



**THE INSTITUTE OF
Company Secretaries of India**
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

SUPPLEMENT PROFESSIONAL PROGRAMME (NEW SYLLABUS)

for

June, 2022 Examination

ADVANCED TAX LAWS (PART I – INDIRECT TAXES)

MODULE 1

PAPER 2

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Note: Students are also required to update themselves on all the relevant Rules, Notifications, Circulars, Clarifications, etc. issued by the CBIC on or before 30th November, 2021 pertaining to GST and Customs Act, 1962.

Lesson 1

An Overview on Goods and Services Tax ‘GST’

CASE LAW

September 29, 2020	National Highways Authority of India vs. Sahakar Global Limited	Delhi High Court
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GST implementation being a “change in law” qualifies as a *force majeure* event

Facts of the case:

The Appellant invited bids from entities interested in undertaking toll collection from users. The bid by Respondent was accepted by the Appellant. The parties entered into a contract agreement on June 30, 2017 and accordingly the project site was duly handed over to the Respondent on July 2, 2017. However, two days prior to the execution of the agreement, i.e., on June 28, 2017, Notification No. 9/2017-Central Tax was issued stating that the CGST Act, 2017 would come into effect from July 1, 2017, due to which, there was a heavy fall in the traffic volume of the commercial transport vehicles and user fee collection on the highway owing to the implementation of GST. The reduction in toll collections rendered the Respondent unable to deposit weekly remittances on time and it tried to plead its case with the Appellant in order to revisit their agreement pertaining to toll collections or seek grant of leniency.

Subsequently, the Respondent, citing implementation of GST as a *force majeure* event covered under the contract agreement, submitted a statement of the losses suffered by it until July 9, 2017. The Appellant refused to accept the Respondent’s claims and denied that the implementation of GST was a *force majeure* event and shortfall in toll collection was a business risk associated with the work, and the Respondent was required to forthwith deposit the outstanding toll collections with penal interest.

Judgment:

The Respondent invoked arbitration wherein the Learned Arbitrator held that implementation of GST was indeed a *force majeure* event where under it accepted GST w.e.f. July 1, 2017 as a ‘change in law’ falling under the ambit of force majeure as envisaged in the contract agreement and the Appellant was liable to pay compensation for loss generated in revenue triggered by reduced toll collections due to implementation of GST.

Delhi High Court held that, the date of implementation of GST was not known and could not be speculated by anybody. It is a ‘change in law’ qualifying as a force majeure event.

Lesson 2

Supply

1. Clarification regarding applicability of GST on supply of food in Anganwadis and Schools

Circular No. 149/05/2021 – GST, dated June 17, 2021

Clarification on applicability of GST on the issues as to whether serving of food in schools under Mid-Day Meals Scheme would be exempt if such supplies are funded by government grants and/or corporate donations. The issue was examined by GST Council in its 43rd meeting held on 28th May, 2021.

Entry 66 clause (b)(ii) of notification No. 12/2017-Central Tax (Rate) dated 28th June, 2017, exempts Services provided to an educational institution, by way of catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory. This entry applies to pre-school and schools.

Accordingly, as per said entry 66, any catering service provided to an educational institution is exempt from GST. The entry further mentions that such exempt service includes mid- day meal service as specified in the entry. The scope of this entry is thus wide enough to cover any serving of any food to a school, including pre-school. Further, an Anganwadi interalia provides pre-school non-formal education. Hence, anganwadi is covered by the definition of educational institution (as pre-school).

As per recommendation of the GST Council, it is clarified that services provided to an educational institution by way of serving of food (catering including mid- day meals) is exempt from levy of GST irrespective of its funding from government grants or corporate donations [under said entry 66 (b)(ii)]. Educational institutions as defined in the notification include anganwadi. Hence, serving of food to anganwadi shall also be covered by said exemption, whether sponsored by government or through donation from corporates.

Brief Analysis

It is clarified that services provided to an educational institution by way of serving of food (catering including mid-day meals) is exempt from levy of GST irrespective of its funding from government grants or corporate donations. Educational institutions as defined in the notification include anganwadi. Hence, serving of food to anganwadi shall also be covered by said exemption, whether sponsored by government or through donation from corporates.

For further details please visit: https://www.cbic.gov.in/resources/htdocs-cbec/gst/Circular_Refund_149.pdf

2. Clarification regarding applicability of GST on the activity of construction of road where considerations are received in deferred payment (annuity)

Circular No. 150/06/2021 – GST, dated June 17, 2021

GST is exempt on service, falling under heading 9967 (service code), by way of access to a road or a bridge on payment of annuity. Heading 9967 covers “supporting services in transport” under which code 996742 covers “operation services of National Highways, State Highways, Expressways, Roads & streets; bridges and tunnel operation services”. Entry 23 of said notification exempts “service by way of access to a road or a bridge on payment of toll”. Together the entries 23 and 23A exempt access to road or bridge, whether the consideration are in the form of toll or annuity. It is hereby clarified that Entry 23A of notification No. 12/2017-CT(R) does not exempt GST on the annuity (deferred payments) paid for construction of roads.

For further details please visit: https://www.cbic.gov.in/resources/htdocs-cbec/gst/Circular_Refund_150.pdf

3. Clarification regarding GST on supply of various services by Central and State Board (such as National Board of Examination)

Circular No. 151/07/2021 – GST, dated June 17, 2021

GST is exempt on services provided by Central or State Boards (including the boards such as NBE) by way of conduct of examination for the students, including conduct of entrance examination for admission to educational institution. Therefore, GST shall not apply to any fee or any amount charged by such Boards for conduct of such examinations including entrance examinations. GST is also exempt on input services relating to admission to, or conduct of examination, such as online testing service, result publication, printing of notification for examination, admit card and questions papers etc., when provided to such Boards.

For further details please visit: https://www.cbic.gov.in/resources/htdocs-cbec/gst/Circular_Refund_151.pdf

4. Clarification regarding rate of tax applicable on construction services provided to a Government Entity, in relation to construction such as of a Ropeway on turnkey basis

Circular No. 152/08/2021 – GST, dated June 17, 2021

Works contract service provided by way of construction such as of rope way shall fall under entry at Sl. No. 3(xii) of notification 11/2017-(CTR) and attract GST at the rate of 18%.

For further details please visit: https://www.cbic.gov.in/resources/htdocs-cbec/gst/Circular_Refund_152.pdf

5. GST on milling of wheat into flour or paddy into rice for distribution by State Governments under PDS

Circular No. 153/09/2021 – GST, dated June 17, 2021

In case the supply of service by way of milling of wheat into flour or of paddy into rice, is not eligible for exemption under Sl. No. 3 A of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 for the reason that value of goods supply in such a composite supply exceeds 25%, then the applicable GST rate would be 5% if such composite supply is provided to a registered person, being a job work service (entry No. 26 of notification No. 11/2017- Central Tax (Rate) dated 28.06.2017). Combined reading of the definition of job-work [section 2(68), 2(94), 22, 24, 25 and section 51] makes it clear that a person registered only for the purpose of deduction of tax under section 51 of the CGST Act is also a registered person for the purposes of the said entry No. 26, and thus said supply to such person is also entitled for 5% rate.

For further details please visit: https://www.cbic.gov.in/resources/htdocs-cbec/gst/Circular_Refund_153.pdf

6. GST on service supplied by State Government to their undertakings or PSUs by way of guaranteeing loans taken by them

Circular No. 154/10/2021 – GST, dated June 17, 2021

Entry No. 34A of Notification no. 12/2017-Central Tax (Rate) dated 28.06.2017 exempts “Services supplied by Central Government, State Government, Union territory to their undertakings or Public Sector Undertakings (PSUs) by way of guaranteeing the loans taken by such undertakings or PSUs from the banking companies and financial institutions.”

For further details please visit: https://www.cbic.gov.in/resources/htdocs-cbec/gst/Circular_Refund_154.pdf

7. Clarification regarding GST rate on laterals/parts of Sprinklers or Drip Irrigation System

Circular No. 155/11/2021 – GST, dated June 17, 2021

The GST rate on Sprinklers or Drip Irrigation System along with their laterals/parts are governed by S.No. ‘195B’ under Schedule II of notification No. 1/2017- Central Tax (Rate), dated 28th June, 2017 which is 6%. The intention of this entry has been to cover laterals (pipes to be used solely with with sprinklers/drip irrigation system) and such parts that are suitable for use solely or principally with 'sprinklers or drip irrigation system', as classifiable under heading 8424 as per Note 2 (b) to Section XVI to the HSN. Hence, laterals/parts to be used solely or principally with sprinklers or drip irrigation system, which are classifiable under heading 8424, would attract a GST of 12%, even if supplied separately.

For further details please visit: https://www.cbic.gov.in/resources/htdocs-cbec/gst/Circular_Refund_155.pdf

8. Clarification on doubts related to scope of “Intermediary”

Circular No. 159/15/2021 – GST, dated September 20, 2021

‘Intermediary’ has been defined in the sub-section (13) of section 2 of the Integrated Goods and Services Tax Act, 2017 as under–

“Intermediary means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account.”

Primary Requirements for intermediary services

The concept of intermediary services, as defined above, requires some basic prerequisites, which are discussed below:

Minimum of Three Parties: By definition, an intermediary is someone who arranges or facilitates the supplies of goods or services or securities between two or more persons. It is thus a natural corollary that the arrangement requires a minimum of three parties, two of them transacting in the supply of goods or services or securities (the main supply) and one arranging or facilitating (the ancillary supply) the said main supply. An activity between only two parties can, therefore, NOT be considered as an intermediary service. An intermediary essentially “arranges or facilitates” another supply (the “main supply”) between two or more other persons and, does not himself provide the main supply.

Two distinct supplies: As discussed above, there are two distinct supplies in case of provision of intermediary services;

- (1) Main supply, between the two principals, which can be a supply of goods or services or securities;
- (2) Ancillary supply, which is the service of facilitating or arranging the main supply between the two principals. This ancillary supply is supply of intermediary service and is clearly identifiable and distinguished from the main supply.

Brief Analysis

The definition of intermediary services specifically mentions that intermediary “does not include a person who supplies such goods or services or both or securities on his own account”. Use of word “such” in the definition with reference to supply of goods or services refers to the main supply of goods or services or both, or securities, between two or more persons, which are arranged or facilitated by the intermediary.

It implies that in cases wherein the person supplies the main supply, either fully or partly, on principal to principal basis, the said supply cannot be covered under the scope of “intermediary”.

For further details please visit:

9. Clarification regarding GST rates & classification (goods) based on the recommendations of the GST Council in its 45th meeting

Circular No. 163/19/2021 – GST, dated October 06, 2021

Clarification with reference to GST levy, related to the following are being issued through this circular:

- i. Fresh vs dried fruits and nuts;
- ii. Classification and applicable GST rates on Tamarind seeds;
- iii. Coconut vs Copra;
- iv. Classification and applicable GST rate on Pure henna powder and leaves, having no additives;
- v. Scented sweet supari and flavored and coated illaichi;
- vi. Classification of Brewers' Spent Grain (BSG), Dried Distillers' Grains with Soluble [DDGS] and other such residues and applicable GST rate;
- vii. GST rates on goods [miscellaneous pharmaceutical products] falling under heading 3006;
- viii. Applicability of GST rate of 12% on all laboratory reagents and other goods falling under heading 3822;
- ix. Requirement of Original/ import Essentiality certificate, issued by the Directorate General of Hydrocarbons (DGH) on each inter-State stock transfer of goods imported at concessional GST rate for petroleum operations;
- x. External batteries sold along with UPS Systems/ Inverter;
- xi. Specified Renewable Energy Projects;
- xii. Fiber Drums, whether corrugated or non-corrugated.

For further details please visit: https://www.cbic.gov.in/resources/htdocs-cbec/gst/Circular%20No.%20163_18_2021_GST.pdf;jsessionid=42CA470AD7692AE0E40F3BFB414E9285

10. Clarification regarding applicable GST rates & exemptions on certain services

Circular No. 164/20/2021 – GST, dated October 06, 2021

The issue-wise clarifications are given below:

- **Services by cloud kitchens/central kitchens:**

Clarification regarding the classification and rate of GST on services rendered by Cloud kitchen or Central Kitchen.

The word ‘restaurant service’ is defined in Notification No. 11/2017 – CTR as below: - ‘Restaurant service’ means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied.

The explanatory notes to the classification of service state that ‘restaurant service’ includes services provided by Restaurants, Cafes and similar eating facilities including takeaway services, room services and door delivery of food. It is clarified that service provided by way of cooking and supply of food, by cloud kitchens/central kitchens are covered under ‘restaurant service’, as defined in notification No. 11/2017- Central Tax (Rate) and attract 5% GST [without ITC].

- **Coaching services supplied by coaching institutions and NGOs under the central sector scheme of ‘Scholarships for students with Disabilities’:**

It is clarified that services provided by any institutions/ NGOs under the central scheme of ‘Scholarships for students with Disabilities’ where total expenditure is borne by the Government is covered under entry 72 of notification No. 12/2017-Central Tax (Rate) dated 28th June, 2017 and hence exempt from GST.

For further details please visit: [https://www.cbic.gov.in/resources/htdocs-cbec/gst/Circular%20No.%20164 2021 GST.pdf](https://www.cbic.gov.in/resources/htdocs-cbec/gst/Circular%20No.%20164%202021%20GST.pdf)

CASE LAW

November 09, 2021	In re Airbus Group India (P) Limited	GST AAAR Karnataka
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Services provided by ‘Airbus Group India’ are Intermediary Services and liable to 18% GST

Facts of the case:

The Appellant has approached Karnataka Appellate Authority for Advance Ruling in appeal for determination of issue as to whether the amount of services rendered by the appellant to Airbus SAS France would be construed as those of an intermediary as defined under Section 2(13) of the CGST Act, 2017, or otherwise. Airbus France has entered into an “Intra-Group Services Agreement” with effect from 1st April 2020 with the Appellant in terms of which the Appellant is required to perform two functions; i.e (i) Procurement Operations and (ii) Procurement Transformation & Central Services. For the above said services, the Appellant would be remunerated with a service fee computed on a ‘cost plus mark-up’ basis.

In order to obtain a ruling on the classification of the service provided by them, the Appellant approached the Authority for Advance Ruling (AAR) seeking a ruling on the following question:

- (a) Whether the activities carried out by the Appellant in India would constitute a supply of “Other Support Services” falling under Heading 9985 or as “Intermediary Service” classifiable under Heading 9961/9962 or any other classification of services as specified under GST laws?
- (b) Whether the services rendered by the Appellant would not be liable to GST, owing to the reason that such services may qualify as “export of services” in terms of clause 6 of Section 2 of the IGST Act, 2017 and consequently, be construed as a ‘zero-rated supply’ in terms of Section 16 of the IGST Act? “

Order:

Section 13(8)(b) of the IGST Act, 2017 stipulates that the place of supply in the case of intermediary services will be the location of the supplier of service. In this case, the activity of the Appellant who is the supplier of intermediary service i.e collection of information of parties in India, analysis of potential suppliers and skill development of existing suppliers, are all very much done in India, which is the location of the supplier of intermediary service. Therefore, by virtue of Section 13(8) (b) of the IGST Act, it automatically flows that the place of supply of the intermediary service provided by the Appellant to Airbus France, is in India. Therefore, the intermediary services provided by the Appellant to Airbus France, do not qualify as export of service. The Karnataka Appellate Authority of Advance Ruling (AAAR) ruled that the 18% GST applicable on Services Provided by Airbus Group as it qualifies as Intermediary services.

For further details please visit:

<https://gst.kar.nic.in/Documents/General/AirbusGroupIndiaPrivateLimited.pdf>

Lesson 3

Input Tax Credit and Computation of GST Liability

1. Clarification in respect of certain GST related issues

Circular No. 160/16/2021 – GST, dated September 20, 2021

With effect from 01.01.2021, section 16(4) of the CGST Act, 2017 was amended vide the Finance Act, 2020, so as to delink the date of issuance of debit note from the date of issuance of the underlying invoice for purposes of availing input tax credit. Accordingly, for availment of ITC on or after 01.01.2021, in respect of debit notes issued either prior to or after 01.01.2021, the eligibility for availment of ITC will be governed by the amended provision of section 16(4), whereas any ITC availed prior to 01.01.2021, in respect of debit notes, shall be governed under the provisions of section 16(4), as it existed before the said amendment on 01.01.2021.

For further details please visit: https://www.cbic.gov.in/resources/htdocs-cbec/gst/Circular%20No.%20160_14_2021_GST.pdf

CASE LAWS

1.	February 16, 2021	M/s. Ram Auto (Appellant) vs. Commissioner of Central Taxes & Central Excise	Madras High Court
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Benefit of Input Tax Credit (ITC) cannot be denied on account of having entered details in the wrong column.

Facts of the case:

The Appellant was a dealer in two-wheelers. The Assessee was registered under Tamil Nadu Value Added Tax Act, 2006. The Appellant was having ITC to the tune of Rs. 4,85,684/-. Following the introduction of the GST regime, transition and migrations from the earlier system had to be made under which the appellant was required to file the necessary Form GST TRAN-1. While filing the said Form, instead of entering the details under column 7(a), the petitioner erroneously entered the details against column 7(d). The column 7(d) would apply only in cases of stock of goods not supported by invoices/documents evidencing payment of tax. While the appellant was very much having the necessary invoices/documents evidencing payment of tax, since the appellant did not enter the details correctly, the consequential credit under the new GST regime was not given. The appellant submitted a request wherein it pointed out that the mistake committed by them was purely inadvertent. As a result, the appellant was not able to adjust the claimed credit amount against their present liability.

Decision:

The Madras High Court held that the benefit of input tax credit (ITC) cannot be denied for having entered the details in the wrong column.

2.	September 22, 2020	CIAL Duty Free and Retail Services Ltd. (CDRSL) vs Union of India and others	Kerala High Court
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Refund should be claimed only after paying GST on Input services

Facts of the case:

In writ petition, a declaration had been sought to the effect that the CGST Act, 2017, the IGST Act, 2017, and the Kerala SGST Act, 2017 and the rules thereunder do not apply to the supply of goods and services effected by the Appellant in the arrival and departure Duty-Free Shops (DFS) at Calicut International Airport in terms of the Concession Agreement with a further prayer of issuance of direction to the respondents not to apply the aforementioned Acts to the DFS operated by the Appellant and to quash notices and invoices to the extent of levying CGST and IGST on the revenue sharing in terms of the Concession Agreement. The Appellant contended that refund of ITC pursuant to sale of duty free goods from Duty Free Shops at the departure area of airport, had been declined and GST towards the minimum guaranteed fees/concession fees for grant of rights and use of licensed premises of duty free in the departure or arrival area of international airport had been made accessible by the Bombay High Court.

Decision:

The Kerala High Court ordered the Appellant to pay the GST on input services including Concession Fee to Respondent and claim Input Tax Credit (ITC) of the entire tax amount and thereafter claim refund of the same by following the procedure.

Lesson 4

Procedural Compliance under GST

1. Exclusion of government departments and local authorities from the requirement of issuance of e-invoice

Notification No. 23/2021 – Central Tax, dated June 01, 2021

The Government, on the recommendations of the Council, hereby makes the following further amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No.13/2020 – Central Tax, dated the 21st March, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 196(E), dated the 21st March, 2020, namely: —

In the said notification, in the first paragraph, after the words “notifies registered person, other than”, the words “a government department, a local authority,” shall be inserted.

Brief Analysis

This notification seeks to amend earlier Notification to exclude government departments and local authorities from the requirement of issuance of e-invoice.

For further details please visit: <https://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-23-central-tax-english-2021.pdf>

2. Fifth Amendment, 2021 to the CGST Rules, 2017

Notification No. 27/2021 – Central Tax, dated June 01, 2021

The Government, on the recommendations of the Council, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely: —

1. Short title and commencement. - (1) These rules may be called the Central Goods and Services Tax (Fifth Amendment) Rules, 2021.

(2) Save as otherwise provided in these rules, they shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017, —

(i) in sub-rule (1) of rule 26, in the fourth proviso, with effect from the 31st day of May, 2021, for the figures, letters and words “31st day of May, 2021”, the figures, letters and words “31st day of August, 2021” shall be substituted;

(ii) in sub-rule (4) of rule 36, for the second proviso, the following proviso shall be substituted, namely: —

“Provided further that such condition shall apply cumulatively for the period April, May and June, 2021 and the return in **FORM GSTR-3B** for the tax period June, 2021 or quarter ending June, 2021, as the case may be, shall be furnished with the cumulative adjustment of input tax credit for the said months in accordance with the condition above.”;

(iii) in sub-rule (2) of rule 59, after the first proviso, the following proviso shall be inserted, namely: —

“Provided further that a registered person may furnish such details, for the month of May, 2021, using IFF from the 1st day of June, 2021 till the 28th day of June, 2021.”.

Brief Analysis

This notification seeks to make amendments (Fifth Amendment, 2021) to the CGST Rules, 2017. Rule 36(4) shall apply cumulatively for the period April, May & June 2021 and the return in FORM GSTR-3B for the tax period June, 2021 or quarter ending June, 2021 shall be furnished with the cumulative adjustment of input tax credit for the said months.

The details using IFF for the month of May 2021 can be furnished from June 1, 2021 till June 28, 2021.

For further details please visit: <https://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-27-central-tax-english-2021.pdf>

3. Clarification in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices

Circular No. 156/12/2021 – GST, dated June 21, 2021

Notification No. 14/2020-Central Tax, dated 21st March, 2020 had been issued which requires Dynamic QR Code on B2C invoice issued by taxpayers having aggregate turnover more than 500 crore rupees, w.e.f. 01.12.2020. Further, penalty has been waived for non-compliance for the period from 01st December, 2020 to 30th June, 2021, subject to the condition that the said person complies with the provisions of the said notification from 1st July, 2021. Any person, who has obtained a Unique Identity Number (UIN) as per the provisions of Section 25(9) of CGST Act, 2017, is not a “registered person” as per the definition of registered person provided in section 2(94) of the CGST Act 2017. Therefore, any invoice, issued to such person having a UIN, shall be considered as invoice issued for a B2C supply and shall be required to comply with the requirement of Dynamic QR Code.

For further details please visit: <https://www.cbic.gov.in/resources/htdocs-cbec/gst/156-12-2021%20GST%20Circular.pdf>

4. Central Goods and Services Tax (Sixth Amendment) Rules, 2021

Notification No. 30/2021 – Central Tax, dated July 30, 2021

The Government, on the recommendations of the Council, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely:-

1. Short title and commencement. - (1) These rules may be called the Central Goods and Services Tax (Sixth Amendment) Rules, 2021.

(2) They shall come into force from the 1st day of August, 2021.

2. In the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), for rule 80, the following rule shall be substituted, namely: -

“80. Annual return.- (1) Every registered person, other than those referred to in the second proviso to section 44, an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return for every financial year as specified under section 44 electronically in **FORM GSTR-9** on or before the thirty-first day of December following the end of such financial year through the common portal either directly or through a Facilitation Centre notified by the

Commissioner:

Provided that a person paying tax under section 10 shall furnish the annual return in **FORM GSTR-9A**.

(2) Every electronic commerce operator required to collect tax at source under section 52 shall furnish annual statement referred to in sub-section (5) of the said section in **FORM GSTR -9B**.

(3) Every registered person, other than those referred to in the second proviso to section 44, an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, whose aggregate turnover during a financial year exceeds five crore rupees, shall also furnish a self-certified reconciliation statement as specified under section 44 in **FORM GSTR-9C** along with the annual return referred to in sub-rule (1), on or before the thirty-first day of December following the end of such financial year, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.”.

Brief Analysis

This notification seeks to amend Rule 80 of the CGST Rules, 2017 and notify Form GSTR 9 and 9C for FY 2020-21. Rule 80 provides for exemption from GSTR-9C to taxpayers having Annual Aggregate Turnover (AATO) upto Rs. 5 crores.

For further details please visit:

<https://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-30-central-tax-english-2021.pdf>

5. Central Goods and Services Tax (Seventh Amendment) Rules, 2021

Notification No. 32/2021 – Central Tax, dated August 29, 2021

The Government, on the recommendations of the Council, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely: —

1. Short title and commencement. - (1) These rules may be called the Central Goods and Services Tax (Seventh Amendment) Rules, 2021. (2) Save as otherwise provided in these rules, they shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017, —

(i) in sub-rule (1) of rule 26, -

(a) in the fourth proviso, for the figures, letters and words “31st day of August, 2021”, the figures, letters and words “31st day of October, 2021” shall be substituted;

(b) with effect from the 1st day of November, 2021, all the provisos shall be omitted;

(ii) with effect from the 1st day of May, 2021, in rule 138E, after the fourth proviso, the following proviso shall be inserted, namely: -

“Provided also that the said restriction shall not apply during the period from the 1st day of May, 2021 till the 18th day of August, 2021, in case where the return in FORM GSTR-3B or the statement of outward supplies in FORM GSTR-1 or the statement in FORM GST CMP-08, as the case may be, has not been furnished for the period March, 2021 to May, 2021.”;

(iii) in FORM GST ASMT-14, -

(a) after the words, “with effect from -----”, the words, “vide Order Reference No. -----, dated -----” shall be inserted;

(b) the words, “for conducting business without registration despite being liable for registration” shall be omitted;

(c) at the end after “Designation”, the word “Address” shall be inserted.

Brief Analysis

The filing of Form GSTR 3B & GSTR 1/IFF by companies using Electronic Verification Code (EVC), instead of Digital Signature Certificate (DSC) has already been enabled for the period from April 27, 2021 to August 31, 2021. The said period has been further extended to October 31, 2021.

For further details please visit:

<https://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-32-central-tax-english-2021.pdf>

6. Notification to make amendments (Eighth Amendment, 2021) to the CGST Rules, 2017

Notification No. 35/2021 – Central Tax, dated September 24, 2021

In the Central Goods and Services Tax Rules, 2017, — (1) In rule 10A of the said rules, with effect from the date as may be notified, -

(a) after the words “details of bank account”, the words “which is in name of the registered person and obtained on Permanent Account Number of the registered person” shall be inserted;

(b) the following proviso shall be inserted, namely:-

“Provided that in case of a proprietorship concern, the Permanent Account Number of the proprietor shall also be linked with the Aadhaar number of the proprietor.”

For further details please visit:

<https://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-35-central-tax-english-2021.pdf>

7. Clarification in respect of refund of tax specified in section 77(1) of the CGST Act and section 19(1) of the IGST Act

Circular No. 162/18/2021 – GST, dated September 25, 2021

The refund under section 77 of CGST Act/ Section 19 of IGST Act, 2017 can be claimed before the expiry of two years from the date of payment of tax under the correct head, i.e. integrated tax paid in respect of subsequently held inter-State supply, or central and state tax in respect of subsequently held intra-State supply, as the case may be.

For further details please visit:

https://www.cbic.gov.in/resources/htdocs-cbec/gst/Circular%20No.%20162_18_2021_GST.pdf

8. Clarification in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices and compliance of Notification 14/2020- Central Tax dated 21st March, 2020

Circular No. 165/21/2021 – GST, dated November 17, 2021

The Entry at S. No. 4 of the Circular No. 156/12/2021-GST dated 21st June, 2021 is substituted as below:

4.	" In cases, where receiver of services is located outside India, and payment is being received by the supplier of services ,through RBI approved modes of payment, but as per provisions of the IGST Act 2017, the place of supply of such services is in India, then such supply of services is not considered as export of services as per the IGST Act 2017; whether in such cases, the Dynamic QR Code is required on the invoice issued, for such supply of services, to such recipient located outside India?	No. Wherever an invoice is issued to a recipient located outside India, for supply of services, for which the place of supply is in India, as per the provisions of IGST Act 2017, and the payment is received by the supplier, in convertible foreign exchange or in Indian Rupees wherever permitted by the RBI, such invoice may be issued without having a Dynamic QR Code, as such dynamic QR code cannot be used by the recipient located outside India for making payment to the supplier."
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For further details please visit:

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/circular-final-165-21-2021.pdf>

9. Circular on Clarification on refund related issues (Circular No. 166/22/2021- GST dated November 17, 2021)

S. No.	Issue	Clarification
1.	Whether the provisions of subsection (1) of section 54 of the CGST Act regarding time period, within which an application for refund can be filed, would be applicable in cases of refund of excess balance in electronic cash ledger?	No, the provisions of sub-section (1) of section 54 of the CGST Act regarding time period, within which an application for refund can be filed, would not be applicable in cases of refund of excess balance in electronic cash ledger.
2.	Whether certification/ declaration under Rule 89(2)(l) or 89(2)(m) of CGST Rules, 2017 is required to be furnished along with the application for refund of excess balance in electronic cash ledger?	No, furnishing of certification/ declaration under Rule 89(2)(l) or 89(2)(m) of the CGST Rules, 2017 for not passing the incidence of tax to any other person is not required in cases of refund of excess balance in electronic cash ledger as unjust enrichment clause is not applicable in such cases.

For further details please visit:

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular-166-22-2021-GST.pdf>

10. Annual Return

Section 44 of CGST Act provides that:

Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person shall furnish an annual return which may include a self-certified reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year, with the audited annual financial statement for every financial year electronically, within such time and in such form and in such manner as may be prescribed:

Provided that the Commissioner may, on the recommendations of the Council, by notification, exempt any class of registered persons from filing annual return under this section:

Provided further that nothing contained in this section shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for Annual return.

Lesson 5

Assessment, Audit, Scrutiny, Demand and Recovery, Advance Ruling, Appeals and Revision

1. Clarification regarding extension of limitation under GST Law in terms of Hon'ble Supreme Court's Order dated April 27, 2021

Circular No. 157/13/2021 – GST, dated July 20, 2021

On the basis of the legal opinion, it is hereby clarified that various actions/compliances under GST can be broadly categorised as follows:-

(a) **Proceedings that need to be initiated or compliances that need to be done by the taxpayers:-** These actions would continue to be governed only by the statutory mechanism and time limit provided/ extensions granted under the statute itself. Various Orders of the Hon'ble Supreme Court would not apply to the said proceedings/ compliances on part of the taxpayers.

(b) **Quasi-Judicial proceedings by tax authorities:-**

The tax authorities can continue to hear and dispose off proceedings where they are performing the functions as quasi-judicial authority. This may interalia include disposal of application for refund, application for revocation of cancellation of registration, adjudication proceedings of demand notices, etc.

Similarly, appeals which are filed and are pending, can continue to be heard and disposed off and the same will be governed by those extensions of time granted by the statutes or notifications, if any.

(c) **Appeals by taxpayers/ tax authorities against any quasi- judicial order:-** Wherever any appeal is required to be filed before Joint/ Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various courts against any quasi-judicial order or where a proceeding for revision or rectification of any order is required to be undertaken, the time line for the same would stand extended as per the Hon'ble Supreme Court's order.

In other words, the extension of timelines granted by Hon'ble Supreme Court vide its Order dated 27.04.2021 is applicable in respect of any appeal which is required to be filed before Joint/ Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various courts against any quasi-judicial order or where proceeding for revision or rectification of any order is required to be undertaken, and is not applicable to any other proceedings under GST Laws.

For further details please visit:

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/157-13-2021%20GST%20Circular.pdf;jsessionid=4A EADB07BD25DE9A350 FD482BB21E80F>

2. Provisions of Section 110 and 111 of the Finance Act, 2021 made applicable

Notification No. 29/2021 – Central Tax, dated July 30, 2021

This notification seeks to notify section 110 and 111 of the Finance Act, 2021 w.e.f. August 01, 2021. Section 110 omits section 35(5) of CGST Act which means GST Audit (GSTR-9C) by CA/CMA is no longer required and Section 111 substitutes section 44 (Annual return) of CGST Act, 2017.

For further details please visit:

<https://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-29-central-tax-english-2021.pdf>

Lesson 6

Inspection, search, seizure, offences & penalties

1. Guiding Principles for conduct of search

CBIC GST Investigation Wing has issued following procedure to be followed during search operations in accordance with provisions of Code of Criminal Procedure, 1973 [Instructions No. 01/2020-21/GST-Investigation, dated 2-2-2021]

- (i) The officer issuing authorization for search should have valid and justifiable reasons for authorizing a search which shall be duly recorded in the file. Search should be carried out only with a proper search authorization issued by the Competent Authority.
- (ii) The instructions related to generation of DIN for each search authorization shall be scrupulously followed by the officer authorising search.
- (iii) The premises of a person cannot be searched on the authority of a search warrant issued for the premises of some other person. Where a search warrant, through oversight, has been issued in the name of a person who is already dead, the authorised officer should report to the Competent Authority and get a fresh warrant issued in the names of the legal heirs.
- (iv) In case of search of a residence, a lady officer shall necessarily be part of the search team.
- (v) The search shall be made in the presence of two or more independent witnesses who would preferably be respectable inhabitants of the locality, and if no such inhabitants are available or willing, the inhabitants of any other locality should be asked to be witness to the search. PSU employees, Bank employees etc. may be included as witnesses during sensitive search operations to maintain transparency and credibility. The witnesses should be informed about the purpose of the search and their duties.
- (vi) The officers conducting the search shall first identify themselves by showing their identity cards to the person in-charge of the premises. Also, before the start of the search, the officers as well as the independent witnesses shall offer their personal search. After the conclusion of the search all the officers and the witnesses should again offer themselves for their personal search.
- (vii) The search authorization shall be executed before the start of the search and the same shall be shown to the person in charge of the premises to be searched and his/her signature with date and time shall be obtained on the body of the search authorization. The signatures of the witnesses with date and time should also be obtained on the body of the search authorization.
- (viii) A Panchnama containing truthful account of the proceedings of the search shall necessarily be made and a list of documents/ goods/things recovered should be prepared. It should be ensured that time and date of start of search and conclusion of search must be mentioned in the Panchnama. The fact of offering personal search of the officers and witnesses before initiation and after conclusion of search must be recorded in the Panchnama.

(ix) In the sensitive premises videography of the search proceedings may also be considered and the same may be recorded in Panchnama.

(x) While conducting search, the officers must be sensitive towards the assessee/party. Social and religious sentiments of the person(s) under search and of all the person(s) present, shall be respected at all times. Special care/attention should be given to elderly, women and children present in the premises under search. Children should be allowed to go to school, after examining of their bags. A woman occupying any premises, to be searched, has the right to withdraw before the search party enters, if according to the customs she does not appear in public. If a person in the premises is not well a medical practitioner may be called.

(xi) The person from whose custody any documents are seized may be allowed to make copies thereof or take extracts therefrom for which he/she may be provided a suitable time and place to take such copies or extract therefrom. However, if it is felt that providing such copies or extracts therefrom prejudicially affect the investigation, the officer may not provide such copies. If such request for taking copies is made during the course of search, the same may be incorporated in Panchnama, intimating place and time to take such copies.

(xii) The officer authorized to search the premises must sign each page of the Panchnama and annexures. A copy of the Panchnama along with all its annexures should be given to the person in-charge of the premises being searched and acknowledgement in this regard may be taken. If the person in-charge refuses to sign the Panchnama, the same may be pasted in a conspicuous place of the premises, in presence of the witnesses. Photograph of the Panchnama pasted on the premises may be kept on record.

(xiii) In case any statement is recorded during the search, each page of the statement must be signed by the person whose statement is being recorded. Each page of the statement must also be signed by the officer recording the statement as 'before me'.

(xiv) After the search is over, the search authorization duly executed should be returned to the officer who had issued the said search authorization with a report regarding the outcome of the search. The names of the officers who had participated in the search should be written on the reverse of the search authorization. If search authorization could not be executed due to any reason, the same should be mentioned in the reverse of the search authorization and a copy of the same may be kept in the case file before returning the same to the officer who had issued the said search authorization.

(xv) The officers should leave the premises immediately after completion of Panchnama proceedings.

(xvi) During the prevalent COVID-19 pandemic situation, it is imperative to take precautionary measures such as maintaining proper social distancing norms, use of masks and hand sanitizers etc. The search team should take all measures as contained in the guidelines of Ministry of Home Affairs, and Ministry of Health & Family Welfare, and also the guidelines issued by the State Government from time to time.

Lesson 8

Integrated Goods and Services Tax

1. Change of place of supply for B2B MRO services

Notification No. 03/2021 – Integrated Tax, dated June 02, 2021

This notification seeks to amend earlier Notification of Integrated Tax dated September 30, 2019 to change the place of supply for B2B MRO services in case of Shipping industry, to the location of the recipient.

For further details please visit:

<https://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-3-2021-igst-english.pdf;jsessionid=B2D877EC2CEDE4B15FFDE49181DC4E05>

2. Clarification relating to export of services-condition (v) of section 2(6) of the IGST Act 2017

Circular No. 161/17/2021 – GST, dated September 20, 2021

Supply of services made by a branch or an agency or representational office of a foreign company, not incorporated in India, to any establishment of the said foreign company outside India, shall be treated as supply between establishments of distinct persons and shall not be considered as “export of services” in view of condition (v) of section 2(6) of IGST Act.

Similarly, any supply of service by a company incorporated in India to its branch or agency or representational office, located in any other country and not incorporated under the laws of the said country, shall also be considered as supply between establishments of distinct persons and cannot be treated as export of services.

For further details please visit:

https://www.cbic.gov.in/resources/htdocs-cbec/gst/Circular%20No.%20161_14_2021_GST.pdf

Lesson 13

Valuation & Assessment of Imported and Export Goods & Procedural Aspects

1. Clarification regarding applicability of IGST on repair cost, insurance and freight, on goods re-imported after being exported for repairs

Circular No. 16/2021 –Customs, dated July 19, 2021

Notification Nos. 45/2017- Customs and 46/2017- Customs, both dated 30th June, 2017, issued at the time of implementation of GST, prescribe certain concession from duty / taxes on reimport of goods exported for repair outside India. The GST Council deliberated on the issue and recommended that a suitable clarification, including any clarificatory amendment, if required, may be issued for removal of any doubt, to clarify the decision of the GST Council that re- import of goods sent abroad for repair attracts IGST and cess (as applicable) on a value equal to the repair value, insurance and freight.

For further details please visit: <https://www.cbic.gov.in/resources/htdocs-cbec/customs/cs-circulars/cs-circulars-2021/Circular-No-16-2021.pdf>

2. Principal Commissioners/Commissioners of Customs to decide the amount of security required in certain cases of provisional assessments

Circular No. 19/2021 –Customs, dated August 16, 2021

Amendment in Circular No.38/2016-Customs with the insertion of a new entry 5(d) to enable Principal Commissioners/Commissioners of Customs to decide the amount of security required in certain cases of provisional assessments. The new entry 5(d) is applicable to all fresh import consignments and those pending finalisation of assessment under Section 18 of the Customs Act, 1962.

For further details please visit: <https://www.cbic.gov.in/resources/htdocs-cbec/customs/cs-circulars/cs-circulars-2021/Circular-No-19-2021.pdf;jsessionid=EF6F97C4721FDAC73D724329C13CFD41>

Lesson 14

Arrival or Departure and Clearance of Goods, Warehousing, Duty Drawback, Baggage and Miscellaneous Provisions

1. De-notification of Inland Container Depots/Container Freight Stations/Air Freight Stations

Circular No. 20/2021 –Customs, dated August 16, 2021

A facility will become ripe for de-notification if the following conditions are met, namely,

- i. The application for de-notification is complete in all respects,
- ii. There are no dues, including the duties on the uncleared goods that are eventually sold, pending to be recovered from the custodian,
- iii. All the uncleared goods lying at the facility have been cleared from the facility by disposal and / or shifting to any other facility in the jurisdiction of the Commissionerate,
- iv. All the detained / seized / confiscated goods lying at the facility are disposed and / or shifted out of the facility to another location for safe custody, and
- v. All the other items belonging to Customs such as office records, furniture etc. are removed from the facility.

For further details please visit: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2021/Circular-No-20-2021.pdf;jsessionid=DC964A49CAC5E018E8F2AC4F87F7FDE5>

2. Reducing compliance burden regarding registration of Authorised Couriers

Circular No. 24/2021 –Customs, dated October 27, 2021

As part of reducing the compliance burden on stakeholders, CBIC has taken measures to simplify the registration requirements of Authorised Couriers. Notifications No. 86/2021-Customs (N.T.) and 85/2021- Customs (N.T.) both dated October 27, 2021, have amended the Courier Imports and Exports (Clearance) Regulations, 1998 and the Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010 respectively.

These amendments provide lifetime validity to a registration, in place of the existing system of validity-periods and renewals. They also provide for voluntary surrender of registration. While enabling a deemed invalidity of registration in case the Authorised Courier is inactive for a continuous period of 1 year, at a time, these also empower the Principal Commissioner or Commissioner to renew such a registration. Such deemed invalidation provision will be applied prospectively.

For further details please visit: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2021/Circular-No-24-2021.pdf>
