




## Analysis of “50th GST Council Meeting Decisions”



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### Manner of calculation of interest amount on IGST ITC reversal clarified


- As per Section 50(3)
- where the **input tax credit has been wrongly availed and utilised**,
- the **registered person shall pay interest** on such input tax credit wrongly availed and utilised,
- Clarification vide Circular 192/04/2023 dated 17.07.2023
- regarding the manner of calculation of interest amount liable to be paid under section 50(3) of CGST Act, 2017 in respect of **wrongly availed and utilized IGST credit**.

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# Interest

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### Manner of calculation of interest amount on IGST ITC reversal clarified

- clarifying inter alia that in cases of wrong availment of IGST credit,
- the balance of input tax credit (ITC) in electronic credit ledger, under the heads of IGST, CGST and SGST taken together, has to be taken in consideration while calculating such interest liability as **per rule 88B of CGST Rules, 2017**.

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## Circular No. 192/04/2023-GST dated 17<sup>th</sup> July 2023

- **The CBIC has issued circular and provide clarification on charging of interest under section 50(3) of the CGST Act, 2017, in cases of wrong availment of IGST credit and reversal thereof.**
  - In the cases where IGST credit has been wrongly availed and subsequently reversed on a certain date, there will not be any interest liability under sub-section (3) of section 50 of CGST Act
  - if during the time period starting from such availment and up to such reversal, the balance of input tax credit (ITC) in the electronic credit ledger, under the heads of IGST, CGST and SGST taken together, **has never fallen below the amount** of such wrongly availed ITC, even if available balance of IGST credit in electronic credit ledger individually falls below the amount of such wrongly availed IGST credit.
  - **However**, when the balance of ITC, under the heads of IGST, CGST and SGST of electronic credit ledger taken together, **falls below such wrongly availed amount of IGST credit**,

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- As per proviso to Section 11 of Goods and Services Tax (Compensation to States) Act, 2017, input tax credit **in respect of compensation cess**
- on supply of goods and services leviable under Section 8 of the said Act can be utilised only towards payment of compensation cess leviable on supply of goods and services.
- Thus, credit of compensation cess cannot be utilized for payment of any tax under CGST or SGST or IGST heads and/ or reversals of credit under the said heads. Accordingly, **credit of compensation cess available in electronic credit ledger cannot be taken into account** while considering the balance of electronic credit ledger for the purpose of calculation of interest under sub-rule (3) of rule 88B of CGST Rules in respect of wrongly availed and utilized IGST, CGST or SGST credit.

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- then it will amount to the utilization of such wrongly availed IGST credit and the extent of utilization will be the extent to which the total balance in electronic credit ledger under heads of IGST, CGST and SGST taken together falls below such amount of wrongly availed IGST credit, and **will attract interest** as per sub-section (3) of section 50 of CGST Act, read with section 20 of Integrated Goods and Services Tax Act, 2017 and sub-rule (3) of rule 88B of CGST Rules.

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## Example:

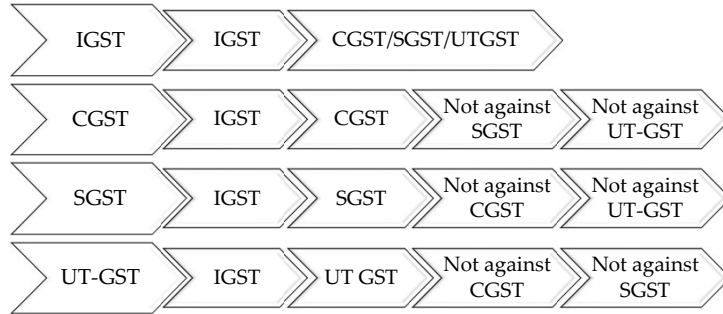
- If a person has **wrongly availed & utilized IGST credit Rs.1,000, but he still has balance credit in IGST (Rs. 0.00), CGST (Rs. 700) and SGST (Rs. 300)**, then as per clarification - the taxpayer should **get benefit of this balance credit lying in his credit ledger** while calculating interest payment on wrongly availed IGST.

Particulars	CGST	SGST	IGST
<b>ITC Wrongly Availed &amp; Utilized</b>	0	0	1,000
Balance available in electronic credit ledger after above adjustment	700	300	0
<b>Benefit available to taxpayer for interest calculation</b>	<b>700</b>	<b>300</b>	<b>0</b>
Amount on which interest is calculated for wrong availment and utilization of IGST credit (Wrong IGST- Balance available in electronic credit ledger on totality basis) i.e. (1000-700-300-0)	0	0	0

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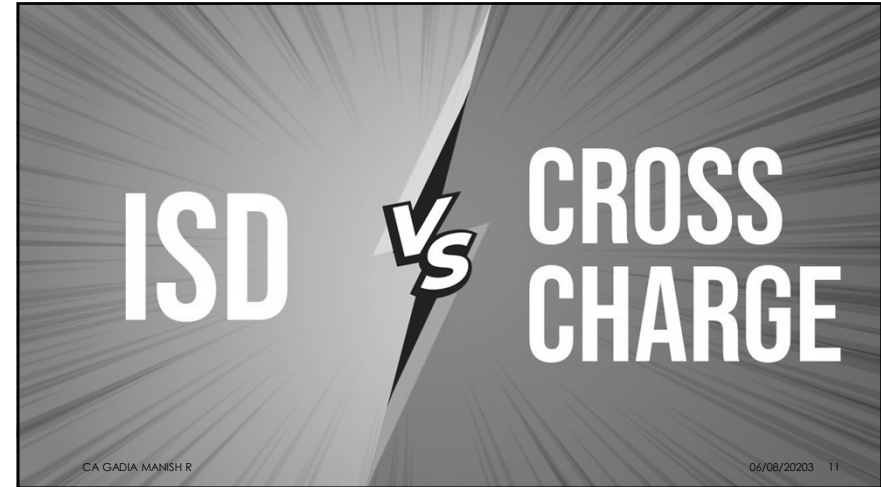
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### Manner of Set off of ITC (Rule 88A)



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- **This is so because** as per GST set-off rules,

First IGST input credit is used to set off output liability then only CGST & SGST input credit can be set off. Therefore if a taxpayer still has balance in IGST / CGST / SGST input credit then he would have utilized the same to set off his output liability presuming as if he had not availed the wrong IGST Credit.

**So, practically govt. is at no revenue loss even if he has availed & utilized wrong IGST credit. In such case only IGST reversal would be required. Interest will not be levied to the extent balance available in credit ledger.**

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### Input Service Distributor

- As per Section 2(61) "**Input Service Distributor**" means
- **an office of the** supplier of goods or services or both
- **which receives tax invoices** issued under section 31 towards **the receipt of input services** and
- **issues a prescribed document** for the **purposes of distributing the credit** of central tax, State tax, integrated tax or Union territory tax paid on the said services to a supplier of taxable goods or services or both
- **having** the same Permanent Account Number as that of the said office;

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## Input Service Distributor

- An Input Service Distributor is an office specifically for the purpose of distributing the credit of "input services" common to multiple registrations. ISD receives tax invoices from the outside parties towards receipts of input services. It distributes the credit of CGST,SGST/UTGST and IGST paid on such common services by issuing invoices to the other registrations having the same PAN.
- **In order to distribute the common credit amongst various branches one has to get registered as an Input Service Distributor under GST.**

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## Clarification regarding distribution of ITC between distinct persons

- **Circular no. 199/04/2023-GST dated 17<sup>th</sup> July, 2023** provides clarification regarding distribution of ITC between distinct persons in case of Input Service procured by Third Party or in respect of Internally Generated Services as follows:
- Common input services procured by HO from a third party attributable to both HO and BOs or exclusively to one or more BOs,
- the HO has an option to distribute such ITC through ISD mechanism,
- However, as per present provisions of the CGST Act and CGST Rules, it is not mandatory for the HO to distribute such input tax credit by ISD mechanism.
- HO can also issue tax invoices to the concerned BOs in respect of common input services procured from a third party by HO

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## Cross Charge

- As per the provisions of the CGST Act, the tax will also be imposed on the supply of goods and services **without consideration amongst distinct persons (i.e. Schedule I of CGST Act, 2017)**.
- Where **two business units** have obtained **different registrations** under GST (may be within the same state or different states or UT), they will be considered **distinct persons**. Where there is a **supply** of goods and services that has **taken place between** distinct persons, it comes under the purview of GST.
- **Hence, every such supply between distinct persons will result in "Cross-Charge" transactions and tax invoice should be raised accordingly.**
- **For your better understanding refer to the below example:**
- Where a business entity has multiple places of business registered under the same PAN, it is likely the set-up will be on the lines of the Head Office handling admin work, maintenance of accounts and IT systems and other operations for all the units present in India. **Input services provided by the Head Office to the various branches are considered separate services.**

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## Clarification regarding distribution of ITC between distinct persons

- To distribute such input service there should actually be attributable to such BO or actually provided to such BO.
- In case, the HO distributes or wishes to distribute ITC to BOs in respect of such common input services through the ISD mechanism as per the provisions of **section 20** of CGST Act read with **rule 39** of the CGST Rules, HO is required to get itself registered mandatorily as an ISD in accordance with **Section 24(viii)** of the CGST Act.
- Further, such distribution of ITC in respect of common input services procured from a third party can be made by an HO To a BO only if the said input services are actually attributable to such BO or said services are actually provided to such BO.

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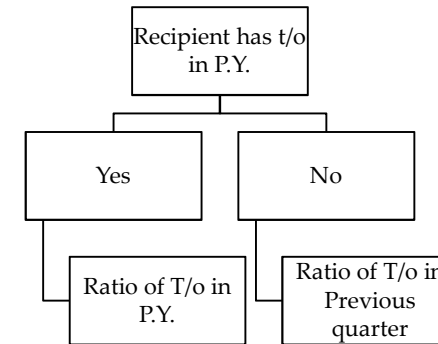
## Conditions for distribution Sec 20(2)

- Against an ISD invoice issued to each of the recipient containing such details as prescribed
- Credit distributed shall not exceed the amount of credit available for distribution
- Credit of tax paid on inputs service attributable to a recipient to be distributed to that recipient
- Credit of tax paid on input services attributable to more than one recipient/ all recipients to be distributed only amongst such recipient to whom the input service is attributable pro rata on the basis of turnover in State of such recipient during relevant period to the aggregate of the turnover of all such recipients **to whom such Input Service is attributable** and which are operational in the current year, during the said relevant period

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## Relevant Period

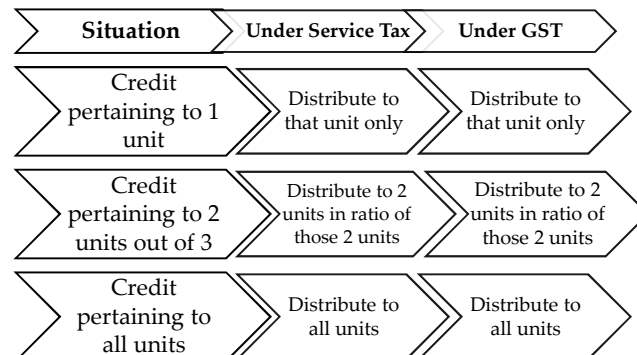


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## Manner of distribution-Rule 39

- Distribution of the input service credit



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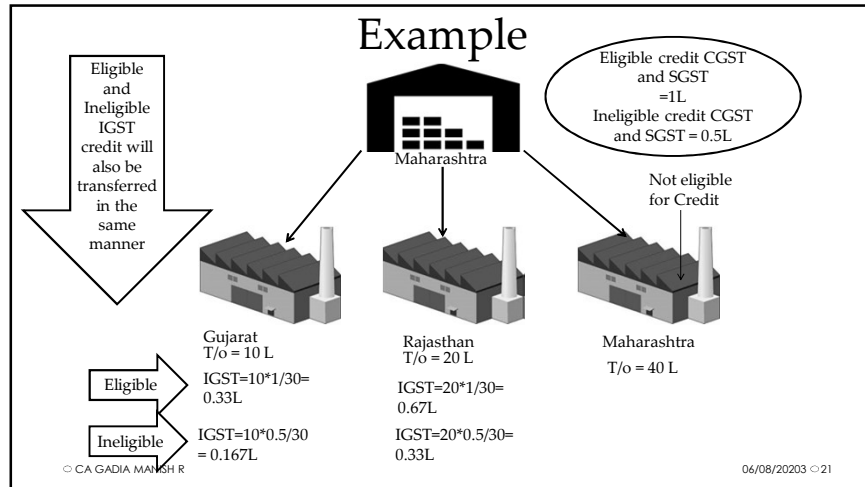
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## Procedure for distribution of ISD Rule 39

- the input tax credit available for distribution in a month shall be distributed in the same month. The details of same shall be provided in FORM GSTR- 6.
- ISD shall separately distribute the amount of ineligible input tax credit and the amount of eligible input tax credit;
- Central tax, State tax, Union territory tax and integrated tax shall be distributed separately
- $C1 = (t1 \div T) \times C$   
 "C" = credit to be distributed,  
 "t1" = the turnover of person a recipient (R1) during the relevant period,  
 "T" is the aggregate of the turnover, during the relevant period, of all recipients to whom the input service is attributable

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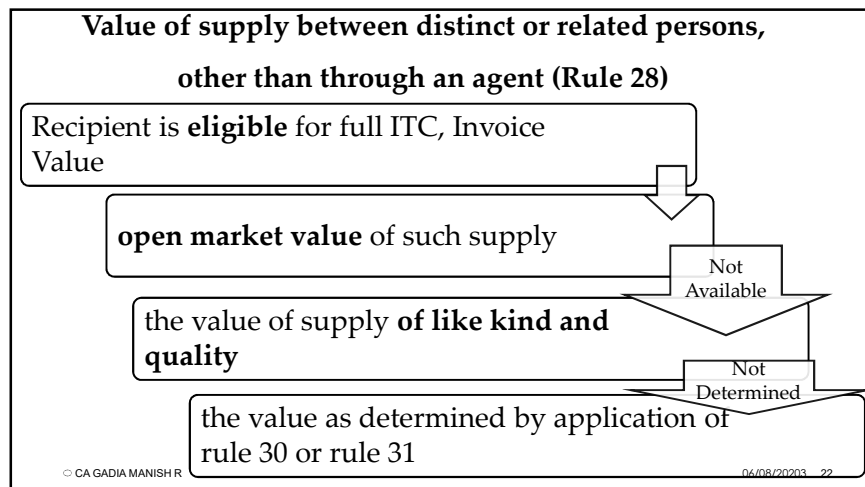


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- In respect of **Internally Generated Services** where HO is providing certain services to the BOs for which **full input tax credit is available** to the concerned BOs
- the value of supply services made by a registered person to a distinct person needs to be determined as per rule 28 of CGST Rules
- Accordingly, in respect of supply of services by HO to BOs, the value of the said supply of services declared in the invoice by HO shall be deemed to be open market value of such services, if the recipient BO is **eligible** for full input tax credit.
- Accordingly, in cases where **full input tax credit is available to a BO**, the value declared on the invoice by HO to the said BO in respect of a supply of services shall be deemed to be the open market value of such services, irrespective of the fact whether cost of any particular component of such services, like employee cost etc., has been included or not in the value of the services in the invoice.

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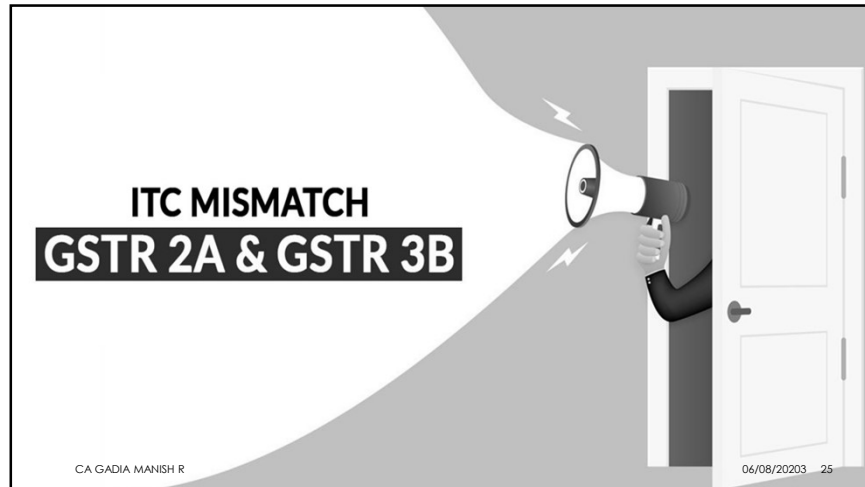


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- Further, in such cases where **full input tax credit is available to the recipient**, if HO has not issued a tax invoice to the BO in respect of any particular services being rendered by HO to the said BO, the value of such services may be deemed to be declared as Nil by HO to BO, and may be deemed as open market value in terms of second proviso to rule 28 of CGST Rules.
- In respect of **internally generated services** provided by the HO to BOs, in cases where **full input tax credit is not available to the concerned BOs**, the cost of salary of employees of the HO, involved in providing the said services to the BOs, is not mandatorily required to be included while computing the taxable value of the supply of such services

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### Circular No. 193/05/2023-GST dated 17<sup>th</sup> July, 2023

**CBIC vide Circular No. 193/05/2023-GST dated 17<sup>th</sup> July, 2023** has clarified that circular No. 183/15/2022-GST dated 27<sup>th</sup> Dec, 2022 shall also apply for period F.Y 2019-20 and 2020-21 **subject to fulfilment of Rule 36(4) of CGST Rules, 2017 from date of insertion thereof i.e. w.e.f 9<sup>th</sup> October,2019.**

- It is further clarified that consequent to insertion of clause (aa) to sub-section (2) of section 16 of the CGST Act and amendment of rule 36(4) of CGST Rules w.e.f. 01.01.2022,
- It is also clarified that guideline provided in Circular no. 183/15/2022-GST dated 27<sup>th</sup> Dec, 2022 shall apply only to the extent of limit provided under Rule 36(4) viz. 20%, 10% or 5% i.e. documentation would be required in respect of the 20% or 10% or 5% additional ITC taken.

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**Special procedure for verification of ITC mismatch extended to period up to 31.12.2021**

- As per the recommendations of the Council in its 48 meeting, **Circular No. 183/15/2022-GST** dated 27<sup>th</sup> December 2022
- was issued to provide for the procedure for **verification of input tax credit** in cases involving difference in Input Tax Credit availed in FORM GSTR-3B vis a vis that available as per FORM GSTR-2A during FY 2017-18 and 2018-19.
- To provide **further relief** to the taxpayers, the Council recommended for further issuance of a circular to provide for similar procedure for verification of input tax credit in cases involving difference in Input Tax Credit availed in FORM GSTR-3B vis a vis that available as per FORM GSTR-2A during the period **01.04.2019 to 31.12.2021.**
- Further, **the department has issued clarification in Circular No. 193/05/2023-GST dated 17<sup>th</sup> July 2023**
- **to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for the period 01.04.2019 to 31.12.2021.**

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- These instructions will apply only to the on-going proceedings in scrutiny/ audit/ investigation, etc. for the period 01.04.2019 to 31.12.2021 and not to the completed proceedings.
- However, these instructions will apply in those cases during the period 01.04.2019 to 31.12.2021 where any adjudication or appeal proceedings are still pending.
- It has been further clarified that these guidelines are clarificatory in nature and may be applied as per the actual facts and circumstances of each case and shall not be used in the interpretation of the provisions of law.

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## Circular No. 183/15/2022-GST dated 27<sup>th</sup> December, 2022

### issued by CBIC

- Circular No. 183/15/2022-GST dated 27<sup>th</sup> December, 2022 issued by CBIC; **relief for ITC mismatch** in the initial years of GST implementation i.e. F.Y. 2017-18 and F.Y. 2018-19 has been provided.
- As per the said circular, **the mismatch between ITC as per GSTR 2A and ITC as GSTR 3B**, shall be handled by the proper officer **by seeking all invoices** on which ITC has been availed by the registered person in his GSTR 3B, **but which are not reflecting in GSTR 2A** and ascertain fulfillment of Section 16(2)(a) & 16(2)(b) of CGST Act,2017 in the **following scenarios**:
  - Non filing of GSTR 1 by the supplier.
  - Non-reporting of invoices in GSTR 1 by the supplier.
  - Wrong reporting of B2B supplies as B2C supplies in GSTR 1 by the supplier.
  - Wrong reporting of GSTIN in GSTR 1 by supplier.

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## Calculation of Restrictions as per Old Rule 36(4)

Sr. No	Particulars	Before 09.10.19	09.10.19 to 31.12.19	On or after 01.01.20
1	Total ITC as per Books	55,00,000	55,00,000	55,00,000
2	Eligible ITC as per Books	50,00,000	50,00,000	50,00,000
3	Ineligible ITC as per Books (1-2)	5,00,000	5,00,000	5,00,000
4	Total ITC as per GSTR-2A	35,00,000	35,00,000	35,00,000
5	Eligible ITC as per GSTR-2A	30,00,000	30,00,000	30,00,000
6	Ineligible ITC as per GSTR-2A (4-5)	5,00,000	5,00,000	5,00,000
7	20% / 10% of the Eligible ITC as per Form GSTR-2A [Rule 36(4)] (5*20%) (5*10%)	NA	6,00,000	3,00,000
8	Maximum Permissible ITC [As per Rule 36(4)] (5+7)	NA	36,00,000	33,00,000
9	ITC allowable	50,00,000	36,00,000	33,00,000
10	Additional Cash Outflow / Impact [As per Rule 36(4)]		14,00,000	17,00,000

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## Applicability of Rule 36(4)

- Full ITC in respect of Import and ISD
- The restriction of 5%/10%/20% 36(4) will be applicable only on the invoices, etc. on which credit is availed before 31.12.2021.
- The restriction imposed is not supplier wise
- The calculation would be based on only those invoices which are otherwise eligible for ITC
- The taxpayer may have to ascertain the same from his auto populated **FORM GSTR 2A as available on the due date of filing of FORM GSTR-1 under sub-section (1) of section 37.**

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## Why the government issued the said circular with limited period? i.e Firstly upto 31.03.2019 and now extended upto 31.12.2021.

- Earlier, Circular No. 183/15/2022-GST dated 27<sup>th</sup> December, 2022 issued by CBIC for **relief for ITC mismatch** in the initial years of GST implementation for F.Y. 2017-18 and F.Y. 2018-19 this is for the reason that of Rule 36(4) of CGST Rules, 2017 issued in the FY 2019-20 (5%/10%/20%).
- Further, the government has realized that the said Rule 36(4) was challenged by the Gujarat High court and issues notices to the Central and State government on limiting the input tax credit to the assessee. Therefore, the government has now extended the benefit of the said circular till 31.12.2021.

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- It is to be noted that, on 01.01.2022 the Rule 36(4) was amended and A new Auto-generated, ITC statement has been introduced in the GST portal – The GSTR -2B which is available to all regular taxpayers.
- **Hence, as a result of the GSTR 2B the said circular is now extended till 31.12.2021 only.**

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### Clarification on warranty replacement of parts and repair services during warranty period

- **Circular no. 195/04/2023- GST dated 17<sup>th</sup> July 2023 is issued** to provide clarity on various issues pertaining to the GST liability as well as the liability to reverse input tax credit in cases involving warranty replacement of parts and repair services during warranty period.
- The circular also addresses the treatment of extended warranties, stating that GST is payable on the consideration for extended warranties.

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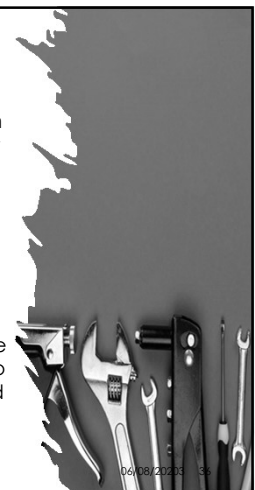


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- **Issue 1: There are cases where the original equipment manufacturer offers warranty for the goods supplied by him to the customer and provides replacement of parts and/ or repair services to the customer during the warranty period, without separately charging any consideration at the time of such replacement/ repair services.**
- **Whether GST would be payable on such replacement of parts or supply of repair services, without any consideration from the customer, as part of warranty?**
- The value of original supply of goods (provided along with warranty) by the manufacturer to the customer includes the likely cost of replacement of parts and / or repair services to be incurred during the warranty period, on which tax would have already been paid at the time of original supply of goods.

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- As such, where the manufacturer provides replacement of parts and/ or repair services to the customer during the warranty period, without separately charging any consideration at the time of such replacement/ repair services, no further GST is chargeable on such replacement of parts and/ or repair service during warranty period.
- However, if any additional consideration is charged by the manufacturer from the customer, either for replacement of any part or for any service, then GST will be payable on such supply with respect to such additional consideration.

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- **Issue 3: Whether GST would be payable on replacement of parts and/ or repair services provided by a distributor without any consideration from the customer, as part of warranty on behalf of the manufacturer?**
- **Clarification:** There may be instances where a distributor of a company provides replacement of parts and/ or repair services to the customer as part of warranty on behalf of the manufacturer and no separate consideration is charged by such distributor in respect of the said replacement and/ or repair services from the customer.
- In such cases, as no consideration is being charged by the distributor from the customer, no GST would be payable by the distributor on the said activity of providing replacement of parts and/ or repair services to the customer.

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- **Issue 2: Whether in such cases, the manufacturer is required to reverse the input tax credit in respect of such replacement of parts or supply of repair services as part of warranty, in respect of which no additional consideration is charged from the customer?**
- **Clarification:** In such cases, the value of original supply of goods (provided along with warranty) by the manufacturer to the customer includes the likely cost of replacement of parts and/ or repair services to be incurred during the warranty period.
- Therefore, these supplies cannot be considered as exempt supply and accordingly, the manufacturer, who provides replacement of parts and/ or repair services to the customer during the warranty period, is not required to reverse the input tax credit in respect of the said replacement parts or on the repair services provided.

17(5)(h) Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples

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- However, if any additional consideration is charged by the distributor from the customer, either for replacement of any part or for any service, then GST will be payable on such supply with respect to such additional consideration.

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- **Issue 4: In the above scenario where the distributor provides replacement of parts to the customer as part of warranty on behalf of the manufacturer, whether any supply is involved between the distributor and the manufacturer and whether the distributor would be required to reverse the input tax credit in respect of such replacement of parts?**
- **Clarification:**
  - a) There may be cases where the distributor replaces the part(s) to the customer under warranty either by using his stock or by purchasing from a third party and charges the consideration for the part(s) so replaced from the manufacturer, by issuance of a tax invoice, for the said supply made by him to the manufacturer. In such a case, GST would be payable by the distributor on the said supply by him to the manufacturer and the manufacturer would be entitled to avail the input tax credit of the same, subject to other conditions of CGST Act. In such case, no reversal of input tax credit by the distributor is required in respect of the same.

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- c) There may be cases where the distributor replaces the part(s) to the customer under warranty out of the supply already received by him from the manufacturer and the manufacturer issues a credit note in respect of the parts so replaced subject to provisions of sub-section (2) of section 34 of the CGST Act. Accordingly, the tax liability may be adjusted by the manufacturer, subject to the condition that the said distributor has reversed the ITC availed against the parts so replaced.

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- b) There may be cases where the distributor raises a requisition to the manufacturer for the part(s) to be replaced by him under warranty and the manufacturer then provides the said part(s) to the distributor for the purpose of such replacement to the customer as part of warranty. In such a case, where the manufacturer is providing such part(s) to the distributor for replacement to the customer during the warranty period, without separately charging any consideration at the time of such replacement, no GST is payable on such replacement of parts by the manufacturer. Further, no reversal of ITC is required to be made by the manufacturer in respect of the parts so replaced by the distributor under warranty.

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- **Issue 5 : Where the distributor provides repair service, in addition to replacement of parts or otherwise, to the customer without any consideration, as part of warranty, on behalf of the manufacturer but charges the manufacturer for such repair services either by way of issue of tax invoice or a debit note, whether GST would be payable on such activity by the distributor?**
- **Clarification:** In such scenario, there is a supply of service by the distributor and the manufacturer is the recipient of such supply of repair services in accordance with the provisions of sub-clause (a) of clause (93) to section 2 of the CGST Act, 2017.
- Hence, GST would be payable on such provision of service by the distributor to the manufacturer and the manufacturer would be entitled to avail the input tax credit of the same, subject to other conditions of CGST Act.

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- **Issue 6: Sometimes companies provide offers of Extended warranty to the customers which can be availed at the time of original supply or just before the expiry of the standard warranty period. Whether GST would be payable in both the cases?**
- **Clarification:**
  - a) If a customer enters in to an agreement of extended warranty with the manufacturer at the time of original supply, then the consideration for such extended warranty becomes part of the value of the composite supply, the principal supply being the supply of goods, and GST would be payable accordingly.
  - b) However, in case where a consumer enters into an agreement of extended warranty at any time after the original supply, then the same is a separate contract and GST would be payable by the service provider, whether manufacturer or the distributor or any third party, depending on the nature of the contract (i.e. whether the extended warranty is only for goods or for services or for composite supply involving goods and services)

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## Clarification on various issues related to GST Refund

- **Circular no. 197/04/2023- GST dated 17<sup>th</sup> July 2023 is issued** to provide clarity on various issues pertaining to GST Refund
- **Issue 1: Doubts are being raised as to whether the refund of the accumulated input tax credit under section 54(3) of CGST Act shall be admissible on the basis of the input tax credit as reflected in FORM GSTR-2A or on the basis of that available as per FORM GSTR-2B of the applicant.**
- **Clarification:** Since availment of input tax credit has been linked with FORM GSTR-2B w.e.f. 01.01.2022, availability of refund of the accumulated input tax credit under section 54(3) of CGST Act for a tax period shall be restricted to input tax credit as per those invoices, the details of which are reflected in FORM GSTR-2B of the applicant for the said tax period or for any of the previous tax periods and on which the input tax credit is available to the applicant.

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- Accordingly, para 36 of Circular No. 125/44/2019-GST dated 18.11.2019, which was earlier modified vide Para 5 of Circular No. 135/05/2020-GST dated 31.03.2020, stands modified to this extent.
- Consequently, Circular No. 139/09/2020-GST dated 10.06.2020, which provides for restriction on refund of accumulated input tax credit on those invoices, the details of which are uploaded by the supplier in GSTR-1 and are reflected in the FORM GSTR-2A of the applicant, also stands modified accordingly.

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- It is further clarified that as the said amendments in section 16(2) (aa) of CGST Act and Rule 36(4) of CGST Rules have been brought into effect from 01.01.2022,
- therefore, the said restriction on availability of refund of accumulated input tax credit for a tax period on the basis of the credit available as per **FORM GSTR-2B** for the said tax period or for any of the previous tax periods,
- shall be applicable for the refund claims for the tax period of January 2022 onwards.
- However, in cases where refund claims for a tax period from January 2022 onwards has already been disposed of by the proper officer before the issuance of this circular, in accordance with the extant guidelines in force, the same shall not be reopened because of the clarification being issued by this circular.

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- **Issue 3: Doubts have been raised as regarding calculation of "adjusted total turnover" under sub-rule (4) of rule 89 of CGST Rules, in view of insertion of Explanation in sub-rule (4) of rule 89 of CGST Rules vide Notification No. 14/2022-Central Tax dated 05.07.2022. Clarification is being sought as to whether value of goods exported out of India has to be considered as per Explanation under sub-rule (4) of rule 89 of CGST Rules for the purpose of calculation of "adjusted total turnover" in the formula under the said sub-rule.**
- **Clarification :** In this regard, it is mentioned that consequent to amendment in definition of the "Turnover of zero-rated supply of goods" vide Notification No. 16/2020-Central Tax dt. 23.03.2020, Circular 147/03/2021-GST dt. 12.03.2021 was issued which inter alia clarified that the same value of zero-rated/ export supply of goods, as calculated as per amended definition of "Turnover of zero-rated supply of goods", needs to be taken into consideration while calculating "turnover in a state or a union territory", and accordingly, in "adjusted total turnover" for the purpose of sub-rule (4) of Rule 89.
- On similar lines, it is clarified that consequent to Explanation having been inserted in sub-rule (4) of rule 89 of CGST Rules vide Notification No. 14/2022- CT dt. 05.07.2022, the value of goods exported out of India to be included while calculating "adjusted total turnover" will be same as being determined as per the Explanation inserted in the said sub-rule.

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- **Issue 2 : Requirement of the undertaking in FORM RFD 01 inserted vide Circular No. 125/44/2019-GST dated 18.11.2019.**
- **Clarification:** Circular 125/44/2019-GST dated 18.11.2019 provided for various undertaking to be submitted along with FORM RFD 01 and also undertaking in said FORM RFD 01.
- However, since Section 42 of CGST Act has been omitted w.e.f. 1st October, 2022 vide **Notification No. 18/2022-CT dated 28.09.2022**
- Further, an amendment has also been made in Section 41 of the CGST Act, wherein the concept of provisionally accepted input tax credit has been done away with.
- Besides, FORM GSTR-2 and FORM GSTR-3 have also been omitted from CGST Rules. In view of this, reference to section 42, FORM GSTR-2 and FORM GSTR-3 is being deleted from the said para in the Circular as well as from the said undertaking.
- Thus, the relevant undertaking submitted along with FORM RFD 01, the undertaking in FORM RFD 01 and consequently undertakings forming part of Annexure A of the said Circular also stands amended.

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- **Issue 4: Clarification in respect of admissibility of refund where an exporter applies for refund subsequent to compliance of the provisions of sub-rule (1) of rule 96A:**
- **Clarification :** References have been received citing the instances where exporters have voluntarily made payment of due integrated tax, along with applicable interest, in cases where goods could not be exported or payment for export of services could not be received within time frame as prescribed in clause (a) or (b),
- as the case may be, of sub-rule (1) of rule 96A of CGST Rules. Clarification is being sought as to whether subsequent to export of the said goods or as the case may be, realization of payment in case of export of services,
- the said exporters are entitled to claim not only refund of unutilized input tax credit on account of export but also refund of the integrated tax and interest so paid in compliance of the provisions of sub-rule (1) of rule 96A of CGST Rules.
- As long as goods are actually exported or as the case may be, payment is realized in case of export of services, even if it is beyond the time frames as prescribed in sub-rule (1) of rule 96A, the benefit of zero-rated supplies cannot be denied to the concerned exporters.

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- Accordingly, it is clarified that in such cases, on actual export of the goods or as the case may be, on realization of payment in case of export of services, the said exporters would be entitled to refund of unutilized input tax credit in terms of sub-section (3) of section 54 of the CGST Act, if otherwise admissible.
- It is also clarified that in such cases subsequent to export of the goods or realization of payment in case of export of services, as the case may be, the said exporters would be entitled to claim refund of the integrated tax so paid earlier on account of goods not being exported, or as the case be, the payment not being realized for export of services, within the time frame prescribed in clause (a) or (b), as the case may be, of sub-rule (1) of rule 96A. It is further being clarified that no refund of the interest paid in compliance of sub-rule (1) of rule 96A shall be admissible.
- It may further be noted that the refund application in the said scenario may be made under the category "Excess payment of tax". However, till the time the refund application cannot be filed under the category "Excess payment of tax" due to non-availability of the facility on the portal to file refund of IGST paid in compliance with the provisions of sub-rule (1) of rule 96A of CGST Rules as "Excess payment of tax", the applicant may file the refund application under the category "Any Other" on the portal.

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## E-Commerce Operator (ECO)

- As per **Section 2(45)** of CGST Act, 2017 E-Commerce Operator is defined as:
  - any person who owns,
  - Operates,
  - or manages,
  - digital or electronic facility or platform
- for **electronic commerce**;
- **Section 2(44)** of CGST Act, 2017 defines **electronic commerce**-
  - as the supply of goods or services or both, including digital products over digital or electronic network;

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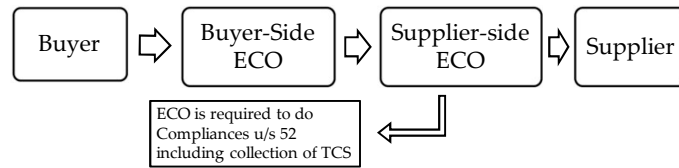
## Clarification on TCS liability under Section 52 of CGST Act, 2017

- **Circular no. 194/04/2023-GST dated 17<sup>th</sup> July 2023**, provides clarification on the Tax Collected at Source(TCS) liability under Section 52 of the CGST Act, 2017 in the case of multiple E-commerce Operators (ECOs) in one transactions.
- It states that in a situation where multiple ECOs are involved in a single transaction
- and the supplier-side ECO is not the supplier of the goods or services,
- the compliances under Section 52, including collection of TCS should be done by the supplier-side ECO who releases the payment to the supplier.
- However, if the supplier side ECO is also the supplier of the goods or services then the buyer side ECO should collect TCS while making payment to the supplier.

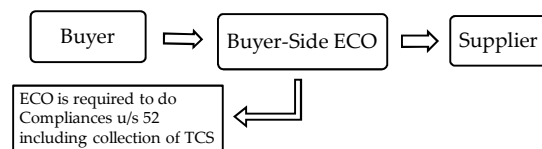
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### Case 1: Where the supplier side ECO himself is not the supplier in the said supply



### Case 2: where the supplier side ECO is himself the supplier of the said supply



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- as the category of persons exempted from obtaining registration under the said Act, subject to the following conditions, namely-
  - i. such persons shall not make any inter-State supply of goods;
  - ii. such persons shall not make supply of goods through electronic commerce operator in more than one State or Union Territory ;
  - iii. such persons shall be required to have a Permanent Account Number (PAN) ;
  - iv. such persons shall, before making any supply of goods through electronic commerce operator, declare on the common portal their PAN, address of their place of business and the State or Union Territory in which such persons seek to make such supply, which shall be subjected to validation on the common portal;
  - v. such persons have been granted an enrolment number on the common portal on successful validation of the PAN declared as per clause (iv);

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## Conditions making supplies of goods through an E-Commerce Operator Without GSTIN

- As per **Section 24(ix)** persons who supply goods or services or both, other than supplies specified under sub-section (5) of section 9, through such electronic commerce operator who is required to collect tax at source under section 52; shall be required to be registered irrespective of T/O.
- The Ministry of Finance vide **Notification No. 34/2023-CT** dated 31st July,2023 hereby specifies the persons making supplies of goods through an electronic commerce operator required to collect tax at source under section 52
- and having an aggregate turnover in the preceding financial year and in the current financial year
- not exceeding the amount of aggregate turnover above which a supplier is liable to be registered in the State or Union territory in accordance with the provisions of section 22(1),

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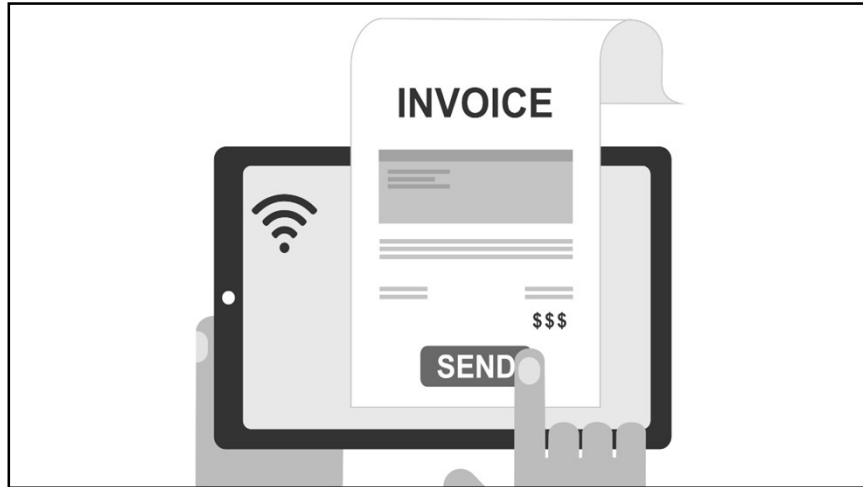
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- iv. such persons shall not be granted more than one enrolment number in a State or Union territory;
- v. no supply of goods shall be made by such persons through electronic commerce operator unless such persons have been granted an enrolment number on the common portal; and
- vi. where such persons are subsequently granted registration under section 25 of the said Act, the enrolment number shall cease to be valid from the effective date of registration. such persons shall not make any inter-State supply of goods

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### Government departments for TDS considered to be registered under GST

- **Circular no. 198/04/2023-GST dated 17<sup>th</sup> July 2023**, stating that Government Departments or establishments/ Government agencies/ local authorities/ PSUs, registered **solely for the purpose of deduction of tax at source** as per provisions of section 51 of the CGST Act, are **to be treated as registered persons** under the GST law as per provisions of clause (94) of section 2 of CGST Act.
- Accordingly, the registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, **is required to issue e-invoices** for the supplies made to such Government Departments or establishments/ Government agencies/ local authorities/ PSUs, etc. under rule 48(4) of CGST Rules.

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## E-Invoicing

- E-Invoicing is an invoice sent by supplier to recipient in an electronic mode.
- E-Invoicing was introduced in India since September 2020.
- **E-invoicing is applicable for all B2B and Export transactions.**
- **E-invoicing is NOT applicable for B2C transactions.**
- The threshold limits for it has been now reduced to Aggregate Annual turnover of Rs.5Cr or above
- E-Invoicing is made applicable in a phased manner as follows:

Phases	Aggregate Turnover (in <u>ANY</u> preceding Financial Year from FY 2017-18 and onwards)	Date of Applicability
1 <sup>st</sup>	More than 500 Cr	01 <sup>st</sup> October, 2020
2 <sup>nd</sup>	More than 100 Cr	01 <sup>st</sup> January, 2021
3 <sup>rd</sup>	More than 50 Cr	01 <sup>st</sup> April, 2021
4 <sup>th</sup>	More than 20 Cr	01 <sup>st</sup> April, 2022
5 <sup>th</sup>	More than 10 Cr	01 <sup>st</sup> October, 2022
6 <sup>th</sup>	<b>More than 5 Cr</b>	<b>01<sup>st</sup> August, 2023</b>

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## Services by a director to his company in his private or personal capacity

- As per entry no. 6 of **Notification No. 13/2017 CTR dated 28.06.2017** tax on services supplied by director of a company or a body corporate to the said company or the body corporate shall be paid by the company or the body corporate under Reverse Charge Mechanism
- It is hereby clarified vide **Circular No.201/13/2023-GST dated 1.08.2023** that services supplied by a **director of a company or body corporate** to the company or body corporate **in his private or personal capacity** such as services supplied by way of renting of immovable property to the company or body corporate are **not taxable under RCM.**
- Only those services supplied by **director of company or body corporate**, which are supplied by him as or **in the capacity of director** of that company or body corporate **shall be taxable under RCM** in the hands of the company or body corporate.

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## Whether supply of food or beverages in cinema hall is taxable as restaurant service?

- As per CBIC vide **Notification No.11/2017** Central Tax Rate 'Restaurant Service' is taxable at 5%, without availability of ITC.
- Earlier vide **Circular No.164/20/2021 dated 06.10.2021** ice cream sold by a parlor or any similar outlet would attract GST at the rate of 18%.
- It is hereby clarified vide **Circular No.201/13/2023-GST dated 01.08.2023** that supply of food or beverages in a cinema hall is taxable as 'restaurant service' as long as:
  - The food or beverages are supplied by way of or as part of a service, and
  - supplied independent of the cinema exhibition service

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## Whether supply of food or beverages in cinema hall is taxable as restaurant service?

- It is further clarified that where the sale of cinema ticket and supply of food and beverages are clubbed together, and such bundled supply satisfies the test of composite supply, the entire supply will attract GST at the rate applicable to service of exhibition of cinema, the principal supply.
- Whether Ice Cream sold by Ice Cream Parlors in Cinema Halls would be considered as 'restaurant service' or sale of ice cream ?

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HSN CODE	DESCRIPTION	OLD RATE	NEW RATE
19059030	Extruded or expanded products, savoury or salted.	18%	18%
1905	supply of uncooked/ un-fried extruded snack pellets.	5%	5%
1905	Extruded snack pellets in ready- to-eat.	18%	18%
2309	Fish Soluble Paste	18%	5%
0801	Desiccated Coconut		
	Biomass Briquettes		
	Supply of raw cotton including kala cotton, from agriculturist to cooperatives		5% RCM
5605	Imitation zari thread or yarn known as "Kasab" or by any other name in trade parlance.	12%	5%
	Plates and cups made from areca leaves		
9021	Trauma, spine, arthroplasty implants	5%	5%

**As is Basis?**

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### Clarification regarding GST Rates and classification of Goods

- The Ministry of Finance vide **Circular No.200/12/2023-GST** dated 1st August, 2023 gives Clarification of the following goods based on the recommendations of the GST Council in its 50th Meeting –
- Un-fried or un-cooked snack pellets. By whatever name called, manufactured through process of extrusion ;
- Fish Soluble paste;
- Desiccated coconut;
- Biomass briquettes
- Imitation zari thread or yarn known by any name in trade parlance;
- Supply of raw cotton by agriculturist to cooperatives;
- Plates, cups made from areca leaves
- Goods falling under HSN heading 9021

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**Holding Shares  
in a subsidiary  
company is not  
supply of  
service**

- **Circular no 196/04/2023-GST dated 17<sup>th</sup> July 2023**, clarifies that holding shares in a subsidiary company by a holding company **will not be considered as a supply of services and cannot be taxed under GST.**

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### Procedure for Recovery of Tax and Interest in terms of Rule 88C(3) [on account of difference in liability reported in Form GSTR-1 and paid through Form GSTR-3B]

- On the recommendations of the GST Council in its 48<sup>th</sup> meeting held on 17.12.2022, rule 88C was inserted in the CGST Rules, 2017 with effect from 26.12.2022 for system based intimation to the registered person in cases **where the output tax liability in terms of FORM GSTR-1 of a registered person for any particular month exceeds the output tax liability disclosed by the said person in the return in FORM GSTR-3B** for the said month by a specified threshold.
- The Council has now recommended **insertion of Rule 142B** in the CGST Rules, 2017 and **insertion of a FORM GST DRC-01D** to provide for manner of recovery of the tax and interest in respect of the amount intimated under rule 88C which has not been paid and for which no satisfactory explanation has been furnished by the registered person.

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### ONLINE COMPLIANCE PERTAINING TO LIABILITY OR DIFFERENCE IN GSTR 1 AND GSTR 3B

Earlier, Notification No. 26/2022 – Central Tax Dated 26-12-2022, was issued by the Government introduced **Rule 88C** to seek an explanation from the taxpayers for difference in GSTR 1 and GSTR 3B through a **new Form DRC – 01B**. **Now**, the procedure for recovery of tax and interest is issued in the GST council meeting.



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The GSTN portal has now enabled Form DRC - 01B.



This functionality compares the liability paid in GSTR 3B with liability declared in GSTR 1. If the difference exceeds the predefined limit or the percentage (yet to be defined), the taxpayer will receive an intimation in Part A of this newly enabled functionality.



Post receipt of the above intimation, the taxpayer is required to furnish a reply in Part B of DRC – 01B within 7 days.



If the same has not been paid and for which no satisfactory explanation has been furnished by the registered person will not only attract direct recovery proceedings u/s 79 along with interest in a FORM GST DRC-01D but also GSTR 1/IFF for the subsequent tax period will be disabled.

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## What are TRAN 1 and TRAN 2?

- **TRAN 1 under GST:**

The GST (Goods and Service Tax) form TRAN 1 is a transition form **for existing taxpayers in old schemes** who are filing the GST TRAN – 1 (Transition 1) form to claim their previous input tax credit from previously purchased stock prior to the implementation of the GST.

- **TRAN 2 under GST:**

GST form TRAN 2 (Transition 2) is filed by registered taxpayers **who are eligible to receive credit** in the Electronic Cash Ledger for eligible duties and taxes previously paid on inputs under the pre-GST regime.



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## Background to decision in the case of Filco Trade Center Pvt. Ltd.

- Despite several extensions being granted for filing of Form GST TRAN-1 many assessee's were **unable to file and carry forward their cenvat credit to the GST regime on account of technical glitches**. Such assessee's approached their jurisdictional High Court seeking reliefs inter alia on the ground that the right to credit is a vested indefensible right and the same cannot be restricted basis purely technical considerations.
- A challenge was also mounted in several of these petitions that right to utilize the cenvat credit duly availed is an indefeasible right and no time limit can be inserted to restrict the transition and availment of the said credit under GST. Divergent views were expressed by the High Courts on the said issue.
- **Finally, the Supreme Court has via the case of Filco Trade Center Pvt. Ltd. conclusively put an end to this divergence.**

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## Special procedure for manual filing of appeal against the TRAN-1/ TRAN-2 orders

- Through **Notification No.29/2023 Central Tax dated 31<sup>st</sup> July, 2023** a special procedure to be provided under Section 148 of CGST Act, 2017 to enable manual filing of appeal against the orders passed by proper officers in accordance with Circular No. 182/14/2022-GST, dated 10<sup>th</sup> November, 2022 with respect to TRAN-1 / TRAN-2 claims of the registered persons, **filed in pursuance of the directions of Hon'ble Supreme Court in case of the Union of India v/s Filco Trade Centre Pvt. Ltd.**
- Format of doing manual appeal provided with notification as **Annexure 1.**

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## Special procedure to be followed by the Manufacturers of Tobacco, Pan Masala & other similar items

Through **Notification No. 30/2023-CT dated 31<sup>st</sup> July, 2023** CBIC notified the special monthly returns & machine registration for manufactures of tobacco, pan masala & other similar items inter alia. The new procedures are as mentioned below:

- Details of packing machines should be filled in **Form SRM-1 within 30 Days of issuance of such notice.**
- For manufacturers, as mentioned above, with new registration after the issuance of such notification, Details of packing machines should be filled by existing manufactures in **Form SRM-1 within 15 Days of issuance of such notice.**
- Details of **additional machines** should be furnished in **Form SRM IIA** within **24 hours of installation** of such machine
- A Unique ID shall be generated of each machine
- Details of **machines removed** to be furnished in **Form SRM IIB within 24 hours** of such removal

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- Production **details of machines declared/submitted to other Government organizations** to be provided in **Form SRM IA** within **15 Days of such declaration/submission**. In case such **declaration/submission** has been made **before the issuance of such notice**, then **30 Days time** has been provided to submit Form SRM IA.
- Furnish daily record of inputs being procured and utilized in quantity and value terms along with the details of waste generated as well as the daily record of reading of electricity meters and generator set meters in a format as specified in **FORM SRM-III A** in each place of business.
- Furnish daily shift-wise record of machine-wise production, product-wise and brand-wise details of clearance in quantity and value terms in a format as specified in **FORM SRM-III B** in each place of business.
- A special statement for each month in **FORM SRM-IV** on the common portal, on or before **10<sup>th</sup> of next month**

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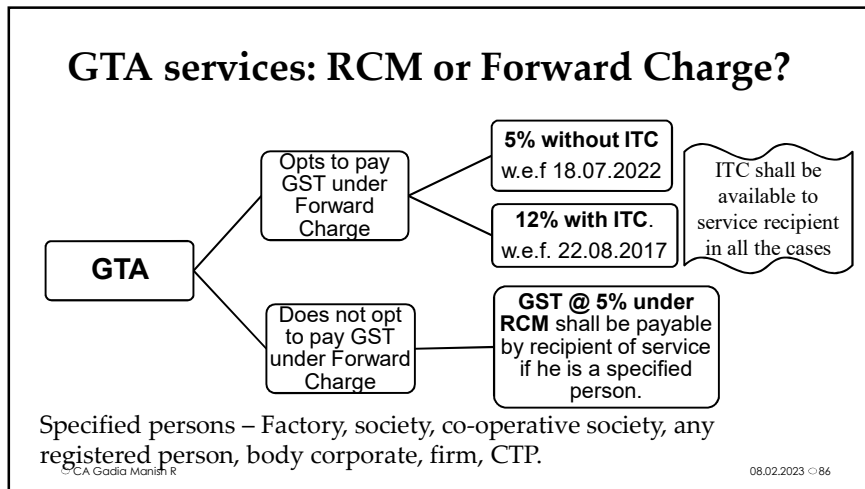
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## GTA

- A single registration under GST cannot opt for both RCM and FCM. However 2 different registrations under the same PAN can opt for different GST payment mechanism.
- Once, GTA has opted to pay through FCM , he cannot switch in the said financial year to RCM.

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### GTA need not file declaration every year to continue paying GST under forward charge

- **GTAs will not be required to file declaration for paying GST under forward charge every year.**
- If they have exercised this option for a particular financial year, they shall be deemed to have exercised it for the next and future financial years unless they file a declaration that they want to revert to reverse charge mechanism (RCM).
- Further the last date of exercising the option by GTAs to pay GST under forward charge shall be 31<sup>st</sup> March of preceding Financial Year instead of 15<sup>th</sup> March, 1<sup>st</sup> January of preceding Financial Year shall be the start date for exercise of option.

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GST Amnesty Scheme	Notification No.
Late fee for filing of <b>FORM GSTR-4</b> returns for the quarters from July 2017 to March 2019 or for the F.Y.s from 2019-20 to 2021-22 has been reduced to -Nil for Nil returns -Rs. 500/- (Rs. 250/- CGST + Rs. 250/- SGST) for other than Nil returns if returns are filed on or before 31.08.2023	<a href="#">Notification No. 22/2023-Central Tax dt. 17.07.2023</a>
Maximum late fee is restricted to Rs. 20,000/- (Rs. 10,000/CGST + Rs. 10,000/-SGST) for filing of Annual Return in <b>FORM GSTR-9</b> for any F.Y. from 2017-18 to 2021-22 if filed on or before 31.08.2023	<a href="#">Notification No. 25/2023-Central Tax dt. 17.07.2023</a>
Late fee for filing of Final Return in <b>FORM GSTR-10</b> has been reduced to Rs. 1,000/- (Rs. 500/-CGST + Rs. 500/-SGST) if filed on or before 31.08.2023	<a href="#">Notification No. 26/2023-Central Tax dt. 17.07.2023</a>
Registered persons whose registration was cancelled on or before 31.12.2022 due to non-filing of returns, may file <b>application for revocation of cancellation of registration</b> after filing of all returns pending upto the effective date of cancellation of registration along with payment of due tax, interest, penalty and late fee thereon on or before 31.08.2023	<a href="#">Notification No. 23/2023-Central Tax dt. 17.07.2023</a>
<b>Best Judgement Assessment</b> orders issued on or before 28.02.2023 for non-furnishing of valid FORM GSTR-3B returns will be deemed to be withdrawn if such returns are filed on or before 31.08.2023 along with payment of due tax, interest and late fee thereon	<a href="#">Notification No. 24/2023-Central Tax dt. 17.07.2023</a>

**Extension of Amnesty Scheme notified vide notifications dated 31.03.2023 till 31.08.2023**

- Council recommended to extend the amnesty schemes notified vide notifications dated 17.07.2023 regarding **non-filers** of FORM GSTR-4, FORM GSTR-9 & FORM GSTR-10 returns, revocation of cancellation of registration and deemed withdrawal of assessment orders issued under Section 62 of CGST Act, 2017, **hill 31.08.2023.**

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**Extension of Due Date for furnishing returns for specified states notified vide notifications dated 17.03.2023 and 27.03.2023**

- Council recommended to extend the Due Date for furnishing returns notified vide notifications dated 17.07.2023 and 27.07.2023 regarding of FORM GSTR-3B, FORM GSTR-1 & FORM GSTR-7 returns

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Particulars	Notification No.	Extended Date	Specification
GSTR-3B for the month of May,2023	17/2023-CT dated 27th June, 2023	30th June, 2023	districts of Kutch, Jamnagar, Morbi, Patan and Banaskantha in the state of <b>Gujarat</b> .
GSTR-1 for the month of April, May & June,2023	18/2023-CT dated 17th July, 2023	31st July, 2023	for registered person whose principal place of business is in state of <b>Manipur</b>
GSTR-3B for the month of April, May & June,2023	19/2023-CT dated 17th July, 2023	31st July, 2023	for registered person whose principal place of business is in state of <b>Manipur</b>
GSTR-3B for quarter ending June,2023	20/2023-CT dated 17th July, 2023	31st July, 2023	for registered person whose principal place of business is in state of <b>Manipur</b>
GSTR-7 for April, May & June,2023 CA GADIA MANISH R	21/2023-CT dated 17th July, 2023	31st July, 2023	for registered person whose principal place of business is in state of <b>Manipur</b> 06/08/2023 93

## Accounts Aggregator

- The CBIC vide **Notification No. 33/2023 – Central Tax dated 31<sup>st</sup> July, 2023**, hereby notifies “**Account Aggregator**” as the systems with which information may be shared by the common portal based on consent under Section 158A of the CGST Act, 2017
- For the purpose of this notification, “**Account Aggregator**” means a non-financial banking company which undertakes the business of an Account Aggregator in accordance with the policy directions issued by the Reserve Bank of India under section 45JA of the Reserve Bank of India Act, 1934 and defined as such in the Non-Banking Financial Company -Account Aggregator (Reserve Bank) Directions, 2016

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## Annual Returns for FY 2022-23

- The Council has recommended that the **relaxations** provided in FY 2021-22 in respect of various tables of FORM GSTR-9 and FORM GSTR-9C be **continued for FY 2022-23**.
- Further, CBIC vide **Notification No. 32/2023 Central Tax dated 31<sup>st</sup> July, 2023**, hereby exempts the registered persons having aggregate annual turnover upto Rs. 2 Crores in F.Y. 2022-23 from filing of annual return for the said financial year.

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## Goods and Services Tax Appellate Tribunal (Appointment and Conditions of Service of President and Members) Rules, 2023

- The Council has recommended the Rules governing appointment and conditions of President and Members of the proposed GST Appellate Tribunal for enabling smooth constitution and functioning of GST Appellate Tribunal. The Council also recommended that provisions of Finance Act, 2023 pertaining to GST Appellate Tribunal may be notified by the Centre **w.e.f. 01.08.2023**, so that the same can be brought into operation at the earliest.

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## Generation of e-way bills for intra-State movement of gold and precious stones

- In accordance with the recommendations of Group of Ministers (GoM) on implementation of E-way bill requirement for movement of Gold/ Precious stones under chapter 71, the Council has recommended to **insert rule 138F in CGST Rules, 2017, as well as in SGST Rules, 2017 of the States**, who want to mandate the requirement of **generation of e-way bills** for intra-State movement of gold and precious stones under Chapter 71 within their States.

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Opinions or views are like wrist watches.

Every watch shows different time from others.

But every one believes that their time is right!

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## Some other Important Changes

- To do away with the requirement that the physical verification of business premises is to be conducted **in the presence of the applicant**.
- To provide for physical verification in **high risk cases** even where Aadhaar has been authenticated.
- 28% GST** on the value of the chips purchased in **casinos**.
- 28% GST** on the full value of the bets placed in **Online Gaming**.

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Thank You!

Information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of particular situation.

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