PAPER 8: INDIRECT TAX LAWS

STATUTORY UPDATE FOR NOVEMBER 2019 EXAMINATION

For the sake of brevity, Central Goods and Services Tax, Integrated Goods and Services Tax, Central Goods and Services Tax Act, 2017, Integrated Goods and Services Tax Act, 2017, Central Goods and Services Tax Rules, 2017 and Integrated Goods and Services Tax Rules, 2017 have been referred to as CGST, IGST, CGST Act, IGST Act, CGST Rules and IGST Rules respectively.

For Part -I: Goods and Services Tax of Paper 8: Indirect Tax Laws, the provisions of CGST Act and IGST Act, including significant circulars and notifications issued and other legislative amendments made upto 30th April, 2019, are applicable for November, 2019 examinations.

The subject matter of Part I: Goods and Services Tax of October 2018 Edition of the Final (New Course) Study Material is based on the provisions of the CGST Act and IGST Act as amended upto 31.10.2018.

The amendments made by the CGST Amendment Act, 2018 and IGST Amendment Act, 2018 as also the notifications and circulars issued between 01.11.2018 and 30.04.2019 in GST laws are given in this Statutory Update.

The content discussed in Part II: Customs & FTP of the Study Material is based on the customs law as amended by the Finance Act, 2018 and significant notifications and circulars issued till 30.04.2018. The significant notifications/circulars issued from 01.05.2018 to 30.04.2019 in Customs & FTP are given in this Statutory Update.

For the ease of reference, the amendments have been grouped into Chapters which correspond with the Chapters of the Study Material.

It may be noted that there may be certain provisions which have been amended more than once in the period covered in this Update. However, for November, 2019 examination, students are expected to answer the questions on the basis of the position of law as amended by the significant notifications/circulars issued till 30.04.2019.

It may be noted that October 2018 Edition of the Study Material for Final (New Course) Paper 8 is applicable for Final (Old) Course Paper 8 also.

PART I: GOODS AND SERVICES TAX

2
SUPPLY UNDER GST

I Amendments made by the CGST (Amendment) Act, 2018 – Effective from 01.02.2019

1. Definition of term business amended [Section 2(17)(h) of the CGST Act]

Section 2(17) of the CGST Act defines "business". Prior to amendment, as per clause (h) of said sub-section, the term business included **services** provided by a race club by way of totalisator or a licence to book maker in such club.

Under the amended position, clause (h) of said sub-section has been substituted to provide that business includes **activities** of a race club **including** by way of totalisator or a license to book maker or **activities** of a licensed book maker in such club.

Thus, the scope of term 'business' has widened to include all the activities of race club and all the activities of a licence book maker in such club. Further, since term 'services' used earlier in this clause led to ambiguity as actionable claims have been defined as 'goods' in the CGST Act, it has been replaced with 'activities'.

2. Definition of term service amended [Section 2(102) of the CGST Act]

An Explanation has been inserted to the definition of 'service' under section 2(102) of the CGST Act to clarify that the expression "services" includes **facilitating or arranging transactions in securities**.

Since securities are excluded from the definition of both 'goods' and 'services' in the CGST Act, they are neither goods nor services. However, facilitating or arranging transactions in securities is liable to GST. In order to clarify the same, this explanation has been inserted.

Example: If some service charges or service fees or documentation fees or broking charges or such like fees or charges are charged in relation to transactions in securities, the same would be a consideration for provision of service and chargeable to GST.

3. Import of service without consideration from a related party/establishment outside India in course of furtherance of business to be deemed to be supply even if such service is received by a person other than a taxable person [Schedule I of the CGST Act]

Earlier, import of services by a **taxable** person from a related person or from any of his other establishments outside India, in the course or furtherance of business was deemed to be supply even if made without consideration.

The word "taxable" has been omitted. Therefore, import of services by any person from a related person or from any of his other establishments outside India, in the course or furtherance of business is deemed to be supply even if made without consideration.

This amendment is to ensure that import of services by entities which are not registered under GST (for instance, who are only making exempted supplies), but are otherwise engaged in business activities is taxed when received from a related person or from any of their establishments outside India.

4. New activities/ transactions added to Schedule III to the CGST Act

Schedule III to the CGST Act specifies transactions/ activities which shall be neither treated as supply of goods nor a supply of services. Following three new activities/ transactions have been inserted in said Schedule.

1. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India. It seeks to exclude from the tax net such transactions which involve movement of goods, caused by a registered person, from one non-taxable territory to another non-taxable territory.

2. (a) Supply of warehoused goods to any person before clearance for home consumption. Warehoused goods means goods deposited in a warehouse.

   (b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.

   The purpose is to ensure that there is no double taxation of transactions where supply of goods occurs in the course of high sea sales and sale of warehoused goods, before clearance for home consumption. It was observed that in case of supply of goods as high seas sales and sale of warehoused goods, before being cleared for home consumption, IGST was being levied twice, once under the Customs Tariff Act, 1975 (read with the IGST Act) and then for a second time, on clearance for home consumption under the IGST Act. Since double taxation needs to be avoided, circulars were issued to state that IGST would be payable only once at the time of clearance of goods for home consumption.

   Thus, under the amended position, the above transactions shall be treated neither as a supply of goods nor a supply of services.

Following transactions are neither supply of goods nor supply of services		
Supply from non-taxable territory to another non-taxable territory	Supply of warehoused goods	Supply by way of endorsement of documents of title of goods (High Sea Sales)

Examples

1. *Mr. A purchased goods from China and sold it to Mr. John in Canada without bringing the goods in India. This transaction is neither supply of goods nor supply of services.*
2. *Mr. X imported some goods in India, but kept the goods in custom bonded warehouse without clearing it for home consumption. In the meantime, Mr. X sold these goods to Mr. Y while they were in warehouse. This transaction between Mr. X and Mr. Y is neither supply of goods nor supply of services.*
3. *Mr. P of India imported some goods from Japan. While the goods were in high seas, Mr. P sold the goods to Mr. Q in India by way of endorsement of documents of title of goods. This transaction between Mr. P and Mr. Q is neither supply of goods nor supply of services.*

II. Significant Notifications/ Circulars/ Orders

1. Clarification on scope of principal and agent relationship under Schedule I of CGST Act in the context of del-credere agent (DCA)

Circular No. 57/31/2018 GST dated 04.09.2018 clarified that the key ingredient for determining whether a principal agent relationship falls within the scope of Para 3. of Schedule I of the CGST Act, would be whether the invoice for the further supply of goods on behalf of the principal is being issued by the agent or not.

Where the invoice for further supply is being issued by the agent in his name then, any provision of goods from the principal to the agent would fall within the fold of the said para. However, where the invoice is issued by the agent to the customer in the name of the principal, such agent shall not fall within the ambit of Schedule I of the CGST Act.

Circular No. 73/47/2018 GST dated 05.11.2018 has clarified the scope and ambit of principal agent relationship in the context of a del-credere agent (DCA[1]).

[1] *In commercial trade parlance, a DCA is a selling agent who is engaged by a principal to assist in supply of goods or services by contacting potential buyers on behalf of the principal. The factor that differentiates a DCA from other agents is that the* ***DCA guarantees the payment to the supplier.***
In such scenarios where the buyer fails to make payment to the principal by the due date, DCA makes the payment to the principal on behalf of the buyer (effectively providing an insurance against default by the buyer), and for this reason the commission paid to the DCA may be relatively higher than that paid to a normal agent.

DCA is an agent who guarantees the payment to the principal supplier. In order to guarantee timely payment to the supplier, the DCA can resort to various methods including extending short-term transaction-based loans to the buyer or paying the supplier himself and recovering the amount from the buyer with some interest at a later date.

This loan is to be repaid by the buyer along with an interest to the DCA at a rate mutually agreed between DCA and buyer. Concerns have been expressed regarding the valuation of supplies from principal to recipient where the payment for such supply is being discharged by the recipient through the loan provided by DCA or by the DCA himself. Issues arising out of such loan arrangement have been examined and the clarifications on the same are as below:

Issue: Whether a DCA falls under the ambit of agent under Para 3 of Schedule I of the CGST Act?

Clarification: As already clarified vide *Circular No. 57/31/2018 GST*, whether or not the DCA will fall under the ambit of agent under Para 3 of Schedule I of the CGST Act depends on the following possible scenarios:

- In case where the invoice for supply of goods is issued by the supplier to the customer, either himself or through DCA, the DCA does not fall under the ambit of agent.
- In case where the invoice for supply of goods is issued by the DCA in his own name, the DCA would fall under the ambit of agent.

Issue: Whether the **temporary short-term transaction-based loan extended by the DCA to the recipient (buyer)**, for which interest is charged by the DCA, is to be included in the value of goods being supplied by the supplier (principal) **where DCA is not an agent under Para 3 of** Schedule I of the CGST Act?

Clarification: In such a scenario following activities are taking place:

1. Supply of goods from supplier (principal) to recipient;
2. Supply of agency services from DCA to the supplier or both;
3. Supply of extension of loan services by the DCA to the recipient.

It is clarified that in cases where the DCA is not an agent under Para 3 of Schedule I of the CGST Act, the temporary short-term transaction based loan being provided by DCA to the buyer is a supply of service by the DCA to the recipient on principal to principal basis and is an independent supply.

Therefore, interest being charged by the DCA would not form part of the value of supply of goods supplied (to the buyer) by the supplier[2].

[2] *Services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services) are exempt vide Notification No 12/2017 CT (R) dated 28.06.2017.*

Issue: Whether **DCA is an agent under Para 3** of Schedule I of the CGST Act and makes payment to the principal on behalf of the buyer and charges interest to the buyer for delayed payment along with the value of goods being supplied, **whether the interest will form part of the value** of supply of goods also or not?

Clarification: In such a scenario following activities are taking place:

1. Supply of goods by the supplier (principal) to the DCA;
2. Further supply of goods by the DCA to the recipient;
3. Supply of agency services by the DCA to the supplier or the recipient or both;
4. Extension of credit by the DCA to the recipient.

It is clarified that in cases where the DCA is an agent under Para 3 of Schedule I of the CGST Act, the temporary short-term transaction based credit being provided by DCA to the buyer no longer retains its character of an independent supply and is subsumed in the supply of the goods by the DCA to the recipient. It is emphasised that the activity of extension of credit by the DCA to the recipient would not be considered as a separate supply as it is in the context of the supply of goods made by the DCA to the recipient.

It is further clarified that the value of the interest charged for such credit would be required to be included in the value of supply of goods by DCA to the recipient as per section 15(2)(d) of the CGST Act.

2. Clarification on various doubts related to treatment of sales promotion schemes under GST.

It has been noticed that there are several promotional schemes which are offered by taxable persons to increase sales volume and to attract new customers for their products. Taxability of two such schemes has been clarified as under:

A <u>Free samples and gifts:</u>

- It is a common practice among certain sections of trade and industry, such as, pharmaceutical companies which often provide drug samples to their stockists, dealers, medical practitioners, etc. without charging any consideration.
- As per section 7(1)(a) of the CGST Act, the expression "supply" includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.
- Therefore, the goods or services or both which are supplied free of cost (without any consideration) shall not be treated as "supply" under GST (except in case of activities mentioned in Schedule I of the CGST Act).

- Accordingly, it is clarified that samples which are supplied free of cost, without any consideration, do not qualify as "supply" under GST, except where the activity falls within the ambit of Schedule I of the CGST Act.

B. <u>Buy one get one free offer</u>:

- Sometimes, companies announce offers like 'Buy One, Get One free'.

  For example, "buy one soap and get one soap free" or "Get one tooth brush free along with the purchase of tooth paste".

- As per section 7(1)(a) of the CGST Act, the goods or services which are supplied free of cost (without any consideration) shall not be treated as "supply" under GST (except in case of activities mentioned in Schedule I of the CGST Act).

- It may appear at first glance that in case of offers like "Buy One, Get One Free", one item is being "supplied free of cost" without any consideration. In fact, it is not an individual supply of free goods, but a case of two or more individual supplies where a single price is being charged for the entire supply. It can at best be treated as supplying two goods for the price of one.

- Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined as per the provisions of section 8 of the CGST Act.

Note: The availability or otherwise of ITC in the hands of the supplier in relation to aforesaid two schemes has been discussed in Chapter 8 – Input Tax Credit.

[Circular 92/11/2019 GST dated 07.03.2019]

3
CHARGE OF GST

I. Amendments made by the CGST (Amendment) Act, 2018 – Effective from 01.02.2019 unless otherwise specified

1. Reverse charge on inward supplies from unregistered persons [Section 9(4) of the CGST Act]

Section 9(4) of the CGST Act, which mandated all registered persons to pay the tax on reverse charge basis on intra-State purchases made from unregistered persons, was under suspension.

Said sub-section has now been substituted with a new sub-section (4) which provides as follows:

The Government may, on the recommendations of the Council, by notification, **specify a class of registered persons** who shall, in respect of supply of **specified categories of goods or services or both received from an unregistered supplier**, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both. All the provisions of the CGST Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.

The impact of this amendment is as follows:

As per the erstwhile provision, tax under reverse charge was payable by **ALL** registered persons on **ALL** intra-State supplies of goods and/or services received by such registered persons from any unregistered supplier. However, such tax liability had been deferred vide an exemption notification.

Under the amended provision, tax under reverse charge is payable by the **NOTIFIED class of registered persons** on **NOTIFIED categories of *intra-State supplies*** of goods and/or services received by such registered persons from any unregistered supplier.

Similar amendment has also been carried out in section 5(4) of the IGST Act by the IGST (Amendment) Act, 2018. Consequently, tax under reverse charge is payable by the NOTIFIED class of registered persons on NOTIFIED categories of inter-State supplies of goods and/or services received by such registered persons from any unregistered supplier.

2. Amendments in the Composition Scheme

(a) Tax payable under composition scheme is payable in lieu of tax payable under section 9(1) [Section 10 of the CGST Act]

Section 10(1) has been amended in following manner with a view to remove any interpretational ambiguity and stipulate that the composition tax payers shall pay tax as a percentage of their turnover instead of the tax payable on the invoice value of the transactions under section 9(1) [applicable to regular taxpayers].

*"Notwithstanding anything to the contrary contained in this Act but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, whose aggregate turnover in the preceding financial year did not exceed ₹ 50 lakh, may opt to pay, in lieu of the tax payable by him **under section 9(1)**, an amount **of tax** calculated at such rate as may be prescribed, but not exceeding……..."*

(b) Turnover limit for determining the eligibility for composition scheme enhanced to ₹ 1.5 crore

Earlier, the Government had the power to increase the turnover limit for determining the eligibility for composition scheme (hereinafter referred to as eligibility turnover limit) upto ₹ 1 crore [First proviso to section 10 of CGST Act].

The said provision has been amended thereby empowering the Government to enhance the eligibility turnover limit for composition scheme upto **₹ 1.5 crore**.

Consequently, in pursuance of aforesaid power, **with effect from 01.04.2019**, the eligibility turnover limit for composition scheme is enhanced from ₹ 1 crore to **₹ 1.5 crore**. In other words, a registered person, whose aggregate turnover in the preceding financial year did not exceed ₹ 1.5 crore is eligible to opt for composition scheme. In order to give effect to the said amendment, erstwhile *Notification No. 8/2017 CT dated 27.06.2017* has been superseded by ***Notification No. 14/2019 CT dated 07.03.2019.***

Turnover limit for determining the eligibility for composition scheme in case of Special Category States

As discussed above, earlier eligibility turnover limit for composition scheme was ₹ 1 crore. However, 9 Special Category States - Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura and Himachal Pradesh - had a lower eligibility turnover limit of ₹ 75 lakh while remaining 2 Special Category States – Uttarakhand and Jammu and Kashmir - had opted for higher eligibility turnover limit of ₹ 1 crore.

Notification No. 14/2019 CT dated 07.03.2019 has amended the above list. Uttarakhand has now opted for a lower limit of ₹ 75 lakh while Assam and

Himachal Pradesh have moved to higher limit of ₹ 1.5 crore, with all other Special Category States in the list retaining *status quo*.

Resultantly, henceforth the eligibility turnover limit for composition for 8 Special Category States - Arunachal Pradesh, Uttarakhand, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura is ₹ 75 lakh while remaining 3 Special Category States – Assam, Himachal Pradesh and Jammu and Kashmir - had higher eligibility turnover limit of ₹ 1.5 crore.

(c) Composition scheme taxpayers permitted to render services other than restaurant services[3] upto a specified limit [Second proviso to section 10 of the CGST Act]

Generally, only a supplier of restaurant service is eligible for composition scheme. However, there are cases where a manufacturer/ trader is also engaged in supply of services other than restaurant service though the percentage of such supply of services is very small as compared to the supplies of goods. There may also be cases where a restaurant service provider is also engaged in supplying a small percentage of other services.

With a view to enable such taxpayers to avail of the benefit of composition scheme, second proviso has been added to section 10(1) which permits a registered person opting for composition scheme to supply services [other than restaurant services] of specified value. This specified value is value not exceeding:

(a) 10% of the turnover in a State/Union territory in the preceding financial year

or

(b) ₹ 5 lakh,

whichever is higher.

Thus, it can be inferred that a registered person opting for composition scheme whose turnover is upto ₹ 50 lakh in the preceding financial year can supply services [other than restaurant services] upto a maximum value of ₹ 5 lakh in the current financial year. Further, a registered person opting for composition scheme whose turnover is more than ₹ 50 lakh and upto ₹1.5 crore in the preceding financial year can supply services [other than restaurant services] in the current financial year upto a maximum value of 10% of the turnover in a State/Union territory in the preceding financial year.

Example: Ramsewak has opted for composition scheme in the financial year 2019-2020. His aggregate turnover in FY 2018-19 is ₹ 60 lakh. Since his aggregate turnover in the preceding FY does not exceed ₹ 1.5 crore, he is eligible for composition scheme. Further, in FY 2019-2020, he can supply services [other than restaurant services] upto a value of not exceeding:

[3] Supplies referred to in clause (b) of paragraph 6 of Schedule II of the CGST Act

(a) 10% of ₹ 60 lakh, i.e. ₹ 6 lakh

or

(b) ₹ 5 lakh,

whichever is higher. Thus, he can supply services upto a value of ₹ 6 lakh in FY 2019-2020.

If the value of services supplied exceeds ₹ 6 lakh, he becomes ineligible for the composition scheme and has to opt out of the composition scheme.

A co-joint reading of section 10(1) and section 10(2)(a) provides that the registered person shall be eligible to opt for the composition scheme provided:

(i) either he is not at all engaged in supply of services other than restaurant services

or

(ii) in case he supplies services other than restaurant services, value of such services does not exceed 10% of the turnover in a State/Union Territory in the preceding financial year or ₹ 5 lakh, whichever is higher.

(d) Rates under composition scheme

Under composition scheme, a (i) manufacturer, (ii) restaurant service provider and (iii) any other supplier eligible for composition levy, is required to pay tax @ (i) ½%[4], (ii) 2½%[5] and (iii) ½%[6] respectively.

Earlier, tax rate under category (iii) was ½% of turnover of taxable supplies of **goods** in the State or Union territory.

However, **with effect from 01.02.2019,** tax rate under category (iii) is ½% of turnover of taxable supplies of **goods and services** in the State or Union territory ***[Notification No. 03/2019 CT dated 29.01.2019]***.

(e) Interest income to be excluded while computing aggregate turnover for determining eligibility for composition scheme. Interest income not to render a person ineligible for composition scheme

As seen earlier, amended section 10(1) of the CGST Act provides that a registered person engaged in supply of services, other than restaurant services, may opt for composition scheme. However, value of such services should not exceed - 10% of the turnover in a State/Union territory in the preceding financial year or ₹ 5 lakh, whichever is higher.

Further, amended section 10(2)(a) provides that the registered person shall be eligible to opt for composition scheme provided either he is not at all engaged in supply of services other than restaurant services or in case he supplies services other than restaurant services, value of such services does not

[4] *Effective rate 1% (CGST+ SGST/UTGST)*
[5] *Effective rate 5% (CGST+ SGST/UTGST)*
[6] *Effective rate 1% (CGST+ SGST/UTGST)*

exceed 10% of the turnover in a State/Union Territory in the preceding financial year or ₹ 5 lakh, whichever is higher.

In view of the amended provisions of composition levy, *Order No. 01/2017 CT dated 13.10.2017* which was issued in view of the erstwhile position of law has been superseded by ***Order No. 01/2019 CT dated 01.02.2019.***

Said order clarifies that the value of supply of exempt services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, shall not be taken into account -

i. for determining the eligibility for composition scheme under second proviso to section 10(1). Under this proviso, a registered person opting for composition scheme may supply services [other than restaurant services] of value not exceeding 10% of the turnover in the preceding financial year in a State/Union territory or ₹ 5 lakh, whichever is higher. Thus, while computing value of services [other than restaurant services] as referred in second proviso to section 10(1), interest on loans/deposit/advances will not be taken into account.

ii. in computing aggregate turnover in order to determine eligibility for composition scheme.

(g) Effective date in case of denial of composition option by tax authorities

In case of denial of option to pay tax under composition levy by the tax authorities, it has been clarified that the effective date of such denial shall be from a date, including any retrospective date, as may be determined by tax authorities. However, such effective date shall not be prior to the date of contravention of the provisions of the CGST Act/ CGST Rules ***[Circular No. 77/51/2018 GST dated 31.12.2018]***.

II. Significant Notifications/Circulars/Orders

1. Option to pay concessional tax @ 3%

With effect from 01.04.2019, *Notification No. 2/2019 CT (R) dated 07.03.2019*[7] has provided an option to a registered person whose aggregate turnover in the preceding financial year is upto ₹50 lakh and who is not eligible to pay tax under composition scheme, to pay tax @ 3%[8] on first supplies of goods and/or services upto an aggregate turnover of ₹ 50 lakh made on/after 1st April in any FY, subject to specified conditions. The scheme has been elucidated as under:

Who are the persons not eligible for composition scheme, but eligible for *Notification No. 2/2019 CT (R)?*

A registered person who is exclusively engaged in supplying services other than restaurant services.

[7] *as amended by Notification No. 9/2019 CT (R) dated 29.03.2019*
[8] *Effective rate 6% (CGST+ SGST/UTGST)*

Conditions:

1. Supplies are made by a registered person who is:
    - not engaged in making any supply which is not leviable to tax under the said Act.
    - not engaged in making any inter-State outward supply – neither of goods nor of services.
    - neither a casual taxable person nor a non-resident taxable person.
    - not engaged in making any supply through an electronic commerce operator who is required to collect tax at source under section 52.
    - not engaged in making supplies of notified goods, namely, ice cream and other edible ice, whether or not containing cocoa [2105 00 00], Pan masala [2106 90 20] and all goods of Chapter 24, i.e. Tobacco and manufactured tobacco substitutes.
2. The registered person shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.
3. The registered person shall issue a bill of supply** instead of tax invoice. Such bill of supply will have the following words at its top - *'taxable person paying tax in terms of Notification No. 2/2019 CT (R) dated 07.03.2019, not eligible to collect tax on supplies'*.

    Order No. 3/2019 CT dated 08.03.2019 has clarified that provisions of section 31(3)(c) of the CGST Act [containing provisions relating to Bill of Supply] shall also apply to a person paying tax under this notification[9].

Other significant points:

1. Where more than one registered persons are having the same PAN, CGST on supplies by all such registered persons is paid @ 3% under this notification.
2. The registered person opting to pay CGST@ 3% under this notification shall be liable to pay:
    - CGST @ 3% on all outward supplies - first supplies of goods or services or both upto an aggregate turnover of ₹50 lakh made on or after the 1st April in any FY – regardless of any exemption from tax available to such supplies or any notification issued under section 9(1).
    - CGST on inward supplies on which he is liable to pay tax under section 9(3)/9(4) (reverse charge) at the applicable rates.
3. In computing aggregate turnover in order to determine eligibility of a registered person to pay central tax @ 3% under this notification, value of supply of exempt services by way of extending deposits, loans or advances in so far as

[9] *Since section 31(3)(c) is applicable only to a composition supplier.*

the consideration is represented by way of interest or discount, shall not be taken into account.

4. Where any registered person who has availed of ITC opts to pay tax under this notification, he shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the ITC in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods as if the supply made under this notification attracts the provisions of section 18(4) of the CGST Act and the rules made thereunder and after payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse.

5. The CGST Rules, as applicable to a person paying tax under composition scheme shall, *mutatis mutandis*, apply to a person paying tax under this notification. In view of this provision, ***Circular No. 97/16/2019 GST dated 05.04.2019*** has clarified that provisions contained in Chapter II [Composition Levy] of the CGST Rules shall *mutatis mutandis* apply to persons paying tax by availing the benefit of this notification, except to the extent specified below:

   (i) the option of payment of tax by availing the benefit of this notification in respect of any place of business in any State/UT shall be deemed to be applicable in respect of all other places of business registered on the same PAN.

   (ii) the option to pay tax by availing the benefit of this notification would be effective from the beginning of the FY or from the date of registration in cases where new registration has been obtained during the FY.

First supplies of goods or services or both shall, for the purposes of determining eligibility of a person to pay tax under this notification, include the supplies from 1st April of a FY to the date from which he becomes liable for registration under the said Act but for the purpose of determination of tax payable under this notification shall not include the supplies from the first day of April of a financial year to the date from which he becomes liable for registration under the Act.

2. Amendments in the reverse charge notification

The reverse charge notifications for services[10] have been amended by *Notification No. 29/2018 CT (R) dated 31.12.2018 & Notification No. 5/2019 CT (R) dated 29.03.2019 / Notification No. 30/2018 IT (R) dated 31.12.2018 & Notification No. 5/2019 IT (R) dated 29.03.2019* as follows:

(a) Amendment in the RCM provisions applicable to GTA

In case of goods transport agency (GTA) service where the tax is payable @ 5% (2.5% CGST + 2.5% SGST/UTGST or 5% IGST) and service is received by one of the specified recipients, namely, a factory registered under Factories Act, society registered under Societies Act, Co-operative society, body corporate and

[10] *Notification No. 13/2017 CT (R) dated 28.06.2017/ Notification No. 10/2017 IT (R) dated 28.06.2017*

partnership firm including AOP – whether or not registered under GST law, person registered under GST law & registered casual taxable person, tax is payable under reverse charge by the recipient of service.

The said provisions have been amended stipulating that reverse charge mechanism (RCM) shall not apply to services provided by a GTA, by way of transport of goods in a goods carriage by road to-

(a) a Department/establishment of the Central Government/ State Government/ Union territory; or

(b) local authority; or

(c) Governmental agencies,

which has taken registration under the CGST Act only for the purpose of deducting tax under section 51 and not for making a taxable supply of goods or services.

It may be noted that the said services have been simultaneously exempted from payment of tax vide ***Notification No. 28/2018 CT (R) dated 31.12.2018***. Thus, there will be no tax liability in this case. *[Refer Chapter 4: Exemptions from GST for discussion on this amendment.]*

The above amendment has become **effective from 01.01.2019**.

(b) New services under the RCM

S.No.	Category of supply of service	Supplier of service	Recipient of Service
1.	Services provided by Business facilitator to a banking company [Effective from 01.01.2019]	Business facilitator	A banking company, located in the taxable territory
2.	Services provided by an agent of business correspondent to business correspondent. [Effective from 01.01.2019]	An agent of business correspondent	A business correspondent, located in the taxable territory.
3.	Security services (services provided by way of supply of security personnel) provided to a registered person. However, nothing contained in this entry shall apply to: (i) (a) a Department or Establishment of the Central Government or State Government or Union territory; or (b) local authority; or	Any person other than a body corporate	A registered person, located in the taxable territory.

	(c) Governmental agencies; which has taken registration under the CGST Act only for the purpose of deducting tax under section 51 of the said Act and not for making a taxable supply of goods or services; or (ii) a registered person paying tax under composition scheme. [Effective from 01.01.2019]		
4.	Services supplied by any person by way of transfer of development rights or Floor Space Index (FSI) (including additional FSI) for construction of a project by a promoter [Effective from 01.04.2019]	Any person	Promoter
5.	Long term lease of land (30 years or more) by any person against consideration in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name) and/or periodic rent for construction of a project by a promoter. [Effective from 01.04.2019]	Any person	Promoter

(c) With effect from 01.01.2019, a new clause has been inserted in the Explanation to reverse charge notifications stipulating that the provisions of this notification, in so far as they apply to the Central Government, State Government, shall also apply to the Parliament and State Legislature.

3. Amendments in GST in real estate sector

Earlier, the effective rate of GST on real estate sector was **8%/12% with ITC**. **With effect from 01.04.2019**, the effective rates of GST for the new projects have been brought down to a large extent.

However, the promoters/builders have been given a one-time option to continue to pay tax at the old rates on ongoing projects (buildings where construction and actual booking both have started before 01.04.2019) which have not been completed by 31.03.2019.

New effective rates of GST for the new projects by promoters are as follows:

(i) New rate of 1% without ITC on construction of **affordable houses** (area 60 sqm in metros/ 90 sqm in non-metros and value upto ₹ 45 lakh).

(ii) New rate of 5% without ITC shall be applicable on construction of:

  (a) all houses other than affordable houses, and

  (b) commercial apartments such as shops, offices etc. in a residential real estate project (RREP) in which the carpet area of commercial apartments is not more than 15% of total carpet area of all apartments.

Conditions:

Above tax rates shall be available subject to following **conditions**:

(a) Input tax credit shall not be available.

(b) 80% of inputs and input services [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas], used in supplying the service shall be purchased from registered persons[11].

However, if value of inputs and input services purchased from registered supplier is less than 80%, **promoter has to pay GST on reverse charge basis, under section 9(4) of the CGST Act,** at the rate of 18% on all such inward supplies** (to the extent short of 80% of the inward supplies from registered supplier).

Further, where cement is received from an unregistered person, the promoter shall pay tax on supply of such cement on reverse charge basis, under section 9(4) of the CGST Act, at the applicable rate which is 28% (CGST 14% + SGST 14%) at present.

Moreover, GST on capital goods shall be paid by the promoter on reverse charge basis, under section 9(4) of the CGST Act at the applicable rates.

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[11] Discussion in above paras highlighted in grey is solely for the purpose of knowledge of the students and is not meant for examination purposes as rate of tax prescribed for supply of services has been excluded from the syllabus vide Study Guidelines applicable for November, 2019 examinations.

[Notification No. 07/2019 CT (R) dated 29.03.2019/ Notification No. 07/2019 IT (R) dated 29.03.2019]

Supply of TDR, FSI, long term lease (premium) of land by a landowner to a developer exempt from GST

Supply of TDR, FSI, long term lease (premium) of land by a landowner to a developer have been exempted subject to the condition that the constructed flats are sold before issuance of completion certificate and tax is paid on them.

Exemption of TDR, FSI, long term lease (premium) shall be withdrawn in case of flats sold after issue of completion certificate, but such withdrawal shall be limited to 1% of value in case of affordable houses and 5% of value in case of other than affordable houses. This will achieve a fair degree of taxation parity between under construction and ready to move property.

The liability to pay tax on TDR, FSI, long term lease (premium) has been shifted from land owner to builder under the reverse charge mechanism (RCM) – *as discussed in detail in point 2.(b)(4)/(5) above.*

4. Clarification on nature of supply of PSLC between banks

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

[Circular No. 93/12/2019 GST dated 08.03.2019]

4

EXEMPTIONS FROM GST

I. Amendments made by the CGST (Amendment) Act, 2018 – Effective from 01.02.2019

1. Definition of "local authority" amended [Section 2(69) of the CGST Act]

Section 2(69) of the CGST Act defines "local authority". Prior to amendment, by virtue of clause (f) of section 2(69), local authority meant a Development Board constituted under article 371 of the Constitution. The said clause has been amended vide the CGST (Amendment) Act, 2018 to provide that a local authority would mean a Development Board constituted under article 371 as well as a**rticle 371J** of the Constitution.

Article 371 of the Constitution grants special status to Maharashtra and Gujarat. Under this article, the President is empowered to establish a separate Board to ensure equitable distribution of funds in the State's budget to meet the developmental needs of the region.

Article 371J of the Constitution grants special status to 6 backward districts of Karnataka-Hyderabad region. Under this article, the President is empowered to establish a separate Board to ensure equitable distribution of funds in the State's budget to meet the developmental needs of the region.

II Significant Notifications/ Circulars/ Orders

1. Amendments relating to exemptions for supply of services

Notification No. 12/2017 CT (R) dated 28.06.2017 which grants exemption to intra-State supply of services from CGST, has been amended vide ***Notification No. 28/ 2018 CT (R) dated 31.12.2018/ Notification No. 4/2019 IT (R) dated 29.3.2019*** *as under-*

S.No.	Nature of amendment	Description of services
1.	New entry 21B inserted - New exemption	Services provided by a goods transport agency, by way of transport of goods in a goods carriage, to, - (a) Department or Establishment of the Central/State Government/Union territory; or (b) local authority; or (c) Governmental agencies, which has taken GST registration only for the purpose

		of deducting tax under section 51 and not for making a taxable supply of goods or services. *[Effective from 01.01.2019]*
2.	New entry 27A inserted- New exemption	Services provided by a banking company to Basic Saving Bank Deposit (BSBD) account holders under Pradhan Mantri Jan Dhan Yojana (PMJDY) *[Effective from 01.01.2019]*.
3.	Entry 34A amended – Scope of exemption enhanced	Services supplied by Central/State Government/Union territory to their undertakings or Public Sector Undertakings (PSUs) by way of guaranteeing the loans taken by such undertakings or PSUs from the **banking companies** and financial institutions *[Effective from 01.01.2019]*. (The words 'banking companies' have been inserted in the entry)
4.	New entry 74A inserted- New exemption	Services provided by rehabilitation professionals recognised under the Rehabilitation Council of India Act, 1992 by way of rehabilitation, therapy or counselling and such other activity as covered by the said Act at medical establishments, educational institutions, rehabilitation centres established by Central/State Government/ Union territory or an entity registered under section 12AA of the Income Tax Act, 1961 *[Effective from 01.01.2019]*.
5.	Entry 67 withdrawn	Earlier, services provided by Indian Institutes of Managements (IIMs) as covered under entry No. 67 of said notification were exempt. However, under the amended position, **with effect from 01.01.2019,** entry No. 67 has been omitted as IIMs are now covered under the definition of 'educational institution' whose services are exempt under entry No. 66 of the said notification. In this regard, ***Circular No. 82/01/2019 GST dated 01.01.2019*** has clarified as under***:*** With effect from 31.01.2018, all the IIMs are "educational institutions" as defined under *Notification No. 12/ 2017 CT (R) dated 28.06.2017* as they provide education as a part of a curriculum for obtaining a qualification recognized by law for the time being in force. IIMs also provide various short duration/ short term programs for which they award participation certificate to the executives/ professionals as they are considered as "participants" of the said programmes. These participation certificates are not any qualification recognized by law. Such participants are also not

		considered as students of IIM. Services provided by IIMs as an educational institution to such participants is not exempt from GST. Such short duration executive programs attract standard rate of GST @ 18% (CGST 9% + SGST 9%) *[Effective from 01.01.2019]*.
6.	New entries 41A and 41B inserted- New exemption	Supply of TDR, FSI, long term lease (premium) of land by a landowner to a developer have been exempted subject to the condition that the constructed flats are sold before issuance of completion certificate and tax is paid on them. Exemption of TDR, FSI, long term lease (premium) shall be withdrawn in case of flats sold after issue of completion certificate, but such withdrawal shall be limited to 1% of value in case of affordable houses and 5% of value in case of other than affordable houses. This will achieve a fair degree of taxation parity between under construction and ready to move property *[Effective from 01.04.2019]*.

Parallel exemptions from IGST have been extended to supply of inter-State services by amending *Notification No. 9/2017 IR) dated 28.06.2017,* which grants exemption to supply of inter-State services from IGST vide ***Notification No. 29/2018 IT (R) dated 31.12.2018 / Notification No. 4/2019 CT (R) dated 29.3.2019.***

2. Clarification on availability of GST exemption on the upfront amount payable in installments for long term lease of plots

In respect of GST exemption granted vide Entry 41[12] on the upfront amount which is determined upfront but is paid or payable in instalments for long term (30 years, or more) lease of industrial plots or plots for development of financial infrastructure, it has been clarified vide ***Circular No. 101/20/2019 GST dated 30.04.2019*** that GST exemption on the upfront amount is admissible irrespective of whether such upfront amount is payable or paid in one or more instalments, provided the amount is determined upfront.

3. Exemption in respect of supply of services having place of supply in Nepal or Bhutan, not required, as condition of receipt of payment in convertible foreign exchange to qualify as "export of services" relaxed

Earlier, one of the conditions for a service to qualify as “export of services” was that the payment for such service must be received by the supplier in convertible foreign exchange [Section 2(6) of the IGST Act]. Since in the case of exports to Nepal and Bhutan the payment is received in Indian rupees as per RBI regulations, supply of services having place of supply in Nepal or Bhutan, against payment in Indian Rupees was exempted from payment of tax vide *Notification No. 9/2017 IT (R) dated 28.06.2017*.

[12] *under Notification No. 12/2017 CT (R) dated 28.06.2017*

With effect from 01.02.2019, IGST (Amendment) Act, 2018 has amended said provision to provide that in case of export of services, wherever permitted by the Reserve Bank of India, receipt of payment in Indian rupees has been allowed – *Discussed in detail in Chapter 14 – Import and Export under GST*.

Consequently, the supply of services having place of supply in Nepal or Bhutan, against payment in Indian Rupees can now be considered as export of services subject to fulfilment of other conditions. Thus, exemption available to such services vide Entry 10D in said notification has been withdrawn vide ***Notification No. 2/2019 IT (R) dated 04.02.2019***.

5

PLACE OF SUPPLY

I. Amendments made by the IGST (Amendment) Act, 2018- Effective from 01.02.2019

1. Place of supply of goods transported outside India when both supplier and recipient is in India [Section 12(8) of IGST Act]

Section 12 of the IGST Act prescribes the provisions for determination of place of supply of services when the location of supplier of the services and the location of recipient of the services is in India.

As per sub-section (8) of the said section, the place of supply of services by way of transportation of goods, including by mail or courier, provided to a registered person, is the location of such person and where such services are provided to an unregistered person, the place of supply is the location at which such goods are handed over for their transportation.

A new proviso has been inserted in this sub-section to lay down that where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods. Therefore, in case where the location of supplier and recipient is in India and goods are transported to a place outside India, the place of supply of transportation service shall be the place of destination of such goods, i.e. outside India.

2. Place of supply of services in respect of goods temporarily imported into India [Section 13(3)(a) of IGST Act]

Section 13 of the IGST Act prescribes the provisions for determination of place of supply of services when the location of supplier of the services or the location of recipient of services is outside India.

As per sub-section (3)(a) of the said section, the place of supply of services requiring physical presence of goods is the location where such service is actually performed. However, this provision does not apply in case of service supplied in respect of goods that are temporarily imported into India for repairs and are exported after repairs, without being put to any other use in India.

The scope of such exception has been expanded by the IGST (Amendment) Act, 2018. After the amendment, the provisions of sub-section (3) will also not apply in case of goods that are temporarily imported into India for **any other treatment or process** (apart from repairs) and are exported after such **treatment or process** without being put to any use in India, other than that which is required for such treatment or process.

Thus, place of supply of services in respect of goods imported into India for any job work or any other process etc. and exported after such job work or process etc. without being put to any other use, will be determined in accordance with the general rule, i.e. section 13(2) of the IGST Act.

II. Significant Notifications/ Circulars/ Orders/

1. Amendments in IGST Rules – Effective from 01.01.2019

(i) In case of advertisements over the internet, service is deemed to be provided all over India [Rule 3 of the IGST Rules]

Rule 3 of the IGST Rules provides the mechanism to determine the proportionate value attributable to different States or Union territories (UT), in the case of supply of advertisement services to the Central Government/ State Government/ Statutory body/ Local authority, under section 12(14) of the IGST Act, in the absence of any contract (in this regard) between the supplier of service and recipient of services.

Clause (h) of rule 3 *inter alia* provided that in the case of advertisements over internet, the amount attributable to the value of advertisement service disseminated in a State/UT shall be calculated on the basis of the internet subscribers in such State/UT, which in turn, shall be calculated in the manner prescribed therein.

The said provision in rule 3 has been amended to provide that in case of advertisements over internet, the advertisement service **shall be deemed to have been provided all over India**. Thus, the value of such service will be apportioned amongst all States and UTs, of India in the manner prescribed therein.

(ii) Computation of value of services where immovable property is located in more than one State and where the location of supplier and recipient is in India [New rule 4 of the IGST Rules]

Section 12(3) of the IGST Act provides that the place of supply of services, in relation to immovable property or a boat or a vessel, shall be the location at which immovable property or boat or vessel is located or intended to be located. However, in case where the immovable property or boat or vessel is located in more than one State/ UT, the service is deemed to have been supplied in each of the respective States/ UT, proportionately in terms of value of services determined as per rule 4 in the following manner:-

S. No.	Type of service in relation to immovable property	Factor which determines the proportionate value of service
(a)	Service provided by way of lodging accommodation by hotel, inn, guest house etc. and its ancillary services	Number of nights stayed in such property [Refer Example 1]

	(other than the cases where such property is a single property located in 2 or more contiguous States/ UT or both)	
(b)	All other services provided in relation to immovable property including • services by way of accommodation in any immovable property for organising any marriage or reception etc. • supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called where such property is a single property located in 2 or more contiguous States or/and UT • services ancillary to services mentioned above	Area of the immovable property lying in each State/ UT [Refer Example 2]
(c)	Services by way of lodging accommodation by a house boat or vessel and its ancillary services	Time spent by the boat or vessel in each such State/ UT, to be determined on the basis of declaration made by the service provider [Refer Example 3]

Example 1: *A hotel chain X charges a consolidated sum of Rs.30,000/- for stay in its two establishments in Delhi and Agra, where the stay in Delhi is for 2 nights and the stay in Agra is for 1 night. The place of supply in this case is both in the Union territory of Delhi and in the State of Uttar Pradesh and the service shall be deemed to have been provided in the Union territory of Delhi and in the State of Uttar Pradesh in the ratio 2:1 respectively. The value of services provided will thus be apportioned as Rs.20,000/- in the Union territory of Delhi and Rs.10,000/- in the State of Uttar Pradesh.*

Example 2: *There is a piece of land of area 20,000 square feet which is partly in State S1 say 12,000 square feet and partly in State S2, say 8000 square feet. Site preparation work has been entrusted to T. The ratio of land in the two states works out to 12:8 or 3:2 (simplified). The place of supply is in both S1 and S2. The service shall be deemed to have been provided in the ratio of 12:8 or 3:2 (simplified) in the States S1 and S2 respectively. The value of the service shall be accordingly apportioned between the States.*

Example 3: *A company C provides the service of 24 hours accommodation in a houseboat, which is situated both in Kerala and Karnataka in as much as the guests board the house boat in Kerala and stay there for 22 hours but it also moves into Karnataka for 2 hours (as declared by the service provider). The place of supply of this service is in the States of Kerala and Karnataka. The service shall be deemed to have been provided in the ratio of 22:2 or 11:1 (simplified) in the states of Kerala and Karnataka, respectively. The value of the service shall be accordingly apportioned between the States.*

(iii) Computation of value of services where event is organised in more than one State and where the location of supplier and the recipient is in India [New rule 5 of the IGST Rules]

Section 12(7) of the IGST Act provides that when services provided by way of organisation of events including services ancillary to such organisation or assigning of sponsorship to such events, is provided to an unregistered person, the place of supply of such service is the location where the event is actually held.

If the event is held in more than one State/ UT and a consolidated amount is charged for services relating to such event, the place of supply of such service is deemed to be in each of the respective State/ UT in proportion to the value of services determined in terms of the contract or agreement entered into in this regard. **In the absence of any such contract or agreement, the value is determined in accordance with rule 5 by the application of generally accepted accounting principles**.

Example: *An event management company E has to organize some promotional events in States S1 and S2 for a recipient R (unregistered). 3 events are to be organized in S1 and 2 in S2. They charge a consolidated amount of Rs.10,00,000 from R. The place of supply of this service is in both the States S1 and S2. Say the proportion arrived at by the application of generally accepted accounting principles is 3:2. The service shall be deemed to have been provided in the ratio 3:2 in S1 and S2 respectively. The value of services provided will thus be apportioned as Rs. 6,00,000/- in S1 and Rs. 4,00,000/- in S2.*

(iv) Computation of value of services where leased circuit is installed in more than one State and where the location of supplier and the recipient is in India [New rule 6 of the IGST Rules]

Section 12(11)(a) of the IGST Act determines the place of supply of services in relation to telecommunication services provided using a fixed telecommunication line, leased circuits, internet leased circuits, cable or dish antenna. The place of supply of such services is the location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services.

If the leased circuit is installed in more than one State/ UT and a consolidated amount is charged for supply of services, the place of supply is deemed to be in each of the respective States/ UT in proportion to the value of services determined in terms of the contract or agreement entered into in this regard**. In the absence of any such contract or agreement, the value is determined in accordance with rule 6 in proportion to the number of points lying in the State/ UT.**

The number of points in a circuit is determined in the following manner-

S. No.	Number of Points	Examples
(i)	In the case of a circuit between two points or places, the starting point or place of the circuit and the end point or place of the circuit will invariably constitute two points	***Example 1:*** *A company T installs a leased circuit between the Delhi and Mumbai offices of a company C. The starting point of this circuit is in Delhi and the end point of the circuit is in Mumbai. Hence, one point of this circuit is in Delhi and another in Maharashtra. The place of supply of this service is in the Union territory of Delhi and the State of Maharashtra. The service shall be deemed to have been provided in the ratio of 1:1 in the Union territory of Delhi and the State of Maharashtra, respectively.*
(ii)	Any intermediate point or place in the circuit will also constitute a point provided that the benefit of the leased circuit is also available at that intermediate point	***Example 2****: A company T installs a leased circuit between the Chennai, Bengaluru and Mysuru offices of a company C. The starting point of this circuit is in Chennai and the end point of the circuit is in Mysuru. The circuit also connects Bengaluru. Hence, one point of this circuit is in Tamil Nadu and two points in Karnataka. The place of supply of this service is in the States of Tamil Nadu and Karnataka. The service shall be deemed to have been provided in the ratio of 1:2 in the States of Tamil Nadu and Karnataka, respectively.* ***Example 3:*** *A company T installs a leased circuit between the Kolkata, Patna and Guwahati offices of a company C. There are 3 points in this circuit in Kolkata, Patna and Guwahati. One point each of this circuit is, therefore, in West Bengal, Bihar and Assam. The place of supply of this service is in the*

		States of West Bengal, Bihar and Assam. The service shall be deemed to have been provided in the ratio of 1:1:1 in the States of West Bengal, Bihar and Assam, respectively.

(v) Computation of value of services where the service is performed in more than one State and where the location of supplier or the recipient is outside India [New rule 7 of the IGST Rules]

Section 13(3) of the IGST Act determines the place of supply of services supplied (i) in respect of goods requiring physical presence of such goods and (ii) to an individual requiring his physical presence. The place of supply of such services is the location where such services are performed.

As per section 13(7) of the IGST Act, if such services are supplied in more than one State/ UT, the place of supply of such services is taken as being in each such State/ UT and the value of such supplies is determined in terms of the contract or agreement entered into in this regard**. In the absence of any such contract or agreement, the value is determined in accordance with rule 7 in the following manner:-**

S. No.	Cases	Manner of computing the proportionate value of service
(i)	Services supplied on the same goods	Equally dividing the value of service in each of the States/ UT where the service is performed [Refer Example 1]
(ii)	Services supplied on different goods	Considering the ratio of the invoice value of goods in each States/ UT, on which service is performed, as the ratio of the value of the service performed in each State/UT [Refer Example 2]
(iii)	Services supplied to individuals	Applying generally accepted accounting principles. [Refer Example 3]

Example 1: *A company C which is located in Kolkata is providing the services of testing of a dredging machine and the testing service on the machine is carried out in Orissa and Andhra Pradesh. The place of supply is in Orissa and Andhra Pradesh and the value of the service in Orissa and Andhra Pradesh will be ascertained by dividing the value of the service equally between these two States.*

Example 2: *A company C which is located in Delhi is providing the service of servicing of two cars belonging to Mr. X. One car is of manufacturer J and is located in Delhi and is serviced by its Delhi workshop. The other car is of manufacturer A and is located in Gurugram and is serviced by its Gurugram workshop. The value of service attributable to the UT of Delhi and the State of*

Haryana respectively shall be calculated by applying the ratio of the invoice value of car J and the invoice value of car A, to the total value of the service.

Example 3: *A makeup artist M has to provide make up services to an actor A. A is shooting some scenes in Mumbai and some scenes in Goa. M provides the makeup services in Mumbai and Goa. The services are provided in Maharashtra and Goa and the value of the service in Maharashtra and Goa will be ascertained by applying the generally accepted accounting principles.*

(vi) Computation of value of services where immovable property is located in more than one State and where the location of supplier or the recipient is outside India [New rule 8 of the IGST Rules]

As per section 13(7) of the IGST Act, the place of supply of services supplied, in relation to an immovable property, in more than one State/ UT is taken as being in each such State/ UT and the value of such supplies is determined in terms of the contract or agreement entered into in this regard. Rule 8 of the IGST Rules lays down that in the absence of any such contract or agreement, **the value is determined by applying the provisions of rule 4 of the said rules, *mutatis mutandis*.**

(vii) Computation of value of services where event is held in more than one State and where the location of supplier or the recipient is outside India [New rule 9 of the IGST Rules]

As per section 13(7) of the IGST Act, the place of supply of services supplied, by way of admission to or organisation of an event in more than one State/ UT is taken as being in each such State/ UT and the value of such supplies is determined in terms of the contract or agreement entered into in this regard. Rule 9 of the IGST Rules lays down that in the absence of any such contract or agreement, **the value is determined by applying the provisions of rule 5 of the said rules, *mutatis mutandis*.**

[Notification No. 04/2018 IT dated 31.12.2018]

6

TIME OF SUPPLY

I. Amendments made by the CGST (Amendment) Act, 2018 – Effective from 01.02.2019

1. Drafting errors in sections 12 and 13 of the CGST Act rectified

Prior to the amendment, section 12(2) of the CGST Act provided that the time of supply of goods is the earliest of the following dates, namely:—

(a) the date of issue of invoice by the supplier or the last date on which he is required, under section 31(1), to issue the invoice with respect to the supply; or

(b) the date on which the supplier receives the payment with respect to the supply.

However, it may be noted that *Notification No. 66/2017 CT dated 15.11.2017* specifies that a registered person (excluding composition supplier) should pay GST on the outward supply of goods at the time of supply as specified in section 12(2)(a).

Section 31(1) requires that a registered person supplying taxable goods shall, before or at the time of removal or delivery of goods, issue a tax invoice. However, section 31 contains other situations as well, where invoice is to be raised, e.g. continuous supply of goods, goods sent on approval basis etc.

Section 12(2)(a) has been amended by the CGST (Amendment) Act, 2018 to omit the reference of "sub-section (1)" therefrom. Thus, under the amended position, for determining the time of supply of goods, the date of issue of invoice by the supplier or the last date on which he is required, under section 31 [and not only section 31(1)] will need to be considered.

Similar amendment has been made in section 13 which prescribes the provisions for determining the time of supply of services. As per section 13(2), the time of supply of services shall be the earliest of the following dates, namely:—

(a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or

(b) the date of provision of service, if the invoice is not issued within the period prescribed under sub-section (2) section 31 or the date of receipt of payment, whichever is earlier; or

(c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply

Here also, section 13(2) has been amended to omit the reference of "sub-section (2)" from clause (a) and clause (b) thereof. Thus, under the amended position, for determining the time of supply of services, the invoice issued within the period prescribed under section 31 [and not only section 31(2)] will need to be considered.

II. Significant Notifications/ Circulars/ Orders

1. Special procedure for determining the time of supply of services in certain cases

With effect from 01.04.2019, supply of services by a landowner to a developer by way of –

(i) transfer of transferable development rights (TDR) or floor space index (FSI);

(ii) granting of long term lease,

for construction of residential apartments have been exempted subject to the condition that the constructed flats are sold before issuance of completion certificate or first occupation of the project, whichever is earlier, and tax is paid on them.

Such exemption for TDR, FSI, long term lease (premium) shall not be available in case of flats which remain un-booked on the date of issuance of completion certificate or first occupation of the project, whichever is earlier. The promoter (developer) shall be liable to pay tax at the applicable rate, on reverse charge basis, on such proportion of (i) value of development rights and/or FSI, or (ii) upfront amount paid for long term lease, as is attributable to such un-booked residential apartments.

In view of the above change, **with effect from 01.04.2019,** a special procedure for payment of tax has been laid down for following classes of registered persons, namely-

(i) a promoter who receives development rights or FSI (including additional FSI) on or after 1st April, 2019 for construction of a project against consideration payable or paid by him, wholly or partly, in the form of construction service of commercial or residential apartments in the project or in any other form including in cash;

(ii) a promoter, who receives long term lease of land on or after 1st April, 2019 for construction of residential apartments in a project against consideration payable or paid by him, in the form of upfront amount*,

* Such upfront amount is called as premium, salami, cost, price, development charges or by any other name.

For such persons, the liability to pay tax on, -

(a) the consideration paid by him in the form of construction service of commercial or residential apartments in the project, for supply of development rights or FSI (including additional FSI);

(b) the monetary consideration paid by him, for supply of development rights or FSI (including additional FSI) relatable to construction of residential apartments in project;

(c) the upfront amount paid by him for long term lease of land relatable to construction of residential apartments in the project; and

(d) the supply of construction service by him against consideration in the form of development rights or FSI (including additional FSI),

shall arise on the date of issuance of completion certificate or first occupation of the project, whichever is earlier.

[Notification No. 6/2019 CT (R) dated 29.03.2019/ Notification No. 6/2019 IT (R) dated 29.03.2019]

7

VALUE OF SUPPLY

I. Significant Notifications/ Circulars/ Orders

1. Clarification on valuation methodology for ascertainment of GST on TCS under Income Tax Act, 1961

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

It has been clarified that for the purpose of determination of value of supply under GST, tax collected at source (TCS) under the provisions of the Income Tax Act, 1961 would not be includible as it is an interim levy not having the character of tax.

[Circular No. 76/50/2018 GST dated 31.12.2018 amended vide corrigendum dated 7.03.2019]

2. Clarification on value to be adopted for computing GST on services of Business Facilitator (BF) or a Business Correspondent (BC) to Banking Company

Issue: What is the value to be adopted for the purpose of computing GST on services provided by BF/BC to a banking company?

Clarification: As per RBI's Circular and subsequent instructions on the issue (referred to as 'guidelines' hereinafter), banks may pay reasonable commission/fee to the BC, the rate and quantum of which may be reviewed periodically. The agreement of banks with the BC specifically prohibits them from directly charging any fee to the customers for services rendered by them on behalf of the bank. On the other hand, banks (and not BCs) are permitted to collect reasonable service charges from the customers for such service in a transparent manner. The arrangements of banks with the BCs specify the requirement that the transactions are accounted for and reflected in the bank's books by end of the day or the next working day, and all agreements/contracts with the customer shall clearly specify that the bank is responsible to the customer for acts of omission and commission of the BF/BC.

Hence, banking company is the service provider in the BF model or the BC model operated by a banking company as per RBI guidelines. The banking company is liable to pay GST on the entire value of service charge or fee charged to customers whether or not received via BF or BC.

[Circular No. 86/05/2019 GST dated 01.01.2019]

3. Clarification on discounts

A. Discounts including 'Buy more, Save more' offers

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

(ii) Some suppliers also offer periodic / year ending discounts to their stockists, etc. For example- Get additional discount of 1% if you purchase 10,000 pieces in a year, get additional discount of 2% if you purchase 15,000 pieces in a year. Such discounts are established in terms of an agreement entered into at or before the time of supply though not shown on the invoice as the actual quantum of such discounts gets determined after the supply has been effected and generally at the year end. In commercial parlance, such discounts are colloquially referred to as "volume discounts". Such discounts are passed on by the supplier through credit notes.

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

B. Secondary Discounts

(i) These are the discounts which are not known at the time of supply or are offered after the supply is already over. For example, M/s A supplies 10,000 packets of biscuits to M/s B at Rs. 10/- per packet. Afterwards M/s A re-values it at Rs. 9/- per packet. Subsequently, M/s A issues credit note to M/s B for Rs. 1/- per packet.

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

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

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

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

[Circular 92/11/2019 GST dated 07.03.2019]

8

INPUT TAX CREDIT

I. Amendments made by the CGST (Amendment) Act, 2018 – Effective from 01.02.2019

1. Provisions introduced for availing ITC in case of bill to ship to situations in case of services [Explanation to section 16(2)(b) of the CGST Act]

Section 16(2) of CGST Act deals with the conditions for availing input tax credit. One such condition is that the goods or services or both shall be received by the registered person. In the case of "bill-to-ship-to" situations, for the purposes of availing of ITC on goods by the registered person, a deeming provision is present as an explanation to section 16(2)(b) of the CGST Act vide which the registered person is deemed to have received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of the said registered person.

The CGST (Amendment) Act, 2018 has amended the said explanation to introduce such deeming fiction in case of services as well. As per the amended explanation, it shall be deemed that the registered person has received the goods or, as the case may be, **services**—

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.

2. For the purpose of reversal of ITC, value of exempt supplies not to include Schedule III items except sale of land and sale of building [Section 17(3) of the CGST Act]

As per sub-section (2) of section 17 of the CGST Act, where goods and/or services are partly used for making exempt supplies including zero rated supplies and partly for taxable supplies, ITC attributable to only taxable supplies and zero rated supplies can be taken by the registered person. In other words, in such a case, ITC attributable to exempt supplies need to be reversed.

Sub-section (3) of section 17 provides that the value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities,

sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

The CGST (Amendment) Act, 2018 has inserted an explanation in this sub-section to clarify that 'value of exempt supply' for the purpose of this sub-section shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule, i.e. sale of land and sale of building. Therefore, while in all other items of Schedule III, ITC will not be required to be reversed; in case of sale of land and sale of building, ITC will need to be reversed.

3. Scope of blocked credits reduced [Clauses (a) and (b) of section 17(5) of the CGST Act]

The CGST (Amendment) Act, 2018 has substituted clauses (a) and (b) of section 17(5) with a view to expand the scope of ITC availability. Provisions relating to credit availability have undergone a change in respect of goods and services like motor vehicles, vessels and aircrafts, general insurance, servicing, repair and maintenance, food & beverages, outdoor catering, membership of club, travel benefits etc. Under the amended position, the restriction and availability of ITC in respect of such goods and services is as under:

S. No.	Goods and/or services on which credit is blocked	Exceptions to goods and/or services mentioned in column (2) on which credit is allowed	Remarks
(1)	(2)	(3)	(4)
(i)	Motor vehicles* for transportation of persons with seating capacity ≤ 13 persons (including the driver)	Such motor vehicles when used for- • making further taxable supply of such motor vehicles; • making taxable supply of transportation of passengers; • making taxable supply of imparting training on driving such motor vehicles.	• ITC on motor vehicles for transportation of persons with seating capacity ≤ 13 persons (including the driver) used for any purpose other than ones mentioned in Sl. No. (i) of column (3) is not allowed. • ITC on motor vehicles for transportation of persons with seating capacity > 13 persons (including the driver) used for any purpose is allowed. • ITC on any other motor vehicle (e.g. motor vehicle used for transportation of goods,

			dumpers, tippers etc.) used for any purpose is allowed.
Examples ***1.*** *ITC on cars purchased by a manufacturing company for official use of its employees is blocked.* ***2.*** *ITC on cars purchased by a car dealer for sale to customers is allowed.* ***3.*** *ITC on cars purchased by a company engaged in renting out cars for transportation of passengers, is allowed.* ***4.*** *ITC on cars purchased by a car driving school is allowed.* ***5.*** *ITC on buses purchased by a company for transportation of its employees from their residence to office and back, is allowed.* ***6.*** *ITC on trucks purchased by a company for transportation of its finished goods is allowed.*			
(ii)	Vessels and aircrafts	Vessels and aircraft when used for- • making further taxable supply of such vessels or aircraft; • making taxable supply of transportation of passengers; • making taxable supply of imparting training on navigating such vessels; • making taxable supply of imparting training on flying such aircrafts; • transportation of goods.	ITC on vessels and aircrafts used for any purpose other than the ones mentioned in Sl. No. (ii) of column (3) is not allowed.
Examples ***1.*** *ITC on aircraft purchased by a manufacturing company for official use of its CEO is blocked.* ***2.*** *ITC on aircraft purchased by an Aviation School providing training on flying aircrafts, is allowed.*			
(iii)	General insurance, servicing, repair and maintenance relating to:	• Such services relating to motor vehicles for transportation of persons with seating capacity ≤ 13	• ITC is not allowed on services of general insurance, servicing, repair and maintenance relating to motor vehicles, vessels or

	• Motor vehicles for transportation of persons with seating capacity ≤ 13 persons (including the driver), • Vessels • Aircraft	persons (including the driver) when used for purposes mentioned in Sl Nos. (i) of column (3) above • Such services relating to vessels or aircraft when used for purposes mentioned in Sl. No. (ii) of column (3) above • Such services when received by a taxable person engaged – o in the manufacture of such motor vehicles (as mentioned in Sl. No. (iii) of column 2), vessels or aircraft; or o in the supply of general insurance services in respect of such motor vehicles (as mentioned in Sl. No. (iii) of column 2), vessels or aircraft insured by him	aircraft, ITC on which is not allowed. • ITC is allowed on services of general insurance, servicing, repair and maintenance relating to motor vehicles, vessels or aircraft, ITC on which is allowed.
Examples ***1.*** *ITC on general insurance taken on a car used by employees of a manufacturing company for official purposes, is blocked.* ***2.*** *ITC on maintenance & repair services availed by a company for a truck used for transporting its finished goods, is allowed.*			
(iv)	• Food and beverages • Outdoor catering	• Such goods and/or services when used by a registered person for making an outward taxable	• ITC on such goods and/or services when used for any purpose other than the ones mentioned in Sl. No. (iv)

	• Beauty treatment • Health services • Cosmetic and plastic surgery • Leasing, renting or hiring of motor vehicles, vessels or aircraft on which ITC is not allowed • Life insurance and health insurance	supply of the same category of goods and/or services (sub-contracting) or as an element of a taxable composite or mixed supply • When such goods and/or services are provided by an employer to its employees under a statutory obligation	of column (3), is not allowed. • When such goods and/or services are provided by the employer to its employees without any statutory obligation, ITC thereon is blocked.
Examples ***1.*** *AB & Co., a caterer of Amritsar, has been awarded a contract for catering in a marriage to be held at Ludhiana. The firm has given the contract for supply of snacks, to be served in the marriage, to CD & Sons, a local caterer of Ludhiana. ITC on such outdoor catering services availed by AB & Co., is allowed.* ***2.*** *ITC on outdoor catering services availed by a company, for a team development event organised for its employees, is blocked.* ***3.*** *ITC on outdoor catering service availed by a company to run a canteen in its factory. The Factories Act, 1948 requires the company to set up a canteen in its factory. ITC on such outdoor catering is allowed.*			
(v)	Membership of a club, health and fitness centre	When such services are provided by an employer to its employees under a statutory obligation	When such goods and/or services are provided by the employer to its employees without any statutory obligation, ITC thereon is blocked.
(vi)	Travel benefits extended to employees on vacation such as leave or home travel concession	When such services are provided by an employer to its employees under a statutory obligation	When such goods and/or services are provided by the employer to its employees without any statutory obligation, ITC thereon is blocked.

***Definition of Motor Vehicle** – As per section 2(76) of the CGST Act, "motor vehicle" shall have the same meaning as assigned to it in clause (28) of section 2 of the Motor Vehicles Act, 1988.

As per section 2(28) of the Motor Vehicles Act, 1988, "motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty-five cubic centimetres.

4. Value of turnover for the purpose of *pro rata* distribution of ITC by an ISD to exclude central sales tax also [Section 20 of the CGST Act]

Section 20 of the CGST Act prescribes the manner of distribution of credit by an input service distributor. Essentially, the section lays down that the credit of tax paid on input services attributable to more than one recipient should be distributed *pro rata* on the basis of the turnovers in a State/Union Territory of such recipients.

Prior to amendment, clause (c) of the explanation to section 20 defined the term "turnover", in relation to any registered person engaged in the supply of taxable goods as well as goods not taxable under this Act to mean the value of turnover, reduced by the amount of any duty or tax levied under entry 84 of List I of the Seventh Schedule to the Constitution and entries 51 and 54 of List II of the said Schedule.

The CGST (Amendment) Act, 2018 has amended the said clause (c) of the explanation to clarify that the term "turnover", in relation to any registered person engaged in the supply of taxable goods as well as goods not taxable under this Act, means the value of turnover, reduced by the amount of any duty or tax levied under entries 84 **and 92A** of List I of the Seventh Schedule to the Constitution and entries 51 and 54 of List II of the said Schedule. In other words, apart from excise duty, State excise duty and VAT, the value of turnover would now exclude central sales tax also. It may be noted that the power to levy central sales tax is derived from the entry 92A of the List I of the VII Schedule to the Constitution.

5. SGST/ UTGST to be used for payment of IGST only when credit of CGST is not available [Section 49 of the CGST Act]

Section 49(5) prescribes the order of utilization of ITC. As per clause (c) and clause (d) of section 49(5), ITC of SGST/UTGST should first be utilized towards payment of SGST/UTGST and the amount remaining, if any, may be utilized towards payment of IGST.

The CGST (Amendment) Act, 2018 has inserted provisos after the said clause (c) and clause (d) to lay down that ITC on account of SGST/UTGST can be utilized towards payment of IGST only where the balance of the ITC on account of CGST is not available for payment of IGST.

6. ITC of IGST to be fully utilised first [New section 49A of the CGST Act]

The CGST (Amendment) Act, 2018 has inserted a new section 49A "Utilisation of input tax credit subject to certain conditions" in the CGST Act.

Section 49A provides that ITC of CGST, SGST/UTGST should be utilised towards payment of IGST, CGST, SGST/UTGST only after the ITC of IGST has first been utilised fully towards such payment. Section 49A starts with a non obstante clause, "Notwithstanding anything contained in section 49…." Thus, the provisions of section 49A would prevail over the provisions of section 49.

7. Order of utilization of ITC [New section 49B of the CGST Act]

The CGST (Amendment) Act, 2018 has inserted a new section 49B "Order of utilisation of input tax credit" in the CGST Act.

Section 49B provides that the Government may, on the recommendations of the Council, prescribe the order and manner of utilization of the ITC of IGST, CGST, SGST/UTGST towards payment of any such tax. Section 49B also starts with a non obstante clause, "Notwithstanding anything contained in this Chapter …." Thus, the provisions of section 49B would prevail over the provisions contained in Chapter X: Payment of Tax. However, utilisation of ITC of CGST for payment of SGST/UTGST and *vice versa* will not be prescribed.

II. Significant Notifications/ Circulars/ Orders

1. Transfer of credit on obtaining separate registrations for multiple places of business within a State/Union territory [New rule 41A inserted in the CGST Rules]

Consequent to the introduction of enabling provisions for obtaining separate registrations for multiple places of business in a State/ Union territory, a new rule 41A has been inserted in the CGST Rules to prescribe provisions for transfer of ITC in such situations. **The rule has become effective from 01.02.2019.**

The new rule lays down that a registered person (transferor) who has obtained separate registration for multiple places of business and who intends to transfer, either wholly or partly, the unutilised ITC lying in his electronic credit ledger to any or all of the newly registered place of business, should furnish the prescribed details on the common portal within a period of 30 days from obtaining such separate registrations. Upon acceptance of such details by the newly registered person (transferee) on the common portal, the unutilised ITC would get credited to his electronic credit ledger.

The ITC is transferred to the newly registered entities in the ratio of the value of assets held by them at the time of registration. Here, the 'value of assets' means the value of the entire assets of the business whether or not ITC has been availed thereon.

[Notification No. 03/2019 CT dated 29.01.2019]

2. Value of assets for the purpose of apportionment of ITC in case of demerger to include value of entire assets of the business, whether or not ITC has been availed thereon [Explanation inserted after proviso to rule 41(1) of the CGST Rules]

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

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

[Notification No. 16/2019 CT dated 29.03.2019]

3. Value of exempt supplies and total turnover for the purpose of reversal of ITC under rules 42 and 43 to exclude central sales tax also [Rules 42(1) and 43(1) of the CGST Rules]

Rules 42 and 43 of the CGST Rules provide the manner of determination of ITC in respect of inputs, input services and capital goods and reversal thereof. Essentially, the rules provide that when inputs, input services and capital goods are used for both taxable and exempt activity, ITC attributable to exempt supplies out of the total turnover, need to be reversed. For this purpose, prior to amendment, the value of exempt supplies and the total turnover excluded central excise duty, State excise duty and VAT as levied under entry 84 of List I and entries 51 and 54 of List II of Seventh Schedule.

With effect from 01.02.2019, the value of exempt supplies and the total turnover under rules 42 and 43 will exclude the amount of any duty or tax levied under entry 84 **and entry 92A** of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule. In other words, apart from excise duty, State excise duty and VAT, the value of exempt supplies and the total turnover as provided under rules 42 and 43 would now exclude central sales tax also.

[Notification No. 03/2019 CT dated 29.01.2019]

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

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

With effect from 01.02.2019, in case of export of services, wherever permitted by the Reserve Bank of India, receipt of payment in Indian rupees has been allowed. This has been done since in the case of exports to Nepal and Bhutan, the payment is received in Indian rupees as per RBI regulations. Therefore, the supply of services having place of supply in Nepal or Bhutan, against payment in Indian

Rupees can now be considered as export of services and consequently, exemption available to such services has also been withdrawn *[These amendments have been discussed in detail in Chapter 4: Exemptions from GST and Chapter 14: Import and Export under GST].*

In this backdrop, the exclusion of such services from value of exempt supplies is no more required.

[Notification No. 03/2019 CT dated 29.01.2019]

5. Other miscellaneous amendments in rules 42 and 43 of the CGST Rules – Effective from 01.04.2019

(i) Earlier clause (g) of rule 42(1) of CGST Rules provided that 'T_1', 'T_2', 'T_3' and 'T_4' should be determined and declared by the registered person at the invoice level in GSTR 2. It may be noted that GSTR 2 is not in operation as of now.

The said clause has been amended to provide that 'T_1', 'T_2', 'T_3' and 'T_4' should be determined and declared by the registered person at the invoice level in GSTR 2 **and at summary level in GSTR 3B**.

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

(iii) Earlier, clause (l) of rule 42(1) provided that the amount of C_3 should be computed separately for ITC of CGST, SGST/UTGST and IGST. C_3 is the eligible ITC out of common credit that is attributable to the purposes of business and for effecting taxable supplies including zero rated supplies.

The said clause has been amended to provide that the amount of C_3, **D_1, and D_2** should be computed separately for ITC of CGST, SGST/UTGST and IGST **and declared in GSTR 3B or through a prescribed form**. D_1 is ITC attributable towards exempt supplies. D_2 is the ITC attributable to non-business purposes.

(iv) Earlier clause (m) of rule 42(1) provided that the amount equal to aggregate of 'D_1' and 'D_2' should be added to the output tax liability of the registered person.

The said clause has been amended to provide that the amount equal to aggregate of 'D_1' and 'D_2' should be **reversed by the registered person in GSTR 3B or in the prescribed form**.

(v) Earlier clause (a) of rule 41(2) provided, *inter alia,* that where the aggregate of the amounts calculated finally in respect of 'D_1' and 'D_2' exceeds the aggregate of the amounts determined under sub-rule (1) in respect of 'D_1' and 'D_2', such excess shall be added to the output tax liability of the registered person in the month not later than the month of September following the end of the financial year to which such credit relates.

The said clause has been amended to provide that where the aggregate of the amounts calculated finally in respect of 'D_1' and 'D_2' exceeds the aggregate of the amounts determined under sub-rule (1) in respect of 'D_1' and 'D_2', such

excess shall be **reversed by the registered person in GSTR 3B or in the prescribed form** in the month not later than the month of September following the end of the financial year to which such credit relates.

(vi) Earlier clause (a) of rule 43(1) of CGST Rules provided that the amount of input tax in respect of capital goods used or intended to be used exclusively for non-business purposes or used or intended to be used exclusively for effecting exempt supplies shall be indicated in GSTR 2 and shall not be credited to his electronic credit ledger.

The said clause has been amended to provide that the amount of input tax in respect of capital goods used or intended to be used exclusively for non-business purposes or used or intended to be used exclusively for effecting exempt supplies should be indicated in GSTR 2 **and GSTR 3B** and shall not be credited to his electronic credit ledger.

Clause (b) of rule 43(1) has also been amended on the similar lines to provide that the amount of input tax in respect of capital goods used or intended to be used exclusively for effecting taxable supplies including zero-rated supplies shall be indicated in GSTR 2 **and GSTR 3B** and shall be credited to the electronic credit ledger.

(vii) Earlier, clause (g) of rule 43(1) provided that 'F' is the total turnover of the registered person during the tax period.

The said clause has been amended to provide that 'F' is the total turnover **in the State** of the registered person during the tax period.

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

[Notification No. 16/2019 CT dated 29.03.2019]

6. New mechanism prescribed for utilisation of ITC [New rule 88A inserted in the CGST Rules]

The amendment of section 49 and insertion of new section 49A vide the CGST (Amendment) Act, 2018 – which prescribe utilization of ITC of IGST in a particular order - resulted in accumulation of ITC for one kind of tax in electronic credit ledger and discharge of liability for the other kind of tax through electronic cash ledger in certain scenarios.

The newly inserted section 49A of the CGST Act provides that the ITC of IGST has to be utilized completely before ITC of CGST/SGST can be utilized for discharge of any tax liability. Further, as per the provisions of section 49 of the CGST Act, ITC of IGST has to be utilized first for payment of IGST, then CGST and then SGST in that order mandatorily. This led to a situation, in certain cases, where a taxpayer has to discharge his tax liability on account of one type of tax (say SGST) through

electronic cash ledger, while the ITC on account of other type of tax (say CGST) remains un-utilized in electronic credit ledger.

Accordingly, in exercise of the powers conferred under newly introduced section 49B of the CGST Act (refer amendment given at point no. I.(7) above), a new rule 88A has been inserted in the CGST Rules.

The newly inserted rule 88A allows utilization of ITC of IGST towards the payment of CGST and SGST/UTGST **in any order** subject to the condition that the entire ITC of IGST is completely exhausted first before the ITC of CGST or SGST/UTGST can be utilized.

The new rule provides as under:

- ITC of IGST should first be utilized towards payment of IGST.
- Remaining ITC of IGST, if any, can be utilized towards the payment of CGST and SGST/UTGST in any order, i.e. ITC of IGST can be first utilized either against CGST or SGST.
- ITC of CGST, SGST/UTGST can be utilized towards payment of IGST, CGST, SGST/UTGST only after the ITC of IGST has first been utilized fully.

[Notification No. 16/2019 CT dated 29.03.2019 read with Circular No. 98/17/2019 GST dated 23.04.2019]

7. Clarification in respect of utilization of ITC under GST

CBIC has clarified that after the insertion of new rule 88A in the CGST Rules, the order of utilization of ITC will be as per the order (of numerals) given below:

ITC of	**Output IGST liability**	**Output CGST liability**	**Output SGST/ UTGST liability**
IGST	**(I)**	**(II) – In any order and in any proportion**	
(III) ITC of IGST to be completely exhausted mandatorily			
CGST	**(V)**	**(IV)**	**Not permitted**
SGST/UTGST	**(VII)**[13]	**Not permitted**	**(VI)**

The following illustration would further amplify the impact of newly inserted rule 88A:

Illustration:

Amount of ITC available and output tax liability under different tax heads

Head	**Output tax liability**	**ITC**
IGST	1000	1300

[13] *ITC on account of SGST/UTGST should be utilized towards payment of IGST only after the ITC of CGST has been utilized fully.*

CGST	300	200
SGST/UTGST	300	200
Total	**1600**	**1700**

Option 1:

ITC of	Discharge of output IGST liability	Discharge of output CGST liability	Discharge of output SGST/UTGST liability	Balance of ITC
IGST	1000	200	100	0
ITC of IGST has been completely exhausted				
CGST	0	100	-	100
SGST/UTGST	0	-	200	0
Total	**1000**	**300**	**300**	**100**

Option 2:

ITC of	Discharge of output IGST liability	Discharge of output CGST liability	Discharge of output SGST/UTGST liability	Balance of ITC
IGST	1000	100	200	0
ITC of IGST has been completely exhausted				
CGST	0	200	-	0
SGST/UTGST	0	-	100	100
Total	**1000**	**300**	**300**	**100**

[Circular No. 98/17/2019 GST dated 23.04.2019]

8. Clarification in respect of transfer of ITC in case of death of sole proprietor

Issue: Whether section 18(3) of the CGST Act provides for transfer of ITC which remains unutilized to the transferee in case of death of the sole proprietor?

Clarification: For the purpose of section 18(3) of the CGST Act and rule 41(1) of the CGST Rules, transfer or change in the ownership of business will include transfer or change in the ownership of business due to death of the sole proprietor.

[Circular No. 96/15/2019 GST dated 28.03.2019]

In case of transfer of business with the specific provisions for transfer of liabilities, unutilized ITC can be transferred to the transferred business in terms of section 18(3) of the CGST Act. Rule 41(1) of the CGST Rules requires the registered person to furnish the details of transfer of business in the prescribed form electronically on the common portal along with a request for transfer of unutilized ITC lying in his electronic credit ledger to the transferee.

9. Clarification on ITC in the hands of the supplier in respect of sales promotional schemes

(i) Free samples and gifts

Clause (h) of sub-section (5) of section 17 of the CGST Act provides that ITC shall not be available in respect of goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples.

It has been clarified that ITC shall not be available to the supplier on the inputs, input services and capital goods to the extent they are used in relation to the gifts or free samples distributed without any consideration. However, where the activity of distribution of gifts or free samples falls within the scope of "supply" on account of the provisions contained in Schedule I of the said Act, the supplier would be eligible to avail the ITC.

(ii) Buy one get one free offer:

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

[Refer Chapter 2: Supply under GST for detailed discussion on taxability of the sales promotional schemes mentioned at point (i) and (ii) above.]

(iii) Discounts including 'Buy more, save more' offers

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

[Refer Chapter 7: Value of Supply of Chapter for detailed discussion on valuation in relation to the sales promotional scheme mentioned above.]

[Circular No. 92/11/2019 GST dated 28.03.2019]

9
REGISTRATION

I Amendments made by the CGST (Amendment) Act, 2018 – Effective from 01.02.2019, unless otherwise specified

1. Amendments in the threshold limit for registration

As per section 22, the threshold limit for registration - for States other than Special Category States is ₹ 20 lakh and for Special Category States is ₹ 10 lakh. 11 Special Category States are specified in Article 279A(4)(g) of the Constitution namely, States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand.

However, earlier explanation (iii) to section 22 defined Special Category States for the purpose of said section as States as specified in article 279A(4)(g) of the Constitution except the State of Jammu and Kashmir. Thus, Jammu and Kashmir was not a Special Category State for the purpose of section 22. Remaining other States were Special Category States.

The definition of Special Category States as contained in said explanation has been amended. As a result of the amendment, now, only Mizoram, Tripura, Manipur and Nagaland are Special Category States for the purpose of section 22.

Arunachal Pradesh, Assam, Jammu and Kashmir, Meghalaya, Sikkim, Himachal Pradesh and Uttarakhand are not the Special Category States for said purpose.

Following notifications grant the exemption from registration to persons making supplies of services specified therein with aggregate turnover up to ₹ 20 lakh [₹ 10 lakh in Special Category States as defined in section 22]. In order to bring into effect the above amendment in definition of Special Category States in explanation (iii) of section 22, these notifications have also been appositely amended:

(a) Persons making supplies of services through an ECO (other than supplies specified under section 9(5) of the CGST Act) *[Notification No. 65/2017 CT dated 15.11.2017]*[14].

(b) Persons making inter-State supplies of taxable services *[Notification No. 10/2017 IT dated 13.10.2017]*[15].

[14] *amended vide Notification No.06/2019 CT dated 29.01.2019*
[15] *amended vide Notification No.03/2019 IT dated 29.01.2019*

Further, a proviso has been inserted in section 22(1) which provides that the Government may, at the request of a Special Category State and on the recommendations of the Council, enhance the threshold limit for Special Category States from ₹ 10 lakh to such amount, not exceeding ₹ 20 lakh and subject to such conditions and limitations, as may be so notified. However, this power has not yet been exercised.

Subsequently, **with effect from 01.04.2019, *Notification No. 10/2019 CT dated 07.03.2019*** is issued which exempts any person who is **engaged in exclusive supply of goods** and whose aggregate turnover in the financial year does not exceed ₹ 40 lakh. Exceptions to this exemption are as follows:

(a) persons required to take compulsory registration under section 24 of the CGST Act.

(b) persons engaged in making supplies of ice cream and other edible ice, whether or not containing cocoa [2105 00 00], Pan masala [2106 90 20] and all goods of Chapter 24, i.e. Tobacco and manufactured tobacco substitutes.

(c) Persons engaged in making intra-State supplies in the States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura, Uttarakhand. Inter-State supplies of goods are nevertheless liable to compulsory registration and are thus covered in exception (i) above.

(d) Person who has opted for voluntary registration or such registered persons who intend to continue with their registration under the CGST Act.

The above discussion can be summarised as follows:

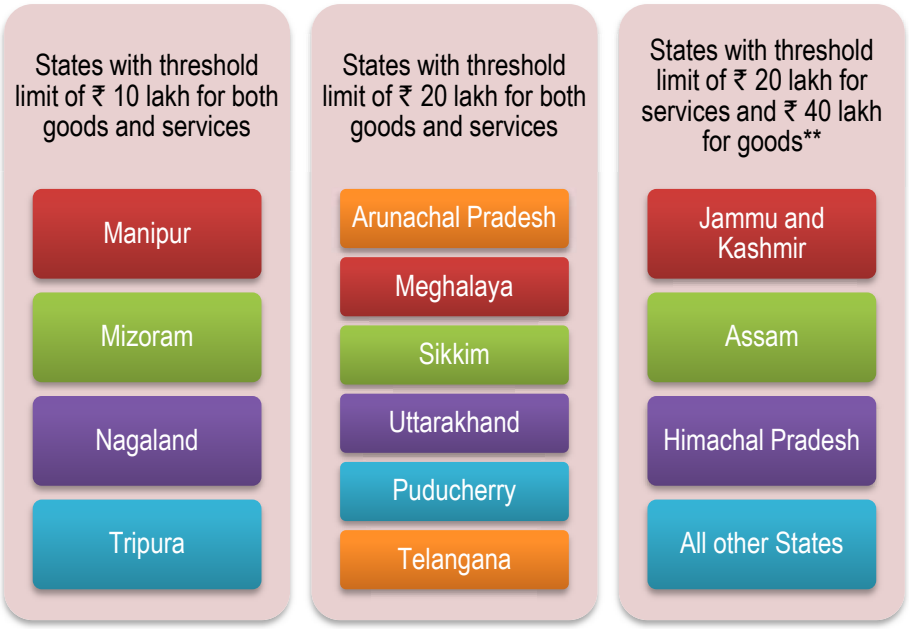
Position prior to amendment

<table>
<tr><th rowspan="2"></th><th rowspan="2"></th><th rowspan="2"></th><th colspan="2">Threshold limit for persons engaged</th></tr>
<tr><th>exclusively in supply of goods</th><th>in supply of services/ both goods and services</th></tr>
<tr><td colspan="2">States other than Special Category States</td><td>All</td><td>₹ 20 lakh</td><td>₹ 20 Lakh</td></tr>
<tr><td rowspan="5">Special Category States as per Constitution</td><td rowspan="5">Special Category States as per section 22</td><td>Manipur</td><td rowspan="5">₹ 10 lakh</td><td rowspan="5">₹ 10 Lakh</td></tr>
<tr><td>Mizoram</td></tr>
<tr><td>Nagaland</td></tr>
<tr><td>Tripura</td></tr>
<tr><td>Arunachal</td></tr>
</table>

		Pradesh		
		Assam		
		Meghalaya		
		Sikkim		
		Himachal Pradesh		
		Uttarakhand		
	Others	Jammu and Kashmir	₹ 20 lakh	₹ 20 Lakh

Position after amendment

			Threshold limit for persons engaged	
			exclusively in supply of goods	**in supply of services/ both goods and services**
States other than Special Category States		Puducherry	₹ 20 lakh	₹ 20 Lakh
		Telangana	₹ 20 lakh	₹ 20 Lakh
		Others	₹ 40 lakh	₹ 20 Lakh
Special Category States as per Constitution	Special Category States as per section 22	Manipur	₹ 10 lakh	₹ 10 Lakh
		Mizoram	₹ 10 lakh	₹ 10 Lakh
		Nagaland	₹ 10 lakh	₹ 10 Lakh
		Tripura	₹ 10 lakh	₹ 10 Lakh
	Others	Jammu and Kashmir	₹ 40 lakh	₹ 20 Lakh
		Assam	₹ 40 lakh	₹ 20 Lakh
		Himachal Pradesh	₹ 40 lakh	₹ 20 Lakh
		Arunachal Pradesh	₹ 20 Lakh	₹ 20 Lakh
		Meghalaya	₹ 20 Lakh	₹ 20 Lakh
		Sikkim	₹ 20 Lakh	₹ 20 Lakh
		Uttarakhand	₹ 20 Lakh	₹ 20 Lakh



**persons engaged exclusively in supply of goods

Examples:

Supplier	engaged	Aggregate turnover	Applicable threshold limit for registration	Whether liable to obtain registration?
Prithiviraj of Assam	*exclusively in supply of shoes*	*₹ 22 lakh*	*₹40 lakh*	✘
	exclusively in supply of pan masala	*₹ 22 lakh*	*₹20 lakh*	✓
	exclusively in supply of taxable services	*₹ 22 lakh*	*₹20 lakh*	✓
	in supply of both taxable goods and services	*₹ 22 lakh*	*₹20 lakh*	✓
Shivaji of Telangana	*exclusively in supply of toys*	*₹ 22 lakh*	*₹20 lakh*	✓
	exclusively in supply of ice cream	*₹ 22 lakh*	*₹20 lakh*	✓

	exclusively in supply of taxable services	*₹ 22 lakh*	*₹20 lakh*	✓
	in supply of both taxable goods and services	*₹ 22 lakh*	*₹20 lakh*	✓
Ashoka of Manipur	*exclusively in supply of paper*	*₹ 12 lakh*	*₹10 lakh*	✓
	exclusively in supply of tobacco	*₹ 12 lakh*	*₹10 lakh*	✓
	exclusively in supply of taxable services	*₹ 12* lakh	*₹10 lakh*	✓
	in supply of both taxable goods and services	*₹ 12* lakh	*₹10 lakh*	✓

2. Compulsory registration for e-commerce operator who is required to collect tax at source [Section 24(x) of CGST Act]

Section 24 of the CGST Act enlists the categories of persons who are compulsorily required to obtain registration. In terms of clause (x) of said section, an e-commerce operator was earlier required to take compulsory registration irrespective of his turnover limit.

Said clause has been amended to provide that **those e-commerce operators who are required to collect tax at source under section 52 of the CGST Act would only be required to obtain compulsory registration.**

This is a taxpayer-friendly measure. Small e-commerce operators who are not required to collect tax at source under section 52 would now be eligible for availing the threshold exemption limit benefit for registration purposes.

3. Separate registration for a person having multiple place of business in a State

A person seeking registration under the GST law is granted a single registration in a State or Union territory. Separate GST registrations within the same State/UT were permitted only for separate business verticals. Accordingly, proviso to section 25(2) provided that a person having multiple business verticals in a State or Union territory may be granted a separate registration for each business vertical, subject to prescribed conditions.

The requirement of having multiple business verticals to obtain separate registrations in a State has been dispensed with. Therefore, now a person having multiple places of business in a State or Union territory may be granted a **separate**

registration for each such place of business, subject to such conditions as may be prescribed.

Consequently, the definition of 'business vertical' as contained in section 2(18) of the CGST Act has also been omitted. Another consequential amendment has also been carried out in clause (iii) of Explanation 1 of section 8(2) of the IGST Act by omitting the reference of business vertical in the same.

Example: *Meethalal & Sons - a supplier in Delhi has three branches – two engaged in supply of garments and one engaged in supply of shoes. While as per the erstwhile provisions, Meethalal & Sons could obtain only registrations – one for business vertical of garments and another for business vertical of shoes, now it can obtain separate GST registration for each three branches.*

Further, rule 11 enumerating the conditions for separate registration for multiple business verticals within a State/UT has also been subsequently substituted vide ***Notification No. 03/2019 CT dated 29.01.2019*** with a new rule 11.

New rule stipulates that any person having multiple places of business within a State/UT, requiring a separate registration for any such place of business shall be granted separate registration in respect of each such place of business subject to the following conditions, namely:-

(a) such person has more than one place of business as defined in section 2(85);

(b) such person shall not pay tax under composition levy for any of his places of business if he is paying tax under normal scheme for any other place of business.

Where any place of business of a registered person that has been granted a separate registration becomes ineligible to pay tax under composition scheme, all other registered places of business of the said person shall become ineligible to pay tax under said scheme.

(c) all separately registered places of business of such person shall pay tax under the Act on supply of goods or services or both made to another registered place of business of such person and issue a tax invoice or a bill of supply, as the case may be, for such supply.

A registered person opting to obtain separate registration for a place of business shall submit a separate application in prescribed form in respect of such place of business.

The provisions of rule 9 and rule 10 relating to the verification and the grant of registration shall, mutatis mutandis, apply to an application submitted under this rule.

4. Separate registration for SEZ unit or SEZ developer

Earlier, first proviso to rule 8(1) of the CGST Rules provided that a person having unit in SEZ or an SEZ developer will make a separate application for registration as

a *business vertical* distinct from his other units located outside SEZ. Thus, in case where two units of a tax payer were located in same State - one in SEZ and another outside SEZ, separate registrations were required to be obtained for each of the two units as *separate business vertical.*

With the dispensation of the requirement of having multiple business verticals to obtain separate registrations in a State/UT, the aforesaid provision has been accordingly modified **with effect from 01.02.2019**. Modified provision states that a person having a unit in SEZ or being a SEZ developer shall have to apply for a separate registration, as distinct from his *place of business* located outside the SEZ in the same State or Union territory.

This modified provision has been incorporated as second proviso to section 25(1) and simultaneously, first proviso to rule 8(1) has been omitted[16].

5. Cancellation or suspension of registration [Section 29 of CGST Act and rule 21A of the CGST Rules]

Under section 29, the cancellation of the registration can either be initiated by the Department on their own motion or the registered person can apply for cancellation of their registration.

A proviso to section 29(1) has been inserted to provide that once a registered person has applied for cancellation of registration or the proper officer seeks to cancel his registration, the proper officer may suspend his registration during pendency of the proceedings relating to cancellation of registration filed by such registered person, *for such period and in such manner as may be prescribed***.*

The intent of the said amendment is to ensure that a taxpayer is freed from the routine compliances, including filing returns, under GST law during the pendency of the proceedings related to cancellation of registration.

Consequently, heading of the section has also been changed to 'Cancellation **or suspension** of registration'.

*****Period and manner of suspension of registration***

Further, **with effect from 01.02.2019,** new rule 21A of the CGST Rules has been inserted vide ***Notification No. 03/2019 CT dated 29.01.2019*** which lays down the period and manner of suspension of registration as follows:

1. **Where registered person has applied for cancellation of registration:** Where a registered person has applied for cancellation of registration, the registration shall be deemed to be suspended from:

   (a) the date of submission of the application

   or

   (b) the date from which the cancellation is sought,

[16] *vide Notification No. 03/2019 CT dated 29.01.2019*

whichever is later,

pending the completion of proceedings for cancellation of registration.

2. **Where cancellation of the registration has been initiated by the Department on their own motion:** Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled, he may, after affording the said person a reasonable opportunity of being heard, suspend the registration of such person **with effect from a date to be determined by him**, pending the completion of the proceedings for cancellation of registration.

3. A registered person, whose registration has been suspended as above:

   - shall not make any taxable supply during the period of suspension and
   - shall not be required to furnish any return under section 39.

4. The suspension of registration shall be deemed to be revoked upon completion of the cancellation proceedings by the proper officer. Such revocation shall be effective from the date on which the suspension had come into effect.

II. Significant Notifications/ Circulars/ Orders

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

When a person is applying for registration to collect TCS in a State/UT **where he does not have a physical presence**, he shall **mention name of said State/UT in Part A** of prescribed application form for registration.

Further, the name of the **State/UT in which his principal place of business is located** is to be mentioned **in Part B** of the application form. States/UTs mentioned in Part A and Part B of the application form may be different.

[Notification No. 74/2018 CT dated 31.12.2018]

2. Pending returns to be filed before revocation of cancellation of registration [Rule 23 of the CGST Rules]

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

Two newly inserted provisos provide as follows:

All returns due for the period from the date of the order of cancellation of registration till the date of the order of revocation of cancellation of registration shall be furnished by the said person within a period of 30 days from the date of order of revocation of cancellation of registration.

However, where the registration has been cancelled with retrospective effect, the registered person shall furnish all returns relating to period from the effective date of cancellation of registration till the date of order of revocation of cancellation of registration within a period of 30 days from the date of order of revocation of cancellation of registration.

From the combined reading of aforesaid provisions, it can be inferred that where the registration has been cancelled *with effect from the date of order of cancellation of registration*, (i) all returns due till the date of such cancellation are required to be furnished before the application for revocation can be filed and (ii) all returns required to be furnished in respect of the period from the date of order of cancellation till the date of order of revocation of cancellation of registration have to be furnished within a period of 30 days from the date of the order of revocation.

However, where *the registration has been cancelled with retrospective effect*, the application for revocation of cancellation of registration can be filed, subject to the condition that all returns relating to the period from the effective date of cancellation of registration till the date of order of revocation of cancellation of registration shall be filed within a period of 30 days from the date of order of such revocation of cancellation of registration.

[Notification No. 20/2019 CT dated 23.04.2019 read with Circular No. 99/18/2019 GST dated 23.04.2019]

3. Clarification that transfer/change in the ownership of business to include the transfer /change in the ownership of business due to death of the sole proprietor

Section 29(1)(a) of the CGST Act provides that reason of transfer of business includes "death of the proprietor".

Similarly, for uniformity and for the purpose of section 22(3) of the said Act, it is clarified that transfer or change in the ownership of business under said section will include transfer/change in the ownership of business due to death of the sole proprietor.

[Circular No. 96/15/2019 GST dated 28.03.2019]

10

TAX INVOICE; CREDIT AND DEBIT NOTES; E-WAY BILL

I. Amendments made by the CGST (Amendment) Act, 2018 – Effective from 01.02.2019

1. One or more credit/ debit notes can be issued for multiple invoices [Sub-sections (1) and (3) of section 34 of the CGST Act]

Earlier, a credit/debit note, which is issued by the registered person under section 34, was required to be issued invoice-wise. This used to cause avoidable compliance burden for tax payers.

The CGST (Amendment) Act, 2018 has amended sub-section (1) of section 34 to allow the registered person to issue one (consolidated) or more credit notes in respect of multiple invoices issued in a financial year without linking the same to individual invoices.

Similarly, sub-section (3) of section 34 has been amended to allow the registered person to issue one (consolidated) or more debit notes in respect of multiple invoices issued in a financial year without linking the same to individual invoices.

II. Significant Notifications/ Circulars/ Orders

1. Signature/ digital signature of the supplier/ his authorised representative not required on (i) electronic tax invoice, (ii) electronic bill of supply, (iii) electronic consolidated tax invoice in case of banking companies etc. and (iv) electronic ticket for passenger transportation service [Rules 46, 49 and 54 of the CGST Rules]

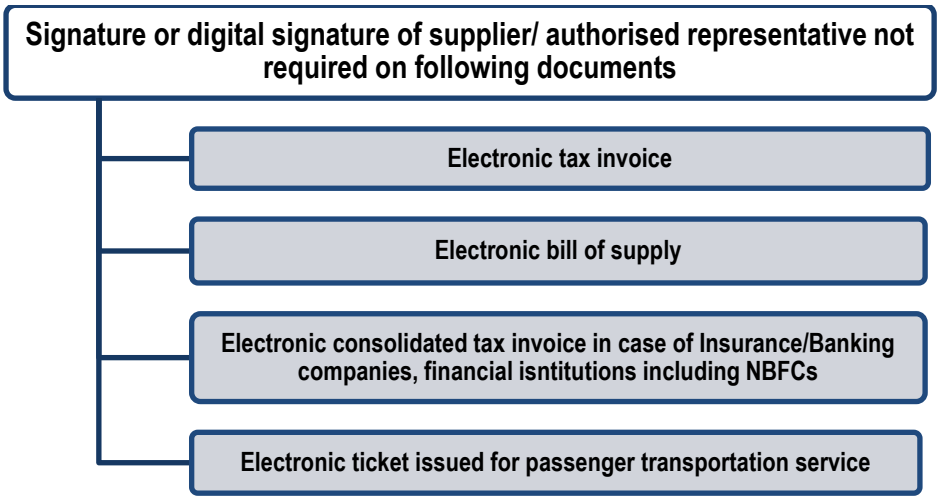
As per rule 46 of the CGST Rules, a tax invoice should contain signature or digital signature of the supplier or his authorised representative. A proviso has been inserted in the said rule to lay down that that such signature would not be required in the case of an electronic invoice.

Rule 49 of the CGST Rules – which prescribes the provisions for bill of supply - has also been amended to provide that signature or digital signature of the supplier or his authorised representative would not be required in the case of an electronic bill of supply.

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

Similarly rule 54(2) – which enables issuance of a monthly consolidated tax invoice or any other document in lieu thereof, in case of insurance company/banking company/financial institutions including NBFCs - has been amended to provide that signature or digital signature of the supplier or his authorised representative would not be required in the case of consolidated invoice or any other document in lieu thereof issued in accordance with the provisions of the Information Technology Act, 2000 (electronic consolidated invoice).

Similarly rule 54(4) – which enables a ticket issued for passenger transportation service to be considered as a tax invoice - has been amended to provide that signature or digital signature of the supplier or his authorised representative would not be required in the case of ticket issued in accordance with the provisions of the Information Technology Act, 2000 (electronic ticket).



[Notification No. 74/2018 CT dated 31.12.2018]

2. New contents prescribed for credit and debit notes

Prior to amendment, sub-rule (1) of rule 53 of the CGST Rules prescribed the contents of revised tax invoice as well as credit or debit notes.

A new sub-rule (1A) has been inserted in rule 53 to provide the contents of debit and credit notes separately. Consequently, sub-rule (1) now provides the contents of only the revised tax invoice.

Further, information relating to -

- nature of document,
- value of taxable supply of goods or services, rate of tax and the amount of the tax credited or debited to the recipient

is no longer required to be mentioned on the revised tax invoice.

The new sub-rule (1A) sets out the contents of credit and debit note as under-

(a) name, address and GSTIN of the supplier;

(b) nature of the document;

(c) a consecutive serial number not exceeding 16 characters, in one or multiple series, containing alphabets or numerals or special characters-hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year;

(d) date of issue of the document;

(e) name, address and GSTIN or UIN, if registered, of the recipient;

(f) name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un-registered;

(g) serial number(s) and date(s) of the corresponding tax invoice(s) or, as the case may be, bill(s) of supply;

(h) value of taxable supply of goods or services, rate of tax and the amount of the tax credited or, as the case may be, debited to the recipient; and

(i) signature or digital signature of the supplier or his authorised representative.

The above amendments have become effective from 01.02.2019.

[Notification No. 03/2019 CT dated 29.01.2019]

11

ACCOUNTS AND RECORDS

I. Amendments made by the CGST (Amendment) Act, 2018 – Effective from 01.02.2019

1. Books of accounts of Central/State Government or local authority which are subject to audit by CAG or any statutory auditor appointed for auditing the accounts of local authorities are not subject to audit by a Chartered Accountant/Cost Accountant [Section 35(5) of the CGST Act]

Section 35(5) of the CGST Act requires that every registered person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a Chartered Accountant or a Cost Accountant. For this purpose, the turnover limit of Rs. 2 crore has been prescribed vide rule 80(3) of the CGST Rules.

The CGST (Amendment) Act, 2018 has inserted a proviso after the said sub-section to lay down that nothing contained in section 35(5) shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General (CAG) of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force.

In other words, books of accounts of the Central/State Government or local authority would not be subject to audit by a Chartered Accountant/Cost Accountant if the same are subject to audit by CAG of India or any statutory auditor appointed for auditing the accounts of local authorities.

The said amendment has become effective from 01.02.2019.

Consequential amendment has been made in rule 80(3) of the CGST Rules *[Refer Chapter 13: Returns for discussion on this amendment]*.

12
PAYMENT OF TAX

UNIT I: PAYMENT OF TAX, INTEREST AND OTHER AMOUNTS

I. Amendments made by the CGST (Amendment) Act, 2018 – Effective from 01.02.2019

1. SGST/ UTGST to be used for payment of IGST only when credit of CGST is not available [Section 49(5) of the CGST Act]

Refer Chapter 8: Input Tax Credit for discussion on this amendment.

2. ITC of IGST to be fully utilized first [Section 49A of the CGST Act]

Refer Chapter 8: Input Tax Credit for discussion on this amendment.

3. Order of utilisation of ITC [Section 49B of the CGST Act]

Refer Chapter 8: Input Tax Credit for discussion on this amendment.

II. Significant Notifications/ Circulars/ Orders

1. Payment of liability to be made in accordance with the provisions of sections 49, 49A and 49B of the CGST Act

Earlier, rule 85(3) of the CGST Rules provided that payment of every liability by a registered person as per his return should be made by debiting the electronic credit ledger or the electronic cash ledger in accordance with section 49 of the CGST Act. Further, rule 86(2) of the CGST Rules provided that the electronic credit ledger would be debited to the extent of discharge of any liability in accordance with the provisions of section 49 of the CGST Act.

Due to the introduction of new sections 49A and 49B, rule 85(3) and rule 86(2) have been amended to include therein the reference of section 49A and section 49B along with section 49. **The said amendments have become effective from 01.02.2019.**

[Notification No. 03/2019 CT dated 29.01.2019]

2. New mechanism prescribed for order of utilisation of ITC [New rule 88A inserted in the CGST Rules]

Refer Chapter 8: Input Tax Credit for discussion on this amendment.

3. Clarification in respect of utilization of ITC under GST

Refer Chapter 8: Input Tax Credit for discussion on this clarification.

UNIT II: TAX DEDUCTION AT SOURCE AND COLLECTION OF TAX AT SOURCE

I. Amendments made by the CGST (Amendment) Act, 2018 – Effective from 01.02.2019

1. Details of supplies furnished by e-commerce operator to be matched with corresponding details furnished by the supplier under section 37 or section 39 of the CGST Act [Section 52(9) of the CGST Act]

Section 52(9) of the CGST Act which prescribes the provisions for dealing with discrepancy in case of matching of details, has been amended so as to include the reference of section 39 (furnishing of returns) therein.

Thus, the amended provision read as "Where the details of outward supplies furnished by the operator under sub-section (4) do not match with the corresponding details furnished by the supplier under section 37 **or section 39**, the discrepancy shall be communicated to both persons in such manner and within such time as may be prescribed." Therefore, details of supplies furnished by e-commerce operator shall be matched with the corresponding details furnished by the supplier in GSTR-1 or in returns prescribed under section 39.

II. Significant Notifications/ Circulars/ Orders

1. Categories of persons not liable to deduct TDS

Tax is not liable to be deducted at source in the following cases:-

(i) When goods and/or services are supplied from a public sector undertaking (PSU) to another PSU, whether or not a distinct person – **Effective from 01.10.2018**.

[Notification No. 61/2018 CT dated 05.11.2018]

(ii) When supply of goods and/or services takes place between one person to another person specified in clauses (a), (b), (c) and (d) of section 51(1) of the CGST Act.

[Notification No. 73/2018 CT dated 31.12.2018]

2. Clarification regarding applicability of the provisions of section 51 (TDS) of the CGST Act on certain notified persons

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

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

[Circular No. 76/50/2018 GST dated 31.12.2018]

13
RETURNS

I. Amendments made by the CGST (Amendment) Act, 2018 – Effective from 01.02.2019

1. GST Practitioner enabled to perform other prescribed functions as well [Section 48(2) of the CGST Act]

Earlier, as per section 48(2) of the CGST Act, a registered person could authorise a Goods and Services Tax Practitioner (GSTP) to furnish its details of outward supplies, inward supplies and returns.

The CGST (Amendment) Act, 2018 has amended section 48(2) to provide as under:

"A registered person may authorise an approved goods and services tax practitioner to furnish the details of outward supplies under section 37, the details of inward supplies under section 38 and the return under section 39 or section 44 or section 45 ***and to perform such other functions*** *in such manner as may be prescribed."*

II. Significant Notifications/ Circulars/ Orders

1. Books of accounts of Central/State Government or local authority are not subject to audit by a chartered accountant [Rule 80(3) of the CGST Rules]

Earlier, rule 80(3) of CGST Rules provided that every registered person whose aggregate turnover during a financial year exceeds Rs. 2 crore shall get his accounts audited by a Chartered accountant or a Cost Accountant and furnish a copy of audited annual accounts and a duly certified reconciliation Statement along with the Annual Return.

With effect from 01.02.2019, the said sub-rule has been amended to exempt the department of the Central/State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force, from the requirement of getting its accounts audited and furnishing the copy of audited annual accounts and a duly certified reconciliation Statement along with the Annual Return.

This amendment has been made as a consequence of the amendment made by the CGST (Amendment) Act, 2018 in section 35 of the CGST Act. The said amendment has been discussed in Chapter 11: Accounts and Records.

[Notification No. 03/2019 CT dated 29.01.2019]

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

As per rule 83(3) of the CGST Rules, any person who has been enrolled as GSTP by virtue of being enrolled as a Sales Tax Practitioner or Tax Return Preparer under the earlier indirect tax laws could remain enrolled as a GSTP only for a period of 18 months from the appointed date unless he passed the examination conducted by NACIN (National Academy of Customs, Indirect Taxes and Narcotics) within the said period of 18 months.

With effect from 01.02.2019, the said sub-rule has been amended to provide that a sales tax practitioner and a tax return preparer shall be eligible to remain enrolled as GSTP only if he passes the said examination within **30 months** from the appointed date.

[Notification No. 03/2019 CT dated 29.01.2019]

3. Scope of activities that can be undertaken by a GSTP enhanced

As per rule 83(8) of the CGST Rules, a GSTP could undertake any or all of the following activities on behalf of a registered person, if so authorised by him to-

(a) furnish the details of outward and inward supplies;

(b) furnish monthly, quarterly, annual or final return;

(c) make deposit for credit into the electronic cash ledger;

(d) file a claim for refund; and

(e) file an application for amendment or cancellation of registration.

Under the amended position, apart from the above-mentioned activities, a GSTP could also undertake the following activities on behalf of the registered person:

(i) furnish information for generation of e-way bill;

(ii) furnish details of challan in the prescribed form;

(iii) file an application for amendment or cancellation of enrolment under rule 58; and

(iv) file an intimation to pay tax under the composition scheme or withdraw from the said scheme.

The said amendment has become effective from 01.02.2019.

[Notification No. 03/2019 CT dated 29.01.2019]

As per section 35(2) of the CGST Act read with rule 58 of the CGST Rules, every owner or operator of warehouse or godown or any other place used for storage of goods and every transporter, irrespective of whether he is a registered person or not, shall maintain records of the consigner, consignee and other relevant details of the goods in such manner as may be prescribed. If such persons are not already

registered, they shall obtain a unique enrolment number by applying electronically at the GST Common Portal.

4. Composition taxpayers and tax payers paying tax under *Notification No. 2/2019 CT dated 01.03.2019* to file return annually and make payment quarterly

A special procedure for furnishing of return and payment of tax has been prescribed for the following persons:

(i) registered persons paying composition tax

(ii) registered person paying tax by availing the benefit of *Notification No. 02/2019 CT (R) dated 07.03.2019*.

Such persons will:

(i) furnish a statement in the prescribed form containing details of payment of self-assessed tax, for every quarter (or part of the quarter), by 18th day of the month succeeding such quarter.

(ii) furnish a return (GSTR 4) for every financial year (or part of the financial year), on or before 30th day of April following the end of such financial year.

The registered persons paying tax by availing the benefit of *Notification No. 02/2019 CT (R) dated 07.03.2019* will be deemed to have complied with the provisions of section 37 and section 39 of the CGST Act if they have furnished the prescribed statement and GSTR 4 as mentioned above.

[Notification No. 21/2019 CT dated 23.04.2019]

In view of the above-mentioned special procedure, rule 62 of CGST Rules which prescribed the provisions for quarterly return by the composition supplier has also been amended. The amended rule 62 whose heading has been changed to "Form and manner of submission of statement and return" provides as under:

(i) Every registered person paying tax under section 10 **or paying tax by availing the benefit of *Notification No. 02/2019 CT (R) dated 07.03.2019* shall electronically furnish -**

(a) a statement in the prescribed form containing details of payment of self-assessed tax, for every quarter (or part of the quarter), by 18th day of the month succeeding such quarter; and

(b) a return (GSTR 4) for every financial year (or part of the financial year), on or before 30th day of April following the end of such financial year.

(ii) Every registered person furnishing the **statement under sub-rule (1) shall discharge his liability towards tax or interest** payable by debiting the electronic cash ledger.

(iii) The return furnished under sub-rule (1) shall include the- (a) invoice wise inter-State and intra-State inward supplies received from registered and un-registered persons; and (b) consolidated details of outward supplies made.

(iv) A registered person who has opted to pay tax under section 10 **or by availing the benefit of *Notification No. 02/2019 CT (R) dated 07.03.2019*** from the beginning of a financial year shall, where required, furnish the details of outward and inward supplies and return under rules 59, 60 and 61 relating to the period during which the person was liable to furnish such details and returns till the due date of furnishing the return for the month of September of the succeeding financial year or furnishing of annual return of the preceding financial year, whichever is earlier.

Here, the person shall not be eligible to avail ITC on receipt of invoices or debit notes from the supplier for the period prior to his opting for the composition scheme **or paying tax by availing the benefit of *Notification No. 02/2019 CT (R) dated 07.03.2019*.**

(v) A registered person opting to withdraw from the composition scheme at his own motion or where option is withdrawn at the instance of the proper officer shall, where required, furnish **a statement in the prescribed form for the period for which he has paid tax under the composition scheme till the 18th day of the month succeeding the quarter in which the date of withdrawal falls and furnish GSTR 4 for the said period till the 30th day of April following the end of the financial year during which such withdrawal falls**.

(vi) **A registered person who ceases to avail the benefit of *Notification No. 02/2019 CT (R) dated 7.03.2019*, shall, where required, furnish a statement in the prescribed form for the period for which he has paid tax by availing the benefit under the said notification till the 18th day of the month succeeding the quarter in which the date of cessation takes place and furnish GSTR 4 for the said period till the 30th day of April following the end of the financial year during which such cessation happens.**

[Notification No. 20/2019 CT dated 23.04.2019]

14

IMPORT AND EXPORT UNDER GST

I. Amendments made by the IGST (Amendment) Act, 2018 – Effective from 01.02.2019

1. Definition of "export of services" amended to allow receipt of export consideration in Indian rupees wherever permitted by the RBI [Section 2(6) of the IGST Act]

Earlier, as per section 2(6) of the IGST Act, "export of services" meant supply of services 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; 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.

The IGST (Amendment) Act, 2018 has inserted the words **"or in Indian rupees wherever permitted by the Reserve Bank of India"** after the words "foreign exchange" in sub-clause (iv).

Thus, after the amendment, payment for export of service can be received in Indian rupees, if permitted by the RBI. In case of exports to Nepal and Bhutan, the payment is received in Indian rupees as per RBI regulations.

Pursuant to this amendment, consequential amendments have been made in exemption *Notification No. 09/2017 IT (R) dated 28.06.2017* and explanation to rules 42 and 43 of the CGST Rules *(discussed in Chapter 4: Exemptions and Chapter 8: Input tax Credit)* and *Circular No. 08/08/2017 GST dated 04.10.2017 (discussed at point II.(2) in this Chapter).*

2. Explanation to section 2(16) of the IGST Act defining "Governmental Authority" amended

Section 2(16) of the IGST Act defines "non-taxable online recipient". An explanation appended to this sub-section defines the expression "governmental authority". The said explanation has been amended to include the reference of "Panchayat under article 243G" in the definition of Governmental Authority.

The amended definition reads as under:

"Governmental authority means an authority or a board or any other body,—

(i) set up by an Act of Parliament or a State Legislature; or

(ii) established by any Government,

with ninety per cent. or more participation by way of equity or control, to carry out any function entrusted ***to a Panchayat under article 243G or*** *to a municipality under article 243W of the Constitution."*

II. Significant Notifications/ Circulars/ Orders

1. Clarification on export of services under GST

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

Clarification:

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

a) Supply of services from the exporter of services located in India to the recipient of services located outside India for the full contact value;

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

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

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

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

a) IGST has been paid by the supplier located in India for import of services on that portion of the services which has been directly provided by the supplier located outside India; and

b) RBI by general instruction or by specific approval has allowed that part of the consideration for such exports can be retained outside India.

Illustration*: ABC Ltd. India has received an order for supply of services amounting to $ 500,000/- to a US based client. ABC Ltd. India is unable to supply the entire services from India and asks XYZ Ltd. Mexico (who is not merely an establishment of a distinct person viz. ABC Ltd. India, in accordance with the Explanation 1 in section 8 of the IGST Act) to supply a part of the services (say 40% of the total contract value).*

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

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

[Circular No. 78/52/2018 GST dated 31.12.2018]

2. Amendment in *Circular No. 08/08/2017 GST dated 04.10.2017*, in view of the amendment carried out in section 2(6) of IGST Act

Circular No. 08/08/2017 GST dated 04.10.2017 clarified issues related to furnishing of Bond/Letter of Undertaking for export. In view of the amendment carried out in section 2(6) of the IGST Act allowing realization of export proceeds in INR, wherever allowed by the RBI, the *Circular No. 08/08/2017 GST dated 04.10.2017* has been amended to clarify that **the acceptance of LUT for supplies of goods or services to countries outside India or SEZ developer or SEZ unit will be permissible irrespective of whether the payments are made in Indian currency or convertible foreign exchange as long as they are in accordance with the applicable RBI guidelines.**

[Circular No. 88/07/2019 GST dated 01.02.2019]

3. *Circular No. 03/1/2018 IGST dated 25.5.2018* which clarified on the applicability of IGST on goods supplied while being deposited in a customs bonded warehouse, rescinded

The provisions of the CGST (Amendment) Act, 2018 and SGST Amendment Acts of the respective States have been brought into force w.e.f. 01.02.2019. Schedule III of the CGST Act has been amended vide section 32 of the CGST (Amendment) Act, 2018 so as to provide that the "supply of warehoused goods to any person before clearance for home consumption" shall be neither a supply of goods nor a supply of services.

Accordingly, *Circular No. 03/01/2018 IGST dated 25.05.2018* which clarified on the applicability of IGST on goods supplied while being deposited in a customs bonded warehouse, has been rescinded.

[Circular No. 04/01/2019 IGST dated 01.02.2019]

4. Supplies against Advance Authorisation scheme not to be used in supply of nil rated/fully exempted supplies, when exports have already been made after availing ITC on inputs used in manufacture of such exports

Notification No. 48/2017 CT dated 18.10.2017 specifies the supplies which shall be treated as deemed exports. The said notification has been amended as under:

(i) Supply of goods by a registered person against Advance Authorisation is a deemed export in terms of the said notification. The following conditions have been prescribed in this regard:

1. the goods so supplied, when exports have already been made after availing ITC on inputs used in manufacture of such exports, shall be used in manufacture and supply of taxable goods (other than nil rated or fully exempted goods) and a certificate to this effect from a chartered accountant is submitted to the jurisdictional commissioner of GST or any other officer authorised by him within 6 months of such supply.

   Thus, supplies against Advance Authorisation scheme cannot be used in manufacture and supply of nil rated or fully exempted supplies.

2. No such certificate shall be required if ITC has not been availed on inputs used in manufacture of export goods.

(ii) The definition of advance authorisation has been amended to remove the words "on pre import basis" therefrom. The amended definition reads as under:

"Advance Authorisation means an authorisation issued by the Director General of Foreign Trade under Chapter 4 of the Foreign Trade Policy 2015-20 for import or domestic procurement of inputs for physical exports".

[Notification No. 01/2019 CT dated 15.01.2019]

15
Refunds

I. Amendments made by CGST (Amendment) Act - Effective from 01.02.2019

1. Principle of unjust enrichment to apply in case of refund claim arising out of supplies of goods/services made to SEZ developer/unit [Section 54 of CGST Act]

Section 54(8) of the CGST Act provides a list of situations where the principle of unjust enrichment does not apply for the purposes of payment of refund; in other words, refund amount, instead of being credited to the Consumer Welfare Fund, shall be paid to the applicant.

One such situation was zero-rated supplies of goods or services. Zero-rated supply under section 16(1) of the IGST Act means physical exports of goods or services or supplies made to an SEZ unit/SEZ developer. Earlier, principle of unjust enrichment did not apply in such cases.

Section 54(8)(a) has been amended to provide that the principle of unjust enrichment will now apply in case of refund claim arising out of supplies of goods or services made to SEZ developer/unit.

Consequently, refund of tax paid on only **export** of goods or services or both or on inputs or input services used in making such **exports** shall be paid to the applicant, instead of being credited to the Consumer Welfare Fund.

2. Relevant date for claiming refund [Explanation 2 to section 54]

Explanation 2 to section 54 of CGST Act defines relevant date for claiming refund under section 54. It has now been amended in case of services exported out of India and in case of refund of unutilized ITC on account of inverted duty structure as under-

Cases	Relevant Date (amendment highlighted in bold)
(i) In case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, and the supply of services had been completed prior to the receipt of such payment	Date of receipt of payment in convertible foreign exchange or **in Indian rupees wherever permitted by the Reverse Bank of India** This amendment has been made in view of amendment carried out in section 2(6) of IGST Act, allowing realisation of export proceeds in INR,

	wherever allowed by RBI – *Discussed in detail in Chapter 3: Charge of tax*.
(ii) In case of refund of unutilised ITC on account of inverted duty structure	Due date **for furnishing of return under section 39 for the period in which such claim for refund arises** This amendment has been made to correct an inherent contradiction of the relevant date in case of refund of unutilized ITC under section 54(3) since as per Explanation (2)(e) to section 54, the relevant date means the end of the financial year in which such claim for refund arises while section 54(3) states that a registered person may claim refund of any unutilized ITC at the end of any tax period.

II Significant Notifications/ Circulars/ Orders

1. Relevant period for calculating refund on account of inverted duty structure [Rule 89(5)]

Rule 89(5) of CGST Rules has been amended to include the definition of relevant period as follows:

Relevant period means the period for which the claim has been filed.

[Notification No. 74/2018 CT dated 31.12.2018]

2. Filing of departure manifest shall be deemed to be the application filed for refund of tax paid on export of goods.

Earlier, rule 96 provided that the shipping bill filed by an exporter of goods shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India and such application shall be deemed to have been filed only when:—

(a) the person in charge of the conveyance carrying the export goods duly files an export manifest or an export report covering the number and the date of shipping bills or bills of export; and

(b) the applicant has furnished a valid return in Form GSTR-3/Form GSTR-3B, as the case may be;

In other words, filing of export manifest or an export report, apart from filing of shipping bill and GSTR-3B is a mandatory requirement for processing refund claim. Clause (a) above has been amended to provide that if person in charge of the

conveyance carrying export of goods files a departure manifest[17]; then also the application for refund of IGST paid on export of goods shall be deemed to have been filed.

[Notification No. 74/2018 CT dated 31.12.2018]

3. Declaration to the effect that tax has not been collected from SEZ unit/ developer is required for claiming refund

Rule 89(2) of CGST Rules provides documentary evidences to be accompanied with the application of refund.

Earlier clause (f) of the said sub-rule required a declaration to the effect that the SEZ unit/SEZ developer has not availed ITC of the tax paid by the supplier of goods or services or both, in a case where the refund is on account of supply of goods or services made to a SEZ unit/SEZ developer.

With effect from 01.02.2019, the principle of unjust enrichment applies in case of refund claim arising out of supplies of goods or services made to SEZ developer/unit.

Consequently, **with effect from 01.02.2019,** clause (f) has been substituted with a new clause providing that a declaration to the effect that **tax has not been collected from SEZ unit/SEZ developer**, is required as a documentary evidence, in case where the refund is on account of supply of goods or services or both made to SEZ unit/SEZ developer.

[Notification No. 03/2019 CT dated 29.01.2019]

4. Amendments in provisions relating to grant of provisional refund [Rule 91]

Rule 91(2) provides that the proper officer, after scrutiny of the claim and the evidence submitted in support thereof and on being *prima facie* satisfied that the amount claimed as refund is due to the applicant in accordance with the provisions of section 54(6), shall make an order in prescribed form, sanctioning the amount of refund due to the said applicant on a provisional basis within a period not exceeding 7 days from the date of the acknowledgement.

With effect from 01.02.2019, a proviso is inserted in this sub-rule that the order issued under this sub-rule shall not be required to be revalidated by the proper officer.

Further, rule 91(3) stipulates that the proper officer shall issue a payment advice for the amount so sanctioned and the same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.

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[17] *Governed by Sea Cargo Manifest and Transhipment Regulations 2018 which shall come into force on 01.08.2019 vide Notification No. 38/2018-Cus. (N.T.), dated 11-5-2018 as amended by Notification No. 17/2019-Cus. (N.T.), dated 27-2-2019*

With effect from 01.02.2019, a new proviso has been inserted in this sub-rule also that the payment advice shall be required to be revalidated where the refund has not been disbursed within the same financial year in which the said payment advice was issued.

[Notification No. 03/2019 CT dated 29.01.2019]

5. Amendments in provisions relating to order sanctioning refund [Rule 92]

Rule 92(4) provides that where the proper officer is satisfied that the amount refundable under rule 92(1) or rule 92(2) is payable to the applicant under section 54(8), he shall make an order in prescribed form and issue a payment advice for the amount of refund and the same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.

With effect from 01.02.2019, two new provisos have been inserted in this sub-rule which provide as under-

The order issued in prescribed form shall not be required to be revalidated by the proper officer.

However, the payment advice shall be required to be revalidated where the refund has not been disbursed within the same financial year in which the said payment advice was issued.

[Notification No. 03/2019 CT dated 29.01.2019]

6. Export of goods or services under bond or LUT [Rule 96A]

Clause (b) of rule 96A(1) provides that any registered person availing the option to supply services for export without payment of integrated tax shall furnish, prior to export, a bond or LUT, binding himself to pay tax due along with interest within period of 15 days after expiry of one year, or such further period as may be allowed by the Commissioner, from the date of issue of invoice for exports, if the payment of such services is not received by the exporter in convertible foreign exchange.

With effect from 01.02.2019, in view of the amendment carried out in section 2(6) of IGST Act *[Discussed in detail in Chapter 3: Charge of tax]*, the payment of such services can be received by the exporter in Indian rupees, wherever permitted by Reserve Bank of India.

Consequently, aforesaid rule has been amended to provide that any registered person availing the option to supply services for export without payment of integrated tax shall furnish, prior to export, a bond or LUT, binding himself to pay tax due along with interest within period of 15 days after expiry of 1 year, or such further period as may be allowed by the Commissioner, from the date of issue of invoice for exports, if the payment of such services is not received by the exporter in convertible foreign exchange **or in Indian rupees, wherever permitted by Reserve Bank of India**.

[Notification No. 03/2019 CT dated 29.01.2019]

7. Clarification on refund amount for claim of refund of accumulated ITC on account of inverted duty structure

Circular No. 79/ 53/ 2018 GST dated 31.12.2018 clarifies that refund of unutilized ITC in case of inverted tax structure, as provided in section 54(3) of the CGST Act, is available where ITC remains unutilized even after setting off of available ITC for the payment of output tax liability.

Where there are multiple inputs attracting different rates of tax, in the formula provided in rule 89(5) of the CGST Rules, the term "Net ITC" covers the ITC availed on all inputs in the relevant period, irrespective of their rate of tax.

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

(i) Suppose a manufacturing process involves the use of an input A (attracting 5 per cent GST) and input B (attracting 18 per cent GST) to manufacture output Y (attracting 12 per cent GST).

(ii) The refund of accumulated ITC in the situation at (i) above, will be available under section 54(3) of the CGST Act read with rule 89(5) of the CGST Rules, which prescribes the formula for the maximum refund amount permissible in such situations.

(iii) Further assume that the claimant supplies the output Y having value of ₹ 3,000/- during the relevant period for which the refund is being claimed. Therefore, the turnover of inverted rated supply of goods and services will be ₹ 3,000/-. Since the claimant has no other outward supplies, his adjusted total turnover will also be ₹ 3,000/-.

(iv) If we assume that Input A, having value of ₹ 500/- and Input B, having value of ₹ 2,000/-, have been purchased in the relevant period for the manufacture of Y, then Net ITC shall be equal to ₹ 385/- (₹ 25/- and ₹ 360/- on Input A and Input B respectively).

(v) Therefore, multiplying Net ITC by the ratio of turnover of inverted rated supply of goods and services to the adjusted total turnover will give the figure of ₹ 385/-.

(vi) From this, if we deduct the tax payable on such inverted rated supply of goods or services, which is ₹ 360/-, we get the maximum refund amount, as per rule 89(5) of the CGST Rules which is ₹ 25/-.

8. Clarification on the term "input"

On certain occasions, ITC on stores and spares, packing materials, materials purchased for machinery repairs, printing and stationery items, is not considered as part of Net ITC on the grounds that these are not directly consumed in the

manufacturing process and therefore, do not qualify as input. There are also instances where stores and spares charged to revenue are considered as capital goods and therefore the ITC availed on them is not included in Net ITC, even though the value of these goods has not been capitalized in his books of account by the claimant.

Clarification: It is clarified that input tax credit of the GST paid on inputs shall be available to a registered person as long as he/she uses or intends to use such inputs for the purposes of his/her business and there is no specific restriction on the availment of such ITC anywhere else in the GST Act. The GST paid on inward supplies of stores and spares, packing materials etc. shall be available as ITC as long as these inputs are used for the purpose of the business and/or for effecting taxable supplies, including zero-rated supplies, and the ITC for such inputs is not restricted under section 17(5) of the CGST Act. Further, capital goods have been clearly defined in section 2(19) of the CGST Act as goods whose value has been capitalized in the books of account and which are used or intended to be used in the course or furtherance of business. Stores and spares, the expenditure on which has been charged as a revenue expense in the books of account, cannot be held to be capital goods.

[Circular No. 79/ 53/ 2018 GST dated 31.12.2018]

10. Clarification on refund of accumulated ITC of input services and capital goods arising on account of inverted duty structure:

Section 54(3) of the CGST Act provides that refund of any unutilized ITC may be claimed where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies). Further, section 2(59) of the CGST Act defines inputs as any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business. Thus, inputs do not include services or capital goods. Therefore, clearly, the intent of the law is not to allow refund of tax paid on input services or capital goods as part of refund of unutilized input tax credit.

Accordingly, rule 89(5) of the CGST Rules defines the term 'Net ITC' [as used in the formula for calculating the maximum refund amount under said rule], to 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.

In view of the above, it is clarified that both the law and the related rules clearly prevent the refund of tax paid on input services and capital goods as part of refund of input tax credit accumulated on account of inverted duty structure.

[Circular No. 79/ 53/ 2018 GST dated 31.12.2018]

16
JOB WORK

I. Amendments made by the CGST (Amendment) Act, 2018 – Effective from 01.02.2019

1. Extension of period for receiving back the goods sent for job work [Section 143 of the CGST Act]

In terms of section 143 of the CGST Act, a registered person (Principal) is allowed to send inputs or capital goods to a job worker for job work without payment of tax subject to the conditions, *inter alia*, that the inputs and capital goods are brought back within a period of 1 year and 3 years respectively.

Second proviso has been inserted to section 143(1) of CGST Act, to provide that the period of 1 year and 3 years may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding 1 year and 2 years respectively.

This amendment would cover situations where the period of 1 year specified is not adequate in respect of job works such as hull construction/fabrication of vessels (for defence purposes), since these processes complete in a period of around 14 to 16 months.

II. Significant Notifications/ Circulars/ Orders

1. Amendment in *Circular No. 38/12/2018 GST dated 26.03.2018* in view of amendments made by the CGST (Amendment) Act, 2018 and IGST (Amendment) Act, 2018

Circular No. 38/12/2018 GST dated 26.03.2018 which clarifies various issues regarding the procedures to be followed for sending goods for job work and the related compliance requirements for the principal and the job worker has been suitably amended to take into consideration the following amendments made by the CGST (Amendment) Act, 2018 and IGST (Amendment) Act, 2018:

(i) Extension of period for receiving back the goods sent for job work as discussed above.

(ii) Amendment in the definition of the Special Category States under explanation (iii) to section 22(1).

(iii) Amendment carried out in Reverse charge provisions on inward supplies from unregistered persons under section 9(4) of the CGST Act/section 5(4) of the IGST Act.

[Circular No. 88/07/2019 GST dated 01.02.2019]

17

ASSESSMENT AND AUDIT

I. Amendments made by the CGST (Amendment) Act, 2018 – Effective from 01.02.2019

1. Definition of "cost accountant" amended [Section 2(35) of the CGST Act]

Earlier, as per section 2(35) of CGST Act, "cost accountant" meant a cost accountant as defined in clause (c) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959.

The words "clause (c)" has been substituted with words "clause (b)". This amendment has been brought to rectify a typographical error in the law.

II. Significant Notifications/ Circulars/ Orders

1. Audit by tax authorities can be conducted for a part of a year

The period of audit to be conducted by tax authorities is a financial year or multiples thereof. The said provision has been amended to provide that the audit may be conducted for a financial year, ***or part thereof*** or multiples thereof.

Thus, the Commissioner or any officer authorised by him, by way of a general or a specific order, may now undertake audit of any registered person for part of financial year also.

[Notification No. 74/2018 CT dated 31.12.2018]

2. Summary of various assessment orders to be uploaded on portal

The summary of assessment orders under section 62, 63 and 64 of the CGST Act is required to be uploaded electronically in the prescribed forms.

[Notification No. 16/2019 CT dated 29.03.2019]

19

DEMANDS & RECOVERY

I. Amendments made by the CGST (Amendment) Act, 2018 – Effective from 01.02.2019

1. Taxes can be recovered from distinct persons also [Section 79 of the CGST Act]

Section 79 of CGST Act stipulates the provisions relating to recovery of taxes. An explanation has been inserted to section 79 to clarify that for the purposes of this section, the word person shall include "distinct persons" as referred to in sub-section (4) or, as the case may be, sub-section (5) of section 25.

Thus, recovery of taxes under GST law can now be made from distinct persons present in different States/ UTs also.

II. Significant Notifications/ Circulars/ Orders

1. Clarification on levy of penalty under section 73 of the CGST Act in case of delayed filing of return

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

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

The provisions of section 73(11) of the CGST Act can be invoked only when the provisions of section 73 are invoked and the provisions of section 73 of the CGST Act are generally not invoked in case of delayed filing of the return in FORM GSTR-3B because tax along with applicable interest has already been paid.

It is accordingly clarified that penalty under the provisions of section 73(11) of the CGST Act is not payable in such cases. It is further clarified that since the tax has been paid late in contravention of the provisions of the CGST Act a general penalty under section 125 of the CGST Act may be imposed after following the due process of law.

[Circular No. 76/50/2018 GST dated 31.12.2018]

20

LIABILITY TO PAY IN CERTAIN CASES

I. Significant Notifications/ Circulars/ Orders

1. Transferee / successor be liable to pay any tax, interest or any penalty due from the transferor incases of transfer of business due to death of sole proprietor

As per section 85(1) of the CGST Act, the transferor and the transferee / successor shall jointly and severally be liable to pay any tax, interest or any penalty due from the transferor in cases of transfer of business "in whole or in part, by sale, gift, lease, leave and license, hire or in any other manner whatsoever".

Furthermore, section 93(1) of the CGST Act provides that where a person, liable to pay tax, interest or penalty under the CGST Act, dies, then the person who continues business after his death, shall be liable to pay tax, interest or penalty due from such person under this Act.

It is therefore clarified that the transferee/ successor shall be liable to pay any tax, interest or any penalty due from the transferor incases of transfer of business due to death of sole proprietor.

[Circular No. 96/15/2019 GST dated 28.03.2019]

21

OFFENCES AND PENALTIES

I. Amendments made by the CGST (Amendment) Act, 2018 – Effective from 01.02.2019

1. Amount of tax and penalty payable under section 129 of the CGST Act to be paid within 14 days

Prior to amendment, where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in section 129(1) within **7 days** of such detention or seizure, further proceedings were initiated in accordance with the provisions of section 130.

Under the amended position, the period of 7 days has been increased to a period of **14 days**. Thus, if amount of tax and penalty as provided in section 129(1) is not paid within 14 days of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130.

II. Significant Notifications/ Circulars/ Orders

1. Clarification on 'owner of the goods' for the purposes of section 129(1) of the CGST Act.

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

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

[Circular No. 76/50/2018 GST dated 31.12.2018]

22

APPEALS & REVISION

I. Amendments made by the CGST (Amendment) Act, 2018 – Effective from 01.02.2019

1. Definition of "Adjudicating Authority" amended [Section 2(4) of the CGST Act]

Anti profiteering authority has been excluded from the definition of Adjudicating authority and the term CBEC used therein has been changed to CBIC. The CGST (Amendment) Act, 2018 has amended section 2(4) of the CGST Act, which defines adjudicating authority, as under:

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

2. Upper limits prescribed for pre-deposits for filing appeal to Appellate Authority and Appellate Tribunal [Section 107(6), Section 112(8) of the CGST Act and Section 20 of the IGST Act]

Section 107(6) of CGST Act provides that no appeal shall be filed to Appellate Authority unless the applicant has paid in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him and a sum equal to 10% of the remaining amount of tax in dispute arising from the said order. The CGST (Amendment) Act, 2018 has amended the said section to provide a ceiling of Rs. 25 crore on the amount of pre-deposit. Thus, the amount of pre-deposit for filing an appeal to Appellate Authority cannot exceed Rs. 25 crore.

Similarly, a ceiling of Rs. 50 crore has been introduced in respect of pre-deposit for filing an appeal to Appellate Tribunal. The CGST (Amendment) Act, 2018 has amended section 112(8) of the CGST Act to give effect to such amendment.

With effect from 01.02.2019, section 20 of the IGST Act has also been amended vide the IGST (Amendment) Act, 2018 to provide that where the appeal is to be filed before the Appellate Authority or the Appellate Tribunal, the maximum amount payable shall be Rs. 50 crore and Rs. 100 crore rupees respectively. Section 20 of the IGST Act specifies the provisions of the CGST Act which are applicable in case of IGST Act as well.

II. Significant Notifications/ Circulars/ Orders

1. Prior notice to person in case of adverse order by Revisional Authority

If the Revisional Authority decides to pass an order in revision under section 108 of the CGST Act which is likely to affect the person adversely, an obligation has been cast on the Revisional Authority to serve a notice on such person and give him a reasonable opportunity of being heard. Along with the order under section 108(1), the Revisional Authority will also issue a summary of the order clearly indicating the final amount of demand confirmed.

[Notification No. 74/ 2018 CT dated 31.12.2018]

24

MISCELLANEOUS PROVISIONS

I. Amendments made by the IGST (Amendment) Act, 2018 – Effective from 01.02.2019

1. IGST not apportioned under sub-sections (1) and (2) of section 17 to be apportioned equally amongst Central Government and State Government/Union Territories on *ad hoc* basis [New sub-section (2A) inserted in section 17 of the IGST Act]

Section 17 of the IGST Act prescribes the provisions for such apportionment of IGST and settlement of funds between the Central Government and the State Governments.

Sub-sections (1) and (2) of section 17 provides for apportionment of IGST between the Central Government and State Governments/Union Territories in respect of those supplies where the input tax credit cannot be availed and thus, the tax revenue finally accrues to the exchequer.

A new sub-section (2A) has been inserted in section 17 to provide that the amount of IGST not apportioned under sub-section (1) and sub-section (2) may, for the time being, on the recommendations of the Council, be apportioned at the rate of 50% to the Central Government and 50% to the State Governments or the Union territories, as the case may be, on *ad hoc* basis and shall be adjusted against the amount apportioned under the said sub-sections. Thus, essentially, the new sub-section (2A) provides for apportionment of IGST in respect of B2B supplies wherein input tax credit has been taken by the recipients.

PART II: CUSTOMS & FOREIGN TRADE POLICY

1

LEVY OF AND EXEMPTIONS FROM CUSTOMS DUTY

1. Notification providing exemption to re-import of goods and parts thereof for repairs, reconditioning, reprocessing, remaking or similar other process amended

Notification No.158/95 Cus. dated 14.11.1995 provides exemption to re-import of goods and parts thereof for repairs, reconditioning, reprocessing, remaking or similar other process in the following manner:-

S. No.	Particulars	Time-limit for re-importation from the date of exportation	Other conditions to be satisfied
1.	Goods manufactured in India and re-imported for Repairs or for reconditioning	3 years In case of export to Nepal, such time-limit is 10 years.	(a) Goods must be re-exported within six months (extendable till one year) of the date of re-importation. (b) The Assistant Commissioner/Deputy Commissioner of Customs is satisfied as regards identity of the goods. (c) The importer at the time of importation executes a bond.
2*.	Goods manufactured in India and re-imported for (a) Reprocessing (b) Refining (c) Re-making (d) Subject to any process similar to the processes referred to in clauses (a) to (c) above.	1 year	

Note: In 2* above, if any loss of imported goods is noticed during such operation, such loss shall be exempted from whole of the custom duties subject to the satisfaction of Assistant/ Deputy Commissioner of Customs.

The exemption is available even if quantity re-imported is short or low in quantity as long as nature and variety of goods is same.

Amended position

CBIC vide *Notification No. 60/2018 Cus dated 11.09.2018* has amended *Notification No. 158 / 95 Cus dated 14.11.1995* exempting goods manufactured in India and re-imported for repairs / reconditioning / reprocessing / refining / remaking etc. as under:

S. No.	Particulars	Time-limit for re-importation from the date of exportation	Other conditions to be satisfied
1.	Goods manufactured in India and re-imported for Repairs or for reconditioning **other than the specified goods**	3 years In case of export to Nepal, such time-limit is 10 years.	(a) Goods must be re-exported within six months (extendable till one year) of the date of re-importation. (b) The Assistant Commissioner/Deputy Commissioner of Customs is satisfied as regards identity of the goods. (c) The importer at the time of importation executes a bond.
2*.	Goods manufactured in India and re-imported for (a) Reprocessing (b) Refining (c) Re-making (d) Subject to any process similar to the processes referred to in clauses (a) to (c) above.	1 year	

[Notification No. 60/2018 Cus dated 11.09.2018]

5

IMPORTATION, EXPORTATION AND TRANSPORTATION OF GOODS

1. CBIC prescribes Customs (Finalisation of Provisional Assessment) Regulations, 2018 to ease the process of Provisional Assessments u/s 18

The Finance Act, 2011 had introduced the self-assessment under the customs law. Resultantly, the circumstances when the provisional assessment could be resorted also underwent a change and revised Customs (Provisional Duty Assessment) Regulations, 2011 were issued. In 2016, CBIC reviewed the said regulations and rescinded Customs (Provisional Duty Assessment) Regulations, 2011 since section 18 itself lays down the procedure to be followed in the case of provisional assessment.

To further bring the uniformity in the process, CBIC vide *Notification No. 73/2018 Cus (NT) dated 14.08.2018* has prescribed Customs (Finalisation of Provisional Assessment) Regulations, 2018.

The significant provisions contained in said regulations are discussed as under:

- **Time-limit and manner for submission of documents or information by importer/ exporter for the purpose of finalisation of provisional assessment**

  a) Reasons for Provisional Assessment:

  i. the necessary documents have not been produced or information has not been furnished

  ii. the proper officer requires the importer or the exporter to produce any additional documents or information

  Such information or documents shall be made available by the importer /exporter within 1 month from the date of such order of provisional assessment or the date of such requisition by the proper officer.

  b) The proper officer shall within 15 days from the date of such order of provisional assessment, inform the importer or the exporter, in writing, the specific details of the information to be furnished or the documents to be produced. If the document/information is not made available within 15 days, this period may, for reasons recorded in writing, be further extended by proper officer for 3 months on his own or at the request of the importer or the exporter.

  c) The Additional Commissioner or Joint Commissioner of Customs, may further extend the time period referred for another 3 months, in case the documents or

the information required to be submitted by the importer or the exporter or requisitioned by the proper officer have not been made available within prescribed time limit.

d) If the aforesaid time limits don't suffice, the Commissioner of Customs, may extend the time period further as deemed fit.

e) All the requisite information/ documents need to be submitted in one instance by importer/ exporter and importer/exporter themselves or his authorised representative or Customs Broker shall inform the proper officer in writing that he has submitted all the documents or information to be furnished or requisitioned.

f) For the purpose of these regulations, each Bill of Entry or Shipping Bill, as the case may be, that has been assessed provisionally shall be treated as a separate case of provisional assessment.

- **Time-limit for finalisation of provisional assessment**

The proper officer shall finalise the provisional assessment within 2 months of receipt of:

a) an intimation from the importer or the exporter or his authorised representative or Customs Broker under sub-regulation (7) of regulation 4; or

b) a chemical or other test report, where the provisional assessment was ordered for that reason; or

c) an enquiry or investigation or verification report, where the provisional assessment was ordered for that reason.

However, where the documents or information required to be furnished by the importer or the exporter or requisitioned by the proper officer are made available intermittently, the time period of 2 months shall be reckoned from the date of last intimation referred to in clause (a) above.

Further, where the documents or information required to be furnished by the importer or exporter, as the case may be, or requisitioned by the proper officer are not made available or made partly available and no further extension of time has been allowed under sub-regulations (3), (4) or (5) of regulation 4, as the case may be, the proper officer shall proceed to finalise the provisional assessment within 2 months of the expiry of the time allowed for submission of the said documents or information.

d) The Commissioner of Customs concerned may allow, for reasons to be recorded in writing, a further time period of 3 months in case the proper officer is not able to finalise the provisional assessment within the period of 2 months as specified in sub-regulation (1) above.

e) This regulation shall not apply to such cases of provisional assessments, where Board has issued directions to keep that pending.

- **Manner of finalisation of provisional assessment**

  a) The provisional assessment shall be finalised as per the provisions of section 18 of the Act.

  However, if the amount so paid at the time of provisional assessment or after adjustment under clause (a) to sub-section (2) of section 18 of the Act, falls short of the duty finally assessed or re-assessed, as the case may be, and the importer or the exporter has not paid the deficiency, the shortfall shall be adjusted from the security, if any, obtained at the time of provisional assessment, under intimation to the importer or the exporter,

  However, if the amount so adjusted or paid falls short of the duty finally assessed or re-assessed, as the case may be, the importer or exporter of the goods shall pay the shortfall in terms of the provisions of section 18.

  b) The Bond executed at the time of provisional assessment with security, if any, shall be cancelled after finalisation of provisional assessment and the security shall also be returned, if there are no pending dues.

  c) Where the final assessment is contrary to the provisional assessment, the proper officer shall pass a speaking order following principles of natural justice.

  d) Where the final assessment confirms the provisional assessment, the proper officer shall finalise the same after ascertaining the acceptance of such finalisation from the importer or the exporter on record and inform the importer or exporter in writing of the date of such finalisation.

  e) Where a Bill of Entry or Shipping Bill is presented electronically on the Customs Automated system and is ordered to be provisionally assessed, the proper officer shall finalise the provisional assessment on the system also consequent to the procedure prescribed in these regulations.

- **Penalty**

  If any importer or exporter or his authorised representative or Customs Broker contravenes any provision of these regulations or abets such contravention, or fails to comply with any provision of these regulations, he shall be liable to a penalty which may extend to Rs.50,000/-.

  [Notification No. 73/2018 Cus (NT) dated 14.08.2018]

15
FOREIGN TRADE POLICY

1. Entitlement under MEIS for exports made through courier or foreign post office enhanced

Presently, export of handicraft items, handloom products, books/periodicals, leather footwear, toys and tailor made fashion garments through courier or foreign post office using e-commerce of FOB value upto Rs. 25000 per consignment are entitled for reward under MEIS.

However, DGFT has amended the said provision and provided that for export of aforesaid items through courier or foreign post office of FOB value upto Rs. 5,00,000 per consignment will be entitled for reward under MEIS. If the value of exports is more than Rs. 5,00,000 per consignment then MEIS reward would be calculated on the basis of FOB value of Rs. 5,00,000 only.

With this amendment, the limitation on the port of exports for courier exports for the purpose of incentivisation under MEIS has been done away with.

2. Removal of limit of Rs. 1 crore per year for exports on Free of Cost Exports basis for export promotion for Status Holders

Presently, Status holders are entitled to export freely exportable items (excluding Gems and Jewellery, Articles of Gold and precious metals) on free of cost basis for export promotion subject to an annual limit of Rupees 1 Crore or 2% of average annual export realization during preceding three licensing years, whichever is lower.

However, DGFT has amended the aforesaid provision to provide the following:

Status holders shall be entitled to export freely exportable items (excluding Gems and Jewellery, Articles of Gold and precious metals) on free of cost basis for export promotion subject to an annual limit as below:

a) Annual limit of 2% of average annual export realization during preceding three licensing years for all exporters (excluding the exporters of following sectors- (1) Gems and Jewellery Sector, (2) Articles of Gold and precious metals sector).

b) Annual limit of Rupees 1 Crore or 2% of average annual export realization during preceding three licensing years, whichever is lower. (for exporters of the following sectors-(1) Gems and Jewellery Sector, (2) Articles of Gold and precious metals sector).

In nutshell, it means that the limit of Rs 1 Crore per year for exports on free of cost exports basis for export promotion for Status Holders is removed and is made 2% of average annual export realization during preceding three licensing years.

3. Extension of IGST and Compensation Cess exemption under Advance Authorisation, EPCG and EOU scheme upto 31.03.2020

IGST and Compensation Cess was exempted upto 01.10.2018 on imports under Advance Authorisation for physical exports, Capital Goods imported under EPCG authorisation and imports made by EOUs. Said exemption has been extended upto 31.03.2020.

4. Exemption from IGST and GST Compensation Cess extended to deemed exports in case of Advance Authorisation and pre-import condition for said exemption dispensed with

Exemption from IGST and GST Compensation Cess is available to imports under Advance Authorisation. Earlier, this exemption was restricted to only physical exports and was subject to 'pre-import condition'.

Now, pre-import condition for said exemption has been dispensed with and said exemption has also been extended to following deemed exports:

(a) Supply of goods by a registered person against Advance Authorisation.

(b) Supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation.

(c) Supply of goods by a registered person to Export Oriented Unit.

Under pre-import condition, an exporter has to first import inputs under advance authorisation, manufacture final products using only such inputs imported against respective advance authorisation and then physically export them. Thus, exporters cannot import inputs under AA after their finished products are exported. There needs to be a strict nexus between import of duty-free goods under AA and physical export of goods manufactured using the same.