CGST	SGST	Cess
(B) ITC Reversed				
<p>(1) As per Rule 38, 42, and 43 of CGST Rules and sub-section (5) of section 17 of the Act</p> <ul style="list-style-type: none"> • ABSOLUTE REVERSAL WHICH IS NOT RECLAIMABLE - includes <ul style="list-style-type: none"> ○ R.38: Banking/NBFC- 50% ITC ○ R.42/43: exempt outward supply reversal ○ S.17(5) blocked credits ○ ITC of earlier period availed due to inadvertent mistake 	-	-	-	-
<p>(2) Others</p> <ul style="list-style-type: none"> • REVERSAL WHICH IS TEMPORARY AND RECLAIMABLE - includes <ul style="list-style-type: none"> ○ R.37 (non-payment within 180 days) ○ S.16(2)(a) Non-receipt of invoices ○ S.16(2)(b) – Non-receipt of goods ○ Credit notes issued by vendors 	-	-	-	-
(C) Net ITC Available (A) – (B) [To be credited to Electronic Credit Ledger]	-	-	-	-

Changes in 3B reporting

Details	IGST	CGST	SGST	Cess
<u>(D) Other Details</u>				
(1) ITC reclaimed which was reversed under Table 4(B)(2) in an earlier tax period [Do not report blocked credits u/s 17(5) here]				
(2) Ineligible ITC under section 16(4) and ITC restricted due to POS provisions – To be picked from Table 4 of GSTR-2B				

Advisory for Table 4 – ITC

- Data in Table 4A.1 to 4A.5 are Auto populated from GSTR-2B but editable.
- Entire set of data that is available in Form GSTR-2B is carried to Table 4 in GSTR-3B, except for -
 - ITC not eligible on account of Section 16(4) and
 - ITC is ineligible for POS issues e.g. Hotels situated in other states have charged CGST and SGST of the respective state.
- **Reporting only eligible ITC (Net of blocked credits & reversal) is no longer advisable. To comply with this advisory calls for a major shift in accounting policy. Even though ITC is blocked such blocked ITC should be first claimed in books and thereafter should be reversed. Presently many taxpayers straight away expense out such credits leaving no trail for GST Compliance.**



Whether taxpayers are given sufficient time for compliances?

GSTR-9/9C for FY 21-22

- GSTR-9 for FY 21-22 notified with minor changes
- Reporting in Table 4I to Table 4L was optional till FY 20-21. For FY 21-22 Credit Note/ Debit note/ Amendment are to be reported separately for Taxable B2B supply, Zero rated supply/ SEZ supply on payment of Tax in GSTR-9.
- Till FY 20-21, Non-GST and Nil-Rated supplies were allowed to be clubbed with Exempt Supply. However, in GSTR-9 of FY 21-22 Non-GST supply is to be shown separately. Nil-rated supply can be clubbed with exempt supply.
- HSN wise summary of Outward Supply is now made mandatory as under:

Annual Turnover in F.Y. 20-21	HSN reporting in GSTR-9 of FY 21-22
More than 5 Crore	HSN of outward supply to be reported at 6 digits level.
Up to 5 Crore	HSN of outward supply to be reported at 4 digits level.

- Reporting in Table 12B and 12C of GSTR-9C was made optional till FY 20-21. For FY 21-22 this option is removed.

Additional time for issuance of Show Cause Notice/Adjudication Order for F.Y. 17-18

- Deadline for issuance of GST Show Cause Notice (SCN) in respect of FY 2017-2018 for a) GST not paid or b) GST short paid or c) input tax credit wrongly availed or d) Input tax credit wrongly utilized for any reason other than the reason of fraud or any wilful-misstatement or suppression of facts to evade GST is fast approaching. It is now proposed to extend the said deadlines as under:

Deadline	Before Amendment	Post Amendment
To issue SCN	5 th /7 th November 2022 (depending upon the state in which taxpayer is located)	Extended to 30.06.2023
To Issue Adjudication Order	5 th /7 th February 2023 (depending upon the state in which taxpayer is located)	Extended to 30.09.2023

Additional time for recovery of erroneous refund

- Deadline for issuance of Show Cause Notice (SCN) in respect of erroneous recovery of refund is 3(three) years from the date of such erroneous refund. Post amendment, the time period starting from the 1st day of March 2020 to the 28th day of February 2022 shall be excluded in counting 3 years limitation period. Therefore, virtually the department now has additional years for such recovery. Let us take an example :

Deadline	Before Amendment	Post Amendment
For passing order recovering erroneous Refund granted on 18th March 2019	Demand for recovery of erroneous refund can't be issued U/s 73(10) as 3 years limitation period is already over.	Demand for recovery of erroneous refund now can be initiated (2 years period as above to be excluded)

- As a corollary time limit for issuance of SCN for erroneous recovery of refund is also extended on similar lines.

Controversy on the limitation period for filing refund application in respect of COVID period

- Generally, the time limit for filing a Refund application is 2 years from the Relevant date. Due to the COVID-19 lockdown, many applicants could not file their refund applications in time. Hon'ble Supreme Court vide its order dated 10th January 2022 in respect of cognizance of extension of limitation directed that the period from 15-03-2020 till 28-02-2022 shall stand excluded for the purpose of limitation prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.
- Subsequently Hon'ble Bombay High court in **Saiher Supply Chain Consulting (P.) Ltd. [2022] 134 taxmann.com 154 (Bombay)** held that the above extension equally applies to the filing of refund applications. Many other High Courts have expressed a similar view.
- To put all these controversies at rest, CBIC has now excluded the period starting from 01-03-2020 to 28-02-2022 from the limitation period of 2 years.

Controversy on the limitation period for filing refund application in respect of COVID period

- As per Hon'ble Supreme Court order, in cases where the limitation would have expired during the period between 15th March 2020 till 28th February 2022, notwithstanding the actual balance period of limitation remaining, all persons shall be entitled to a limitation period of 90 days from 1st March 2022. In the event, the actual balance period of limitation remaining, with effect from 1st March 2022 is greater than 90 days, that longer period shall apply.
- **Relaxation period prescribed in the Notification is not in line with the extension granted by Hon'ble Supreme Court**

Exemption of Rs 2 Crore for Annual Return to continue

- Registered persons having aggregate annual turnover up to Rs. 2 crores have been exempted from the requirement of filing Annual Return for FY 21-22
- Upto 2 Crore annual aggregate turnover – Annual Return in Form GSTR-9 is optional for FY 21-22
- NN 10/2022 – CT dated 5th July 2022

Extension of time limit for filing CMP-08

- Taxable person who has opted for composition scheme shall file CMP-08 to deposit tax payments every quarter.
- Due date = 18th day of the month succeeding the quarter
- Due date of filing quarterly return in Form GST CMP-08 for the quarter – April to June, 2022 has been extended till 31.07.2022
- NN 11/2022 – CT dated 5th July 2022

Waiver of late fees for filing GSTR-4 for FY 21-22 extended

- Due date for filing GSTR-4 for FY 21-22 was 30th April 2022
- Vide NN 7/2022-CT dated 26th May 2022, waiver of late fees granted for delay in furnishing GSTR-4 for FY 21-22 from 1st May 2022 to 30th June 2022
- Vide NN 12/2012 – CT dated 5th July 2022, waiver of late fees for delay in furnishing GSTR-4 for FY 21-22 extended up to 28th July 2022

NN 15/2022-CT dated 13/07/2022

- Amends category of suppliers not eligible for Registration threshold limit of 40 Lakhs.
- Persons engaged in making supplies of Fly ash bricks, Fly ash aggregates, Fly ash blocks are now included in the specified category of suppliers.
- Consequently, registration threshold limit of Rs. 20 Lakhs is applicable to such category of supplier

NN 16/2022-CT dated 13/07/2022

- Amends list of category of suppliers who are ineligible to opt for composition scheme for goods.
- Manufacturer of fly ash bricks, fly ash aggregate, fly ash blocks are now declared as ineligible to opt for a composition scheme.
- Earlier prescribed condition of 90 percent or more fly ash content is now removed.

Rule 87(3) amended - New modes for payment of GST are notified

- GST payment can now be made by way of -
 - Unified Payment Interface (UPI)
 - Immediate Payment Services (IMPS)

Other Amendments

- Special provision **for refund arising out of export of electricity** is provided. Electricity is considered as goods for the purpose of GST. Rule 89(2)(b) insists on shipping bill details in case of refund application in respect of export of goods. To avoid this dichotomy special provision [Rule 89(2)(ba) is now prescribed for refund of export of electricity. This would facilitate the exporters of electricity in claiming refund of utilized ITC on zero-rated supplies
- For the purpose of claiming **refund in respect of supplies to SEZ** endorsement on invoices certifying receipt of goods/services in SEZ for authorized operations by the specified officer of the zone is a prerequisite. It is now prescribed that specified officer” means a “specified officer” or an “authorized officer” as defined under rule 2 of the Special Economic Zone Rules, 2006.
- Rule 95A of the CGST rules omitted retrospectively w.e.f. 01.07.2019 to facilitate refund of taxes to the **retail outlets established in the departure area of an international Airport beyond immigration counters** for making tax-free supply to an outgoing international tourist. Parallely Circular No. 106/25/2019-GST dated 29.06.2019 is withdrawn abintio.

Fake invoicing - Concept

- **'Fake Invoicing', 'Hawala Invoice', or 'Paper trade'** refers to the situation where a registered person issues invoices for the supply of goods or rendering of services or both without actually supplying such goods or services.
- Generally, a fake invoice passes through a chain of fake invoice generators before it lands in the lap of a recipient of goods or services who is actually involved in making outward supply. Though there might be various reasons for availing fake invoicing one dominant reason could be the availment of the undue ITC to reduce outward tax liability.
- Assuming a fake invoice has passed through 5 fake generators, the department till now was demanding GST from each of such 5 fake generators. Due to this faulty approach wrong picture of fake ITC circulating in the GST ecosystem was created. Invariably such fake generators were making a plea of lack of supply to successfully challenge department proceedings before various High Courts.
- CBIC vide Circular No. 171/03/2022-GST dated 6th July 2022 has now explained the penal consequences of indulging in fake invoicing with a few examples.

Courageous
clarification

Situation #1

- 1.1 A registered person “Mr. A” has issued a tax invoice to another registered person “Mr. B” without any underlying supply of goods or services or both. Given these facts let us understand tax liability and penal consequences if any for Mr. A.
- 1.2 Generally above situation would arise only if Mr. A has sufficient credits in his electronic credit ledger and want to encash/utilize the same.

1.3 Is there any GST liability in the hands of Mr. A?

GST liability in the hands of Mr. A is NIL as there is no actual supply by Mr. A to Mr. B in respect of such a fake Invoice. Accordingly, No demand and recovery proceeding shall be initiated against Mr. A under section 73 or 74 of the Act.

1.4 Whether Mr. A would be subject to any Penal consequences?

Mr. A shall, however, be liable for penal action under section 122 (1)(ii) of the Act for issuing tax invoice without actual supply of goods or services or both. Accordingly, Mr. A shall be liable to pay a penalty of Rs. 10,000 or an amount equivalent to the GST evaded, whichever is higher.

Situation #2

2.1 A registered person “Mr. A” has issued a tax invoice to another registered person “Mr. B” without any underlying supply of goods or services or both. Mr. B avails ITC on the basis of said fake invoice. Mr. B further issues invoice along with the underlying supply of goods or services or both to his buyers/recipients and utilize ITC availed on the basis of the fake invoice issued by Mr. A for payment of his tax liability in respect of his outward supplies. Given these facts let us understand tax liability and penal consequences if any for Mr. A and Mr. B.

2.2 Taxpayers who might be occasionally indulging in fake invoicing to reduce their output tax liability will fall in this situation. Transaction from Mr. A to Mr. B is fake invoicing. whereas, further transaction from Mr. B to his recipient involves actual supply.

2.3 Is there any GST liability and/or Penal consequences for Mr. A?

Refer to Para 1.3 & 1.4 in Situation #1.

Situation #2

2.4 Whether Mr. B is eligible to avail ITC in this case?

As one of the conditions for availment of ITC ie actual receipt of goods or services is not fulfilled in case of fake invoicing, Mr. B would not be eligible to avail ITC. Since Mr. B has wrongly availed and utilized fake ITC for payment of his output tax liability, he would be required to pay back ITC with Interest @ 18% p.a.

2.5 Whether Mr. B would be subject to any Penal consequences?

Mr. B would be liable to demand recovery action u/s 74 of the Act as under:

Stage at which GST and Interest is paid	Penalty u/s 74
Before issue of show cause notice (DRC-01)	15% of Tax Amount and No SCN will be issued.
Within 30 days from issue of DRC-01	25% of Tax Amount. All proceedings deemed to be concluded.
Within 30 days from issue of order	50% of Tax Amount
After 30 days from issue of Order	100% of Tax Amount

2.6 Whether Mr. B will also be subject to any other Penalty in addition to penalty mentioned in the preceding slide?

CBIC in the circular has reiterated the overriding powers of Section 75(13) of the Act. As per provisions of section 75(13), if penal action for fraudulent availment or utilization of ITC is taken against Mr. B under section 74 of the Act, no penalty for the same act/conduct, i.e. for the said fraudulent availment or utilization of ITC, can be imposed on Mr. B under any other provisions of Act, including under Section 122. Therefore, there would not be any further penalty for Mr. B.

2.7 Whether Mr. A or B will be subject to any prosecution?

Kindly refer to subsequent slides for provision relating to prosecution

Situation #3

3.1 A registered person “Mr. A” has issued a tax invoice to another registered person “Mr. B” without any underlying supply of goods or services or both. Mr. B avails ITC on the basis of the said tax invoice and further passes on the said ITC to another registered person “Mr. C” by issuing invoices without an underlying supply of goods or services or both. Given these facts let us understand tax liability and penal consequences if any.

3.2 In this situation Mr. A and Mr. B both are acting as fake invoice generators.

3.3 Is there any GST liability and/or Penal consequences for Mr. A?

Refer to Para 1.3 & 1.4 in Situation #1.

3.4 Is there any GST liability in the hands of Mr. B?

As Mr. B has not effected any supply as such, No GST can be recovered from Mr. B .
Refer to Para 1.3 in Situation #1.

3.5 Whether Mr. B is eligible to avail ITC in this case?

As Mr. B has availed ITC without actual receipt of goods or services Mr. B would not be eligible for ITC and since wrongly availed ITC is consumed against non-existing output liability there would not be any additional GST liability in the hands of Mr. B.

Situation #3

3.6 **Whether A and B shall be subject to demand and recovery provisions laid down in Section 74 of the Act?**

In the absence of actual supply and receipt of goods, Section 74 can't be invoked. Therefore, the benefit of a reduction in penalty if paid at an earlier stage of proceedings shall not be available to Mr. A and B.

3.7 **Whether Mr. A would be subject to any Penal Consequences?**

Yes, under section 122 (1)(ii) of the Act. Refer to slide 1.4 in situation #1

3.8 **Whether Mr. B would be subject to any Penal consequences?**

Since Mr. B is acting in a dual capacity, fake invoice recipient as well as a fake invoice generator, therefore, Section 122(1)((ii) [issuance of fake invoice without actual supply] and section 122(1)(vii) [availing or utilizing ITC without actual supply} of the Act shall apply. Consequently, he shall be liable to pay a penalty of Rs. 10,000 or an amount equivalent to the tax evaded, whichever is higher.

Prosecution and Arrest

In addition to the penalty fake invoicing may also be subject to Prosecution. Hence relevant provision of Section 132 of the Act is extracted below:

Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences, namely:-

- (a)
- (b) **issues any invoice or bill without supply of goods or services or both** in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilization of input tax credit or refund of tax;
- (c) **avails input tax credit using the invoice or bill** referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill;

shall be punishable as under (Refer next slide)

Prosecution and Arrest

Quantum of Tax evaded or ITC availed or utilized	Punishable with
Exceeds 5 crores	Imprisonment for a term which may extend to 5 years and with fine
Exceeds 2crores but does not exceed 5 crores	Imprisonment for a term which may extend to 3 years and with fine
Exceeds 1 crore but does not 5 crore	Imprisonment for a term which may extend to 1 year and with fine
Commit or abets the commission of any of the offenses not mentioned above	Imprisonment up to 6 months or with fine or with both.

- Apart from above, any person retaining benefit of above transactions and at whose instance such transaction is conducted, shall also be liable to a penalty of an amount equivalent to the tax evaded or ITC availed of or passed on.
- Accordingly, Mr. A, Mr. B, and Mr. C shall be liable for prosecution depending upon the quantum of tax evaded or ITC availed or utilized. **In addition, Income tax consequences including penal action u/s 271AAD of the Income Tax act may also follow.**

Eligibility of ITC on obligatory expenses

- **It is clarified by CBIC that the proviso after sub-clause (iii) of clause (b) of sub-section (5) of section 17 of the CGST Act is applicable to the whole of clause (b) of sub-section (5) of section 17 of the CGST Act.**

- Extract of relevant provision from Act

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

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

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

Eligibility of ITC on obligatory expenses

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

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

- **Impact of the above clarification**
- **ITC in respect of the above inward supplies clause [(i), (ii) and (iii)] shall not be blocked if corresponding expenses are incurred pursuant to the legal obligation imposed on the employer under any law for the time being in force.**



the more ITC
the better

Clarification on Taxability of Perquisites

- Perquisites provided by the employer to the employee in terms of the contractual agreement entered into between the employer and the employee, will not be subjected to GST when the same are provided in terms of the contract between the employer and employee.

Clarification on Usage of balance available in electronic credit ledger

- It is clarified that any payment towards output tax, whether self-assessed in the return or payable as a consequence of any proceeding instituted under the provisions of GST Laws, can be made by utilization of the amount available in the electronic credit ledger of registered persons.
- Settles controversy created out of Orissa High Court Judgement in case of Jyoti Construction. Pre deposit now can be made through electronic ledger
- RCM liability to be paid only in cash
- Erroneous refund to be repaid only in cash (not through credit reversal) - Rule 96B?



Ease of
litigation

Para 3.2 of Circular No. 135 modified

- Adverse judgment from 3 High courts striking down Para 3.2

Situation	Eligibility of Inverted duty Refund
Same Input and output, though attracting different tax rates at different points in time	Such situation do not get covered under the provisions of clause (ii) of the first proviso to sub-section (3) of section 54 of the CGST Act. No inverted duty refund
Where though inputs and output goods are same but the output supplies are made under a concessional notification due to which the rate of tax on output supplies is less than the rate of tax on inputs	In such cases, as the rate of tax of output supply is less than the rate of tax on inputs at the same point of time due to supply of goods by the supplier under such concessional notification, the credit accumulated on account of the same is admissible for refund under the provisions of clause (ii) of the first proviso to sub-section (3) of section 54 of the CGST Act.



GST Rate Notifications

Changes in GST Rates w.e.f. 18th July 2022

- NN 45/2017-CT(R) dated the 14th November 2017 rescinded w.e.f. 18th July 2022
- Said notification deals with supply at a concessional rate of 5% GST on supply of specified goods (Scientific and technical instruments) to public-funded research institutes etc.
- Impact - Supply to such research institutes w.e.f. 18th July 2022 would be subject to normal GST rate as per Tariff Notification
- Apparently to avoid an inverted duty situation in the hands of suppliers

Special scheme for Bricks Clin Sector

- Vide NN 02/2022-CT(R), Government has notified a revised tax structure for the Brick Kilns sector, effective from April 01, 2022.
- In this new tax structure, the Government has provided option of Normal scheme [GST rate of 12% (with ITC)] or a Special scheme [6% (without ITC)]
- NN.2/2022-CT (R) dated 31st March 2022 is amended vide NN 10/2022- CT (R) dated 13th July, 2022
- W.e.f. 18th July 2022

Supply eligible for the special scheme before amendment	Supply eligible for the special scheme after amendment
Supply of Fly ash bricks or <u>fly ash aggregate with 90 per cent. or more fly ash content</u> , fly ash blocks	Supply of Fly ash bricks; Fly ash aggregates; <u>Fly ash blocks</u> are now eligible for 6% rate without ITC Condition of 90% relaxed

Restrictive list for Inverted duty refund expanded

- NN 5/2017-CT (R) dated 28th June 2017 provides a list of goods in respect of which **inverted duty refund shall not be allowed on outward supply**
- This list is now expanded by NN 9/2022- CT (R) dated 13th July 2022.
- W.e.f. 18th July 2022, in respect of goods added to the list, an inverted duty refund shall not be allowed.
- Newly added goods in the restrictive list are –

HSN	Commodity description
2701	Coal; briquettes, ovoids and similar solid fuels manufactured from coal
2702	Lignite, whether or not agglomerated, excluding jet
2703	Peat (including peat litter), whether or not agglomerated



Restrictive list for Inverted duty refund expanded

HSN	Commodity description
1507	Soya-bean oil and its fractions, whether or not refined, but not chemically modified
1508	Ground-nut oil and its fractions, whether or not refined, but not chemically modified.
1509	Olive oil and its fractions, whether or not refined, but not chemically modified
1510	Other oils and their fractions, obtained solely from olives, whether or not refined, but not chemically modified, including blends of these oils or fractions with oils or fractions of heading 1509
1511	Palm oil and its fractions, whether or not refined, but not chemically modified
1512	Sunflower-seed, safflower or cotton-seed oil and fractions thereof, whether or not refined, but not chemically modified.
1513	Coconut (copra), palm kernel or babassu oil and fractions thereof, whether or not refined, but not chemically modified

Restrictive list for Inverted duty refund expanded

HSN	Commodity description
1514	Rape, colza or mustard oil and fractions thereof, whether or not refined, but not chemically modified
1515	Other fixed vegetable or microbial fats and oils (including jojoba oil) and their fractions, whether or not refined, but not chemically modified.
1516	Vegetable fats and oils and their fractions, partly or wholly hydrogenated, inter-esterified, re-esterified or elaidinised, whether or not refined, but not further prepared.
1517	Edible mixtures or preparations of vegetable fats or vegetable oils or of fractions of different vegetable fats or vegetable oils of this Chapter, other than edible fats or oils or their fractions of heading 1516
1518	Vegetable fats and oils and their fractions, boiled, oxidised, dehydrated, sulphurised, blown, polymerised by heat in vacuum or in inert gas or otherwise chemically modified, excluding those of heading 1516

Pre-packaged and labelled - now taxable

- Conditions for exemptions of certain specified goods (mainly food items/Cereals/Pulses etc) modified
- W.e.f. 18th July 2022. Most of these commodities shall attract GST levy @5%

Conditions for taxability before amendment	Conditions for taxability after amendment
<p>If put up in unit container and</p> <ul style="list-style-type: none">• bearing a registered brand name; or• bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily, subject to the conditions as in the ANNEXURE I]]	<p>If supplied as pre-packaged and labelled</p>  <p>Packaged food industry severely hit</p>

Pre-packaged and labelled - now taxable

- The expression ‘pre-packaged and labelled’ means a ‘pre-packaged commodity’ as defined in clauses (l) of section 2 of the Legal Metrology Act, 2009 (1 of 2010) where, the package in which the commodity is pre-packed or a label securely affixed thereto is required to bear the declarations under the provisions of the Legal Metrology Act, 2009 (1 of 2010) and the rules made thereunder.”.
- No Exemption:
 - If edible/food items are pre packaged and labelled (as defined) AND
 - Such packaging is required to bear declaration as per Legal Metrology Act and Rules

Pre-packaged and labelled - now taxable

- Legal Metrology Act, 2009 defines a pre-packaged commodity as “pre-packaged commodity” means:
 - a commodity
 - which without the purchaser being present
 - is placed in a package of whatever nature, whether sealed or not,
 - so that the product contained therein has a pre-determined quantity
- **As clarified by TRU circular bearing No. F. No. 190354/172/2022-TRU dated 17th July 2022 imposition of GST on specified goods have moved from registered brand or actionable or enforceable claim on brand to pre-packaged and labelled bearing declaration under legal metrology act and rules thereunder.**
- Supplier would be still eligible for threshold exemption (40 lakhs). Further composition supplier would be subject to composition rate of 1% instead of normal rate.

Pre-packaged and labelled - now taxable

Summarized position as explained in TRU Circular

Situation	Taxability
Specified commodities sold in loose form	Exempt
Specified commodities packed in the presence of buyer	Exempt
Pre-packaged and labelled packs up to 25 KG or 25 Litre (Retail Pack)	GST applicable
Pre-packaged and labelled in a single pack of more than 25 KG or 25 Litre (Retail Pack)	Exempt
Wholesale package – combination of multiple retail packs up to 25KG or 25 Litre	Taxable
Single wholesale pack of more than 25KG or 25 Litre	Exempt
Supply made to Institutional / Industrial user	Exempt

GST would apply at each stage of supply i.e. manufacturer supplying to distributor, or distributor/dealer supplying to retailer, or retailer supplying to individual consumer. Further, the manufacturer/wholesaler/retailer would be entitled to ITC on GST charged by his supplier

Pre-packaged and labelled - now taxable

Illustrations-

Situation	Taxability
Supply of pre-packed atta (wheat flour) meant for retail sale to ultimate consumer in a single pack up to 25 KG	Taxable @ 5%
Supply of pre-packed atta meant for retail sale to ultimate consumer in a single pack of more than 25 KG	Exempt
Supply of pre-packed atta in 10 packages of 10 KG sold in a larger pack	Taxable @ 5%
Supply of pre-packed atta in 2 packages of 26 KG sold in a larger pack	Exempt
Supply of pre-packed atta meant for retail sale to ultimate consumer in a single pack up to 25 KG without making declaration required under legal metrology act (in violation of legal metrology Act)	Taxable @ 5%

Be ready to pay
5% more for
packaged foods

Pre-packaged and labelled - now taxable

List of commodities subject to GST if sold in pre-packaged and labelled form

Description of commodities

All goods [other than fresh or chilled] falling under HSN 0202, 0203, 0204, 0205, 0206, 0207, 0208, 0209, 0210

All goods [other than fresh or chilled] falling under HSN 0303, 0304, 0305, 0306, 0307, 0308

Curd; Lassi; Butter milk falling under HSN 0403

Chena or paneer falling under HSN 0406

Natural honey falling under HSN 0409

All goods [other than fresh or chilled] falling under HSN 0504

Dried leguminous vegetables, shelled, whether or not skinned or split falling under HSN 0713

Manioc, arrowroot, salep, Jerusalem artichokes, sweet potatoes and similar roots and tubers with high starch or inulin content, frozen, whether or not sliced or in the form of pellets and falling under HSN 0714

Dried makhana, whether or not shelled or peeled falling under chapter 08

Pre-packaged and labelled - now taxable

List of commodities subject to GST if sold in pre-packaged and labelled form

Description of commodities

Wheat and meslin falling under HSN 1001

Rye falling under HSN 1002

Barley falling under HSN 1003

Oats falling under HSN 1004

Maize (corn) falling under HSN 1005

Rice falling under HSN 1006

Grain sorghum falling under HSN 1007

Buckwheat, millet and canary seed; other cereals such as Jawar, Bajra, Ragi falling under HSN 1008

Wheat or meslin flour falling under HSN 1101

Cereal flours other than of wheat or meslin, [maize (corn) flour, Rye flour, etc falling under HSN 1102

Cereal groats, meal and pellets under HSN 1103

Pre-packaged and labelled - now taxable

List of commodities subject to GST if sold in pre-packaged and labelled form

Description of commodities

Flour, powder, flakes, granules or pellets of potatoes falling under HSN 1105

Flour, of the dried leguminous vegetables of heading 0713 (pulses) and falling under HSN 1106

Jaggery of all types including Cane Jaggery (gur), Palmyra Jaggery Khandsari Sugar – HSN 1701 or 1702

Puffed rice, commonly known as Muri, flattened or beaten rice, commonly known as Chira, parched rice, commonly known as khoi, parched paddy or rice coated with sugar or gur, commonly known as Murki – HSN 1904

Tender coconut water covered in HSN 2202 90 90 – 12% GST

All goods and organic manure HSN 3101

Coir pith compost covered in chapter 53

Namkeens, bhujia, mixture, chabena and similar edible preparations in ready for consumption form covered in HSN 210690 – 12% GST

- Notification No. 03/2022- CT(R) & Notification No. 05/2022- CT(R)
- **GTA (Goods Transport Agency) now enjoys 3 options -**
 - GTA does not exercise the option to itself pay GST on the services supplied by it; (GTA under RCM) – Existing
 - GTA exercises the option to itself pay GST on services supplied by it @12% (GTA under forward charge) –Existing
 - GTA exercises the option to itself pay GST on services supplied by it @5% (GTA under forward charge) – Newly added option

Above options are also available for transportation of used household goods for personal use – packers and movers



Problem of
Plenty?

If GTA does not exercise the option to itself pay GST on the services supplied by it –

- Simply means GTA is automatically under RCM. Following would be consequences
- No GST Registration
- No other periodic GST compliances
- Recipient to pay GST @ 5% and avail credit if eligible
- **No ITC on goods and input services**
- No declaration on the invoice about forward charge.
- Declaration on Invoice as to RCM Applicability – “RCM applicable on this Invoice – Yes”
- No declaration to jurisdictional authority on an annual basis.
- Option once selected can't be changed during that Financial year

If GTA exercises the option to itself pay GST on services supplied by it

- It means GTA is under reverse charge. If GTA is choosing a 12% forward charge then following could be consequences
- Shall charge 12% GST on outward supply
- Shall file monthly returns and undertake other GST compliances
- Eligible for ITC on goods and input services
- Declaration to be given on Invoice [As per NN 05/2022-CT(R)]
- Declaration to be submitted to Jurisdictional officer before 15th March preceding FY. For FY 22-23 declaration to be filed before 16th August 2022
- **ITC reversal u/r 42 and 43 in case of exempt transportation supply.**
- Recipient need not pay GST under Reverse charge
- Option once selected can't be changed during that Financial year

If GTA exercises the option to itself pay GST on services supplied by it

- It means GTA is under reverse charge. If GTA is choosing a 5% forward charge then following could be consequences
- Shall charge 5% GST on outward supply
- Shall file monthly returns and undertake other GST compliances
- **No ITC on goods and input services**
- Declaration to be given on Invoice [As per NN 05/2022-CT(R)]
- Declaration to be submitted to Jurisdictional officer before 15th March preceding FY. For FY 22-23 declaration to be filed before 16th August 2022 [As per Annexure V to NN 03/2022-CT(R)]
- Cumbersome reversal of ITC if earlier ITC availed on Capital goods/Trucks etc
- Option once selected can't be changed during that Financial year
- Recipient need not pay GST under Reverse charge

Switch over from Forward charge to Reverse charge or vice versa

- Allowed only once a year
- Once an option is selected for a financial year, no change is allowed for the said financial year
- For opting forward charge declaration to be filed before 15th March immediately preceding FY.
- If no declaration is filed then it is deemed as covered under reverse charge
- ITC implications on opting out of forward charge. Section 18(4)

No Reverse charge shall apply in respect of GTA services if -

- Supplier (GTA) has taken **registration** under the GST law and **exercised the option to pay tax** on the services of GTA in relation to transport of goods supplied by him under forward charge; and
- Supplier (GTA) has issued a tax invoice to the recipient charging Central Tax at the applicable rates and has made a **declaration as prescribed** in Annexure III **on such invoice** issued by him.”;

Declaration to be added in Invoice raised by GTA Registered under forward charge -

“I/we have taken registration under the CGST Act, 2017 and have exercised the option to pay tax on services of GTA in relation to transport of goods supplied by us during the Financial Year _____ under forward charge”.

Withdrawal of certain Exemptions available to GTA services

Pre amendment exemptions	Post amendment
<p>Services provided by a goods transport agency, by way of transport in a goods carriage of—</p> <ul style="list-style-type: none">• goods, where consideration charged for the transportation of goods on a consignment transported in a single carriage does not exceed one thousand five hundred rupees(Rs 1500);• goods, where consideration charged for transportation of all such goods for a single consignee does not exceed rupees seven hundred and fifty (Rs 750)	<p>Exemptions Withdrawn. Consequently irrespective of value such GTA services shall be now taxable. [5% or 12%]</p>

Renting of Goods Carriage

- Separate entry created for renting of goods carriage under HSN 9966.
- HSN 9966 deals with Rental services of transport vehicles [with operators]

Description	Tax rate up to 17 th July 2022	Tax rate from 18 th July 2022
Renting of goods carriage <u>where the cost of fuel is included</u> in the consideration charged from the service recipient	18%	12%

- Goods Carriage:- “goods carriage” means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adopted when used for the carriage of goods (Section 2(14) of Motor Vehicle Act).
- **Services by way of giving on hire to a goods transport agency, a means of transportation of goods is still an exempt service.**
- Renting of goods carriage by GTO to GTA – Exempt
- Renting of goods carriage by GTO to end user (other than GTA) – Taxable

- Supporting services in transport was taxable @ 18% with ITC under HSN 9967
- There was confusion in the trade about contours of supporting service in Transport.
- New Explanation is now added in HSN 9967 as under:
- “ This entry does not include goods transport service involving Goods Transport Agency (GTA) service, which falls under Heading 9965”
- It is now crystal clear that GTA services shall be classified under HSN 9965 only, whereas ‘Support services in transport’ shall be classified under HSN 9967.
- Taxability of Munshiana?
- Taxability of Transport broking?

- GST levy made applicable on Room Rent charges in excess of Rs. 5000 w.e.f. 18th July 2022
- Service Provider - Clinical establishment
- Nature of Services - Services provided by a by way of providing room having room charges exceeding Rs. 5000 per day
- Recipient - Person receiving health care services.
- Exclusions - Charges for Intensive Care Unit (ICU)/Critical Care Unit (CCU)/Intensive Cardiac Care Unit (ICCU)/Neo natal Intensive Care Unit (NICU) – Rs. 5000 threshold does not apply
- Taxability - 5% GST without any ITC
- Meaning of clinical establishment, health care services lifted from NN 12/2017-CT(R)
- Proviso added to provide an exemption for Room rent charged up to Rs. 5000 [NN 04/2022-CT(R)]
- Concept of Composite supply, Principal Supply, & Section 8 whether no longer relevant?

Say NO to Hospital else 5%
GST if Room Rent > 5000

Impact of change

- Renting of rooms in hospitals shall now be subject to 5% GST where the room rent is more than Rs.5,000 per day, though such supply of rooms is ancillary to the principal supply of health services being provided by hospitals, which is exempted supply.
- **Levy in case of Package deal without any bifurcation of Room Rent?**

ITC eligibility

- Whether ITC will be hit in the hand of recipient by virtue of Section 17(5)(g) of the CGST Act for personal consumption? ITC goods or services or both used for personal consumption are blocked u/s 17(5)(g)

Similar hair-splitting of room rent would be allowed in the case of plastic surgery treatment or 18% GST on lumpsum?

Whether GST portion reimbursable under Mediclaim?

Services	Applicable GST rate up to 17th July 2022	Applicable GST rate from 18th July 2022
Services by way of treatment or disposal of biomedical waste or the processes incidental thereto by a common bio-medical waste treatment facility to a clinical establishment.	Exempt	12% GST with ITC
Services by the cord blood banks by way of preservation of stem cells or any other service in relation to it	Exempt	18% GST with ITC

- Basic threshold exemption of Rs. 1000 is removed. Consequently, supply is taxable from Re.1

Pre amendment	Post amendment
Supply of 'hotel accommodation' having value of supply of a unit of accommodation <u>above one thousand rupees</u> but less than or equal to seven thousand five hundred rupees per unit per day or equivalent	Supply of 'hotel accommodation' having value of supply of a unit of accommodation above one thousand rupees but less than or equal to seven thousand five hundred rupees per unit per day or equivalent
Taxable @12% GST with ITC	Taxable @12% GST with ITC

“**Hotel accommodation**” means supply, by way of accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes including the supply of time share usage rights by way of accommodation.

Impact of Amendment -

Taxability Pre amendment	Taxability Post amendment
Hotel accommodation services	Hotel accommodation services
Up to Rs. 1000 – Exempt	Up to Rs. 1000 – 12%
Rs. 1001 to Rs. 7500 – 18%	Rs. 1001 to Rs. 7500 – 12%
Above Rs. 7500 – 28%	Above Rs. 7500 -28%

- Low-cost hotels may be now in the tax net.
- Impact on Hostels, Dormitory, etc?



Renting of residential dwelling - Conditionally taxable

- Renting of residential dwelling for use of residence purpose was exempted even in Service Tax regime
- Exemption continued even in GST regime
- Education Guide issued by CBIC in 2012 has clarified that the phrase 'residential dwelling' has to be interpreted in terms of the normal trade parlance as per which it is any residential accommodation, but does not include hotel, motel, inn, guest house, camp-site, lodge, house boat, or like places meant for temporary stay
- Adverse Advance ruling and subsequent litigation has brought issue of taxability of residential dwelling to the forefront.
- Taxability of residential premises given on rent say for hostel

RCM levy to be
paid only in cash

Renting of residential dwelling - Conditionally taxable

Exemption Prior to amendment	Exemption Post amendment
Services by way of renting of residential dwelling <u>for use as residence</u> was exempt	Services by way of renting of residential dwelling for use as residence is exempt except <u>where the residential dwelling is rented to a registered person</u>

Impact of change

- Renting of residential premises is taxable if recipient is a registered person (GSTIN holder]. Registration status of supplier is not relevant. End-use not relevant. GST Rate @ 18% shall apply w.e.f 18th July 2022.
- Registered Recipient ie Tenant under Reverse charge would be liable to pay GST
- Supplier (whether registered or not) is not required to charge or pay any GST
- If Tenant is unregistered then no GST on such renting irrespective of whether supplier is a registered or not.
- No threshold limit is prescribed. So even rent of Re 1 is taxable if conditions fulfilled
- Renting of commercial property was any way taxable @ 18%. No change in that levy.

Renting of residential dwelling - Conditionally taxable

Taxability issues

- Applicability to builders in case of redevelopment/Registered owners in case of redevelopment?
- Taxability in the case of an individual - If treated as personal expenses and recorded in personal books and also paid out of personal funds?
- Rented Guesthouse for employees? Reimbursement of Rent to employees?
- Fully furnished accommodation taken on rent and provided to senior employees?
- Registration status in the state in which the property is located?
- Tenant is registered in GST under trade name but leave and license agreement is registered in personal name or tenant refuse to disclose GSTIN?

ITC Eligibility

- Whether ITC would be allowed to the recipient?
- Loss for Composition /other taxpayers where outward supply is taxable @ 5% without ITC
- ITC if Registration is taken on such Residential premises/shown as additional place?

Exemption to Tour operator in case of Multi-Country Tour

Eligibility

- Tour operator services performed partly in and outside India AND
- Services is rendered to foreign tourist (defined)

Value of exemption

- Proportionate value of tour operator services performed outside India or
- 50% total consideration charged

whichever is less

Proportion to be worked out on the basis of the number of days tour operator services performed in India. Further in making the above calculations, any duration of time equal to or exceeding 12 hours shall be considered as one full day, and any duration of time less than 12 hours shall be taken as half a day

It is better to see something once?

Exemption to Tour operator in case of Multi-Country Tour

illustration as explained in the relevant exemption entry

- # 1 Tour operating services provided for 3 days in India, 2 days in Nepal; Consideration charged for the entire tour: Rs.1,00,000.
- Exemption: Rs.40,000 ($= \text{Rs.1,00,000} \times 2/5$) or Rs.50,000 ($= 50\%$ of Rs.1,00,000) whichever is less, i.e., Rs.40,000 (i.e., Taxable value: Rs.60,000)
- # 2 Tour operating services provided for 2 days in India, 3 days in Nepal; Consideration charged for the entire tour: Rs.1,00,000.
- Exemption: Rs.60,000 ($= \text{Rs.1,00,000} \times 3/5$) or, Rs.50,000 ($= 50\%$ of Rs.1,00,000) whichever is less, i.e., Rs.50,000 (i.e., Taxable value: Rs.50,000)
- #3 Tour operating services provided for 2.5 days in India, 3 days in Nepal; Consideration charged for the entire tour: Rs.1,00,000
- Exemption: Rs.54,545 ($= \text{Rs.1,00,000} \times 3/5.5$) or, Rs.50,000 ($= 50\%$ of Rs.1,00,000) whichever is less, i.e., Rs.50,000 (i.e., Taxable value: Rs.50,000).

Works Contract Services

- Many changes are made in the applicable rate on works contract services.
- **Composite supply of works contract** as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied to the Central Government, State Government, *Union territory or a local authority* by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of –
 - **a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);**
 - **canal, dam or other irrigation works;**
 - **pipeline, conduit or plant for (i) water supply, (ii) water treatment, or (iii) sewerage treatment or disposal**
- Sub-contractor providing above services to main contractor
- **Above services were subject to 12% GST up to 17th July 2022. Rate increased to 18% w.e.f. 18th July 2022**

Merry-go-round. 18%
to 12% to again 18%

Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, [other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above], supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,—

- a. a **road, bridge, tunnel, or terminal for road transportation** for use by general public;
- b. a civil structure or any other original works pertaining to a scheme under **Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awas Yojana**
- c. a civil structure or any other original works pertaining to the "In-situ redevelopment of existing slums using land as a resource, under the Housing for All (Urban) Mission/**Pradhan Mantri Awas Yojana** (Urban);]
- d. a civil structure or any other original works pertaining to the "Beneficiary led individual house construction/enhancement" under the **Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;**
- da. a civil structure or any other original works pertaining to the "Economically Weaker Section (**EWS**) houses" constructed under the **Affordable Housing** in partnership by State or Union territory or local authority or urban development authority under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban)

- db. a civil structure or any other original works pertaining to the houses constructed or acquired under the **Credit Linked Subsidy Scheme** for Economically Weaker Section (**EWS**)/Lower Income Group (**LIG**)/Middle Income Group-1 (**MIG-1**)/Middle Income Group-2 (**MIG-2**)" under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana (Urban);
- e a pollution control or effluent treatment plant, except located as a part of a factory;
- f a structure meant for funeral, burial or cremation of deceased. [Provided that during the period beginning from the 14th June, 2021 and ending with the 30th September, 2021, the central tax on service of description as specified in clause (f), shall, irrespective of rate specified in column (4), be levied at the rate of 2.5 per cent.
- g. a building owned by an entity registered under section 12AA [or 12AB] of the Income-tax Act, 1961 (43 of 1961), which is used for carrying out the activities of providing, centralised cooking or distribution, for mid-day meals under the mid-day meal scheme sponsored by the Central Government, State Government, Union territory or local authorities.

Above services were subject to 12% GST up to 17th July 2022. Rate increased to 18% w.e.f. 18th July 2022

Housing for all?
EWS/MIG/PMAY all
will be now costlier

Composite supply of works contract services in respect of:

- (a) railways including monorail and metro
- (b) a **single residential unit** otherwise than as a part of a residential complex
- (c) **low-cost houses up to a carpet area of 60 square metres** per house in a housing project approved by Competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India
- (d) **low cost houses up to a carpet area of 60 square metres** per house in a housing project approved by the competent authority under- (1) the —Affordable Housing in Partnership component of the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana; (2) any housing scheme of a State Government;
- (e) post-harvest storage infrastructure for agricultural produce including a cold storage for such purposes
- (f) mechanized food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages.

Above services were subject to 12% GST up to 17th July 2022. Rate increased to 18% w.e.f. 18th July 2022

Works Contract Services

- **Composite supply of works contract** as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above, supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of affordable residential apartments covered by sub-clause (a) of clause (xvi) of paragraph 4 below, in a project which commences on or after 1st April, 2019, or in an ongoing project in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if), as the case may be, in the manner prescribed therein
- **Above services relates to affordable residential apartments. Above services were subject to 12% GST up to 17th July 2022. Rate increased to 18% w.e.f. 18th July 2022**

Affordable housing will
now be slightly
unaffordable

Works Contract Services

- **Composite supply of works contract** as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 provided to the Central Government, State Government, Union Territory, a local authority, by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of –
 - (a) a **civil structure or any other original works meant predominantly for use other than for commerce**, industry, or any other business or profession;
 - (b) a structure meant predominantly **for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment**; or
 - (c) **a residential complex predominantly meant for self-use or the use of their employees or other persons** specified in paragraph 3 of the Schedule III of the Central Goods and Services Tax Act, 2017.
- Composite supply of works contract in respect of above services provided by a sub-contractor to the main contractor

Above services were subject to 12% GST up to 17th July 2022. Rate increased to 18% w.e.f. 18th July 2022

Works Contract Services

- Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, **involving predominantly earth work (that is, constituting more than 75per cent. of the value of the works contract)** provided to the Central Government, State Government, Union territory, local authority, a Governmental Authority or a Government Entity
- Composite supply of works contract in respect of above services provided by a sub-contractor to the main contractor
- **Above services were subject to 12% GST up to 17th July 2022. Rate increased to 18% w.e.f. 18th July 2022**

Services rendered by Indian Postal Department

- Various services rendered by Indian post department would now be under forward charge. Further scope of exemption is reduced as explained below .

Position up to 17 th July 2022	Position form 18 th July 2022
Services by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory <u>only were taxed under forward charge.</u>	Now <u>all services provided by postal department is under forward charge.</u> Exemption is now provided only for Services by the Department of Posts by way of a postcard, inland letter, book post, and ordinary post (envelopes weighing less than 10 grams).

Air travel to and from North East airports

Scope of Exemption in respect of Business class air travel to and from North East airports curtailed

Exemption prior to amendment	Exemption Post amendment
Transport of passengers, with or without accompanied belongings, by air, embarking from or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal	Transport of passengers, with or without accompanied belongings, by air <u>in economy class</u> , embarking from or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal

Impact of amendment -

Business class travel to and from above northeast airports was exempt. However, w.e.f. 18th July 2022 12% GST shall apply to such services. Economy class travel to and from above northeast airports continues to remain exempt.

Business class
travel costlier

Concessional rate 5% GST on below-mentioned job work services withdrawn. Consequently, such job work services attract a higher rate w.e.f. 18th July 2022

Description	Applicable GST rate up to 17 th July 2022	Applicable GST rate from 18 th July 2022
Job work services relating to Process of hides, skins and leather	5%	12%
Job work services relating to Manufacture of leather goods or Footwear	5%	12%
Job work services relating to Manufacture of clay bricks	5%	12%

Services by following statutory authorities is now taxable

- W.e.f 18th July 2022, services rendered by the following statutory authorities would be subject to 18% GST with ITC benefits to such service providers.
 - Services provided by RBI
 - Services provided by IRDA
 - Services provided by SEBI
 - Services by way of licensing, registration and analysis or testing of food samples supplied by the Food Safety and Standards Authority of India (FSSAI) to Food Business Operators
 - Services provided by the Goods and Services Tax Network (GSTN) to the Central Government or State Governments or Union territories for implementation of Goods and Services Tax

Changes in GST Rate

In respect of following goods/services new GST rate shall apply w.e.f. 18th July 2022

Description	Applicable GST rate up to 17 th July 2022	Applicable GST rate from 18 th July 2022
Cut and Polished diamonds	0.25%	1.5%
Services provided by a foreman of a chit fund in relation to chit	12%	18%
Cheques, Loose or Book Form	Exempt	18%
Lamps, lights and fixture, their metal printed circuits board LED	12%	18%
Solar water heater system	5%	12%
Centrifugal Pumps, Deep Tube well Turbine Pumps, Submersible Pumps	12%	18%
Transport of passengers, with or without accompanied belongings, by ropeways	18%	5% without ITC

Inflation?

Changes in GST Rate

Description	Applicable GST rate up to 17 th July 2022	Applicable GST rate from 18 th July 2022
Transport of goods by ropeways	18%	5% without ITC
Services by way of transportation by rail or a vessel from one place in India to another of railway equipment's or materials	Exempt	5%
Services by way of storage or warehousing of cereals, pulses, fruits and vegetables	Exempt	Exempt
Services by way of storage or warehousing of nuts, spices, copra, sugarcane, jaggery, raw vegetable fibres such as cotton, flax, jute etc., indigo, unmanufactured tobacco, betel leaves, tendu leaves, coffee and tea.	Exempt	18%
Services by way of fumigation in a warehouse of agricultural produce	Exempt	18%
Services by way of slaughtering of animals	Exempt	18%

Changes in GST Rate

Description	Applicable GST rate up to 17 th July 2022	Applicable GST rate from 18 th July 2022
Services by way of training or coaching in recreational activities relating to arts or culture by Individual	Exempt	Exempt
Services by way of training or coaching in recreational activities relating to arts or culture by person other than Individual	Exempt	18%
Specified Goods specified for petroleum and exploration operations to ONGC, Oil India, their contractors etc	5%	12%
Printing ink, writing or drawing ink and other inks, whether or not concentrated or solid, fountain pen ink, ball pen ink	12%	18%
Knives with cutting blades, serrated or not (including pruning knives), other than knives of heading 8208, and blades therefor	12%	18%

Changes in GST Rate

Description	Applicable GST rate up to 17 th July 2022	Applicable GST rate from 18 th July 2022
Machines for cleaning, sorting or grading, seed, grain pulses; Machinery used in milling industry or for the working of cereals etc; Pawan Chakki that is Air Based Atta Chakki; Wet grinder;	5%	18%
Machines for cleaning, sorting or grading eggs, fruit or other agricultural produce and its parts, Milking machines and dairy machinery	12%	18%
Drawing and marking out instruments	12%	18%
Prepared/finished leather/chamois leather / composition leathers	5%	12%
Ostomy Appliances	12%	5%
Orthopaedic appliance- Splints and other fracture appliances; artificial parts of the body; other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; intraocular lens	12%	5%

Changes in GST Rate

Description	Applicable GST rate up to 17 th July 2022	Applicable GST rate from 18 th July 2022
Tetra Pak (Aseptic Packaging Paper)	12%	18%
Tar (whether from coal, coal gasification plants, producer Gas plants and Coke Oven Plants).	5%	18%
IGST on import of Diethylcarbamazine (DEC) tablets supplied free of cost for National Filariasis Elimination Programme	5%	Exempt
E-waste (specifically defined)	5%	18%

Clarifications regarding applicable GST rates & exemptions on certain services

Rate of GST applicable on supply of ice-cream by ice-cream parlors during the period from 01.07.2017 to 05.10.2021

It is clarified that past cases of payment of GST on supply of ice-cream by ice-cream parlors @ 5% without ITC shall be treated as fully GST paid to avoid unnecessary litigation. Since the decision is only to regularize the past practice, no refund of GST shall be allowed, if already paid at 18%.

Applicability of GST on application fee charged for entrance or the fee charged for issuance of eligibility certificate for admission or for issuance of migration certificate by educational institutions

It is clarified that the amount or fee charged from prospective students for entrance or admission, or for issuance of eligibility certificate to them in the process of their entrance/admission as well as the fee charged for issuance of migration certificates by educational institutions to the leaving or ex-students is covered by exemption under Sl. No. 66 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

Clarifications regarding applicable GST rates & exemptions on certain services

Whether storage or warehousing of cotton in baled or ginned form is covered under entry 24B of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.) which exempted services by way of storage and warehousing of raw vegetable fibres such as cotton before 18.07.2022.

It is clarified that service by way of storage or warehousing of cotton in ginned and or baled form was covered under the above-mentioned entry and hence exempt.

Whether exemption under Sl. No. 9B of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017. covers services associated with transit cargo both to and from Nepal and Bhutan.

It is clarified that exemption under Sl. No. 9B of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017. covers services associated with transit cargo both to and from Nepal and Bhutan.

Applicability of GST on sanitation and conservancy services supplied to Army and other Central and State Government departments

It is clarified that if the above-mentioned services are procured by Indian Army or any other Government Ministry/Department which does not perform any functions listed in the 11th and 12th Schedule to the Constitution, in the manner as a local authority does for the general public, the same are not eligible for exemption.

Clarifications regarding applicable GST rates & exemptions on certain services

Whether the activity of selling of space for advertisement in souvenirs is eligible for concessional rate of 5%.

It is clarified sale of space for advertisement in souvenir book is covered under serial number (i) of entry 21 of Notification No. 11/2017-Central Tax (Rate) and attracts GST @ 5% as 'book' has been defined in the Press and Registration of Books Act, 1867 in an inclusive manner with a wide ambit which would cover souvenir book also.

Taxability and applicable rate of GST on transport of minerals from mining pit head to railway siding, beneficiation plant etc., by vehicles deployed with driver for a specific duration of time.

Such services are nothing but "rental services of transport vehicles with operator" which fall under heading 9966 and attract GST @ 18% under Sr. No. 10 part (iii) of Notification No. 11/2017-Central Tax (Rate) It is clarified that such renting of trucks and other freight vehicles with driver for a period of time is a service of renting of transport vehicles with operator falling under Heading 9966 and not service of transportation of goods by road. This being so, it is not eligible for exemption under Sl. No. 18 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 On such rental services of goods carriages where the cost of fuel is included in the consideration charged from the recipient of service, GST rate has been reduced from 18% to 12% with effect from 18.07.2022.

Clarifications regarding applicable GST rates & exemptions on certain services

Whether location charges or preferential location charges (PLC) collected in addition to the lease premium for long term lease of land constitute part of the lease premium or of upfront amount charged for long term lease of land and are eligible for the same tax treatment.

It is clarified that location charges or preferential location charges (PLC) paid upfront in addition to the lease premium for long term lease of land constitute part of upfront amount charged for long term lease of land and are eligible for the same tax treatment, and thus eligible for exemption.

Applicability of GST on payment of honorarium to the Guest Anchors

It is clarified that supply of all goods & services are taxable unless exempt or declared as 'neither a supply of goods nor a supply of service'. Services provided by the guest anchors in lieu of honorarium attract GST liability subject to registration requirement as per the provisions of the law.

Whether the additional toll fees collected in the form of higher toll charges from vehicles not having fastag is exempt from GST

It is clarified that additional fee collected in the form of higher toll charges from vehicles not having Fastag is essentially payment of toll for allowing access to roads or bridges to such vehicles and may be given the same treatment as given to toll charges.

Clarifications regarding applicable GST rates & exemptions on certain services

Applicability of GST on services in form of Assisted Reproductive Technology (ART)/ In vitro fertilization (IVF)

It is clarified that services by way of IVF are also covered under the definition of health care services and thus exempt.

Whether sale of land after levelling, laying down of drainage lines etc., is taxable under GST

Land may be sold either as it is or after some development such as levelling, laying down of drainage lines, water lines, electricity lines, etc. It is clarified that sale of such developed land is also sale of land and accordingly does not attract GST.

Situations in which corporate recipients are liable to pay GST on renting of motor vehicles designed to carry passengers

It is clarified that where the body corporate hires the motor vehicle (for transport of employees etc.) for a period of time, during which the motor vehicle shall be at the disposal of the body corporate, the service would fall under Heading 9966, and the body corporate shall be liable to pay GST on the same under RCM. However, where the body corporate avails the passenger transport service for specific journeys or voyages and does not take vehicle on rent for any particular period of time, the service would fall under Heading 9964 and the body corporate shall not be liable to pay GST on the same under RCM.

Clarifications regarding applicable GST rates & exemptions on certain services

Whether hiring of vehicles by firms for transportation of their employees to and from work is exempt under Sr. No. 15(b) of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 transport of passengers by non-air conditioned contract carriage

It is clarified that the said exemption would apply to passenger transportation services by non-air conditioned contract carriages falling under Heading 9964 where according to explanatory notes, transportation takes place over pre-determined route on a pre-determined schedule. The exemption shall not be applicable where contract carriage is hired for a period of time, during which the contract carriage is at the disposal of the service recipient and the recipient is thus free to decide the manner of usage (route and schedule) subject to conditions of agreement entered into with the service provider.

Whether supply of service of construction, supply, installation and commissioning of dairy plant on turn-key basis constitutes a composite supply of works contract service and is eligible for concessional rate of GST prior to 18.07.2022.

It is clarified that a contract of the nature described here for construction, installation and commissioning of a dairy plant constitutes supply of works contract and was eligible for concessional rate of GST.

Applicability of GST on tickets of private ferry used for passenger transportation.

“Transportation of passengers by public transport, other than predominantly for tourism purpose, in a vessel between places located in India” is exempted. It is clarified that this exemption would apply to tickets purchased for transportation from one point to another irrespective of whether the ferry is owned or operated by a private sector enterprise or⁴ by a PSU/government.

GST applicability on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law

A contract to do something or to abstain from doing something cannot be said to have taken place unless there are two parties, one of which expressly or impliedly agrees to do or abstain from doing something and the other agrees to pay consideration to the first party for doing or abstaining from such an act. There must be a necessary and sufficient nexus between the supply (i.e. agreement to do or to abstain from doing something) and the consideration.

Liquidated Damages

Liquidated damages cannot be said to be a consideration received for tolerating the breach or non-performance of contract. They are rather payments for not tolerating the breach of contract. Such payments being merely flow of money are not a consideration for any supply and are not taxable. However, amounts paid for acceptance of late payment, early termination of lease or for pre-payment of loan or the amounts forfeited on cancellation of service by the customer as contemplated by the contract as part of commercial terms agreed to by the parties, constitute consideration for the supply of a facility, namely, of acceptance of late payment, early termination of a lease agreement, of pre-payment of loan and of making arrangements for the intended supply by the tour operator respectively. Therefore, such payments, even though they may be referred to as fine or penalty, are actually payments that amount to consideration for supply, and are subject to GST, in cases where such supply is taxable.

Compensation for cancellation of coal blocks

There was no agreement between the prior allottees of coal blocks and the Government that the previous allottees shall agree to or tolerate cancellation of the coal blocks allocated to them if the Government pays compensation to them. No such promise or offer was made by the prior allottees to the Government. Therefore, the compensation paid for cancellation of coal blocks pursuant to the order of the Supreme Court in the above case was not taxable.

Cheque dishonor fine/ penalty

The fine or penalty that the supplier or a banker imposes, for dishonour of a cheque, is a penalty imposed not for tolerating the act or situation but a fine, or penalty imposed for not tolerating, penalizing and thereby deterring and discouraging such an act or situation. Therefore, cheque dishonor fine or penalty is not a consideration for any service and not taxable.

Penalty imposed for violation of laws

Penalties imposed for violation of laws cannot be regarded as consideration charged by Government or a Local Authority for tolerating violation of laws. They stipulate penalty not for tolerating violation but for not tolerating, penalizing and deterring such violations. These amounts are not leviable to GST.

Forfeiture of salary or payment of bond amount in the event of the employee leaving the employment before the minimum agreed period

The said amounts are recovered by the employer not as a consideration for tolerating the act of such premature quitting of employment but as penalties for dissuading the non-serious employees from taking up employment and to discourage and deter such a situation. Therefore, such amounts recovered by the employer are not taxable as consideration for the service of agreeing to tolerate an act or a situation.

Late payment surcharge or fee

The facility of accepting late payments with interest or late payment fee, fine or penalty is a facility granted by supplier naturally bundled with the main supply. Since it is ancillary to and naturally bundled with the principal supply such as of electricity, water, telecommunication, cooking gas, insurance etc. it should be assessed at the same rate as the principal supply.

Fixed Capacity charges for Power

Both the components of the price, the minimum fixed charges/capacity charges and the variable/energy charges are charged for sale of electricity and are thus not taxable as electricity is exempt from GST.

Cancellation charges

Facilitation supply of allowing cancellation of an intended supply against payment of cancellation fee or retention or forfeiture of a part or whole of the consideration or security deposit in such cases should be assessed as the principal supply. However, forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer or such forfeiture by Government or local authority in the event of a successful bidder failing to act after winning the bid for allotment of natural resources, is a mere flow of money, as the buyer or the successful bidder does not get anything in return for such forfeiture of earnest money. Such payments being merely flow of money are not a consideration for any supply and are not taxable.

Clarification regarding GST rates & classification (goods)

Electric vehicles whether or not fitted with a battery pack, attract GST rate of 5%

Stones otherwise covered in S. No. 123 of Schedule-I (such as Napa stones), which are not mirror polished, are eligible for concessional rate under said entry

Mangoes under CTH 0804 including mango pulp, but other than fresh mangoes and sliced, dried mangoes, attract GST at 12% rate

Treated sewage water attracts Nil rate of GST

Nicotine Polacrilex Gum attracts a GST rate of 18%

Fly ash bricks and aggregate – condition of 90% fly ash content applied only to fly ash aggregate, and not fly ash bricks

Applicability of GST on by-products of milling of Dal/ Pulses such as Chilka, Khanda and Churi:

The by-products of milling of pulses/ dal such as Chilka, Khanda and Churi are appropriately classifiable under heading 2302 that consists of goods having description as bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of cereals or of leguminous plants. It is hereby clarified that the subject goods which inter alia is used as cattle feed ingredient are appropriately classifiable under heading 2302 and attract GST at the rate of 5% vide S. No. 103A of Schedule-I of notification no. 1/2017-Central Tax (Rate), dated the 28th June, 2017 and that for the past, the matter would be regularized on as is basis.

CA PREETAM BATRA

91-9689581000



Bon voyage!

Thank You!

गुरु ब्रह्मा गुरुर् विष्णुः
गुरु देवो महेश्वरः ।
गुरु साक्षात् परब्रह्मा
तस्मै श्री गुरवे नमः ॥