

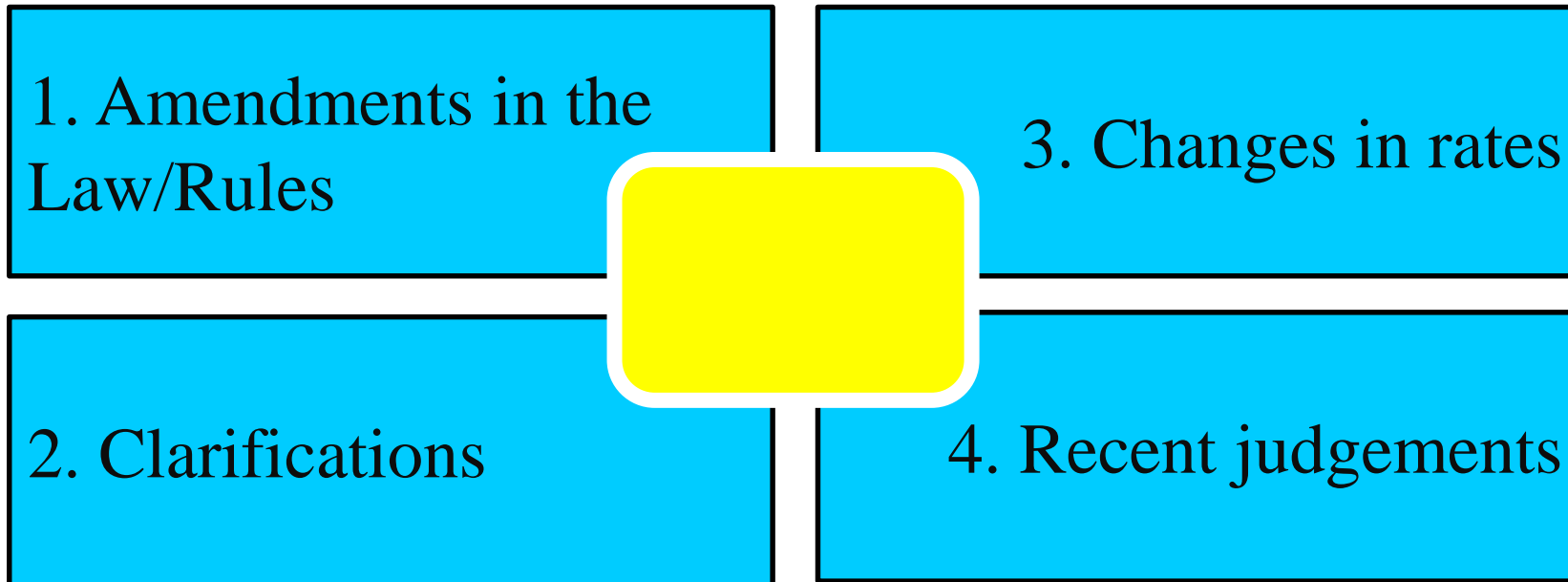
# Recent Amendments under GST

Organised by: JB Nagar Andheri CPE Study Circle

Presented by: CA Jayesh Gogri

Venue: Hotel Kohinoor Continental

## Session design



# TRANSFER OF BALANCE IN ELECTRONIC CASH LEDGER

## Case Study

Cash crunch Ltd. has 2 GST registrations in the state of Maharashtra and Gujarat. Miss. GoofUp, an accountant of Sunshine Ltd. was asked to deposit Rs. 50,000 (CGST & SGST respectively) in the electronic cash ledger of Maharashtra state. However, Miss. GoofUp mistakenly credited the electronic cash ledger of Gujarat state instead of Maharashtra.


- ⊙ Does Miss. GoofUp have to take a refund of the amount in electronic cash ledger of Gujarat branch and transfer amount in electronic cash ledger of the Maharashtra branch? Or
- ⊙ Can Miss. GoofUp transfer the amount of CGST & SGST in electronic cash ledger from Gujarat branch to Maharashtra branch?

Hi!!... My name is Goofup.. Please help me!!!!!!



## Before Amendment

S. 49 of the CGST Act, 2017:

 (10) *A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under this Act, to the electronic cash ledger for integrated tax, central tax, State tax, Union territory tax or cess, in such form and manner and subject to such conditions and restrictions as may be prescribed and such transfer shall be deemed to be a refund from the electronic cash ledger under this Act.*

## After Amendment

S. 49 of the CGST Act, 2017:

🕒 (10) *“A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under this Act, to the electronic cash ledger for,—*

*(a) integrated tax, central tax, State tax, Union territory tax or cess; or*

*(b) **integrated tax or central tax of a distinct person as specified in sub-section (4) or, as the case may be, sub-section (5) of section 25,***

*in such form and manner and subject to such conditions and restrictions as may be prescribed and such transfer shall be deemed to be a refund from the electronic cash ledger under this Act:*

*Provided that no such transfer under clause (b) shall be allowed if the said registered person has any unpaid liability in his electronic liability register.”*

**(Effective from 05.07.2022)**

## Manner to transfer prescribed

### Rule 87. Electronic Cash Ledger

- ⌚ (14) *A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under the Act to the electronic cash ledger for central tax or integrated tax of a distinct person as specified in sub-section (4) or, as the case may be, sub-section (5) of section 25, in **FORM GST PMT- 09**:*

*Provided that no such transfer shall be allowed if the said registered person has any unpaid liability in his electronic liability register.*

**Inserted vide Notification No. 14/2022 – CT dated 05.07.2022**

*wef 05.07.2022*

## What about SGST?

Can a registered person transfer the balance in its electronic cash ledger from SGST column (tax head) to CGST column (interest head) of electronic cash ledger?

YES

Can a registered person transfer the balance in electronic cash ledger from SGST column (tax head) to CGST column (interest head) in electronic cash ledger of **distinct person**?

NO





## ISSUES

- ⌚ Whether the amount deposited in cash ledger is “tax”?
- ⌚ Feature is still not activated
- ⌚ No transfer of SGST
- ⌚ No mechanism for credit ledger

## IMPACT

- 🕒 In the past, no such option for distinct person
- 🕒 Only alternative was - REFUND
- 🕒 Savings in working capital cost and time



# INTEREST - WHEN ITC NOT UTILISED

S. 50 of the CGST Act, 2017

## Case study

- Mr. Happy Singh from Patiala had availed credit of Rs. 2,00,000 which was blocked u/s 17(5) CGST Act. Mr. Happy Singh was issued with a notice for reversing the said credit which was wrongly availed. Mr. Happy Singh was levied interest @18% u/s 50 and penalty of Rs. 20,000 u/s 122(2)(a)

Whether Mr. Happy Singh is **liable to pay penalty** where the said credit amount was availed but never utilized?

Whether Mr. Happy Singh is **liable to pay interest** where the said credit amount was availed but never utilized?



## Before Amendment

S. 50 of the CGST Act, 2017:

🕒 *“(3) A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four per cent., as may be notified by the Government on the recommendations of the Council.”*

## After Amendment

S. 50 of the CGST Act, 2017:

🕒 *“(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**, at such rate not exceeding twenty-four per cent. as may be notified by the Government, on the recommendations of the Council, and the interest shall be calculated, in such manner as may be prescribed.”*

**(Effective from 05.07.2022)**

## Manner of calculating interest prescribed...

### **88B. Manner of calculating interest on delayed payment of tax.-**

- ⌚ (1) *In case, where the supplies made during a tax period are declared by the registered person in the return for the said period and the said return is furnished after the due date in accordance with provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, the interest on tax payable in respect of such supplies shall be calculated on the portion of tax which is paid by debiting the electronic cash ledger, for the period of delay in filing the said return beyond the due date, at such rate as may be notified under sub-section (1) of section 50.*
  
- ⌚ (2) *In all other cases, where interest is payable in accordance with sub section (1) of section 50, the interest shall be calculated on the amount of tax which remains unpaid, for the period starting from the date on which such tax was due to be paid till the date such tax is paid, at such rate as may be notified under sub-section (1) of section 50.*

## ... Manner of calculating interest prescribed...

- ⌚ ***(3) In case, where interest is payable on the amount of input tax credit wrongly availed and utilised in accordance with sub-section (3) of section 50, the interest shall be calculated on the amount of input tax credit wrongly availed and utilised, for the period starting from the date of utilisation of such wrongly availed input tax credit till the date of reversal of such credit or payment of tax in respect of such amount, at such rate as may be notified under said sub-section (3) of section 50.***

**(Effective from 01.07.2017)**



## ... Manner of calculating interest prescribed...

How would you consider that the credit is utilized?

🕒 Explanation to sub-rule 3 of Rule 88B

*Explanation. -For the purposes of this sub-rule, -*

- *(1) input tax credit wrongly availed shall be construed to have been utilised, **when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed**, and the extent of such utilisation of input tax credit shall be the amount by which the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed.*

Balance in Electronic credit ledger- Rs. 4,00,000

- No interest as the credit wrongly availed is Rs. 2,00,000

Balance in Electronic credit ledger- Rs. 80,000

- Interest leviable on Rs. 1,20,000 (2,00,000-80,000)

## ...Manner of calculating interest prescribed

- ⌚ (2) *the date of utilisation of such input tax credit shall be taken to be, -*
- *(a) the date, on which the return is due to be furnished under section 39 or the actual date of filing of the said return, whichever is earlier, if the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, on account of payment of tax through the said return; or*
  - *(b) the date of debit in the electronic credit ledger when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, in all other cases.*

**Effective from 01.07.2017**

**Inserted vide Notification No. 14/2022 – CT dated 05.07.2022**

## Issue

Even though S. 50 of CGST Act, 2017 is confined to wrong **availment and utilisation** of ITC, but penalty is imposed on **availment or utilisation** of ITC???



## Relevant Provisions of Penalty & Prosecution

- ⌚ *S.122(vii) “**takes or utilises** input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder”*
- ⌚ *S.132(b) “issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful **availment or utilisation** of input tax credit or refund of tax”*

## Instances where notice would not be issued...

### S. 73. of CGST Act, 2017

- ⌚ (1) *Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or **where input tax credit has been wrongly availed or utilised** for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, **requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable** under the provisions of this Act or the rules made thereunder.*

## ...Instances where notice would not be issued

### S. 73. of CGST Act, 2017

- ☑ ...
- ☑ (5) *The person chargeable with tax may, before service of notice under sub-section (1) or, as the case may be, the statement under sub-section (3), **pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment** of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.*
- ☑ (6) *The proper officer, **on receipt of such information, shall not serve any notice under sub-section (1)** or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.*

# EXTENSION OF TIME LIMIT FOR ISSUANCE OF NOTICE, REFUND CLAIM

S. 73 of the CGST Act, 2017

## Before Amendment

🕒 S. 73 of the CGST Act, 2017:

- *“(10) The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilized relates to or within three years from the date of erroneous refund.”*



## After Amendment...

Sr. No.	Time Limit for	Last date / Period to be excluded
1.	Issuance of order for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilized <b>for FY 2017-18</b>	Last Date – 30.09.2023

Due date of Annual Return for FY 2017-18 extended to 5<sup>th</sup>/7<sup>th</sup> February 2020 (Notification No. 06/2020 Central Tax dated 03.02.2020)

Time limit to issue order under sub-section (10) of S. 73 for recovery of tax not paid or short paid or of ITC wrongly availed or utilized for FY 2017-18 was within 3 years from due date of annual return i.e., **from 5<sup>th</sup>/7<sup>th</sup> February 2020 would be February 2023. However, same has been extended to 30.09.2023**

**Effective from 01.03.2020**

## ...After Amendment

Sr. no	Time Limit for	Last date / Period to be excluded
1	Issuance of order for recovery of <u>erroneous refund</u> u/s 73(9) of CGST Act, 2017	Period to be excluded – 01.03.2020 to 28.02.2022
2	Filing <u>refund</u> application u/s 54 of CGST Act, 2017	Period to be excluded – 01.03.2020 to 28.02.2022

**Effective from 01.03.2020**

**Inserted vide Notification No. 13/2022 – CT dated 05.07.2022**

## Impact

- ⌚ Extension for issuance of order in respect of recovery of tax has been made only for F.Y. 2017-18 and not for all years

FY 2017-18



# REVOCATION OF SUSPENSION OF REGISTRATION

Insertion of Proviso in Rule 21A

## Automatic revocation of suspension

### Insertion of new proviso in Rule 21A

- 🕒 *“Provided further that where the registration has been suspended under sub-rule (2A) for contravention of the provisions contained in clause (b) or clause (c) of sub-section (2) of section 29 and the registration has not already been cancelled by the proper officer under rule 22, the suspension of registration shall be deemed to be revoked upon furnishing of all the pending returns.”*

**Effective from 05.07.2022**

**Inserted vide Notification No. 14/2022 – CT dated 05.07.2022**

## Relevant Provisions

S.29 Cancellation or suspension of registration:

🕒 (2) *The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where,-*

*(a) a registered person has contravened such provisions of the Act, or the rules made thereunder as may be prescribed; or*

*(b) a person paying tax under section 10 has not furnished the return for a financial year beyond three months from the due date of furnishing the said return; or*

*(c) any registered person, other than a person specified in clause (b), has not furnished returns for a such continuous tax period as may be prescribed **“a continuous period of six months”**\*; or*

*(d) any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration; or*

\* **“a continuous period of six months”** will be amended to **“such continuous tax period as may be prescribed”** from date yet to be notified

## Issue

What if my GST registration is cancelled on 01.01.2022 and cancellation is revoked on 28.01.2022, can I claim ITC for the goods/ services purchased during the period from 01.01.2022 to 27.01.2022?



## Relevant Provisions

### Rule 23 Revocation of cancellation of registration:

- ☑ *(1) A registered person, whose registration is cancelled by the proper officer on his own motion, may subject to the provisions of rule 10B submit an application for revocation of cancellation of registration, in FORM GST REG-21, to such proper officer, within a period of thirty days from the date of the service of the order of cancellation of registration or within such time period as extended by the Additional Commissioner or the Joint Commissioner or the Commissioner, as the case may be, in exercise of the powers provided under the proviso to sub-section (1) of section 30, at the common portal, either directly or through a Facilitation Centre notified by the Commissioner:*

***Provided further that 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 thirty days from the date of order of revocation of cancellation of registration***



## Availment of ITC

### **S. 16 Eligibility and conditions for taking input tax credit**

- ☑ **(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person**

### **S. 2 Definitions-**

- ☑ **(94) “registered person” means a person who is registered under section 25 but does not include a person having a Unique Identity Number**
- ☑ Thus, ITC cannot be availed as the person was not registered for that period

## IMPACT

- ⌚ Proper officer may cancel GST registration if the returns are not furnished for continuous period of 6 months
- ⌚ Automatic suspension of GST registration can be revoked on filing of all pending GST Returns
- ⌚ ITC?



# ITC REVERSAL - DUTY CREDIT SCRIPS

Insertion of clause in Explanation to Rule 43

## No ITC reversal on Duty credit scrips

Insertion of clause (d) in Explanation to Rule 43

- ☑ *“(d) the value of supply of Duty Credit Scrips specified in the notification of the Government of India, Ministry of Finance, Department of Revenue No. 35/2017-Central Tax (Rate), dated the 13<sup>th</sup> October 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number GSR 1284(E), dated the 13thOctober, 2017”*

Duty credit scrips, being exempt supply, still no ITC reversal to be done

**Effective from 05.07.2022**

**Inserted vide Notification No. 14/2022 – CT dated 05.07.2022**

# RE CREDIT OF REFUND PAID BACK

Insertion of Sub-Rule (4B) in Rule 86

## Recredit of amount in electronic credit ledger

Insertion of sub-rule 4A in Rule 86 of CGST Rules, 2017

- 🕒 (4B) *Where a registered person **deposits the amount of erroneous refund** sanctioned to him,*
- *(a) under sub-section (3) of section 54 of the Act, or*
  - *(b) under sub-rule (3) of rule 96, in contravention of sub-rule (10) of rule 96, along with interest and penalty, wherever applicable, through FORM GST DRC-03, by debiting the electronic cash ledger, on his own or on being pointed out, an amount equivalent to the amount of erroneous refund deposited by the registered person **shall be re-credited to the electronic credit ledger by the proper officer by an order made in FORM GST PMT-03A.***

Effective from 05.07.2022

**Inserted vide Notification No. 14/2022 – CT dated 05.07.2022**

## Clarification on recredit of excess or erroneous refund

- ⌚ PMT-03A is applicable in case of below mentioned categories of refund:
  - Refund of IGST obtained in contravention of export of goods or services out of India
  - Refund of unutilized ITC on export without payment of tax
  - Refund of unutilized ITC on zero- rated supply to SEZ developer or unit without payment of tax
  - Refund of unutilized ITC due to inverted tax structure

## Procedure for re-credit of amount in electronic credit ledger

- ☑ Pay the excess/ erroneous refund through DRC-03 + interest and penalty
- ☑ Submit a written request for re-credit
- ☑ Order in PMT-03A within 30 days



# ADDITIONAL PAYMENT MODES

Insertion of clauses (ia) & (ib) in rule 87(3)

## Insertion in Rule 87

### Rule 87. Electronic Cash Ledger

🕒 (3) *The deposit under sub-rule (2) shall be made through any of the following modes, namely:-*

- (i) *Internet Banking through authorised banks;*
- (ia) *Unified Payment Interface (UPI) from any bank;*
- (ib) *Immediate Payment Services (IMPS) from any bank;*

*Other modes include: Debit/credit cards, NEFT, Over the counter*

**Inserted vide Notification No. 14/2022 – CT dated 05.07.2022**

**Effective from 05.07.2022**

# INVERTED DUTY STRUCTURE

Insertion in Rule 89-Inserted vide Notification No. 14/2022 – CT dated 05.07.2022

## Formula for refund on account of Inverted duty structure

Rule 89 of CGST Rules:

- ⌚ (5) *In the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula:-*

***Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} - {tax payable on such inverted rated supply of goods and services x (Net ITC ÷ ITC availed on inputs and input services)}***

**Effective from 05.07.2022**

## Working of refund formula

Sr. No.	Particulars	Amount (Rs.)
1	Turnover of inverted rated supply	6,000
2	Net ITC (Goods)	1,000
3	Net ITC (Services)	200
4	Total Turnover	10,000
5	GST liability	250 (5000*5%)

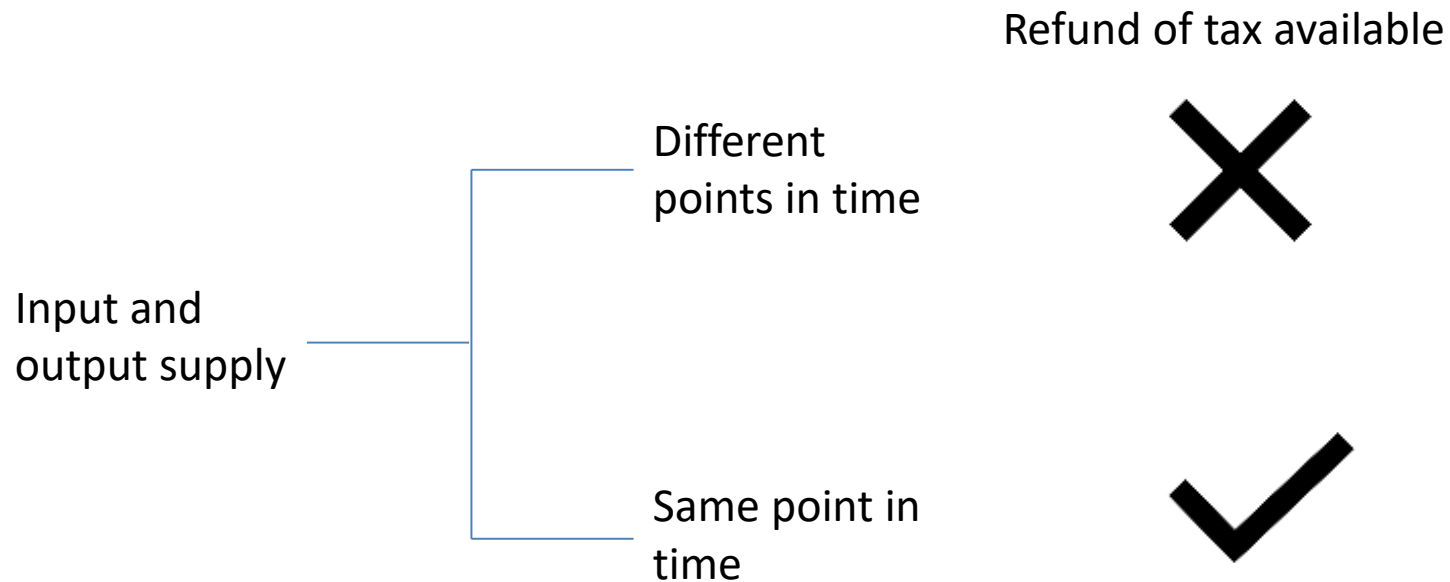
THEN	NOW
$\begin{aligned} \text{Refund Amount} &= (6,000 * 1,000 / 10,000) - 250 \\ &= 600 - 250 \\ &= 350 \end{aligned}$	$\begin{aligned} \text{Refund Amount} &= [(6,000 * 1,000 / 10,000) - \\ &\quad 250 * 1,000 / 1,200] \\ &= 600 - 208 \\ &= 392 \end{aligned}$

## Insertion of para 3.2 & 3.3 in Notification

- ① Para 3.2 of the circular no. 135/05/2020-GST dated 31.03.2020 stands substituted as under:
  - *“3.2 It may be noted that refund of accumulated ITC in terms of clause (ii) of first proviso to sub-section (3) of section 54 of the CGST Act is available where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. It is noteworthy that, the input and output being the same in such cases, though attracting different tax rates at different points in time, do not get covered under the provisions of clause (ii) of the first proviso to sub-section (3) of section 54 of the CGST Act.*
  - *3.3 There may, however, be cases where though inputs and output goods are same, but the output supplies are made under a concessional notification due to which the rate of tax on output supplies is less than the rate of tax on inputs. In such cases, as the rate of tax of output supply is less than the rate of tax on inputs at the same point of time due to supply of goods by the supplier under such concessional notification, the credit accumulated on account of the same is admissible for refund under the provisions of clause(ii) of the first proviso to sub-section (3) of section 54 of the CGST Act, other than the cases where output supply is either Nil rated or fully exempted, and also provided that supply of such goods or services are not notified by the Government for their exclusion from refund of accumulated ITC under the said clause.”*

# Impact

- Now, the refund shall be allowable on the same goods if rate on such output supply is less due to concessional notification.



No restriction provided in S. 54(3)(ii) regarding the input and output supplies made during different points in time



Does that mean circular is going beyond the Act???





## S. 54 Refund of tax

- ☑ *S. 54 (3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:*

***Provided*** that no refund of unutilised input tax credit shall be allowed in cases other than-

*(i) zero rated supplies made without payment of tax;*

***(ii) 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), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:***

***Provided*** further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:

***Provided*** also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

# DUTY FREE SHOPS

Inserted vide Notification No. 14/2022 – CT dated 05.07.2022 read with Circular no. 176/08/2022-GST dated 06.07.2022

## Refund to Duty Free Shops

- ⌚ As per 47<sup>th</sup> GST Council, Supplies from Duty Free Shops (DFS) at international terminal to outgoing international passengers to be treated as exports by DFS and consequential refund benefit to be available to them on such supplies. Rule 95A of the CGST Rules, Circular No. 106/25/2019-GST dated 29.06.2019 and related notifications to be rescinded accordingly.

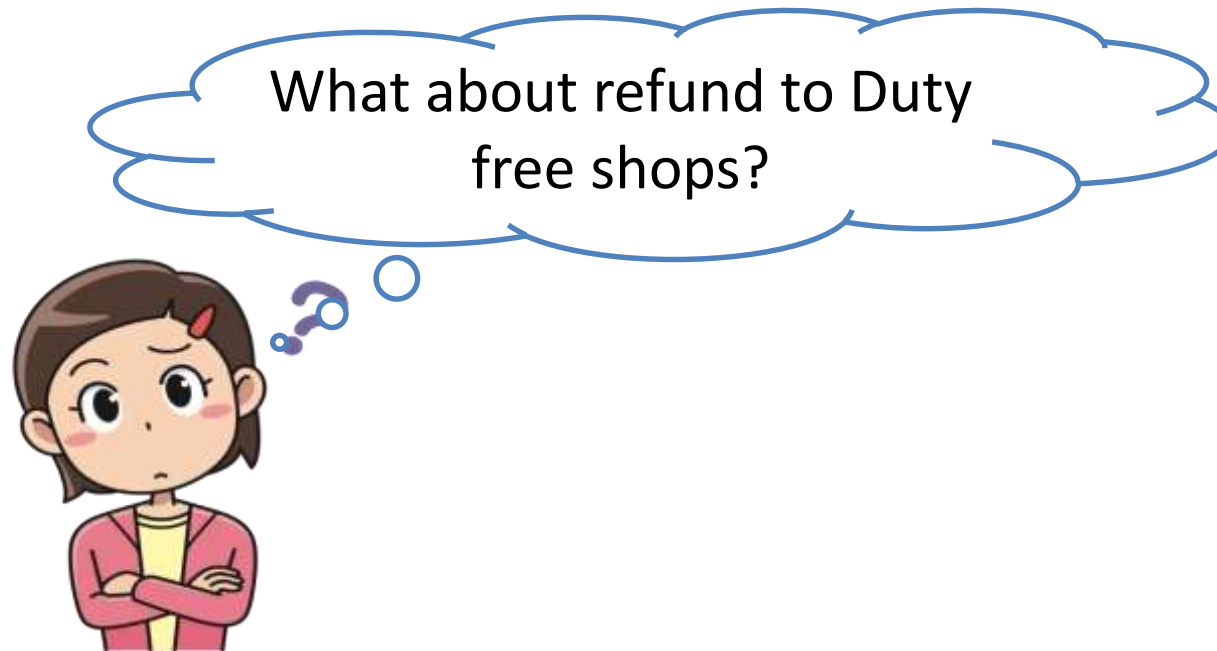
## Omission of Rule 95A

- ⌚ Rule 95A - Refund of taxes to the retail outlets established in departure area of an international Airport beyond immigration counters making tax free supply to an outgoing international tourist (Omitted) - Central Goods and Services Tax Rules, 2017

**Omitted from 01.07.2019**

# Withdrawal of Circular No. 106/25/2019-GST dated 29.06.2019

- ☑ Certain clarifications were given in Circular No. 106/25/2019-GST dated 29.06.2019 with respect to rule 95A for refund of taxes paid on inward supply of indigenous goods by retail outlets established at departure area of the international airport beyond immigration counters when supplied to outgoing international tourist against foreign exchange.



# DATE OF REFUND APPLICATION- EXPORTS (WITH PAYMENT OF TAX)

Amendment in rule 96-Inserted vide Notification No. 14/2022 – CT dated 05.07.2022

## Date of Refund application in case of refund

### Rule 96. Refund of integrated tax paid on goods or services exported out of India.-

⌚ (1) 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 a departure manifest or 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-3B**:

*Provided that if there is any mismatch between the data furnished by the exporter of goods in Shipping Bill and those furnished in statement of outward supplies in **FORM GSTR-1**, such application for refund of integrated tax paid on the goods exported out of India shall be deemed to have been filed on such date when such mismatch in respect of the said shipping bill is rectified by the exporter;*

**Effective from 05.07.2022**

# AMENDMENTS IN GSTR-3B

Notification No. 14/2022 – CT dated 05.07.2022



## Additional information to be disclosed by ECO

11. In the said rules, in FORM GSTR-3B, -

- ⊗ (a) in paragraph 3.1, in the heading, after the words “*liable to reverse charge*”, the brackets, words and figures “*(other than those covered in 3.1.1)*” shall be inserted;
- ⊗ (b) after paragraph 3.1, the following paragraph shall be **inserted**, namely: -

***“3.1.1 Details of supplies notified under sub-section (5) of section 9 of the Central Goods and Services Tax Act, 2017 and corresponding provisions in Integrated Goods and Services Tax/Union Territory Goods and Services Tax/State Goods and Services Tax Acts.*”**

Nature of Supplies	Total Taxable value	Integrated Tax	Central Tax	State/UT Tax	Cess
1	2	3	4	5	6
(i) Taxable supplies on which electronic commerce operator pays tax under sub-section (5) of section 9 [to be furnished by the electronic commerce operator]					

# Additional information to be disclosed by person supplying through ECO

Nature of Supplies	Total Table value	Integrated Tax	Central Tax	State/UT Tax	Cess
1	2	3	4	5	6
(ii) Taxable supplies made by the registered person through electronic commerce operator, on which electronic commerce operator is required to pay tax under sub-section (5) of section 9 [to be furnished by the registered person making supplies through electronic commerce operator					

**Effective from 05.07.2022**

## Disclosure of proper information

- Currently, registered persons were not disclosing inter-state supplies in GSTR -3B under Table 3.2 made to unregistered persons, composition dealers or UIN holders.
- In order to keep a track on State wise supply, it has been advised by CBIC to furnish details in table 3.2 of GSTR-3B on net basis (after adjusting advances, credit notes, debit notes)

3.2 Of the supplies shown in 3.1 (a) and 3.1.1(i) above, details of inter-State supplies made to unregistered persons, composition taxable persons and UIN holders

	Place of Supply (State/UT)	Total Taxable value	Amount of Integrated Tax
1	2	3	4
Supplies made to Unregistered Persons			
Supplies made to Composition Taxable Persons			
Supplies made to UIN holders			

## Power to issue instructions

### S. 168. Power to issue instructions or directions

- ☑ *“(1) The Board may, if it considers it necessary or expedient so to do for the purpose of uniformity in the implementation of this Act, **issue such orders, instructions or directions to the central tax officers as it may deem fit**, and thereupon all such officers and all other persons employed in the implementation of this Act shall observe and follow such orders, instructions or directions.”*
- ☑ Whether instructions can be issued to registered person? GSTR-3B is required to be filed by registered person

# Change in Form GSTR-3B...

Earlier

## 4. Eligible ITC

Details	Integrated Tax	C
1	2	
<b>(A) ITC Available (whether in full or part)</b>		
(1) Import of goods		
(2) Import of services		
(3) Inward supplies liable to reverse charge (other than 1 & 2 above)		
(4) Inward supplies from ISD		
(5) All other ITC		
<b>(B) ITC Reversed</b>		
(1) As per rules 42 & 43 of CGST Rules		
(2) Others		
<b>(C) Net ITC Available (A) – (B)</b>		
<b>(D) Ineligible ITC</b>		
(1) As per section 17(5)		
(2) Others		

Now

## 4. Eligible ITC

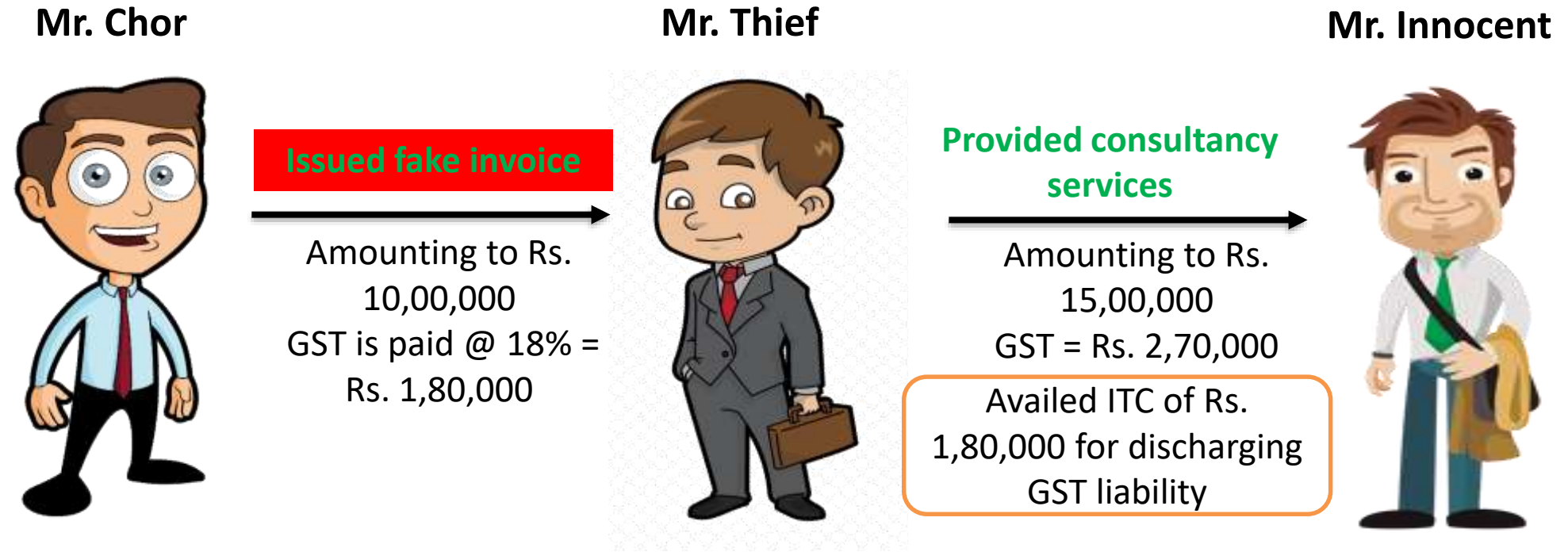
Details	Integrated Tax	C
1	2	
<b>(A) ITC Available (whether in full or part)</b>		
(1) Import of goods		
(2) Import of services		
(3) Inward supplies liable to reverse charge (other than 1 & 2 above)		
(4) Inward supplies from ISD		
(5) All other ITC		
<b>(B) Others</b>		
(1) As per rules 38, 42 and 43 of CGST Rules and sub-section (5) of section 17		
(2) Others		
<b>(C) Net ITC Available (A) – (B)</b>		
<b>(D) Other Details</b>		
(1) ITC reclaimed which was reversed under Table 4(B)(2) in earlier tax period		
(2) Ineligible ITC under section 16(4) and ITC restricted due to PoS provisions		

# CLARIFICATIONS ON FAKE INVOICES

Circular No. 171/03/2022-GST dated 06.07.2022



# Issues relating to fake invoices- Case study 1



## Questions In respect of transaction between Mr. Chor and Mr. Thief:

- ☑ Whether the transaction be considered as supply?
- ☑ Whether any demand or recovery be initiated on both?
- ☑ What are the penal actions to Mr. Chor and Mr. Thief?

## Questions & Answers...

Question	Answer
<p>Whether the transaction be considered as supply?</p>	<p><i>Section 7(1) For the purposes of this Act, the expression “supply” includes—</i></p> <p><i>(a) all forms of supply of goods or services or both such as <b>sale, transfer, barter, exchange, licence, rental, lease or disposal</b> made or agreed to be made for a consideration by a person in the course or furtherance of business;</i></p> <p>As the transaction does not fall within the scope of Supply u/s 7, there is <b>no supply</b></p>



## ...Questions & Answers...

Question	Answer
Whether any demand or recovery be initiated:	<p><b><i>“Section 73. (1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person....”</i></b></p> <p><b><i>“74. (1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person ....”</i></b></p>
For Mr. Chor	As per Section 73 & 74, there is no demand and recovery if there is no Supply. Thus, there could be no demand/ recovery on Mr. Chor
For Mr. Thief	Since Mr. Thief has availed ITC wrongly, Demand or recovery provision applies to Mr. Thief

## ...Questions & Answers...

Question	Answer
What are the penal actions :	<p><i>“S. 122. (1) Where a taxable person who—</i></p> <p><i>...</i></p> <p><i>(ii) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder;</i></p> <p><i>...</i></p> <p><i>he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.”</i></p>
On Mr. Chor	Penalty u/s 122(1)(ii) shall be levied on Mr. Chor

## ...Questions & Answers...

Question	Answer
What are the penal actions :	<p><b><i>“S. 74. (1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where <b>input tax credit has been wrongly availed or utilised by reason of fraud</b>, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and <b>a penalty equivalent to the tax specified in the notice.</b>”</i></b></p> <p><b><i>“S.75(13) Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act”</i></b></p>
On Mr. Thief	Penalty u/s 74(1) shall be levied on Mr. Thief. No penalty under any other section shall be levied as per S. 75(13)

## Availment of credit by Mr. Innocent

- ☑ Mr. Thief although disclosed invoice in GSTR-1, however, no Tax paid on the same
- ☑ S. 16(2)(c)- criteria to avail ITC is payment of tax
- ☑ Mr. Innocent will have to reverse ITC along with Interest

Why are Innocent people punished?



## ...Questions & Answers

Question	Answer
<p>What is the penal action on Mr. Thief?</p>	<p><i>“S. 122. (1) Where a taxable person who—</i>  <i>...</i>  <i>(ii) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder;</i>  <i>...</i>  <i>(vii) takes or utilises input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder;</i>  <i>...</i>  <i>he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.”</i></p> <p><b>Penalty u/s 122(1)(ii) and 122(1)(vii) shall be leviable on Mr. Thief</b></p>

Whether any other Penalties can be levied other than those mentioned in the Circular? Are there any chances of prosecution?



## Penalty u/s 122 of CGST Act, 2017

Sr. No.	Section	Type of offence	Penalty
1.	122(2)	<p>(2) Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised,-</p> <p>(a) Other than fraud</p> <p>(b) Fraud</p>	<p>Rs. 10,000 <u>or</u> 10% of Tax evaded/ITC involved whichever is higher</p> <p>Rs. 10,000 <u>or</u> Tax evaded/ITC involved whichever is higher</p>
2.	122(3)	Any person <b>aids or abets</b> any of the offences under clauses (i) to (xxi) of sub-section (1) of Section 122	Upto Rs. 25,000

## ...Penalty u/s 122 of CGST Act, 2017

Sr. No.	Section	Type of offence	Penalty
3.	122(1A)	<i>(1A) Any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1) and at whose instance such transaction is conducted, shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on</i>	<i>Tax evaded / ITC availed or passed on</i>



## Punishment u/s 132 of CGST Act, 2017...

Sr. No.	Section	Type of offence	Punishment	Amount involved	Bailable/ Non bailable
1.	132(1)(b)	(1) Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences, namely:- (b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;	<p>More than 5 crs = upto 5 years and fine Between 2 crs &amp; 5 crs = Upto 3 years and fine Between 1 crs to 2 crs = Upto 1 year and fine</p>		<p>Amount involved more than 5 crs = Non bailable Less than 5 crs = bailable</p>
2.	132(1)(c)	(c) avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill;			

## ...Punishment u/s 132 of CGST Act, 2017

<i>Sr. No.</i>	<i>Section</i>	<i>Type of offence</i>	<i>Punishment</i>	<i>Amount involved</i>	<i>Bailable/ Non bailable</i>
1.	132(5)	<i>(5) The offences specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) and punishable under clause (i) of that sub-section shall be cognizable and non-bailable</i>	<i>More than 5 crs = upto 5 years and fine</i>		<i>Non bailable and cognizable</i>

Thus, prosecution u/s. 132 can still be done even where the Circular doesn't mention

## S. 126- General Disciplines relating to penalty

- ⊙ No penalty for minor breach (amount less than 5,000 & omission or mistake is an error apparent on the face of record)
- ⊙ penalty imposed shall depend on the facts and circumstances of each case
- ⊙ No penalty can be imposed without providing opportunity of being heard
- ⊙ This Section shall not apply where the penalty is either a fixed sum or expressed as a fixed percentage

## Question...

- ⊙ Can multiple penalties be levied for same offence?
  - S. 75 of CGST Act, 2017
    - “(13) Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.”
  
- ⊙ Doctrine of Double jeopardy:
  - no one ought to be punished twice for one and the same offence

## ...Question

### 🕒 Doctrine of Double jeopardy

- ***In Commissioner Of Service Tax v. M/s Motor World & Others 2012 (6) TMI 69 - KARNATAKA HIGH COURT***

*“21. When once the ingredients of Section 78 are established and there is no reasonable cause for failure, Section 80 is not attracted. Then the authority has to impose a minimum penalty of the amount of Service tax sought to be evaded and the maximum is double the said amount. Here, there is no discretion, which is vested with the authority. The discretion is only confined to impose a penalty above the minimum and less than the maximum provided for under the Act. **It is in that context, in the light of the scheme of this provision that Sections 76 and 78 operate in a mutually exclusive area. For the same reason, the question of imposing penalty both under Sections 76 and 78 would not arise. The penalty is to be imposed either under Section 78 or under Section 76 and certainly not under both the provisions.**”*

### 🕒 Article 20 of Constitution of India-

- ***Article 20 - Protection in respect of conviction for offences***

...

***(2) No person shall be prosecuted and punished for the same offence more than once”***

# DEEMED EXPORTS

Circular No. 172/04/2022-GST dated 06.07.2022

## Refund by recipients of deemed exports...

Recipients of deemed export supplies were facing difficulties on the portal to claim refund of tax paid as the amount was getting debited from electronic credit ledger which was claimed as refund

- ⊙ Whether the ITC availed by the recipient of deemed export supply for claiming refund of tax paid on such supplies would be subject to the provisions of S. 17 of CGST Act, 2017?
  - In case of deemed export supplies, refund is with respect to refund of tax paid on such supplies.
  - The tax paid on such supplies has been available as ITC to the recipients only for enabling them to claim such refunds on the portal.
  - This credit is not in accordance with the provisions of ITC. Therefore, it is not subject to provisions of S. 17 of CGST Act, 2017

## ...Refund by recipients of deemed export

- ⊙ Whether ITC availed by recipient of deemed export supply for claiming refund of tax paid on such supply is included in “Net ITC” for computing refund of unutilized ITC under rule 89(4) & rule 89(5) of the CGST Rules, 2017?
  - ITC availed by recipient of deemed export supply is not as per terms of the provisions of ITC. Therefore, such ITC will not be a part of “Net ITC” for computation of refund under rule 89(4) & rule 89(5) of the CGST Rules, 2017.
  
- ⊙ What is “Net ITC”?
  - As per Rule 89(4)(B)- *“Net ITC” means **input tax credit availed on inputs and input services** during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both;*



## IMPACT

- ⌚ Deemed exporters are placed on a better footing as compared to exporters claiming refund (with/without payment of tax) as-
  - Refund of Blocked credit shall be provided to deemed exporters



~~Blocked  
Credit~~

# BLOCKED CREDITS

Circular No. 172/04/2022-GST dated 06.07.2022

## Clarification on various issues of S. 17(5) of CGST Act, 2017

- ⌚ Whether ITC is available on all goods & services provided by employer to employee under obligation or is it only available on travel benefits extended to employees?
  - Proviso after sub clause (iii) in S. 17(5) is applicable to whole of clause (b)
  - This means that Input tax credit shall be available in respect of outdoor catering, beauty treatment, cosmetic, plastic surgery, membership of club, etc. when it is obligatory for employer to provide such services to its employees

# Clarification on various issues of S. 17(5) of CGST Act, 2017

## ☞ ***“S.17 Apportionment of credit and blocked credits.***

.....

*(5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:-*

.....

*(b) the following supply of goods or services or both-*

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

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

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

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

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

# Perquisites provided by employer to employees as per the contractual agreement

- ⌚ Whether various perquisites provided by employer to employee as a part of contractual agreement liable to GST?
  - Schedule III of the CGST Act, 2017 provides that “*services by employee to the employer in the course of or in relation to his employment*” will not be considered as supply of goods or services and hence GST is not applicable.
  - Any perquisites provided by employer to employee **are in lieu of services provided by employee to employer in relation to his employment**. Thus, perquisites provided by employer to employee in terms of contractual agreement will not be subjected GST.

# Perquisites provided by employer to employees as per the contractual agreement

- ⌚ In case of “Emcure Pharmaceuticals Ltd. (A.A.R.- GST Mah)-2022 (60) G.S.T.L. 231 (A.A.R. - GST - Mah.)”

*“Since the provision of canteen facility by the applicant to its employees is not a transaction made in the course or furtherance of business, and since in terms of Section 7 of the CGST Act, 2017, for a transaction to qualify as supply, it should essentially be made in the course or furtherance of business, we find that the canteen services provided by the applicant to its employees cannot be considered as a “supply” under the relevant provisions of the CGST Act, 2017 and therefore the applicant is not liable to pay GST on the recoveries made from the employees towards providing canteen facility at subsidized rates.”*

# Perquisites provided by employer to employees as per the contractual agreement

🕒 In **Tata Motors Ltd 2022 (59) G.S.T.L. 107 (A.A.R. - GST - Guj.)** it was held that,

*“GST, at the hands on the applicant, is not leviable on the amount representing the employee’s portion of canteen charges, which is collected by the applicant and paid to the Canteen service provider.”*

Perquisites provided by employee to employer are in lieu of Schedule III item and thus no GST is applicable. What if I provide construction services **in lieu of land (Sch III item)**. Will that also not be leviable to GST?





# UTILISATION OF AMOUNT IN ECRL

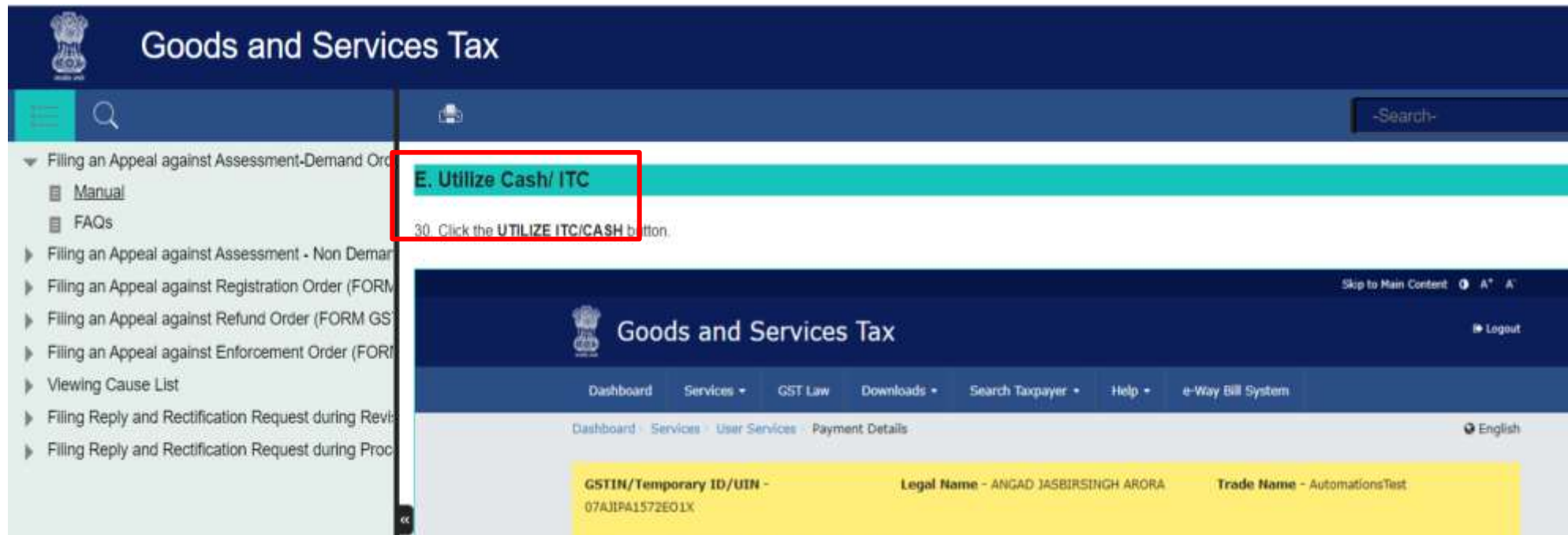
Circular No. 172/04/2022-GST dated 06.07.2022

## Utilisation of the amounts available in ECrL...

- ⌚ Whether amount in electronic credit ledger can be used to make payment of tax liability under RCM mechanism?
  - No, Output tax does not include tax payable under reverse charge mechanism, thus ECrL cannot be used for payment
  - *S. 2(82) “output tax” in relation to a taxable person, means the tax chargeable under this Act on taxable supply of goods or services or both made by him or by his agent but excludes tax payable by him on reverse charge basis;*

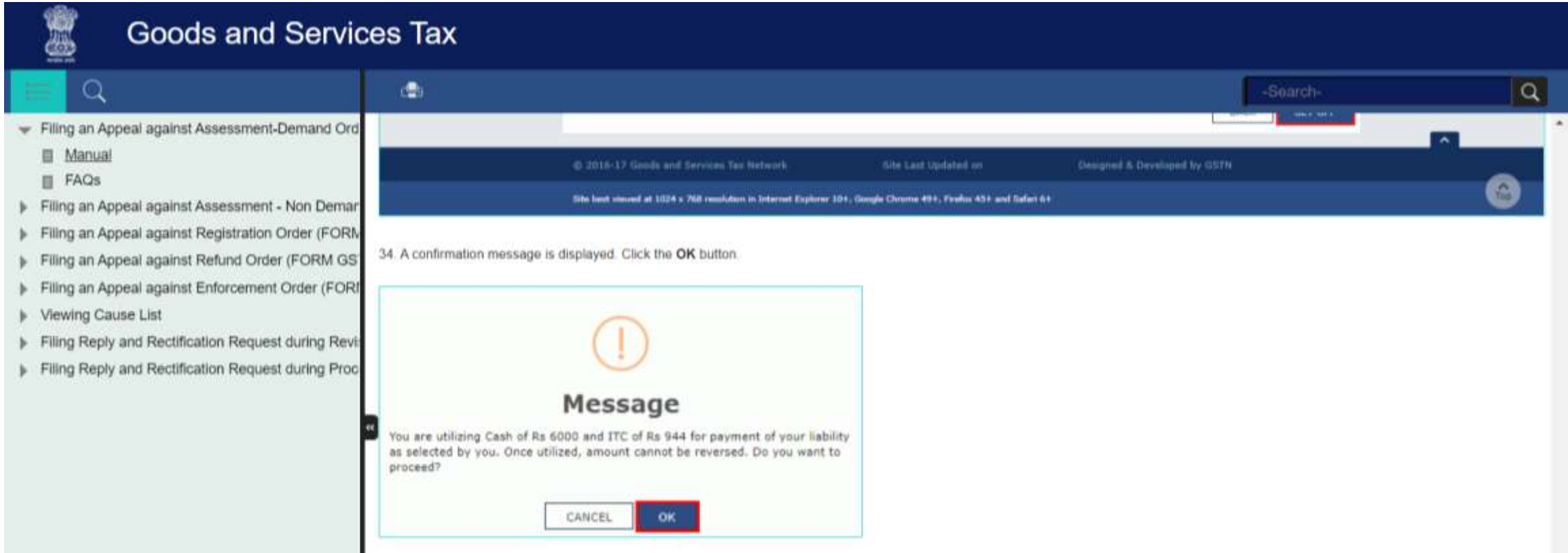
# Can I make payment of pre-deposit using ECrL?...

- ☑ Portal allows to pay pre-deposit by utilizing ITC



The screenshot displays the Goods and Services Tax (GST) portal interface. The main header is dark blue with the GST logo and the text 'Goods and Services Tax'. Below the header, there is a search bar and a navigation menu. The menu item 'E. Utilize Cash/ ITC' is highlighted in a red box. Below this menu item, there is a sub-menu item '30. Click the UTILIZE ITC/CASH button'. The main content area shows a user profile with the following details: GSTIN/Temporary ID/UIN - 07AJPA1572E01X, Legal Name - ANGAD JASBIRSINGH ARORA, and Trade Name - AutomationsTest. The page also includes a 'Logout' button and a 'Skip to Main Content' link.

## ...Can I make payment of pre-deposit using ECrL?



The screenshot displays the Goods and Services Tax (GST) portal interface. The header includes the GST logo and the text "Goods and Services Tax". A search bar is visible in the top right corner. The left sidebar contains a navigation menu with the following items:

- Filing an Appeal against Assessment-Demand Order
  - Manual
  - FAQs
- Filing an Appeal against Assessment - Non Demand
- Filing an Appeal against Registration Order (FORM REG-1)
- Filing an Appeal against Refund Order (FORM REG-1)
- Filing an Appeal against Enforcement Order (FORM REG-1)
- Viewing Cause List
- Filing Reply and Rectification Request during Revision
- Filing Reply and Rectification Request during Proceedings

The main content area shows a confirmation message dialog box with the following text:

34. A confirmation message is displayed. Click the **OK** button.

**Message**

You are utilizing Cash of Rs 6000 and ITC of Rs 944 for payment of your liability as selected by you. Once utilized, amount cannot be reversed. Do you want to proceed?

## Utilisation of the amounts available in ECRL

### 🕒 **Jyoti Construction- 2021 (54) G.S.T.L. 279 (Ori.):**

*“It is not possible to accept the plea of the Petitioner that “Output Tax”, as defined under Section 2(82) of the OGST Act could be equated to the pre-deposit required to be made in terms of Section 107(6) of the OGST Act. Further, as rightly pointed out by Mr. Mishra, Learned ASC, **the proviso to Section 41(2) of the OGST Act limits the usage to which the ECRL could be utilised. It cannot be debited for making payment of pre-deposit at the time of filing of the appeal in terms of Section 107(6) of the OGST Act.**”*

# **GST APPLICABILITY ON LIQUATED DAMAGES, COMPENSATION AND PENALTY ARISING OUT OF BREACH OF CONTRACT**

Circular No. 178/10/2022 – GST dated 03.08.2022

## Liquidated damages

- ⌚ Compensation that would be payable in the event of the non performance of contract is referred as liquidated damages.
- ⌚ Taxability of liquidated damages is that where the amount paid as ‘liquidated damages’ is an amount paid only to compensate for injury, loss or damage suffered by the aggrieved party due to breach of the contract. Such payments do **not constitute consideration** for a supply and are **not taxable**.
- ⌚ Examples of such cases are damages resulting from damage to property, negligence, piracy, unauthorized use of trade name, copyright, etc.

## Compensation for cancellation of coal blocks

- ☑ In 2014, coal block/mine allocations were cancelled by the Hon'ble Supreme Court. Subsequently, Coal Mines Act, 2015 was enacted to allot mining leases to the successful bidders and allottees.
- ☑ Accordingly, prior allottees were given compensation by the Government towards the transfer of their rights/ titles in the land, mine infrastructure, geological reports, consents, approvals etc. to the new successful bidder.
- ☑ There was no agreement between the prior allottees of coal blocks and the Government that the previous allottees shall agree to or tolerate cancellation of the coal blocks allocated to them if the Government pays compensation to them. The compensation given to the previous allottees was also according to the order of Supreme Court.
- ☑ **Therefore, the compensation paid for cancellation of coal blocks pursuant to the order of the Supreme Court in the above case was not taxable.**



## Cheque dishonour fine/ penalty

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



## Penalty imposed for violation of laws

- ⌚ Laws are not framed for tolerating their violation. There is no agreement between the Government and the violator specifying that violation would be allowed or permitted against payment of fine or penalty. There cannot be such an agreement as violation of law is never a lawful object or consideration.
- ⌚ Under Service Tax, such fines are not consideration as no service was provided in lieu of such payments. Also, it was clarified that fines and penalty chargeable by Government or a local authority imposed for violation of a statute, byelaws, rules, or regulations **are not leviable to Service Tax**. It is now clarified that **similar view is to be followed under the GST regime**.

## Forfeiture of salary

- ⌚ The provisions for forfeiture of salary or recovery of bond amount in the event of the employee leaving the employment before the minimum agreed period are incorporated in the employment contract to discourage non-serious candidates from taking up employment.
- ⌚ Further, the employee does not get anything in return from the employer against payment of such amounts.
- ⌚ Therefore, it is clarified that such amounts recovered by the employer **are not taxable**.



## Compensation for not collecting toll charges

- ⌚ In the wake of demonetization, NHAI directed the toll operators to allow free access of toll roads to the users from 8.11.2016 to 1.12.2016 for which the loss of toll charge was paid as compensation by NHAI.
- ⌚ It is clarified that service provided by toll operators is that of access of road/ bridge using toll charges as consideration. During period from 8.11.2016 to 1.12.2016, service was still provided. However, consideration instead of coming from users, came from NHAI in form of compensation.
- ⌚ **Therefore, GST is to be charged as only where the consideration is coming from has changed.**

## Late payment surcharge or fee

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

## Fixed Capacity charges for Power

- ⌚ The price charged for electricity by the power generating companies from the State Electricity Boards (SEBs)/DISCOMS or by SEBs/DISCOMs from individual customers has two components, namely, a minimum fixed charge and variable per unit charge.
- ⌚ The minimum fixed charges remain the same whether electricity is consumed or not.
- ⌚ Both the components of the price, the minimum fixed charges/capacity charges and the variable/energy charges **are charged for sale of electricity and are thus not taxable as electricity is exempt from GST.**

## Cancellation charges

- ☑ Services such as transportation travel and tour are a composite supply of various naturally bundled services. The transportation service, for instance, starts with booking of the ticket for travel and lasts at least till exit of the passenger from the destination terminal. The service of allowing cancellation against payment of cancellation charges is also a natural part of this bundle.
- ☑ **Therefore, facilitation supply of allowing cancellation of an intended supply against payment of cancellation fee in such cases should be assessed as the principal supply.**
- ☑ However, forfeiture of earnest money by a seller in case of breach of ‘an agreement to sell’ an immovable property by the buyer, is a mere flow of money, as the buyer does not get anything in return for such forfeiture of earnest money.
- ☑ Forfeiture of earnest money is not a consideration for tolerating the breach of contract but a compensation for the losses suffered and as a penalty for discouraging the non-serious buyers or bidders. Such payments being merely flow of money are **not a consideration for any supply and are not taxable.**

# TRANSITIONAL CREDIT

Notification No. 03/2022-Central Tax (Rate) dated 13.07.2022 w.e.f 18.07.2022



## Availment of tran credit...

### 🕒 **Union Of India & Anr. Vs. Filco Trade Centre Pvt. Ltd. & Anr. (2018)**

- Goods and Service Tax Network (GSTN) is directed to open common portal for filing concerned forms for availing Transitional Credit through **TRAN-1 and TRAN-2** for two months i.e., w.e.f. **01.09.2022 to 31.10.2022**
- GSTN has to ensure that there are no technical glitch during the said time.
- Considering the judgments of the High Courts on the then prevailing peculiar circumstances, any aggrieved registered assessee is directed to file the relevant form or revise the already filed form irrespective of whether the taxpayer has filed writ petition before the High Court or whether the case of the taxpayer has been decided by Information Technology Grievance Redressal Committee (ITGRC)

## ...Availment of tran credit

- *The concerned officers are given 90 days thereafter to verify the veracity of the claim/transitional credit and pass appropriate orders thereon on merits after granting appropriate reasonable opportunity to the parties concerned*
- *Thereafter, the allowed Transitional credit is to be reflected in the Electronic Credit Ledger*
- *If required GST Council may also issue appropriate guidelines to the field formations in scrutinizing the claims.*

# GST RATES - SERVICES

Notification No. 03/2022-Central Tax (Rate) dated 13.07.2022 w.e.f 18.07.2022

## New GST rate on works contract services...

<i>Tariff item</i>	<i>Description of Service</i>	<i>Old Rate</i>	<i>New Rate</i>
<b>9954</b> (Construction services)	<p><i>*(iii) Composite supply of <b>works contract</b> as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied to the Central Government, State Government, Union territory or a local authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,</i></p> <ul style="list-style-type: none"> <li><i>• a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);</i></li> <li><i>• canal, dam or other irrigation works;</i></li> </ul> <p><i>pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal.</i></p>	12% [Entry 3(iii)]	18% [Entry 3(xii)]

**\*Entry omitted and now will be taxed under the residual entry**

## ...New GST rate on works contract services...

<b>Tariff item</b>	<b>Description of Service</b>	<b>Old Rate</b>	<b>New Rate</b>
<b>9954</b> (Construction services)	<p><i>*(iv) Composite supply of <b>works contract</b> as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 other than that covered by items (i), (ia),(ib), (ic), (id), (ie) and (if)above, supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-(a) a <b>road, bridge, tunnel, or terminal for road transportation for use by general public</b>;(b) a civil structure or any other original works pertaining to a scheme under <b>Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana</b>; (c) a civil structure or any other original works pertaining to the “<b>In-situ redevelopment of existing slums</b> using land as are source, under the Housing for All (Urban)Mission/ Pradhan Mantri Awas Yojana (Urban); (d) a civil structure or any other original works pertaining to the “<b>Beneficiary led individual house construction /enhancement</b>” under the Housing for All (Urban)Mission/Pradhan Mantri Awas Yojana;...</i></p>	12% [Entry 3(iv)]	18% [Entry 3(xii)]

**\*Entry omitted and now will be taxed under the residual entry**

## ...New GST rate on works contract services...

<i>Tariff item</i>	<i>Description of Service</i>	<i>Old Rate</i>	<i>New Rate</i>
<b>9954</b> (Construction services)	<p><i>*(iv) ...(da) a civil structure or any other original works pertaining to the “Economically Weaker Section (EWS) houses” constructed under the Affordable Housing in partnership by State or Union territory or local authority or urban development authority under the Housing for All(Urban) Mission/ Pradhan Mantri Awas Yojana(Urban); (db) a civil structure or any other original works pertaining to the “houses constructed or acquired under the Credit Linked Subsidy Scheme for <u>Economically Weaker Section (EWS)/ Lower Income Group (LIG)/ Middle Income Group-1 (MIG-1)/Middle Income Group-2(MIG-2)” under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana (Urban);...</u></i></p>	12% [Entry 3(iv)]	18% [Entry 3(xii)]

**\*Entry omitted and now will be taxed under the residual entry**

## ...New GST rate on works contract services...

<i>Tariff item</i>	<i>Description of Service</i>	<i>Old Rate</i>	<i>New Rate</i>
<b>9954</b> (Construction services)	<p><i>*(iv)...(e) a pollution control or effluent treatment plant, except located as a part of a factory; or (f) a structure meant for funeral, burial or cremation of deceased. Provided that during the period beginning from the 14th June 2021 and ending with the 30th September,2021, the central tax on service of description as specified in clause (f), shall, irrespective of rate specified in column (4), be levied at the rate of 2.5 per cent.</i></p> <p><i>(g) a building owned by an entity registered under section 12AA or 12AB of the Income Tax Act, 1961 (43 of 1961), which is used for carrying out the activities of providing, centralised cooking or distribution, for mid-day meals under the mid-day meal scheme sponsored by the Central Government, State Government, Union territory or local authorities.</i></p>	12% [Entry 3(iv)]	18% [Entry 3(xii)]

**\*Entry omitted and now will be taxed under the residual entry**

## ...New GST rate on works contract services...

<i>Tariff item</i>	<i>Description of Service</i>	<i>Old Rate</i>	<i>New Rate</i>
<b>9954</b> (Construction services)	<i>*(v) Composite supply of <b>works contract</b> as defined in clause (119) of section 2 of the Central Goods and Services Tax Act,2017 other than that covered by items (i), (ia),(ib), (ic), (id), (ie) and (if)above, supplied by way of construction, erection, commissioning, or installation of original works pertaining to, (a) <b>railways, including monorail and metro</b>; (b) <b>a single residential unit</b> otherwise than as a part of a residential complex; (c) <b>low-cost houses up to a carpet area of 60 square metres per house</b> in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership 'framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;...</i>	12% [Entry 3(v)]	18% [Entry 3(xii)]

**\*Entry omitted and now will be taxed under the residual entry**



## ...New GST rate on works contract services...

<i>Tariff item</i>	<i>Description of Service</i>	<i>Old Rate</i>	<i>New Rate</i>
<b>9954</b> (Construction services)	<p><i>*(v)...(d) low-cost houses up to a carpet area of 60 square metres per house in a housing project approved by the competent authority under-</i></p> <p><i>(1)the “Affordable Housing in Partnership” component of the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;</i></p> <p><i>(2) any housing scheme of a State Government;</i></p> <p><i>(da) low-cost houses upto a carpet area of 60square metres per house in an affordable housing project which has been given infrastructure status vide notification of Government of India, in Ministry of Finance, Department of Economic Affairs vide F. No.13/6/2009-INF, dated the30th March,2017;</i></p> <p><i>(e) <b>post harvest storage infrastructure</b> for agricultural produce including a cold storage for such purposes; or</i></p> <p><i>(f) <b>mechanised food grain handling system</b>, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages.</i></p>	12% [Entry 3(v)]	18% [Entry 3(xii)]

**\*Entry omitted and now will be taxed under the residual entry**

## ...New GST rate on works contract services...

<i>Tariff item</i>	<i>Description of Service</i>	<i>Old Rate</i>	<i>New Rate</i>
<b>9954</b> (Construction services)	<i>*(va) Composite supply of <b>works contract</b> as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above, supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of <b>affordable residential apartments</b> covered by sub-clause (a) of clause (xvi) of paragraph 4 below, in a project which commences on or after 1st April, 2019, or in an ongoing project in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if), as the case may be, in the manner prescribed therein,</i>	12% [Entry 3(va)]	18% [Entry 3(xii)]

**\*Entry omitted and now will be taxed under the residual entry**

## ...New GST rate on works contract services...

<b>Tariff item</b>	<b>Description of Service</b>	<b>Old Rate</b>	<b>New Rate</b>
<b>9954</b> (Construction services)	<p><i>*(vi) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above provided to the Central Government, State Government, Union territory or a local authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of – (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession; (b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or (c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Services Tax Act, 2017. Explanation. - For the purposes of this item, the term ‘business’ shall not include any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities.</i></p>	12% [Entry 3(vi)]	18% [Entry 3(xii)]

**\*Entry omitted and now will be taxed under the residual entry**

## ...New GST rate on works contract services...

<i>Tariff item</i>	<i>Description of Service</i>	<i>Old Rate</i>	<i>New Rate</i>
<b>9954</b> (Construction services)	<i>*(ix) Composite supply of <b>works contract</b> as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 provided by a <b>sub-contractor</b> to the main contractor providing services specified in item(iii) or item (vi) above to the Central Government, State Government, Union territory or a local authority.</i>	12% [Entry 3(vi)]	18% [Entry 3(xii)]

**\*Entry omitted and now will be taxed under the residual entry**

## ...New GST rate on works contract services

<i>Tariff item</i>	<i>Description of Service</i>	<i>Old Rate</i>	<i>New Rate</i>
<b>9954</b> (Construction services)	<p>(vii) Composite supply of <b>works contract</b> as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, involving <b>predominantly earth work</b> (that is, constituting more than <b>75 per cent.</b> of the value of the works contract) provided to the Central Government, State Government, Union territory or a local authority.</p> <p>(x) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 provided by a sub-contractor to the main contractor providing services specified in item (vii) above to the Central Government, State Government, Union territory or a local authority.</p>	5% [Entry 3(vii) & (x)]	12% [Entry 3(vii) & (x)]

## Hotel accommodation services

<i>Tariff item</i>	<i>Description of Service</i>	<i>Old Rate</i>	<i>New Rate</i>
<b>9963</b> (Accommodation, food and beverage services)	<i>Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having “value of supply” of a unit of accommodation below or equal to one thousand rupees per day or equivalent.</i>	NIL (Entry 14)	12% (Entry 7)



CT(R) Notification 03/2022 dated 13.07.2022

## Transportation of passengers by ropeways

<i>Tariff item</i>	<i>Description of Service</i>	<i>Old Rate</i>	<i>New Rate</i>
<b>9964</b> (Passenger transport services)	(via) <i>Transport of passengers</i> , with or without accompanied belongings, by <i>ropeways</i>	18%* [Entry 8(vii)]	5%** [Entry 8(via)]

**\*Earlier there was no specific rate for ropeways, thus it was taxed under the residual entry**

**\*\*New condition for (via)**

*The credit of input tax charged on goods used in supplying the service has not been taken.*

## Transportation of goods by ropeways

<i>Tariff item</i>	<i>Description of Service</i>	<i>Old Rate</i>	<i>New Rate</i>
<b>9965</b> (Goods transport services)	(via) <i>Transport of goods by ropeways</i>	18%* [Entry 9(vii)]	5%** [Entry 9(via)]



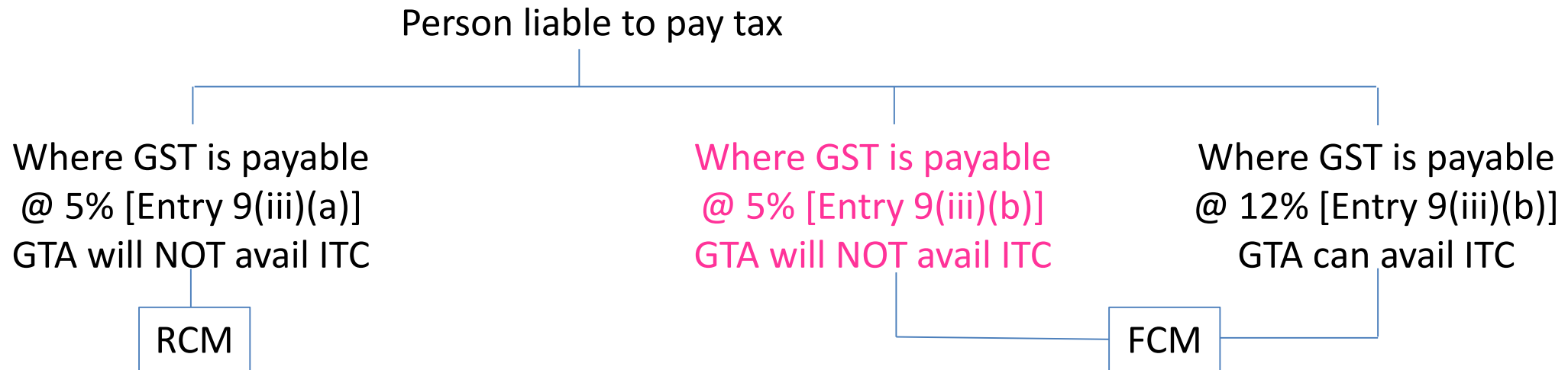
**\*Earlier there was no specific rate for ropeways, thus it was taxed under the residual entry**

**\*\*Condition for (via)**

*The credit of input tax charged on goods used in supplying the service has not been taken.*



# Goods Transport Agency (GTA)



- The option by GTA to itself pay GST shall be exercised by making declaration on or after 15<sup>th</sup> March of the preceding financial year
- However, for FY 2022-23, the option by GTA to itself pay GST shall be exercised on or before 16<sup>th</sup> August 2022
- Invoice for supply of the service charging tax at the rate applicable to FCM maybe issued during the period 18.07.2022 – 16.08.2022 before exercising the option for FY 2022-23 but in that case also option shall be exercised before 16<sup>th</sup> August 2022

# Form to be filed by GTA for exercising FCM option

## FORM

**Form for exercising the option by a Goods Transport Agency (GTA) for payment of GST on the GTA services supplied by him under forward charge before the commencement of any financial year to be submitted before the jurisdictional GST Authority.**

**Reference No.-**

**Date: -**

1. I/We \_\_\_\_\_ (name of Person), authorised representative of M/s..... have taken registration/have applied for registration and do hereby undertake to pay GST on the GTA services in relation to transportation of goods supplied by us during the financial year..... under forward charge in accordance with section 9(1) of the CGST Act, 2017 and to comply with all the provisions of the CGST Act, 2017 as they apply to a person liable for paying the tax in relation to supply of any goods or services or both;

2. I understand that this option once exercised shall not be allowed to be changed within a period of one year from the date of exercising the option and will remain valid till the end of the financial year for which it is exercised.

**Legal Name: -**

**GSTIN: -**

**PAN No.**

**Signature of Authorised representative:**

**Name of Authorised Signatory:**

**Full Address of GTA:**

**(Dated acknowledgment of jurisdictional GST Authority)**

**Note: The last date for exercising the above option for any financial year is the 15th March of the preceding financial year. The option for the financial year 2022-2023 can be exercised by 16th August, 2022.]**

# Declaration on tax invoice

“Annexure III

## Declaration

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

II. This notification shall come into force with effect from the 18<sup>th</sup> July, 2022.

## GTA services

<i>Tariff item</i>	<i>Description of Service</i>	<i>Old Rate</i>	<i>New Rate</i>
<b>9965</b>	<p><i>Services provided by a goods transport agency, by way of transport in a goods carriage of -</i></p> <p><i>(b) goods, where consideration charged for the transportation of goods on a consignment transported in a single carriage does not exceed one thousand five hundred rupees;</i></p> <p><i>(c) goods, where consideration charged for transportation of all such goods for a single consignee does not exceed rupees seven hundred and fifty;</i></p>	<p><i>Nil</i> <i>(Entry 21)</i></p>	<p><i>5%/12 %</i> <i>[Entry 9(iii)]</i></p>

## Service by a foreman of chit fund

<b>Tariff item</b>	<b>Description of Service</b>	<b>Old Rate</b>	<b>New Rate</b>
<b>9971</b> (Financial and related services)	<p><i>(i) Services provided by a foreman of a chit fund in relation to chit.</i></p> <p><i>Explanation.-</i></p> <p><i>(a) "chit" means a transaction whether called chit, chit fund, chitty, kuri, or by whatever name by or under which a person enters into an agreement with a specified number of persons that every one of them shall subscribe a certain sum of money (or a certain quantity of grain instead) by way of periodical installments over a definite period and that each subscriber shall, in his turn, as determined by lot or by auction or by tender or in such other manner as maybe specified in the chit agreement, be entitled to a prize amount;</i></p> <p><i>(b) "foreman of a chit fund" shall have the same meaning as is assigned to the expression "foreman" in clause (j) of section 2 of the Chit Funds Act, 1982 (40 of 1982).</i></p>	12%* [Entry 15(i)]	18% [Entry 15(vii)]

### \*Condition for old rate

*Provided that credit of input tax charged on goods used in supplying the service has not been taken*

## Jobwork services

<i>Tariff item</i>	<i>Description of Service</i>	<i>Old Rate</i>	<i>New Rate</i>
<b>9988</b> <i>(Manufacturing services on physical inputs (goods) owned by others)</i>	<p><i>(i) ...</i></p> <p><i>(e) Processing of hides, skins and leather falling under Chapter 41 in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975);</i></p> <p><i>(ea) manufacture of leather goods or footwear falling under Chapter 42 or 64 in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) respectively;</i></p> <p><i>(h) manufacture of clay bricks falling under tariff item 69010010 in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975);</i></p>	<p>5%</p> <p><i>[Entry 26(i)(e), (ea) &amp; (h)]</i></p>	<p>12%*</p> <p><i>[Entry 26(id)]</i></p>

**\*This entry has been omitted and will be taxed under the residual entry**

## Services by clinical establishment

<b>Tariff item</b>	<b>Description of Service</b>	<b>Old Rate</b>	<b>New Rate</b>
<b>9993</b>	<i>*Services provided by a clinical establishment by way of providing room [other than Intensive Care Unit (ICU)/ Critical Care Unit (CCU)/ Intensive Cardiac Care Unit (ICCU)/ Neo natal Intensive Care Unit (NICU)] having <b>room charges exceeding Rs. 5000 per day</b> to a person receiving health care services.</i>	Nil (Entry 74)	5%** (Entry 31A)

### **\*\*Condition for New rate**

*The credit of input tax charged on goods or services used in supplying the service has not been taken*

## Services of treatment or disposal of biomedical waste

<i>Tariff item</i>	<i>Description of Service</i>	<i>Old Rate</i>	<i>New Rate</i>
<b>9994</b>	<i>(ia) Services by way of treatment or disposal of <b>biomedical waste</b> or the processes incidental thereto by a common bio-medical waste treatment facility to a clinical establishment</i>	<i>NIL (Entry 75)</i>	<i>12% (Entry 32)</i>



## Services by Government department...

<i>Tariff item</i>	<i>Description of Service</i>	<i>Old Rate</i>	<i>New Rate</i>
<b>Chapter 99</b>	<p><i>Services by the Central Government, State Government, Union territory or local authority:</i></p> <p><i>(a) services by the Department of Posts <del>by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory;</del></i></p>	<p><i>Nil</i> <i>(Entry 6)</i></p>	<p><i>18%</i> <i>(Entry 12)</i></p>

\*Earlier particular services of posts were taxed, others were exempt. However, now all services provided by posts are taxed.

## ...Services by Government department...

<i>Tariff item</i>	<i>Description of Service</i>	<i>Old Rate</i>	<i>New Rate</i>
<b>Chapter 99</b>	<p><i>Services provided by the Central Government, State Government, Union territory or local authority to a business entity with an aggregate turnover of up to such amount in the preceding financial year as makes it eligible for exemption from registration under the Central Goods and Services Tax Act, 2017 (12 of 2017)</i></p> <p><i>Explanation.- For the purposes of this entry, it is hereby clarified that the provisions of this entry shall not be applicable to-</i></p> <p><i>(a) services,-</i></p> <p><i>(i) by the Department of Posts <del>*by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory;</del></i></p>	<i>Nil (Entry 7)</i>	<i>18% (Entry 12)</i>

\*Earlier particular services of posts were taxed, others were exempt. However, now all services provided by posts are excluded from exemption and taxed at **9% Rate**

## ...Services by Government department...

<i>Tariff item</i>	<i>Description of Service</i>	<i>Old Rate</i>	<i>New Rate</i>
<b>Chapter 99</b>	<p><i>Services provided by the Central Government, State Government, Union territory or local authority to another Central Government, State Government, Union territory or local authority:</i></p> <p><i>Provided that nothing contained in this entry shall apply to services-</i></p> <p><i>(i) by the Department of Posts <del>by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory;</del></i></p>	<p><i>Nil</i> <i>(Entry 8)</i></p>	<p><i>18%</i> <i>(Entry 12)</i></p>

\*Earlier particular services of posts were excluded from the exemption regarding services by Central Government, State Government, Union territory or local authority. Now all services by post are excluded from such exemption.

## ...Services by Government department

<i>Tariff item</i>	<i>Description of Service</i>	<i>Old Rate</i>	<i>New Rate</i>
<b>Chapter 99</b>	<p><i>Services provided by Central Government, State Government, Union territory or a local authority where the consideration for such services does not exceed five thousand rupees:</i></p> <p><i>Provided that nothing contained in this entry shall apply to-</i></p> <p><i>(i) services by the Department of Posts <del>by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory;</del> excluding post card, inland letter, book post and ordinary post (envelopes weighing less than 10 grams)</i></p>	<p><i>Nil</i> <i>(Entry 9)</i></p>	<p><i>18%</i> <i>(Entry 12)</i></p>

\*All services of department of posts are liable to 18% subject to exclusions

## Renting of goods carriage

<i>Tariff item</i>	<i>Description of Service</i>	<i>Old Rate</i>	<i>New Rate</i>
<b>9966</b> <i>(Rental services of transport vehicles with operators)</i>	<i>(ia) Renting of goods carriage where the cost of fuel is included in the consideration charged from the service recipient</i>	18%* [Entry 10(iii)]	12% [Entry 10(ia)]

**\*Earlier there was no specific rate for goods carriage where cost of fuel is included in consideration, thus it was taxed under the residual entry**

## Renting of residential dwelling

<i>Tariff item</i>	<i>Description of Service</i>	<i>Old Rate</i>	<i>New Rate</i>
<b>9963 or 9972</b>	<i>Services by way of renting of residential dwelling for use as residence <b>except</b> where the residential dwelling is rented to a registered person.</i>	<i>Nil (Entry 12)</i>	<i>18% [Entry 16(iii)]</i>

## Case study

- ⌚ A is conducting business from the state of Maharashtra and Gujarat. A is registered in the state of Maharashtra (as he is making taxable supplies), however, A is not registered in the state of Gujarat as he is making exempt supplies.
- ⌚ Mr. A takes a residential house on rent in the state of Gujarat.



Not Registered  
Registered

Gujarat



Maharashtra

**Is Mr. A Liable To pay GST on renting services for the house taken on rent in Gujarat state?**

## Accommodation services

<i>Tariff item</i>	<i>Description of Service</i>	<i>Old Rate</i>	<i>New Rate</i>
<b>9963</b>	<i>Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having value of supply of a unit of accommodation <u>below or equal to one thousand rupees per day or equivalent.</u></i>	<i>Nil (Entry 14)</i>	<i>12% (Entry 7)</i>

\*Earlier, for above entry, where value of supply was upto Rs. 1000 was exempt. However, now liable to GST @12%



## Air travel to notified regions

<i>Tariff item</i>	<i>Description of Service</i>	<i>Old Rate</i>	<i>New Rate</i>
<b>9964</b>	<i>Transport of passengers, with or without accompanied belongings, by - (a) air <b>other than economy class*</b>, embarking from or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim or Tripura or at Bagdogra located in West Bengal;</i>	<i>Nil (Entry 15)</i>	<i>12% [Entry 8(v)]</i>

\*Economic class - exempt

Other than economic class – 12%

## Transportation by rail

<i>Tariff item</i>	<i>Description of Service</i>	<i>Old Rate</i>	<i>New Rate</i>
<b>9965</b>	<p><i>Services by way of transportation by rail or a vessel from one place in India to another of the following goods –</i></p> <p>....</p> <p><i>(d) railway equipments or materials;</i></p>	<p><i>Nil</i> <i>(Entry</i> <i>20)</i></p>	<p><i>12%</i> <i>[Entry</i> <i>9(iv)]</i></p>

## Warehousing services

<b>Tariff item</b>	<b>Description of Service</b>	<b>Old Rate</b>	<b>New Rate</b>
<b>9967 or 9985</b>	<i>Services by way of storage or warehousing of nuts, spices, copra, sugarcane, jaggery, raw vegetable fibres such as cotton, flax, jute etc., indigo, unmanufactured tobacco, betel leaves, tendu leaves, coffee and tea.</i>	<i>Nil (Entry 24B)</i>	<i>18% (Entry 11)</i>

## Financial services...

<i>Tariff item</i>	<i>Description of Service</i>	<i>Old Rate</i>	<i>New Rate</i>
<b>9971</b>	<i>Services by the Reserve Bank of India.</i>	<i>Nil (Entry 26)</i>	<i>18% [Entry 15(vii)]</i>
<b>9971</b>	<i>Services provided by the Insurance Regulatory and the Development Authority of India to insurers under the Insurance Regulatory and the Development Authority of India Act, 1999 (41 of 1999).</i>	<i>Nil (Entry 32)</i>	<i>18% [Entry 15(vii)]</i>
<b>9971</b>	<i>Services provided by the Securities and Exchange Board of India set up under the Securities and Exchange Board of India Act, 1992 (15 of 1992) by way of protecting the interests of investors in securities and to promote the development of, and to regulate, the securities market.</i>	<i>Nil (Entry 33)</i>	<i>18% [Entry 15(vii)]</i>

## ...Financial services

<b>Tariff item</b>	<b>Description of Service</b>	<b>Old Rate</b>	<b>New Rate</b>
<b>9983 or 9991</b>	<i>Services by way of licensing, registration and analysis or testing of food samples supplied by the food Safety and Standards Authority of India (FSSAI) to Food Business Operators</i>	<i>Nil (Entry 47A)</i>	<i>18% (Entry 29)</i>
<b>9984</b>	<i>Services provided by the Goods and Services Tax Network to the Central Government or State Governments or Union territories for implementation of Goods and Services Tax</i>	<i>Nil (Entry 51)</i>	<i>18% (Entry 22)</i>

# Agricultural produce

<b>Tariff item</b>	<b>Description of Service</b>	<b>Old Rate</b>	<b>New Rate</b>
<b>9985</b>	<i>Services by way of fumigation in a warehouse of agricultural produce</i>	<i>Nil (Entry 53A)</i>	<i>18% (Entry 23(iii))</i>

## Services by clinical establishment

<i>Tariff item</i>	<i>Description of Service</i>	<i>Old Rate</i>	<i>New Rate</i>
<b>9993</b>	<p><i>Services by way of-</i></p> <p><i>(a) health care services by a clinical establishment, an authorised medical practitioner or para-medics;</i></p> <p><i>(b) services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above.</i></p> <p><i>Provided that nothing in this entry shall apply to the services provided by a clinical establishment by way of providing room [ other than Intensive Care Unit (ICU)/ Critical Care Unit (CCU)/ Intensive Cardiac Care Unit (ICCU)/ Neo Natal Intensive Care Unit (NICU)] having room charges exceeding Rs. 5000 per day to a person receiving health care services.*</i></p>	<p><i>Nil</i></p> <p><i>(Entry 74)</i></p>	<p><i>5%</i></p> <p><i>(Entry 31A)</i></p>

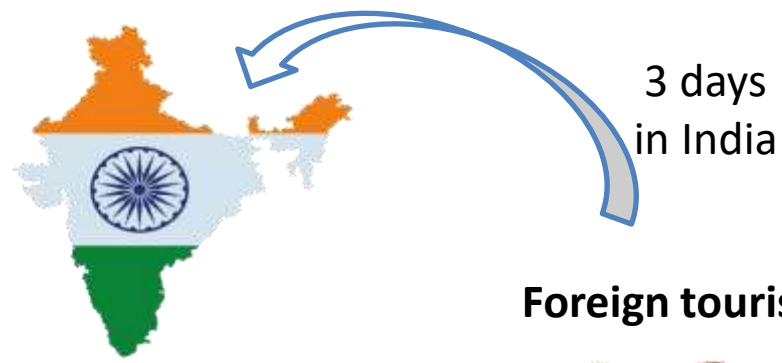
## Slaughtering / cord blood bank services

<b>Tariff item</b>	<b>Description of Service</b>	<b>Old Rate</b>	<b>New Rate</b>
<b>9988</b>	<i>Services by way of slaughtering of animals.</i>	<i>Nil (Entry 56)</i>	<i>12% [Entry 26(id)]</i>
<b>9993</b>	<i>Services provided by the cord blood banks by way of preservation of stem cells or any other service in relation to such preservation.</i>	<i>Nil (Entry 73)</i>	<i>18% (Entry 31A)</i>

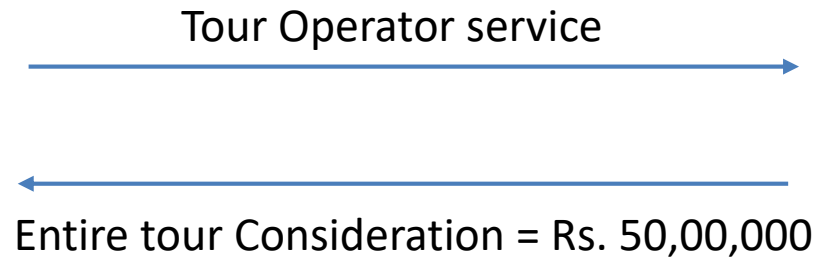


## Training/ right to admission services

<i>Tariff item</i>	<i>Description of Service</i>	<i>Old Rate</i>	<i>New Rate</i>
<b>9996</b>	<i>Services by way of training or coaching in- (a) recreational activities relating to arts or culture, by an individual or (b) sports by charitable entities registered under section 12AA or 12AB of the Income-tax Act.</i>	<i>Nil (Entry 80)</i>	<i>18% [Entry 34(vi)]</i>
<b>9996</b>	<i>Services by way of right to admission to the events organised under FIFA U-17 Women's World Cup 2020 [Whenever rescheduled]</i>	<i>Nil (Entry 82A)</i>	<i>Nil (Entry 82A)</i>



**Foreign tourist**



How GST will be levied on tour operating services provided to foreign tourist partly in India and partly outside India?



## Insertion of exemption entry

<b>Heading</b>	<b>Description of Service</b>	<b>Old Rate</b>	<b>New Rate</b>
<b>9985</b>	<p><i>Tour operator service, which is performed partly in India and partly outside India, supplied by a tour operator to a foreign tourist, to the extent of the value of the tour operator service which is performed outside India:</i></p> <p><i>Provided that value of the tour operator service performed outside India shall be such proportion of the total consideration charged for the entire tour which is equal to the proportion which the number of days for which the tour is performed outside India has to the total number of days comprising the tour, or 50% of the total consideration charged for the entire tour, whichever is less:</i></p> <p><i>Provided further that in making the above calculations, any duration of time equal to or exceeding 12 hours shall be considered as one full day and any duration of time less than 12 hours shall be taken as half a day. Explanation.</i></p> <p><i>-“foreign tourist” means a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purposes.</i></p>	<p><i>Nil</i></p> <p><i>(Entry 54, IT(R)-2/2017)/</i></p> <p><i>5% (entry 23, CT(R)-11/2017)</i></p>	<p><i>Nil</i></p> <p><i>(Entry 52A)</i></p>

## Case study

As per the case study discussed Mr. Ram is providing tour operator service to Mr. & Mrs. Johnson 3 days in India and 2 days in USA for that consideration charged for the entire tour: Rs. 50,00,000/-

Particulars	Amount (Rs.)
Value exempted from GST	= Rs. 20,00,000 (Rs. 50,00,000*2/5) or = Rs. 25,00,000 (Rs. 50,00,000*50%) <b>whichever is lower</b>  = Rs. 20,00,000
Taxable value	Rs. 30,00,000

# RATE CHANGES FOR GOODS

Notification no. 06/2022 – Central Tax (Rate) dated 13.07.2022

## Rate on namkeens

Tariff item	Description of goods	Old Rate	New Rate
<b>2106 90</b>	<p><i>Namkeens, bhujia, mixture, chabena and similar edible preparations in ready for consumption form, <del>other than those put up in unit container and,</del></i></p> <p><i><del>(a) bearing a registered brand name; or</del></i></p> <p><i><del>(b) bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any actionable claim or any enforceable right in respect of such brand name has been voluntarily foregone, subject to the conditions as specified in the ANNEXURE]</del></i></p> <p><i>Pre-packaged and labelled</i></p>	5% (Entry 101A)	12% (Entry 46)



Pre-packaged and labelled – 12%  
Other than pre-packaged and labelled – 5%

## Leather Products...

<b>Tariff item</b>	<b>Description of goods</b>	<b>Old Rate</b>	<b>New Rate</b>
<b>4107</b>	<i>Leather further prepared after tanning or crusting, including parchment-dressed leather, of bovine(including buffalo) or equine animals, without hair on, whether or not split, other than leather of heading 4114</i>	5% (Entry 197A)	12% (Entry 85B)
<b>4112</b>	<i>Leather further prepared after tanning or crusting, including parchment-dressed leather, of sheep or lamb, without wool on, whether or not split, other than leather of heading 4114</i>	5% (Entry 197B)	12% (Entry 85C)
<b>4113</b>	<i>Leather further prepared after tanning or crusting, including parchment-dressed leather, of other animals, without wool or hair on, whether or not split, other than leather of heading 4114</i>	5% (Entry 197C)	12% (Entry 85D)



## ...Leather Products

<b>Tariff item</b>	<b>Description of goods</b>	<b>Old Rate</b>	<b>New Rate</b>
<b>4114</b>	<i>Chamois (including combination chamois) leather; patent leather and patent laminated leather; metallised leather</i>	5% (Entry 197D)	12% (Entry 85E)
<b>4115</b>	<i>Composition leather with a basis of leather or leather fibre, in slabs, sheets or strip, whether or not inrolls; parings and other waste of leather or of composition leather, not suitable for the manufacture of leather articles; leather dust, powder and flour</i>	5% (Entry 197E)	12% (Entry 85F)

## Rates on Machinery...

<b>Tariff item</b>	<b>Description of goods</b>	<b>Old Rate</b>	<b>New Rate</b>
<b>8419 12</b>	<i>Solar water heater and system</i>	5% (Entry 232)	12% (Entry 194A)
<b>8437</b>	<i>Machines for cleaning, sorting or grading, seed, grain or dried leguminous vegetables; machinery used in milling industry or for the working of cereals or dried leguminous vegetables other than farm type machinery and parts thereof</i>	5% (Entry 233)	18% (Entry 329A)

## ...Rates on Machinery

<b>Tariff item</b>	<b>Description of goods</b>	<b>Old Rate</b>	<b>New Rate</b>
<b>84 or 85</b>	<i>E-waste Explanation: For the purpose of this entry, e-waste means electrical and electronic equipment listed in Schedule I of the E-Waste (Management) Rules, 2016 (published in the Gazette of India vide G.S.R. 338 (E) dated the 23rd March 2016), whole or in part if discarded as waste by the consumer or bulk consumer</i>	5% (Entry 234A)	18% (Entry 371A)
<b>8509</b>	<i>Wet grinder consisting of stone as grinder</i>	5% (Entry 234C)	18% (Entry 376AC)
<b>9021</b>	<i>Orthopaedic appliances, such as crutches, surgical belts, and trusses; Splints and other fracture appliances; artificial parts of the body; other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; intraocular lens other than hearing aids</i>	12% (Entry 221 & 257)	5% (Entry 255A)

## GST Rates on mangoes

<i>Tariff item</i>	<i>Description of goods</i>	<i>Old Rate</i>	<i>New Rate</i>
<b>0804</b>	<i>Dates (soft or hard), figs, pineapples, avocados, guavas, mangoes (other than mangoes sliced, dried) and mangosteens, dried.</i>	<i>NIL (Entry 51)</i>	<i>12%* (Entry 16)</i>

Mangoes sliced, dried – 5% (Entry 30A)

Dates, figs, pineapples, avocados, guavas, mangoes and mangosteens, fresh – Exempt (Entry 51)

## GST Rate on ink and aseptic paper

<b>Tariff item</b>	<b>Description of goods</b>	<b>Old Rate</b>	<b>New Rate</b>
<b>3215</b>	<i>All Goods, including printing ink, writing or drawing ink and other inks, whether or not concentrated or solid, fountain pen ink, ball pen ink</i>	12% (Entry 70)	18% (Entry 54C)
<b>4811</b>	Aseptic packaging paper	12% (Entry 120)	18% (Entry 148)

## GST Rate on knives, spoons, forks

<i><b>Tariff item</b></i>	<i><b>Description of goods</b></i>	<i><b>Old Rate</b></i>	<i><b>New Rate</b></i>
<b>8211</b>	<i>Knives with cutting blades, serrated or not (including pruning knives), other than knives of heading 8208, and blades therefor</i>	12% (Entry 187)	18% (Entry 301A)
<b>8214</b>	<i>Paper knives, Pencil sharpeners and blades therefor</i>	12% (Entry 188)	18% (Entry 302A)
<b>8215</b>	<i>Spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs and similar kitchen or tableware</i>	12% (Entry 189)	18% (Entry 302B)

## GST rate on machinery and mechanical appliances...

<b>Tariff item</b>	<b>Description of goods</b>	<b>Old Rate</b>	<b>New Rate</b>
<b>8413</b>	<i>Power driven pumps primarily designed for handling water, namely, centrifugal pumps (horizontal and vertical), deep tube-well turbine pumps, submersible pumps, axial flow and mixed flow vertical pumps</i>	12% (Entry 192)	18% [Entry 317A (c)]
<b>8414 20 10</b>	<i>Bicycle pumps</i>	12% (Entry 193)	18% (Entry 317C)
<b>8414 90 12</b>	<i>Parts of air or vacuum pumps and compressors of bicycle pumps</i>	12% (Entry 195)	18% (Entry 317D)

## ...GST rate on machinery and mechanical appliances

<b>Tariff item</b>	<b>Description of goods</b>	<b>Old Rate</b>	<b>New Rate</b>
<b>8433</b>	<i>Machines for cleaning, sorting or grading eggs, fruit or other agricultural produce, other than machinery of heading 8437; parts [8433 90 00]</i>	12% (Entry 197)	18% (Entry 328A)
<b>8434</b>	<i>Milking machines and dairy machinery</i>	12% (Entry 198)	18% (Entry 328B)
<b>8539</b>	<i>LED lamps</i>	12% (Entry 205)	18% (Entry 390)
<b>9405</b>	<i>LED lights or fixtures including LED lamps</i>	12% (Entry 226)	18% (Entry 438A)
<b>9405</b>	<i>LED (light emitting diode) driver and MCPCB (Metal Core Printed Circuit Board)</i>	12% (Entry 227)	18% (Entry 438A)



<b>Tariff item</b>	<b>Description of goods</b>	<b>Old Rate</b>	<b>New Rate</b>
<b>9017</b>	<i>Drawing, marking-out or mathematical calculating instruments (for example, drafting machines, pantographs, protractors, drawing sets, slide rules, disc calculators); instruments for measuring length, for use in the hand (for example, measuring rods and tapes, micrometers, callipers), not specified or included elsewhere in this chapter</i>	12 (Entry 217)	18 (Entry 413)
<b>10</b>	<i>All goods i.e., cereals, <b>pre-packaged and labelled</b></i>	Nil (Entry 59)	5 (Entry 45)

## Tar/ Ostomy appliances

<b>Tariff item</b>	<b>Description of goods</b>	<b>Old Rate</b>	<b>New Rate</b>
<b>2706</b>	<i>Tar distilled from coal, from lignite or from peat</i>	5% (Entry 163)	18% (Entry 30A )
<b>3006</b>	<i>Ostomy appliances including pouch or flange, stoma adhesive paste, barrier cream, irrigator kit, sleeves, belt, micro-pore tapes</i>	12% (Entry 65)	5% (Entry 181B)

## GST Rate change on pre-packaged items...

<i>Tariff item</i>	<i>Description of goods</i>	<i>Old Rate</i>	<i>New Rate</i>
<b>0202, 0203, 0204,0205, 0206, 0207,0208, 0209, 0210</b>	All goods other than fresh or chilled, <i>pre-packaged and labelled</i>	Nil (Entry 9)	5 (Entry 1)
<b>0303, 0304, 0305, 0306, 0307, 0308, 0309</b>	All goods other than fresh or chilled, <i>pre-packaged and labelled</i>	Nil (Entry 22)	5 (Entry 2)
<b>0403</b>	Curd, Lassi, Butter milk, <i>pre-packaged and labelled</i>	Nil (Entry 26)	5 (Entry 9A)
<b>0406</b>	Chena or paneer, <i>pre-packaged and labelled</i>	Nil (Entry 27)	5 (Entry 11)
<b>0409</b>	Natural honey, <i>pre-packaged and labelled</i>	Nil (Entry 29)	5 (Entry 13)
<b>0504</b>	All goods other than fresh or chilled, <i>pre-packaged and labelled</i>	Nil (Entry 30B)	5 (Entry 16)
<b>0713</b>	Dried leguminous vegetables, shelled, whether or not skinned or split, <i>pre-packaged and labelled</i>	Nil (Entry 45)	5 (Entry 25)

## ...GST Rate change on pre-packaged items...

<b>Tariff item</b>	<b>Description of goods</b>	<b>Old Rate</b>	<b>New Rate</b>
<b>0714</b>	<i>Manioc, arrowroot, salep, Jerusalem artichokes, sweet potatoes and similar roots and tubers with high starch or inulin content, frozen, whether or not sliced or in the form of pellets, <b>pre-packaged and labelled</b></i>	<i>Nil (Entry 46A)</i>	<i>5 (Entry 26)</i>
<b>08</b>	<i>Dried makhana, whether or not shelled or peeled, <b>pre-packaged and labelled</b></i>	<i>Nil (Entry 46B)</i>	<i>5 (Entry 30)</i>
<b>1001</b>	<i>Wheat and meslin, <b>pre-packaged and labelled</b></i>	<i>Nil (Entry 65)</i>	<i>5 (Entry 46)</i>
<b>1002</b>	<i>Rye, <b>pre-packaged and labelled</b></i>	<i>Nil (Entry 66)</i>	<i>5 (Entry 47)</i>

## ...GST Rate change on pre-packaged items...

<i>Tariff item</i>	<i>Description of goods</i>	<i>Old Rate</i>	<i>New Rate</i>
<b>1003</b>	<i>Barley, pre-packaged and labelled</i>	<i>Nil (Entry 67)</i>	<i>5 (Entry 48)</i>
<b>1004</b>	<i>Oats, pre-packaged and labelled</i>	<i>Nil (Entry 68)</i>	<i>5 (Entry 49)</i>
<b>1005</b>	<i>Maize (corn), pre-packaged and labelled</i>	<i>Nil (Entry 69)</i>	<i>5 (Entry 50)</i>
<b>1006</b>	<i>Rice, pre-packaged and labelled</i>	<i>Nil (Entry 70)</i>	<i>5 (Entry 51)</i>

## ...GST Rate change on pre-packaged items...

<b>Tariff item</b>	<b>Description of goods</b>	<b>Old Rate</b>	<b>New Rate</b>
<b>1007</b>	Grain sorghum, <i>pre-packaged and labelled</i>	Nil (Entry 71)	5 (Entry 52)
<b>1008</b>	Buckwheat, millet and canary seed; other cereals such as Jawar, Bajra, Ragi, <i>pre-packaged and labelled</i>	Nil (Entry 72)	5 (Entry 53)
<b>1101</b>	Wheat or meslin flour, <i>pre-packaged and labelled</i>	Nil (Entry 73)	5 (Entry 54)
<b>1102</b>	Cereal flours other than of wheat or meslin i.e., maize (corn) flour, Rye flour, etc., <i>pre-packaged and labelled</i>	Nil (Entry 74)	5 (Entry 55)
<b>1103</b>	Cereal groats, meal and pellets, including suji and dalia, <i>pre-packaged and labelled</i>	Nil (Entry 75)	5 (Entry 56)
<b>1105</b>	Meal, powder, Flour, flakes, granules and pellets of potatoes, <i>pre-packaged and labelled</i>	Nil (Entry 77)	5 (Entry 58)

## ...GST Rate change on pre-packaged items...

<b>Tariff item</b>	<b>Description of goods</b>	<b>Old Rate</b>	<b>New Rate</b>
<b>1106</b>	<i>Meal and powder of the dried leguminous vegetables of heading 0713 (pulses) [other than guar meal 1106 10 10 and guar gum refined split 0713 ], of sago or of roots or tubers of heading 0714 or of the products of Chapter 8, <b>pre-packaged and labelled</b></i>	<i>Nil (Entry 78)</i>	<i>5 (Entry 59)</i>
<b>1701 or 1702</b>	<i>Jaggery of all types including Cane Jaggery (gur), Palmyra Jaggery, pre-packaged and labelled; Khandsari Sugar, <b>pre-packaged and labelled</b></i>	<i>Nil (Entry 94)</i>	<i>5 (Entry 91A)</i>
<b>1904</b>	<i>Puffed rice, commonly known as Muri, flattened or beaten rice, commonly known as Chira, parched rice, commonly known as khei, parched paddy or rice coated with sugar or gur, commonly known as Murki, <b>pre-packaged and labelled</b></i>	<i>Nil (Entry 95)</i>	<i>5 (Entry 98A)</i>

## ...GST Rate change on pre-packaged items

<i>Tariff item</i>	<i>Description of goods</i>	<i>Old Rate</i>	<i>New Rate</i>
<b>2009 89 90</b>	<i>Tender coconut water, pre-packaged and labelled</i>	<i>Nil</i> <i>(Entry 97A)</i>	<i>12</i> <i>(Entry 41A)</i>
<b>3101</b>	All goods i.e., animal or vegetable fertilisers or organic fertilisers, <i>pre-packaged and labelled</i>	<i>Nil</i> <i>(Entry 108)</i>	<i>5</i> <i>(Entry 182)</i>



## Pre – packaged and Labelled

- ☺ *The expression ‘pre-packaged and labelled’ means a ‘pre-packaged commodity’ as defined in clauses (l) of section 2 of the Legal Metrology Act, 2009 (1 of 2010) where, the package in which the commodity is pre-packed or a label securely affixed thereto is required to bear the declarations under the provisions of the Legal Metrology Act, 2009 (1 of 2010) and the rules made thereunder*
- ☺ *Legal Metrology Act, 2009 has defined ‘pre-packaged commodity’ as*  
*“pre-packaged commodity” means a commodity which **without the purchaser being present** is placed in a package of whatever nature, whether sealed or not, so that the product contained therein has a pre-determined quantity*

## What do you mean by “without the purchaser being present”?



Question 1: Mrs. Anamika is ordering grocery from a Kirana shop over call



Question 2: Mr. India has ordered an iPhone from flipkart

Question 3: Mr. Anonymous went to buy 2 kgs rice from Super Mart. The worker went in the godown and packed rice of 2kgs and gave it to Mr. Anonymous



Question 4: Mr. Charan Singh packed rice in quantities of 5kgs each for further sale even when there was no buyer for purchase.

**Is physical presence of buyer required  
or existence of buyer required?**

## Exemptions from packaging and labelling

### The legal metrology (Packaged Commodities) Rules, 2011

**26. Exemption in respect of certain packages.**-Nothing contained in these rules shall apply to any package containing a commodity if—

- ⊙ the net weight or measure of the commodity is ten gram or ten millilitre or less, if sold by weight or measure;

Provided that the provisions of this clause shall not be applicable for tobacco and tobacco products

- ⊙ any package containing fast food items packed by restaurant or hotel and the like;
- ⊙ it contains scheduled formulations and non-scheduled formulations covered under the Drugs (Price Control) Order, 2013 made under section 3 of the Essential Commodities Act, 1955 (10 of 1955):

Provided that no exemption shall be applicable to medical devices declared as drugs

- ⊙ any thread which is sold in coil to handloom weavers

## Non Applicability of Chapter

3. Application of Chapter.- The provisions of **this chapter shall not apply to-**

- ⊙ (a) packages of commodities containing quantity of more than 25 kilogram or 25 litre;
- ⊙ (b) cement, fertilizer and agricultural farm produce sold in bags above 50 kilogram; and
- ⊙ (c) packaged commodities meant for industrial consumers or institutional consumers.”.

# Who are industrial and institutional consumers?

## Industrial consumers

- ⌚ “industrial consumer” means the consumer who buys packaged commodities directly from the manufacturer or from an importer or from wholesale dealer for use by that industry and the package shall have declaration ‘not for retail sale’

## Institutional consumers

- ⌚ “institutional consumer” means the institution which buys packaged commodities bearing a declaration ‘not for retail sale’, directly from the manufacturer or from an importer or from wholesale dealer for use by that institution and not for commercial or trade purposes;

## Questions

What if there is a requirement of packaging & labelling under law, however, the packaging & labelling not done. Is GST still leviable?

What if there is a no requirement of packaging & labelling under law, however, the packaging & labelling done? Is GST still leviable?

## Miscellaneous rate changes

<b>Tariff item</b>	<b>Description of goods</b>	<b>Old Rate</b>	<b>New Rate</b>
<b>4907</b>	.... ; Cheques, loose or in book form	Nil (Entry 118)	18 (Entry 157B)
<b>4905</b>	Maps and hydrographic or similar charts of all kinds, including atlases, wall maps, topographical plans and globes, printed	Nil (Entry 122)	12 (Entry 125A)
<b>5305 to 5308</b>	.....; coir pith compost, pre-packaged and labelled	Nil (Entry 132A)	5 (Entry 215)
<b>8807</b>	Parts of goods of heading 8801	Nil (Entry 141)	18 (Entry 406A)

## Insertion of exemption entry

<b>Chapter, Section, Heading, Sub – heading, Tariff item</b>	<b>Description of Service</b>	<b>Old Rate</b>	<b>New Rate</b>
<b>Any Chapter</b>	<p><i>Goods specified in the List annexed to this Table required in connection with:</i></p> <p><i>(1) <b>Petroleum operations</b> undertaken under petroleum exploration licenses or mining leases, granted by the Government of India or any State Government to the Oil and Natural Gas Corporation or Oil India Limited on nomination basis, or</i></p> <p><i>(2) Petroleum operations undertaken under specified contracts, or</i></p> <p><i>(3) Petroleum operations undertaken under specified contracts under the New Exploration Licensing Policy, or</i></p> <p><i>(4) Petroleum operations undertaken under specified contracts under the Marginal Field Policy (MFP), or</i></p> <p><i>(5) Coal bed methane operations undertaken under specified contracts under the Coal Bed Methane Policy.</i></p>	5 (Same entry)	12 (Same entry)



# Increasing GST Revenue Collection



More than  
2 times

2017 – 18 (Q1: July to Sep)	2022 (Q1: April to June)
Rs. 1,89,697 crore	Rs. 4,53,041 crore

**2017-18 (Q1) vs 2022 (Q1)**

2017-18 (full year)	2021-22 (full year)
Rs. 7,19,078 crore	Rs. 14,83,292 crore

**2017-18 (full) vs 2021-22 (full)**

Based on increase in rates, it can be forecasted that GST Revenue collection will grow further

## **NO REFUND- INVERTED TAX STRUCTURE**

Notification No. 09/2022 – Central Tax (Rate) dated 13.07.2022

## No refund on following items...

<b>Sr. No.</b>	<b>Chapter, Section, Heading, Sub-heading, Tariff item</b>	<b>Description of goods</b>
1A.	<b>1507</b>	<i>Soya-bean oil and its fractions, whether or not refined, but not chemically modified</i>
1B.	<b>1508</b>	<i>Ground-nut oil and its fractions, whether or not refined, but not chemically modified.</i>
1C.	<b>1509</b>	<i>Olive oil and its fractions, whether or not refined, but not chemically modified.</i>
1D.	<b>1510</b>	<i>Other oils and their fractions, obtained solely from olives, whether or not refined, but not chemically modified, including blends of these oils or fractions with oils or fractions of heading 1509</i>
1E.	<b>1511</b>	<i>Palm oil and its fractions, whether or not refined, but not chemically modified.</i>
1F.	<b>1512</b>	<i>Sunflower-seed, safflower or cotton-seed oil and fractions thereof, whether or not refined, but not chemically modified.</i>
1G.	<b>1513</b>	<i>Coconut (copra), palm kernel or babassu oil and fractions thereof, whether or not refined, but not chemically modified.</i>

## ...No refund on following items...

<b>Sr. No.</b>	<b>Chapter, Section, Heading, Sub-heading, Tariff item</b>	<b>Description of goods</b>
1H.	<b>1514</b>	<i>Rape, colza or mustard oil and fractions thereof, whether or not refined, but not chemically modified.</i>
1I.	<b>1515</b>	<i>Other fixed vegetable or microbial fats and oils (including jojoba oil) and their fractions, whether or not refined, but not chemically modified.</i>
1J.	<b>1516</b>	<i>Vegetable fats and oils and their fractions, partly or wholly hydrogenated, inter- esterified, re-esterified or elaidinised, whether or not refined, but not further prepared.</i>
1K.	<b>1517</b>	<i>Edible mixtures or preparations of vegetable fats or vegetable oils or of fractions of different vegetable fats or vegetable oils of this Chapter, other than edible fats or oils or their fractions of heading 1516</i>
1L.	<b>1518</b>	<i>Vegetable fats and oils and their fractions, boiled, oxidised, dehydrated, sulphurised, blown, polymerised by heat in vacuum or in inert gas or otherwise chemically modified, excluding those of heading 1516</i>

## ...No refund on following items

<b>Sr. No.</b>	<b>Chapter, Section, Heading, Sub-heading, Tariff item</b>	<b>Description of goods</b>
1M.	<b>2701</b>	<i>Coal; briquettes, ovoids and similar solid fuels manufactured from coal</i>
1N.	<b>2702</b>	<i>Lignite, whether or not agglomerated, excluding jet</i>
1O.	<b>2703</b>	<i>Peat (including peat litter), whether or not agglomerated</i>

# EXEMPTION FROM FILING ANNUAL RETURN

Notification No. 10/2022 – CT dated 5<sup>th</sup> July 2022

## Filing of Annual return

Exemption from filing Annual Return in Form GSTR-9 for F.Y. 2021-22 only

🕒 If turnover of registered person  $\leq$  Rs. 2 crores

# EXTENSION OF DUE DATES FOR COMPOSITION DEALERS

Notification No. 11/2022 – CT and Notification no. 12/2017 – CT dated 5<sup>th</sup> July



## Extension of Due Date

For payment of tax (Form GST CMP-08):

- ☑ The due date for the quarter ending June 2022
- ☑ Is extended to **31.07.2022**

Waiver of late fees for Form GSTR-4:

- ☑ The late fees for FY 21-22
- ☑ Has been waived till 28.07.2022

## DESH in place of SEZ...

- ☑ Hon'ble Finance Minister had announced in its budget speech 2022 that a new law will be introduced to replace SEZ
- ☑ Pursuant to announcement, a draft bill called “The Development (Enterprise and Services) Hubs Bill, 2022” (DESH) is introduced
- ☑ SEZ law is revamped because WTO's dispute settlement panel has ruled that India's export-related schemes, including the SEZ Scheme, were inconsistent with WTO rules since they directly linked tax benefits to exports.
- ☑ Government can identify an area and notify the same as Development Hub

## ....DESH in place of SEZ...

- ☑ DESH are introduced with a wider objective of boosting domestic manufacturing and job creation in addition to promote exports
- ☑ Positive Net Foreign Exchange requirement will be relaxed so that selling in domestic area will become more easy
- ☑ States will also be able to participate and send recommendations for DESH to Central Board for approval
- ☑ SEZ authority will be called as Development Hub Authority

## ....DESH in place of SEZ

- ④ Central Government may prescribe a single application form for obtaining any license, permission, registration or approval under one or more Central Acts
- ④ Government may prescribe a single form for furnishing returns or information under one or more Central Acts
- ④ Tax Benefits:
  - Exemption/Deferral of customs duty on imports to carry on authorised operations
  - Exemption from customs duty on exports
  - Exemption from excise duty on goods supplied from DTA to Development Hub used in carrying out authorised operations
  - Development hubs will enjoy the same benefits available to SEZ under GST law
  - Exemption from taxes, duties or cess under various enactments like The Coffee Act, 1942, The Tea Act, 1953, The Textiles Committee Act, 1963, etc.

# E-INVOICING

Notification no. 17/2022 – Central Tax dated 01.08.2022

## Amendments in threshold limit for applicability of E-invoice

<b>Sr. No.</b>	<b>Notification No.</b>	<b>Period</b>	<b>Aggregate Annual Turnover Limit in Rs.</b>
1	13/2020 CT dated 21.03.2020	01.10.2020 to 31.12.2020	500 crore
2	88/2020 CT dated 10.11.2020	01.01.2021 to 31.03.2021	100 crore
3	05/2021 CT dated 08.03.2021	01.04.2021 to 31.03.2022	50 crore
4	01/2022 CT dated 24.02.2022	01.04.2022 to 30.09.2022	20 crore

## E-invoicing - Applicability

- ⌚ E-invoicing is applicable to all the persons having aggregate annual turnover of Rs. 10 crore or more in any financial year from 2017-18 onwards w.e.f. 1.10.2022
  
- ⌚ Below persons are exempted from issuing e-invoice :
  - Insurance, Banking or Financial Institution including NBFC
  - Goods Transport Agency transporting goods by road
  - Supplier of passenger transportation service
  - Person supplying services by of admission to exhibition of cinematographic film in multiplex screen
  - SEZ Units

***In addition to E-invoice, do we still  
require to issue E-way bill?***





# DECLARATION TO BE PROVIDED ON TAX INVOICE BY CERTAIN PERSONS

Insertion in Rule 46 of clause(s)

## Declaration on tax invoice to be provided by certain people

Insertion of declaration in Rule 46 of CGST Rules, 2017-

- ☞ *“(s) a declaration as below, that invoice is not required to be issued in the manner specified under sub-rule (4) of rule 48, in all cases where an invoice is issued, other than in the manner so specified under the said sub-rule (4) of rule 48, by the taxpayer having aggregate turnover in any preceding financial year from 2017-18 onwards more than the aggregate turnover as notified under the said sub-rule (4) of rule 48—*

*I/We hereby declare that though our aggregate turnover in any preceding financial year from 2017-18 onwards is more than the aggregate turnover notified under sub-rule (4) of rule 48, we are not required to prepare an invoice in terms of the provisions of the said sub-rule.”*

**Inserted vide Notification No. 14/2022 – CT dated 05.07.2022**

**Effective from 05.07.2022**

## Who is required to provide declaration?...

### 🕒 Rule 48(4) of CGST Rules, 2017-

– (4) *The invoice shall be prepared by such class of registered persons as may be notified by the Government, on the recommendations of the Council, by including such particulars contained in FORM GST INV-01 after obtaining an Invoice Reference Number by uploading information contained therein on the Common Goods and Services Tax Electronic Portal in such manner and subject to such conditions and restrictions as may be specified in the notification.*

***Provided*** that the Commissioner may, on the recommendations of the Council, by notification, exempt a person or a class of registered persons from issuance of invoice under this sub-rule for a specified period, ***subject to such conditions and restrictions as may be specified in the said notification.***

## ...Who is required to provide declaration?

As per Notification No. 13/2020 CT dt 21.03.2020 registered persons covered by sub-rule (2), (3), (4) & (4A) of Rule 54 are exempted from issuing e-invoice, such as –

- ☑ Insurance, Banking or Financial Institution including NBFC [Rule 54(2)]
- ☑ Goods Transport Agency transporting goods by road [Rule 54(3)]
- ☑ Supplier of passenger transportation service [Rule 54(3)]
- ☑ Person supplying services by way of admission to an exhibition of cinematographic film in multiplex screen
- ☑ SEZ Unit as per (Notification No. 61/2020 CT dt 30/07/20)

# OCEAN FREIGHT (MOHIT MINERALS CASE LAW)

## Key facts

**Supplier of Goods**

Ocean Freight Services

**Shipping Company**

**over seas**

Goods on CIF basis

**Mohit Minerals**

**India**

## NOT. 10/2017 – IT (R) dated 28.06.2017

*G.S.R. 685(E). -In exercise of the powers conferred by sub-section (3) of section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government on the recommendations of the Council hereby notifies that on categories of supply of services mentioned in column (2) of the Table below, supplied by a person as specified in column (3) of the said Table, the whole of integrated tax leviable under section 5 of the said Integrated Goods and Services Tax Act, shall be paid on reverse charge basis by the recipient of the such services as specified in column (4) of the said Table:-*

<b>Sl. No.</b>	<b>Category of Supply of Services</b>	<b>Supplier of service</b>	<b>Recipient of Service</b>
10	Services supplied by a person located in non- taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India.	A person located in non-taxable territory	Importer, as defined in clause (26) of section 2 of the Customs Act, 1962(52 of 1962), located in the taxable territory.

## Deemed value of transportation services @ 10% of CIF value

### **NOT. 8/2017 – IT (R) dated 28.06.2017**

- ⌚ 4. *Where the value of taxable service provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India is not available with the person liable for paying integrated tax, the same shall be **deemed to be 10 % of the CIF value** (sum of cost, insurance and freight) of imported goods.*



## ISSUE

**Is GST payable on  
ocean freight by  
importer of goods  
when imports are  
made under CIF  
contracts???**

# Challenge to the territorial jurisdiction

<b>Argument by Department</b>	Parliament has powers to legislate over the transactions occurring extra-territorially provided such transactions have a <b>real connection with India</b> .
<b>Argument by Respondent</b>	Under CIF contract, the ocean freight services are supplied by Foreign Shipping Company to a Foreign Supplier. Hence, the <b>transaction is extra territorial in nature</b> as it takes place beyond the territory of India
<b>Supreme Court's Observation</b>	<ol style="list-style-type: none"><li>1. The destination of the goods is India and thus, a clear territorial nexus is established with the event occurring outside the territory;</li><li>2. The services are rendered for the benefit of the Indian importer.</li><li>3. Since the destination of goods is India, the statute itself is broad enough to cover a taxable event that has extra-territorial aspects, which bears a nexus to India. <i>[Para 108 &amp; 109]</i></li></ol>

# Implications and takeaways

- ⊗ Out and out transactions in the absence of Schedule III
- ⊗ Services consumed outside India
- ⊗ Services rendered for the benefit of the importer
  - Consideration irrelevant
  - Contract irrelevant
    - A stranger to the contract also can be made liable?

## Provisions of IGST ACT

### S. 5- Levy and collection.-

(3) *The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.*

(4) *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, and all the provisions of this 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.*

## Implications and takeaways

- ⌚ Weightage of notifications
- ⌚ Even deeming fiction can be introduced through Notifications
- ⌚ The tax position can be subject to frequently issued notifications

## Challenge to “import of services”

<b>Argument by Department</b>	The ocean freight services are import of services in terms of S. 2(11) of CGST Act read with S. 13(9) of IGST Act
<b>Argument by Respondent</b>	<ul style="list-style-type: none"><li>• One of the conditions specified in S. 2(11) of IGST Act is that “recipient should be located in India”. In the present case, recipient is foreign exporter. Hence, there is no “import of services” in present case</li><li>• S. 7(1)(b) of CGST Act does not cover those import of services which are procured without consideration. In CIF contracts, the consideration for ocean freight flows directly from foreign exporter directly to foreign shipping company. No consideration flows from Indian importer.</li></ul>
<b>Supreme Court’s Conclusion</b>	On a conjoint reading of Sections 2(11) and 13(9) of the IGST Act, read with Section 2(93) of the CGST Act, the import of goods by a CIF contract constitutes an “inter-state” supply which can be subject to IGST where the importer of such goods would be the recipient of shipping service. <i>[Para 148(ii)]</i> .

## IGST Refers to Customs Act

### Section 5. Levy and collection.-

*(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person:*

***Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.***

# Challenge to “value of supply” provided through notification

<b>Argument by Department</b>	S. 15(4) and S. 15(5) of CGST Act empowers Government to prescribe the value of supply by way of a delegated legislation.
<b>Argument by Respondent</b>	The value of supply needs to be determined in terms of S. 15(1) of CGST Act and not by way of a delegated legislation. Hence, para 4 of <b>Noti. No. 8/2017-IT (R)</b> dated 28.06.2017 needs to be <b>struck down</b>
<b>Supreme Court's Observation</b>	The delegation is envisaged in the statutory mechanism. It would be unduly restrictive interpretation if the value of supply is determined only through rules, and not by a notification. Thus, the impugned Noti. No. 8/2017 <b>cannot be struck down for excessive delegation</b> when it prescribes 10 % of the CIF value as the mechanism for imposing tax on a reverse charge basis. <i>[Para 94]</i>



# Challenge on the basis of “composite supply”

<b>Argument by Department</b>	IGST paid on freight element as import of goods is <b>different and separate</b> from RCM liability.
<b>Argument by Respondent</b>	The transaction with the foreign exporter is already subject to IGST under S. 5 of the IGST Act r.w. S. 3(7) and 3(8) of the Customs Tariff Act as “supply of goods”. While paying IGST on import of goods, value of transportation is already factored and taxed as <b>composite supply</b> .
<b>Supreme Court’s Conclusion</b>	The impugned levy imposed on the ‘service’ aspect of the transaction is in violation of the principle of ‘composite supply’ enshrined under S. 2(30) read with S. 8 of the CGST Act. Since the Indian importer is liable to pay IGST on the ‘composite supply’, comprising of supply of goods and supply of services of transportation, insurance, etc. in a CIF contract, <b>a separate levy on the Indian importer for the ‘supply of services’ by the shipping line would be in violation of S. 8 of the CGST Act. [Para 148(v)].</b>

## Composite Supply - Meaning

### *S. 2(30) of CGST Act:*

- ⌚ (30) "composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;*
- ⌚ Illustration.- Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply;*

## Implications and takeaways

- ☑ Too much thrust on composite supply
- ☑ Is composite supply a choice or a compulsion

# VALUE OF LAND?



## Value of land in total value of supply...

- ① ABC Pvt Ltd had sold a flat 1000 sq. ft. of flat for Rs. 2,00,00,000 (i.e. Rs. 20,000 per sq. ft.) in its newly started project
- ① The rate of Rs. 20,000 per sq. ft. consists of the following two components:
  - Rs. 16,000 for land
  - Rs. 4,000 for construction
- ① However, the above two components were not separately recorded in the agreement and a single lump sum price of Rs. 2 crs was charged
- ① How much GST is payable on the flat sold by ABC Pvt Ltd?

## Value of land in total value of supply...

- ⊙ Deemed value of land – Notification 11/2017- CT(R) dated 28.06.2017 as amended by notification no. 3/2019 CT(R) dated 29.03.2019
  - *Entries of construction services provide as under:*
    - *(Provision of Paragraph 2 of this notification **shall** apply for valuation of this service)*
  - *2. In case of supply of service specified in column (3), in item (i); (i) (ia), (ib), (ic), (id), (ie) and (if) against serial number 3 of the Table above, involving transfer of land or undivided share of land, as the case may be, the value of such supply shall be equivalent to the total amount charged for such supply less the value of transfer of land or undivided share of land, as the case may be, and the value of such transfer of land or undivided share of land, as the case may be, in such supply shall be **deemed to be one third of the total amount charged for such supply.***

## ...Value of land in total value of supply...

### **MUNJAAL MANISHBHAI BHATT 2022 (5) TMI 397 - GUJARAT HIGH COURT**

- ① 122. In the result, the impugned Paragraph 2 of the Notification No. 11/2017-Central Tax (Rate) dated 28.6.2017 and identical notification under the Gujarat Goods and Services Tax Act, 2017, which provide for a mandatory fixed rate of deduction of 1/3rd of total consideration towards the value of land is ultra-vires the provisions as well as the scheme of the GST Acts. *Application of such mandatory uniform rate of deduction is discriminatory, arbitrary and violative of Article 14 of the Constitution of India.*
  
- ① 123. While we so conclude, the question is whether the impugned paragraph 2 needs to be struck down or the same can be saved by reading it down. In our considered view, *while maintaining the mandatory deduction of 1/3rd for value of land is not sustainable in cases where the value of land is clearly ascertainable or where the value of construction service can be derived with the aid of valuation rules, such deduction can be permitted at the option of a taxable person particularly in cases where the value of land or undivided share of land is not ascertainable.*

## ...Value of land in total value of supply...

- ⊙ As per section 15(1)
  - The **value of a supply of goods or services** or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply
  
- ⊙ Schedule III Activities or transactions **which shall be treated neither as a supply of goods nor a supply of services**
  - **Sale of land** and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.



...Value of land in total value of supply...

🕒 ***Commissioner of Service tax vs. Bhayana Builders (P) Ltd. 2018 (10) GSTL 118 (SC)***

- 18. In the first instance, no material is produced before us to justify that aforesaid basis of the formula was adopted while issuing the notification. In the absence of any such material, it would be anybody's guess as to what went in the mind of the Central Government in issuing these notifications and prescribing the service tax to be calculated on a value which is equivalent to 33% of the gross amount

## ... Value of land in total value of supply...

- ⌚ As per section 15(4) of CGST Act
  - *(4) Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.*
- ⌚ Rule 27 of CGST Rules prescribes value of supply as ‘open market value’ in a situation where consideration is not wholly in money
- ⌚ As per explanation to Rule 35 of CGST Rules
  - *“(a) "open market value" of a supply of goods or services or both means the full value in money, excluding the integrated tax, central tax, State tax, Union territory tax and the cess payable by a person in a transaction, where the supplier and the recipient of the supply are not related and the price is the sole consideration, to obtain such supply at the same time when the supply being valued is made”*
- ⌚ Stamp Duty value may be taken as open market value as the same is also adopted by State Government

## Whether value of land notification can be retrospectively amended?

### ☑ ***Govind Saran Ganga Saran Vs. CST [1985] 155 ITR 144 (SC)***

- The taxable event, the person liable to pay the tax, the rate of tax and the value on which the tax is payable are the essential ingredients of a taxation statute and they have to be clearly and unambiguously conveyed. If there is any ambiguity regarding any of these ingredients in a taxation statute, there is no tax in law

### ☑ ***Larsen and Toubro Ltd [2015] 60 taxmann.com 354 (SC)***

- Works contract cannot be taxed prior to 01.06.2007 in absence of valuation Rule like Rule 2A of the Service Tax (Determination of Value) Rules, 2006

### ☑ ***Suresh Kumar Bansal [2016] 70 taxmann.com 55 (Delhi) pending in SC***

- Purchase of an under-construction flat was held to be not leviable to tax in absence of a valuation mechanism to deduct the value towards land
- Subsequent to this decision, Rule 2A of the said rule was amended retrospectively so as to provide for a valuation mechanism for deduction of land

## GST Council making rules and amending rules



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