



THE INSTITUTE OF  
Company Secretaries of India

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

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# SUPPLEMENT PROFESSIONAL PROGRAMME

*For December, 2023 Examination*

## ADVANCE TAX LAWS (Part I- Indirect Taxes)

*[Supplement covers amendments/developments from  
August, 2021 to May 2023]*

**MODULE 1**

**PAPER 2**

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**(PART I- INDIRECT TAXES)**

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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 31st May, 2023 pertaining to GST and Customs Act, 1962.

## Lesson 2 - Supply

### 1. 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:** <https://taxinformation.cbic.gov.in/view-pdf/1002906/ENG/Circulars>

## **2. 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://taxinformation.cbic.gov.in/view-pdf/1002902/ENG/Circulars>

## **3. 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://taxinformation.cbic.gov.in/view-pdf/1002901/ENG/Circulars>

#### 4. **Special composition scheme for Brick Kilns**

**(Notification No. 03/2022- Central Tax and Notification No. 04/2022 –Central Tax dated March 31, 2022 )**

These notifications seeks to amend notification no. 10/2019-Central Tax and notification no. 14/2019-Central Tax dated March 07, 2019 to implement special composition scheme for Brick Kilns, as recommended by 45th Goods and Services Tax Council meeting. In the said notification, in the Table, after serial number 3 and the entries relating thereto, the following serial numbers and entries shall be inserted, namely: -

“4.	6815	Fly ash bricks or fly ash aggregate with 90 per cent. or more fly ash content; Fly ash blocks
5.	6901 00 10	Bricks of fossil meals or similar siliceous earths
6.	6904 10 00	Building bricks
7.	6905 10 00	Earthen or roofing tiles”.

This notification shall come into force on the 1st day of April, 2022

#### **Brief Analysis**

As per the notification, Building bricks, Earthen or roofing tiles, fly ash bricks and blocks, bricks of fossil meals can opt for a composition scheme to pay a 6 per cent GST without Input Tax Credit (ITC). Those who do not wish to opt for the composition scheme would be subject to 12 per cent Goods and Services Tax (GST) with Input Tax Credit (ITC). This notification came in to effect from April 01, 2022.

**For further details please visit:** <https://taxinformation.cbic.gov.in/view-pdf/1009265/ENG/Notifications>

#### 5. **Clarifications regarding applicable GST rates & exemptions on certain services**

**(Circular No. 177/09/2022 - Central Tax dated August 03, 2022)**

The payment of GST on supply of ice-cream by ice-cream parlors @ 5% without ITC shall be treated as fully GST paid to avoid unnecessary litigation. Since the decision is only to regularize the past practice, no refund of GST shall be allowed, if already paid at 18%. With effect from 06.10.2021, the ice Cream parlors are required to pay GST on supply of ice-cream at the rate of 18% with ITC.

## **Brief Analysis**

As per this notification, CBIC made issue-wise clarifications on some issues as recommended by the GST Council as- with effect from 06.10.2021, the ice cream parlors are required to pay GST on supply of ice-cream at the rate of 18% with ITC. It is further clarified that application fee charged for entrance or the fee charged for issuance of eligibility certificate for admission or for issuance of migration certificate by educational institutions is exempt.

**For further details please visit:** <https://taxinformation.cbic.gov.in/view-pdf/1003114/ENG/Circulars>

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

**(Circular No. 178/10/2022 - Central Tax dated August 03, 2022)**

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 and there is no agreement, express or implied, by the aggrieved party receiving the liquidated damages, to refrain from or tolerate an act or to do anything for the party paying the liquidated damages, in such cases liquidated damages are mere a flow of money from the party who causes breach of the contract to the party who suffers loss or damage due to such breach. Such payments do not constitute consideration for a supply and are not taxable.

## **Brief Analysis**

As per this Circular, GST on payments like liquidated damages paid for breach of contract; Penalty paid by a mining company to State Government for unaccounted stock of river bed material; Late payment charges collected by any service provider for late payment of bill etc. do not constitute consideration for a supply and are not taxable. If a payment constitutes a consideration for a supply, then it is taxable irrespective of by what name it is called; the payment is merely an event in the course of the performance of the agreement and it does not represent the 'object', as such, of the contract then it cannot be considered 'consideration'. Further, cancellation charges of railway tickets for a class would attract GST at the same rate as applicable to the class.

**For further details please visit:** <https://taxinformation.cbic.gov.in/view-pdf/1003115/ENG/Circulars>

## **7. Clarification regarding GST rates & classification (goods) based on the recommendations of the GST Council in its 47th meeting held on 28th – 29th June, 2022 at Chandigarh**

**(Circular No. 179/11/2022 - Central Tax dated August 03, 2022)**

Electrically operated vehicle including three wheeled electric vehicle means vehicle that runs solely on electrical energy derived from an external source or from electrical batteries. Therefore, the fitting of batteries cannot be considered as a concomitant factor for defining a vehicle as an electrically operated electric vehicle. In view of the above, it is clarified that electrically operated vehicle is to be classified under HSN 8703 even if the battery is not fitted to such vehicle at the time of supply and thereby attract GST at the rate of 5% in terms of entry 242A of Schedule I of notification No. 1/2017- Central Tax (Rate).

## Brief Analysis

As per this Circular, CBIC made Clarifications regarding GST rates & classification (goods) based on the recommendations of the GST Council which covers, Electric vehicles attract GST rate of 5%. , Mangoes under CTH 0804 including mango pulp, attract GST at 12% rate, Treated sewage water attracts Nil rate of GST, Nicotine Polacrilex Gum attracts a GST rate of 18% & Fly ash bricks and aggregate - condition of 90% fly ash content applied only to fly ash aggregate, and not fly ash bricks and others.

**For further details please visit:** <https://taxinformation.cbic.gov.in/view-pdf/1003116/ENG/Circulars>

## CASE LAWS

1.	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:

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?

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>

2.	October 14, 2022	In Re : Coperion Ideal Pvt. Ltd. (2022)	AAAR-UTTAR PRADESH
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Appellant-assessee is engaged in designing, conveying, fabrication and supply of Pneumatic Conveying System(PCS) along with its parts and components which are sold both within and outside India – As regards to imported components, appellant-assessee supplies imported components to customers in India on High Seas Sale basis under High Sea Sales Contract – Appellant-assessee sought advance ruling before AAR on whether supply of components of Pneumatic Conveying System supplied by assessee to its customers on High Seas Sales will be treated neither as supply of goods nor as supply of service by virtue of Entry 8 to Schedule III of CGST Act – AAR ruled that question of taxability of supply of goods on High Sea Sales does not come within purview of Section 97 of CGST Act and falls within purview of Circular No.33/2017-Cus dated 1-8-2017.

**Held:** Further number of activities taken by appellant-assessee under contract includes both supply of goods and supply of services – From entry No.8 of Schedule III of Central Goods and Services Tax Act, 2017, components needed for Pneumatic Conveying System made by appellant-assessee to its customers on High Sea Sales will not be treated as supply of ‘goods’ and they will not be liable for imposition of tax – However, components that are regarded as ‘services’ shall fall within purview of ‘supply of services’, further fall under purview of ‘supply’ as defined under Section 7 of Central Goods and Services Tax Act, 2017.

## 8. Clarification regarding GST rates and classification of certain goods

**(Circular No. 189/01/2023-GST, dated January 13, 2023)**

CBIC makes clarifications, with reference to applicability of GST based on the recommendations of GST Council in its 48th meeting held on December 17, 2022, related to the various items like; Rab, by-products of milling of Dal/ Pulses, Carbonated Beverages of Fruit Drink, fryums, Sports Utility Vehicles (SUVs) etc.

### Brief Analysis

As per this Circular, CBIC made Clarifications regarding GST rates & classification (goods) based on the recommendations of the GST Council which covers, the various items like; Rab which is appropriately classifiable under heading 1702 attracting GST rate of 18%, by-products of milling of Dal/ Pulses such as Chilka, Khanda and Churi/Chuni shall be exempt under GST, Carbonated Beverages of Fruit Drink or ‘Carbonated Beverages with Fruit Juice attract GST at the rate of 28% and Compensation Cess at the rate of 12%, fryums covers goods with description ‘Extruded or expanded products, savoury or salted’, and thereby attract GST at the rate of 18%, Sports Utility Vehicles (SUVs) which attract compensation cess at the rate of 22% and IGST rate has been increased from 5% to 12% on goods specified under notification No. 3/2017-Integrated Tax (Rate).

**For further details please visit:** <https://taxinformation.cbic.gov.in/view-pdf/1003143/ENG/Circulars>



**9. Clarifications regarding applicability of GST on certain services  
(Circular No. 190/02/2023- GST, dated January 13, 2023)**

CBIC makes clarifications, regarding accommodation services supplied by Air Force Mess to its personnel qualify to be considered as services supplied by Central Government, State Government, Union Territory or local authority hence are exempt from GST. Further, Govt. is clarified that incentives paid by MeitY to acquiring banks under the Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions are in the nature of subsidy and thus not taxable.

**Brief Analysis**

As per this Circular, CBIC made Clarifications regarding applicability of GST on certain services like accommodation services supplied by Air Force Mess to its personnel are exempt from GST vide Sl. No. 6 of notification No. 12/2017 –Central Tax (Rate) dated 28.06.2017 and Incentive paid by MeitY to acquiring banks under Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transaction up to Rs.2000/-. The incentive is in the nature of a subsidy directly linked to the price of the service and the same does not form part of the taxable value of the transaction in view of the provisions of section 2(31) and section 15 of the CGST Act, 2017. It is hereby clarified that incentives paid by MeitY to acquiring banks under the Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions are in the nature of subsidy and thus not taxable.

**For further details please visit:** <https://taxinformation.cbic.gov.in/view-pdf/1003144/ENG/Circulars>

**10. Notification regarding insertion and substitution in certain items in Schedule I, II & III  
(Notification no. 03/2023- Central Tax (Rate) New Delhi, dated the February 28, 2023)**

The Central Government, on the recommendations of the Council, hereby makes the further amendments in the notification No.1/2017-Central Tax (Rate), regarding substitution of Jaggery of all types like certain items in Schedule I, and in Schedule II a new entries inserted namely Pencil sharpeners & in Schedule III the word “other than pencil sharpeners” is inserted. This notification shall come into force on the 1st day of March, 2023.

**Brief Analysis**

In this notification the Central Government, hereby makes the further amendments in the notification No.1/2017-Central Tax (Rate), regarding substitution of Jaggery of all types by: -“Jaggery of all types including Cane Jaggery(gur), Palmyra Jaggery, pre-packaged and labelled; Khandsari Sugar, pre-packaged and labelled; Rab, pre-packaged and labelled”; like certain items in Schedule I- 2.5%, against S. No. 91A, in column (3), and in Schedule II –6%, after S. No. 186 and entries relating Pencil sharpeners” and in Schedule III –9%, against S. No. 302A, in column (3), at the end, the brackets and words “[other than pencil sharpeners]” shall be inserted.

**For further details please visit:** <https://taxinformation.cbic.gov.in/view-pdf/1009644/ENG/Notifications>

**11. Notification for further amendments in the notifications of the Government of India, Ministry of Finance (Department of Revenue), No. 2/2017-Central Tax (Rate) and No. 2/2017**

**(Notification No. 04/2023- Central Tax (Rate), New Delhi, dated the February 28, 2023)**

The Central Government, being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India, Ministry of Finance (Department of Revenue), No.2/2017-Central Tax (Rate), No.2/2017 dated the June, 28th, 2017. In the said notifications, in the Schedule, against S. No.94, in Column (3), after the item (ii) and the entries relating thereto, the following item and entry shall be inserted, namely: - “(iii) Rab, other than pre-packaged and labelled”. The said Notifications came into force from March 01, 2023.

### **Brief Analysis**

In this notification the Central Government, hereby makes the further amendments in the notification of the Government of India, by inserting item no (iii) i.e. “Rab, other than pre-packaged and labelled” in the Schedule, against S. No.94, in Column (3), after the item (ii) and the entries relating thereto.

**For further details please visit:** <https://taxinformation.cbic.gov.in/view-pdf/1009645/ENG/Notifications>

### **CASE LAWS**

<b>1.</b>	<b>December 30, 2023</b>	<b>In Re : Doms Industries Pvt. Ltd. (2023)</b>	<b>AAR - GUJARAT</b>
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Applicant is manufacturer and suppliers of stationery items - Applicant supplies different products in single box/pack for single price - One kit contains pencils, eraser and sharpner - Second one contains colouring books, pencils, colour pencil, oil pastels, wax crayons, eraser, scale and sharpner and third one contains pencil, eraser, scale and sharpner.

**Held:** In order to qualify any supply under mixed supply following conditions are to be satisfied viz (i) there should be two or more individual supplies of goods or services or in any combination thereof, (ii) such supply should be made in conjunction with each other for a single price and (iii) such supply does not constitute a composite supply - In instant case, supply of different products in single box/pack and in single price made by applicant satisfies all three conditions of mixed supply; therefore, said supply is covered under category of mixed supply under section 2(74) and supply which attracts higher rate of tax among all taxable supplies containing in pack/box shall be applicable rate of tax for said mixed supply.

<b>2.</b>	<b>April 20, 2023</b>	<b>In Re : Eden Real Estates Pvt. Ltd. (2023)</b>	<b>AAAR-WEST BENGAL</b>
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Applicant-assessee is developing a residential housing project and supplying construction services to recipients for possession of dwelling units - In addition to construction services, applicant-assessee provides services towards right to use of car parking space to prospective buyers who opt for same for which they are additionally charged by applicant-assessee during sale of apartment- Applicant assessee seeks advance ruling on whether amounts charged by applicant-assessee for right to use of car/two wheeler vehicle.

parking space along with sale of under constructed apartments to its prospective buyers is to be treated as a composite supply of construction of residential apartment services or same is a distinct supply under section 7 of CGST/WBGST Act, 2017 – Further, If same is not to be treated as a composite supply, then rate of tax

applicable on such charges collected by applicant-assessee from its prospective customers.

**Held:** Aforesaid fact delineates that such supply is altogether a separate service and it cannot be treated as naturally bundled with construction services – Hence, supply of services for right to use of car parking space is a separate supply and not to be construed as a composite supply of construction of residential apartment services – Further, supply of services for right to use of car parking space would be taxable at 18 percent.

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## 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://taxinformation.cbic.gov.in/view-pdf/1002905/ENG/Circulars>

#### 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 30, 2021	In Re GRB Dairy Foods (P) Ltd. (2022)	AAR - TAMILNADU
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### **ITC is not available on input or input services procured for promotional schemes**

**Facts:** The Appellant was engaged in the business of manufacture and supply of ghee and other products and sold products through various retail stores across the country. With the objective of expanding the market share, the appellant had launched a sales promotional offer to enhance sales of its products. It filed an application for advance ruling to determine whether ITC would be eligible on inputs/input services procured to implement promotional scheme.

**Decision:** The Appellate Authority for Advance Ruling Ruled that inputs or input services procured for a promotional scheme of products are not qualified for ITC. Goods and services distributed under promotional scheme were without consideration and those goods and services were not for further supply but for consumption by retailers under scheme. Moreover, the inputs and input services procured by appellant were for his buyers provided as rewards and not for his own activity such as advertising product. Since, the rewards extended to retailers/stockist under scheme were not in nature of discount; Therefore, Input Tax Credit of GST paid on such inputs/input services procured would not be available.

## **2. Central Goods and Services Tax (Tenth Amendment) Rules, 2021**

### **Notification No. 40/2021- Central Tax dated December 29, 2021**

The Central 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 (Tenth 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 rule 36, for sub-rule (4), the following sub-rule shall be substituted, with effect from the 1st day of January, 2022, namely: -

“(4) No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under subsection (1) of section 37 unless,-

(a) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in **FORM GSTR-1** or using the invoice furnishing facility; and (b) the details of such invoices or debit notes have been communicated to the registered person in **FORM GSTR-2B** under sub-rule (7) of rule 60.”;

(ii) in rule 80,—

(a) after sub-rule (1), the following sub-rule shall be inserted, namely:- —

“(1A) Notwithstanding anything contained in sub-rule (1), for the financial year 2020-2021 the said annual return shall be furnished on or before the twenty-eighth day of February, 2022.”;

(b) after sub-rule (3), the following sub-rule shall be inserted, namely:—

“(3A) Notwithstanding anything contained in sub-rule (3), for the financial year 2020-2021 the said self-certified reconciliation statement shall be furnished along with the said annual return on or before the twenty-eighth day of February, 2022.”;

(iii) in rule 95, in sub-rule (3), after clause (c), the following proviso shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 2021, namely:—

“**Provided** that where Unique Identity Number of the applicant is not mentioned in a tax invoice, the refund of tax paid by the applicant on such invoice shall be available only if the copy of the invoice, duly attested by the authorized representative of the applicant, is submitted along with the refund application in **FORM GST RFD-10.**”;

(iv) in rule 142, with effect from the 1st day of January, 2022,—

(a) in sub-rule (3), for the words and letters, “fourteen days of detention or seizure of the goods and conveyance”, the words, brackets and figures, “seven days of the notice issued under sub-section (3) of Section 129 but before the issuance of order under the said sub-section (3)” shall be substituted;

(b) in sub-rule (5), for the words, “tax, interest and penalty payable by the person chargeable with tax”, the words, “tax, interest and penalty, as the case may be, payable by the person concerned” shall be substituted;

(v) after rule 144, the following rule shall be inserted with effect from the 1st day of January, 2022, namely:—

“**Recovery of penalty by sale of goods or conveyance detained or seized in transit.- 144A.** (1) Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under sub-section (1) of section 129 within fifteen days from the date of receipt of the copy of the order passed under sub-section (3) of the said section 129, the proper officer shall proceed for sale or disposal of the goods or conveyance so detained or seized by preparing an inventory and estimating the market value of such goods or conveyance

**Provided** that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.

(2) The said goods or conveyance shall be sold through a process of auction, including e-auction, for which a notice shall be issued in **FORM GST DRC 10** clearly indicating the goods or conveyance to be sold and the purpose of sale:

**Provided** that where the person transporting said goods or the owner of such goods pays the amount of penalty under sub-section (1) of section 129, including any expenses incurred in safe custody and handling of such goods or conveyance, after the time period mentioned in sub-rule (1) but before the issuance of notice under this sub-rule, the proper officer shall cancel the process of auction and release such goods or

conveyance.

- (3) The last day for submission of bid or the date of auction shall not be earlier than fifteen days from the date of issue of the notice referred to in sub-rule (2):

**Provided** that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.

- (4) The proper officer may specify the amount of pre-bid deposit to be furnished in the manner specified by such officer, to make the bidders eligible to participate in the auction, which may be returned to the unsuccessful bidders, forfeited in case the successful bidder fails to make the payment of the full amount, as the case may be.

- (5) The proper officer shall issue a notice to the successful bidder in **FORM GST DRC-11** requiring him to make the payment within a period of fifteen days from the date of auction:

**Provided** that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.

- (6) On payment of the full bid amount, the proper officer shall transfer the possession and ownership of the said goods or conveyance to the successful bidder and issue a certificate in **FORM GST DRC-12**.
- (7) The proper officer shall cancel the process and proceed for re-auction where no bid is received or the auction is considered to be non-competitive due to lack of adequate participation or due to low bids.
- (8) Where an appeal has been filed by the person under the provisions of subsection (1) read with subsection (6) of section 107, the proceedings for recovery of penalty by sale of goods or conveyance detained or seized in transit under this rule shall be deemed to be stayed:

**Provided** that this sub-rule shall not be applicable in respect of goods of perishable or hazardous nature.” for rule 154, the following rule shall be substituted with effect from the 1st day of January, 2022, namely:—

**”Disposal of proceeds of sale of goods or conveyance and movable or immovable property.—**

154. (1) The amounts so realised from the sale of goods or conveyance, movable or immovable property, for the recovery of dues from a defaulter or for recovery of penalty payable under sub-section (3) of section 129 shall,—

- (a) first, be appropriated against the administrative cost of the recovery process;
- (b) next, be appropriated against the amount to be recovered or to the payment of the penalty payable under sub-section (3) of section 129, as the case may be;
- (c) next, be appropriated against any other amount due from the defaulter under the Act or the Integrated Goods and Services Tax Act, 2017 or the Union Territory Goods and Services Tax Act, 2017 or any of the State Goods and Services Tax Act, 2017 and the rules made thereunder; and
- (d) the balance, if any, shall be credited to the electronic cash ledger of the owner of the goods or conveyance as the case may be, in case the person is registered under the Act, and where the said person is not required to be registered under the Act, the said amount shall be credited to the bank account of the person concerned;

(2) where it is not possible to pay the balance of sale proceeds, as per clause (d) of sub-rule (1), to the person concerned within a period of six months from the date of sale of such goods or conveyance or such further period as the proper officer may allow, such balance of sale proceeds shall be deposited with the Fund;`

- (vii) in rule 159, with effect from the 1st day of January, 2022,—

- (a) in sub-rule (2)-
  - (A) after the words “copy of the order of attachment”, the words, letters and figures —”in **FORM GST DRC-22**” shall be inserted;
  - (B) after the words “Commissioner to that effect”, the words and figures, “and a copy of such order shall also be sent to the person whose property is being attached under section 83” shall be inserted;
- (b) in sub-rule (3)-
  - (A) for the words “and if the taxable person”, the word “and if the person, whose property has been attached,” shall be substituted;
  - (B) for the words “by the taxable person”, the words, “by such person” shall be substituted;
- (c) in sub-rule (4), for the words “the taxable person” occurring at both the places, the words “such person” shall be substituted;
- (d) in sub-rule (5), for the words brackets and figure —, within seven days of the attachment under sub-rule (1), file an objection, the words, letters and figures “file an objection in **FORM GST DRC-22A**” shall be substituted;

### **Brief Analysis**

Rule 36(4) of Central Goods and Services Tax Rules, 2017 shall be substituted, with effect from January 01, 2022, to provide that Input Tax Credit shall not be available to the registered person unless such invoices/debit notes have been reflected in GSTR-2B of the said person.

Rule 95 has been amended to provide that where Unique Identity Number of the applicant is not mentioned in a tax invoice, the refund of tax paid by the applicant on such invoice shall be available only if the copy of the invoice, duly attested by the authorized representative of the applicant, is submitted along with the refund application in **FORM GST RFD-10**.

**For further details please visit:** <https://taxinformation.cbic.gov.in/view-pdf/1009024/ENG/Notifications>

### **3. Manner of filing refund of unutilized ITC on account of export of electricity** **(Circular No. 175/07/2022 - Central Tax dated July 06, 2022)**

The turnover of export of electricity would be calculated by multiplying the energy exported during the period of refund with the tariff per unit of electricity, specified in the agreement. It is clarified that quantum of Scheduled Energy exported, as reflected in the Regional Energy Account (REA) issued by Regional Power Committee (RPC) Secretariat for a particular month, will be deemed to be the quantity of electricity exported during the said month and will be used for calculating the value of zero rated supply in case of export of electricity. Such monthly Regional Energy Account (REA) issued by Regional Power Committee (RPC) Secretariat, as uploaded on the websites of RPC Secretariat, can be downloaded by GST officers as well as the concerned electricity generator for the purpose of refund under Rule 89(4) of CGST Rules 2019. The calculation of the value of the exports of electricity during the month, can be done based on the quantity of scheduled electricity exported during the month by the exporter (as detailed in the REA for the month) and the tariff rate per unit.

### **Brief Analysis**

In the given circular, Department describes the Manner of filing refund of unutilized ITC on account of export of electricity. The applicant would be required to file the application for refund under “Any Other” category electronically in FORM GST RFD-01, and required to furnish/upload the details contained in



Statement 3B of FORM GST RFD-01 (PDF) containing the number and date of the export invoices, details of energy exported, tariff per unit for export of electricity & upload the copy of statement of scheduled energy for electricity exported by the Generation Plants. The proper officer will Processing of refund claim as;

$$\text{Refund Amount} = (\text{Turnover of zero-rated supply of goods} + \text{Turnover of zero rated supply of services}) \times \text{Net ITC} \div \text{Adjusted Total Turnover}$$

**For further details please visit:** <https://taxinformation.cbic.gov.in/view-pdf/1003107/ENG/Circulars>

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## Lesson 4 - Procedural Compliance under GST

### 1. 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://taxinformation.cbic.gov.in/view-pdf/1000501/ENG/Notifications>

## 2. 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, -  
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;  
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://taxinformation.cbic.gov.in/view-pdf/1000498/ENG/Notifications>

## 3. 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://taxinformation.cbic.gov.in/view-pdf/1002903/ENG/Circulars>

## 4. 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, inconvertible 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://taxinformation.cbic.gov.in/view-pdf/1003083/ENG/Circulars>

## 5. 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://taxinformation.cbic.gov.in/view-pdf/1003082/ENG/Circulars>

## 6. Central Goods and Services Tax (Ninth Amendment) Rules, 2021

**(Notification No. 37/2021- Central Tax dated December 01, 2021)**

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

**Short title and commencement.** – (1) These rules may be called the Central Goods and Services Tax (Ninth 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.

(3) In the Central Goods and Services Tax Rules, 2017, — (i) in rule 137, with effect from the 30th day of November 2021, for the words “four years”, the words “five years” shall be substituted.

(ii) in **FORM GST DRC-03**, —

(a) in the heading, after the words “or statement”, the words, letters and figures “or intimation of tax ascertained through FORM GST DRC-01A” shall be inserted;

(b) against item 3, in column (3), for the word and letters “Audit, investigation, voluntary, SCN, annual return, reconciliation statement, others (specify)”, the words, letters, figures and brackets “Audit, inspection or investigation, voluntary, SCN, annual return, reconciliation statement, scrutiny, intimation of tax ascertained through FORM GST DRC-01A, Mismatch (Form GSTR-1 and Form GSTR-3B), Mismatch (Form GSTR-2B and Form GSTR-3B), others (specify)” shall be substituted;

(c) against item 5, in column (1), after the word and figures “within 30 days of its issue”, the words, letters, figures and brackets “, scrutiny, intimation of tax ascertained through Form GST DRC01A, audit, inspection or investigation, others (specify)” shall be inserted;

(d) for the table, under serial number 7, for the table, the following table shall be substituted, namely:-

(e)	Tax Period	Act	Place of supply (POS)	Tax / Cess	Interest	Penalty, If applicable	Fee	Others	Total	Ledger utilised (Cash / Credit)	Debit entry no	Date of debit entry
.	.	.	.	.	.	.	.	.	0.	1.	2.	3.
												..

### Brief Analysis

With effect from November 30, 2021, Rule 137 of the CGST Rules, 2017 has been amended to extend the tenure of National Anti-Profiteering Authority from existing 4 years to 5 years. Amendments have been made in Form GST DRC-03. The heading of the Form has been changed as under: “Intimation of payment made voluntarily or made against the SCN or statement or intimation of tax ascertained through **FORM GST DRC-01A**”

The causes of payment in item no. 3 have been expanded. The drop-down list provides “Audit, inspection or investigation, voluntary, SCN, annual return, reconciliation statement, scrutiny, intimation of tax ascertained through FORM GST DRC-01A, Mismatch (Form GSTR-1 and Form GSTR-3B), Mismatch (Form GSTR-2B and Form GSTR-3B), others (specify)”. Item no. 5 which require to provide the “details of SCN, if payment is made within 30 days of its issue” has been amended to further include “scrutiny, intimation of tax ascertained through Form GST DRC-01A, audit, inspection or investigation, others (specify)”. A separate column mentioning “Fee” has been inserted in the table of serial No. 7 which requires the details of payments made.

**For further details please visit:** <https://taxinformation.cbic.gov.in/view-pdf/1000496/ENG/Notifications>

### 7. Mandatory Aadhaar authentication for GST Refund and revocation application (Notification No. 38/2021 – Central Tax dated December 21, 2021)

This notification seeks to bring sub-rule (2) and sub-rule (3), clause (i) of sub-rule (6) and sub-rule (7) of rule 2 of the Central Goods and Services Tax (Eighth Amendment) Rules, 2021 into force w.e.f. January 01, 2022.

### Brief Analysis

As per this notification Aadhaar authentication is mandatory for GST refund and revocation application.

**For further details please visit:** <https://taxinformation.cbic.gov.in/view-pdf/1009026/ENG/Notifications>

### 8. Government notifies Sections 108, 109 and 113 to 122 of Finance Act, 2021

**Notification No. 39/2021 – Central Tax dated December 21, 2021**

This notification seeks to notify January 01, 2022 as the date on which provisions of section 108, 10 and 113 to 122 of the Finance Act, 2021 shall come into force.

**Brief Analysis**

The provisions of Finance Act, 2021 which amends CGST Act, 2017 are notified w.e.f. January 01, 2022. New clause (aa) is added in Section 7 of CGST Act, 2017 which defines scope of supply. New clause (aa) is also added in Section 16(2) of CGST Act, 2017 which states that Input Tax Credit can be claimed only if it appears in GSTR-2B.

**For further details please visit:** <https://taxinformation.cbic.gov.in/view-pdf/1009025/ENG/Notifications>

**9. Reporting of supplies notified under section 9(5) / 5(5) by E-commerce Operator in GSTR-3B (January 04, 2022)**

The tax on supplies of restaurant service supplied through e-commerce operators, shall be paid by the ecommerce operator with effect from the January 01, 2022. E-commerce operator and registered person would report taxable supplies notified under section 9(5) of CGST Act, 2017 and similar provisions in IGST/SGST/UTGST Act in the following manner:

<b>Supplies reported by</b>	<b>Reporting in Form GSTR-3B</b>
Supplies under 9(5) reported by ECO	Table 3.1(a) of GSTR-3B
Registered person/Restaurant supplying through ECO	Table 3.1(c) along-with nil and exempted supply

**For further details please visit:** <https://www.gst.gov.in/newsandupdates/read/516>

**10. Deployment of Interest Calculator in GSTR-3B (January 26, 2022)**

The new functionality of interest calculator in GSTR-3B will facilitate & assist the taxpayers in doing self-assessment. This functionality will arrive at the system computed interest on the basis of the tax liability values declared by the taxpayers, along with the details about the period to which it pertains. The interest applicable, if any, will be computed after the filing of the said GSTR-3B and will be auto populated in the Table-5.1 of the GSTR3B of the next tax-period. The facility would be similar to the collection of Late fees for GSTR-3B, filed after the Due date, posted in the next period's GSTR-3B. This functionality will inform the taxpayers about the manner of system computed interest for each tax head and hence will assist the taxpayers in doing correct computation of interest for the tax liability of any past period declared in the GSTR-3B for the current tax period.

**For further details please visit:** <https://www.gst.gov.in/newsandupdates/read/520>

**11. E-invoicing will be mandatory for taxpayers whose aggregate turnover is more than Rs. 20 crores (Notification No. 01/2022- Central Tax dated February 24, 2022)**

E-invoicing is now mandatory for registered persons having aggregate turnover above Rs. 20 crores in any of the previous years from 2017-18 till 2021- 22 with effect from April 01, 2022. The existing limit of Rs. 50 crores has been reduced to Rs. 20 crores.

**For further details please visit:**<https://taxinformation.cbic.gov.in/view-pdf/1009232/ENG/Notifications>

**12. CBIC notifies the provisions of clause (c) of section 110 and section 111 of the Finance Act, 2022 (Notification No. 09/2022 - Central Tax dated July 05, 2022)**

As per clause (c) of section 110 of Finance Act, 2022, it is said that A registered person can transfer any amount lying in the tax, interest, penalty, fee or any other amount for:-

- IGST, CGST, SGST, UTGST or cess' or
- IGST or CGST of a distinct person as specified in sub section 4 and 5 of section 25.

Such transfer shall be deemed as a refund from the electronic cash ledger and there is an exception that if there is a tax payable in the electronic liability register then there shall not be any transfer. As per section 111, it is said that for those taxable person who has wrongfully availed and utilised the ITC, they shall be liable to pay the interest @ 24%.

**Brief Analysis**

The Board (CBIC) notifies, the clause (c) of Section 110 and section 111 of the Finance Act, 2022 related to amendment in Section 49 and section 50 of the CGST Act which relates to Interest on delayed payment of tax. Sub-section (10) of section 49 substituted as 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 - IGST, CGST, SGST, UTGST or cess' or IGST or CGST of a distinct person as specified in sub section 4 and 5 of section 25 and section 50 substituted as "(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 percent 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."

**For further details please visit:**<https://taxinformation.cbic.gov.in/view-pdf/1009412/ENG/Notifications>

**13. Notification to make amendments (First Amendment, 2022) to the CGST Rules, 2017 (Notification No. 14/2022 - Central Tax dated July 05, 2022)**

These rules may be called the Central Goods and Services Tax (Amendment) Rules, 2022. Rule 21A has been amended to provide 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. Explanation 1 to Rule 43 has been amended to provide that value of supply of Duty Credit Scrips shall not be included for the purpose of reversal of common credits.

## Brief Analysis

In the given notification Central Government, makes the rules further to amend the Central Goods and Services Tax Rules, 2017 by inserting the proviso of in rule 21A, in sub-rule (4) and clause (d) in rule 43, clause (s) in rule 48, Sub-rule 4B in rule 86 and rule 87 insert rule 88B and other amendment in rule 96, rule 95A and in the said rules, in **FORM GSTR-3B, FORM GSTR-9** etc.

**For further details please visit:** <https://taxinformation.cbic.gov.in/view-pdf/1009417/ENG/Notifications>

## 14. Mandatory furnishing of correct and proper information of inter -State supplies and amount of ineligible/blocked Input Tax Credit and reversal thereof in return in FORM GSTR -3B and statement in FORM GSTR -1

**(Circular No. 170/02/2022 - Central Tax dated July 06, 2022)**

CBIC has advised that the registered persons making inter -State supplies –

- (i) to the unregistered persons, shall also report the details of such supplies, place of supply -wise, in Table 3.2 of FORM GSTR -3B and Table 7B or Table 5 or Table 9/10 of FORM GSTR -1, as the case may be;
- (ii) to the registered persons paying tax under section 10 of the SGST/CGST Act (composition taxable persons) and to UIN holders, shall also report the details of such supplies, place of supply -wise, in Table 3.2 of FORM GSTR -3B and Table 4A or 4C or 9 of FORM GSTR -1, as the case may be, as mandated by the law.
- (iii) shall update their customer database properly with correct State name and ensure that correct PoS is declared in the tax invoice and in Table 3.2 of FORM GSTR -3B while filing their return, so that tax reaches the Consumption State as per the principles of destination-based taxation system.

## Brief Analysis

In this circular CBIC, Mandate to furnish correct and proper information of inter-State supplies and amount of ineligible/blocked Input Tax Credit and reversal thereof in return in FORM GSTR-3B and statement in FORM GSTR-1 to remove infirmities in information being furnished by the registered person in relation to inter-State supplies effected to unregistered person, registered person paying tax under section 10 and also to bring clarity regarding reporting of information about reversal of Input Tax Credit (hereinafter referred to as the “ITC”) as well as ineligible ITC by insuring that ITC not available, on account of limitation of time period as delineated in sub-section (4) of section 16 of the CGST Act or where the recipient of an intra-State supply is located in a different State / UT than that of place of supply, may be reported by the registered person in Table 4D(2). Such details are available in Table 4 of FORM GSTR-2B and it is clarified that the reversal of ITC of ineligible credit under section 17(5) or any other provisions of the CGST Act and rules there under is required to be made under Table 4(B) and not under Table 4(D) of FORM GSTR-3B.

**For further details please visit:** <https://taxinformation.cbic.gov.in/view-pdf/1003102/ENG/Circulars>



**15. Clarification on various issues relating to applicability of demand and penalty provisions under the Central Goods and Services Tax Act, 2017 in respect of transactions involving fake invoices  
(Circular No. 171/03/2022 - Central Tax dated July 06, 2022)**

S. No.	Issue	Clarification
1	In case where a registered person “A” has issued tax invoice to another registered person “B” without any underlying supply of goods or services or both, whether such transaction will be covered as “supply” under section 7 of CGST Act and whether any demand and recovery can be made from ‘A’ in respect of the said transaction under the provisions of section 73 or section 74 of CGST Act. Also, whether any penal action can be taken against registered person ‘A’ in such cases.	Since there is only been an issuance of tax invoice by the registered person ‘A’ to registered person ‘B’ without the underlying supply of goods or services or both, therefore, such an activity does not satisfy the criteria of “supply”, as defined under section 7 of the CGST Act. As there is no supply by ‘A’ to ‘B’ in respect of such tax invoice in terms of the provisions of section 7 of CGST Act, no tax liability arises against ‘A’ for the said transaction, and accordingly, no demand and recovery is required to be made against ‘A’ under the provisions of section 73 or section 74 of CGST Act in respect of the same. Besides, no penal action under the provisions of section 73 or section 74 is required to be taken against ‘A’ in respect of the said transaction. The registered person ‘A’ shall, however, be liable for penal action under section 122 (1)(ii) of the CGST Act for issuing tax invoices without actual supply of goods or services or both

**Brief Analysis**

In this Circular, CBIC has made Clarifications on various issues where the registered persons are found to be involved in issuing fake tax invoices and avail/utilize ITC fraudulently. Such an activity does not satisfy the criteria of “supply”, hence No ITC available and both the registered person(issuer of invoice and receiver of supply of Goods and service) shall, be liable for penal action under section 122 (1)(ii) of the CGST Act for issuing tax invoices without actual supply of goods or services.

**For further details please visit:** <https://taxinformation.cbic.gov.in/view-pdf/1003103/ENG/Circulars>

**16. Clarification on various issues pertaining to GST  
(Circular No. 172/04/2022 - Central Tax dated July 06, 2022)**

S. No.	Issue	Clarification
<b>Refund claimed by the recipients of supplies regarded as deemed export</b>		
1.	Whether the Input Tax Credit (ITC) availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports would be subjected to provisions of Section 17 of the CGST Act, 2017.	The refund in respect of deemed export supplies is the refund of tax paid on such supplies. However, the recipients of deemed export supplies were facing difficulties on the portal to claim refund of tax paid due to requirement of the portal to debit the amount so claimed from their electronic credit ledger. Considering this difficulty, the tax paid on such supplies, has been made available as ITC to the recipients vide Circular No.147/03/2021 - GST dated 12.03.2021 only for enabling them to claim such refund on

		<p>the portal. The ITC of tax paid on deemed export supplies, allowed to the recipients for claiming refund of such tax paid, is not ITC in terms of the provisions of Chapter V of the CGST Act, 2017. Therefore, the ITC so availed by the recipient of deemed export supplies would not be subjected to provisions of Section 17 of the CGST Act, 2017.</p>
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### **Brief Analysis**

In this Circular, CBIC clarifies on various issue pertaining to GST: As In case of deemed export supply to remove difficulties on the portal in claiming refund of tax paid, now made available as ITC to the recipients only for enabling them to claim such refunds on the portal. Further, The ITC of tax paid on deemed export supplies, allowed to the recipients for claiming refund of such tax paid, is not ITC in terms of the provisions of Chapter V of the CGST Act, 2017. Therefore, such ITC availed by the recipient of deemed export supply for claiming refund of tax.

**For further details please visit:** <https://taxinformation.cbic.gov.in/view-pdf/1003104/ENG/Circulars>

### **17. Clarification on issue of claiming refund under inverted duty structure where the supplier is supplying goods under some concessional notification**

**(Circular No. 173/05/2022 - Central Tax dated July 06, 2022)**

It is clarified that in cases, refund of accumulated input tax credit on account of inverted structure as per clause (ii) of sub-section (3) of section 54 of the CGST Act, 2017 would be allowed in cases where accumulation of input tax credit is on account of rate of tax on outward supply being less than the rate of tax on inputs (same goods) at the same point of time, as per some concessional notification issued by the Government providing for lower rate of tax for some specified supplies subject to fulfilment of other conditions.

### **Brief Analysis**

In this Circular Department clarifies that refund of accumulated input tax credit on account of inverted structure as per clause (ii) of sub-section (3) of section 54 of the CGST Act, would be allowed in cases where accumulation of input tax credit is on account of rate of tax on outward supply being less than the rate of tax on inputs (same goods) at the same point of time.

**For further details please visit:** <https://taxinformation.cbic.gov.in/view-pdf/1003105/ENG/Circulars>

### **18. Prescribing manner of re-credit in electronic credit ledger using FORM GST PMT-03A**

**(Circular No. 174/06/2022 - Central Tax dated July 06, 2022)**

The proper officer, on being satisfied that the full amount of erroneous refund along with applicable interest, as per the provisions of section 50 of the CGST Act, and penalty, wherever applicable, has been paid by the said registered person in **FORM GST DRC -03** by way of debit in electronic cash ledger, he shall re-credit an amount in electronic credit ledger, equivalent to the amount of erroneous refund so deposited by the registered person, by passing an order in **FORM GST PMT -03A**, preferably within a period of 30 days from

the date of receipt of request for re-credit of erroneous refund amount so deposited or from the date of payment of full amount of erroneous refund along with applicable interest, and penalty, wherever applicable, whichever is later.

#### **Brief Analysis**

In this Circulars CBEC prescribes the manner of re-credit in electronic credit ledger using **FORM GST PMT-03A** in case where the taxpayer deposits the erroneous refund sanctioned to him under Section 54 and Rule 96 of CGST Rules 2017. In such case the taxpayer shall deposit the amount of erroneous refund along with applicable interest and penalty, wherever applicable, through **FORM GST DRC-03** by debit of amount from electronic cash ledger.

**For further details please visit:** <https://taxinformation.cbic.gov.in/view-pdf/1003106/ENG/Circulars>

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

**(Circular No. 176/08/2022 - Central Tax dated July 06, 2022)**

Rule 95A inserted in the Central Goods and Services Tax Rules, 2017 w.e.f. 01.07.2019, 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 has been omitted, retrospectively w.e.f. 01.07.2019, vide notification No. 14/2022-Central Tax, dated 05.07.2022.

#### **Brief Analysis**

In this circular, Rule 95A, 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 has been omitted by CBIC, retrospectively w.e.f. 01.07.2019.

**For further details please visit:** <https://taxinformation.cbic.gov.in/view-pdf/1003108/ENG/Circulars>

#### **20. Notification issued by CBIC to implement e-invoicing for the taxpayers having aggregate turnover exceeding Rs. 10 Crores from October 01, 2022**

**(Notification No. 17/2022 - Central Tax dated August 01, 2022)**

The threshold limit of aggregate turnover for the applicability of e-invoicing provisions reduced from Rs. 20 crore to Rs. 10 crore w.e.f. October 01, 2022.

#### **Brief Analysis**

CBIC clarifies, that a Registered person whose aggregate turnover in a financial year exceeds Rs. 10 crore w.e.f. October 01, 2022. Will prepare invoice on the common goods & service tax Electronic portal in such a manner as specified.

**For further details please visit:** <https://taxinformation.cbic.gov.in/view-pdf/1009474/ENG/Notifications>

## **21. Central Board of Indirect Taxes & Customs (CBIC) reduces e-invoicing limit from 10 crore to 5 crore**

**(Notification No. 10/2023-Central Tax New Delhi dated May 10, 2023)**

The Government, on the recommendations of the Council, reduced the limit of e-invoicing from existing limit of Rs. 10 crore to Rs. 5 crore. This amendment will come in to effect from the 1st day of August, 2023.

**For further details please visit:** <https://taxinformation.cbic.gov.in/view-pdf/1009732/ENG/Notifications>

## **22. CBIC rolls out Automated Return Scrutiny Module for GST returns in ACES-GST backend application for Central Tax Office**

**(Press Release dated May 11, 2023)**

Central Board of Indirect Taxes & Customs (CBIC) has rolled out the Automated Return Scrutiny Module for GST returns in the ACES-GST backend application for Central Tax Officers. This module will enable the officers to carry out scrutiny of GST returns of Centre Administered Taxpayers selected on the basis of data analytics and risks identified by the System. In the module, discrepancies on account of risks associated with a return are displayed to the tax officers. Tax officers are provided with a workflow for interacting with the taxpayers through the GSTN Common Portal for communication of discrepancies noticed under FORM ASMT-10, receipt of taxpayer's reply in FORM ASMT-11 and subsequent action in form of either issuance of an order of acceptance of reply in FORM ASMT-12 or issuance of show cause notice or initiation of audit / investigation.

### **Brief Analysis**

Under this press release the Union Minister for Finance and Corporate Affairs had given directions to roll out an Automated Return Scrutiny Module for GST return at the earliest. In order to implement this non-intrusive means of compliance verification, CBIC has rolled out the Automated Return Scrutiny Module for GST returns in the ACES-GST backend application for Central Tax Officers. This module will enable the officers to carry out scrutiny of GST returns of Centre Administered Taxpayers selected on the basis of data analytics and risks identified by the System.

**For further details please visit:** <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1923445>

## **23. Rationalisation of late fee for GSTR-9 and Amnesty to GSTR-9 non-filers**

**(Notification no.07/2023–Central tax- March 31, 2023)**

The Central Government, on the recommendations of the Council, hereby waives the amount of late fee referred to in section 47 of the said Act in respect of the return to be furnished under section 44 of the said Act for the financial year 2022-23 onwards.

### **Brief Analysis**

In the said notification the Central Government, hereby waives the amount of late fee referred to in section

47 of the said Act, the registered persons who fails to furnish the return by the due date in respect of the return to be furnished under section 44 of the said Act for the financial year 2022-23 onwards, which is in excess of amount Twenty-five rupees per day, subject to a maximum of an amount calculated at 0.02 percent. of turnover in the State or Union territory for Registered persons having an aggregate turnover of up to five crore rupees in the relevant financial year and Fifty rupees per day, subject to a maximum of an amount calculated at 0.02 percent. Of turnover in the State or Union territory for registered persons having an aggregate turnover more than five crore rupees and up to twenty crores rupees in the relevant financial year.

**For further details please visit:** <https://taxinformation.cbic.gov.in/view-pdf/1009689/ENG/Notifications>

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## Lesson 6- Inspection, Search, Seizure, Offences & Penalties

### CASE LAWS

1.	April 08, 2022	Suresh Balkrishna Jajra V.	Union of India (Rajasthan-High Court)
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**Section 116 of the CGST Act deals with appearance by authorised representatives. The law says that any person who is required to appear before an officer or the Appellate Authority in connection with any proceedings under GST may appear by an authorised representative.**

The petitioner contended that he was entitled to be represented through his representative in view of the provisions contained in Section 116 of the CGST Act, 2017 was not acceptable in law because the provisions under Section 116 of the CGST Act will not be applicable when a person was required to appear personally for examination on oath or affirmation.

The petitioner contended that even though in a case where the summons u/s 70 of CGST Act have been issued to a person, the authority may consider his request of limited nature either for changing date of personal appearance or granting some relief in the context of personal disability, was a matter of consideration of the concerned authority and not for the Court. It would be open for the petitioner to move an application of limited nature before the authority, if for any unavoidable reason, he was unable to appear on a particular date.

The court relied on decision of the Supreme Court in the case of Paramvir Singh Saini vs. Baljit Singh & Others (2021), in which it was observed that even in the matter of issuance of summons under Section 70 of the CGST Act for personal appearance and recording of statement, a procedure has to be followed. “The allegation with regard to high handed action against the son of the petitioner could not be subject matter of this petition. We would not comment upon that,” the court said.

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## Lesson 8- Integrated Goods and Services Tax

### 1. 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://taxinformation.cbic.gov.in/view-pdf/1002904/ENG/Circulars>

### 2. Notification for further amendments in the notifications of the Government of India, Ministry of Finance (Department of Revenue), No. 2/2017- Integrated Tax (Rate)

**(Notification No. 04/2023-Integrated Tax (Rate), New Delhi, dated the February 28, 2023)**

The Central Government, being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India, Ministry of Finance (Department of Revenue), No.2/2017- Integrated Tax (Rate) dated the June, 28th, 2017. In the said notifications, in the Schedule, against S. No.94, in Column (3), after the item (ii) and the entries relating thereto, the following item and entry shall be inserted, namely: - “(iii) Rab, other than pre-packaged and labelled”. The said Notifications came into force from March 01, 2023.

#### **Brief Analysis**

In this notification the Central Government, hereby makes the further amendments in the notification of the Government of India, by inserting item no (iii) i.e. “Rab, other than pre-packaged and labelled” in the Schedule, against S. No. 94, in Column (3), after the item (ii) and the entries relating thereto.

**For further details please visit:** <https://taxinformation.cbic.gov.in/view-pdf/1009649/ENG/Notifications>

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## Lesson 9 - Union Territory Goods and Services Tax (UTGST)

### 1. Mechanism for filing of refund claim by the taxpayers registered in erstwhile Union Territory of Daman & Diu for period prior to merger with U.T. of Dadra & Nagar Haveli

**Circular No. 168/24/2021- GST dated December 30, 2021**

New GSTINs with UT Code 26 were created for the taxpayers of erstwhile UT of Daman and Diu w.e.f August 01, 2020 on merger of the UT of Dadra & Nagar Haveli and UT of Daman & Diu. During the transition, the taxpayers have transferred their ITC balance from their electronic credit ledger of the old GSTIN (by reversing the balance amount available in electronic credit ledger through the last return in FORM GSTR 3B filed for the old GSTIN prior to merger) to the new GSTIN (by availing the ITC for the said amount in the first return in FORM GSTR 3B filed for the new GSTIN) as per procedure specified under Notification No. 10/2020-CT dated 21.03.2020.

The application for refund shall be filed under 'Any other' category on the GST portal using their new GSTIN. In the Remarks column of the application, the applicant needs to enter the category in which the refund application otherwise would have been filed. For example, if the applicant wants to claim refund of unutilised ITC on account of export of goods/services, in remarks column, he shall enter 'Refund of unutilised ITC on account of export of goods/services without payment of tax for the period prior to merger of Daman & Diu with Dadra & Nagar Haveli'. The application shall be accompanied by all the supporting documents which otherwise are required to be submitted with the refund claim.

**For further details please visit:** <https://taxinformation.cbic.gov.in/view-pdf/1003080/ENG/Circulars>

**Notification for further amendments in the notifications of the Government of India, Ministry of Finance (Department of Revenue), No. 2/2017-Union Territory (Rate)  
(Notification No. 04/2023- Union Territory (Rate), New Delhi, dated the February 28, 2023)**

#### Brief Analysis

In this notification the Central Government, hereby makes the further amendments in the notification of the Government of India, by inserting item no (iii) i.e. "Rab, other than pre-packaged and labelled" in the Schedule, against S. No. 94, in Column (3), after the item (ii) and the entries relating thereto.

**For further details please visit:** <https://taxinformation.cbic.gov.in/view-pdf/1009653/ENG/Notifications>

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## Lesson 11 - Industry/Sector Specific Analysis

### 1. GST on service supplied by restaurants through e-commerce operators

**(Circular No. 167/23/2021- GST dated December 17, 2021)**

The GST Council in its 45th meeting held on 17th September, 2021 recommended to notify 'Restaurant Service' under section 9(5) of the CGST Act, 2017. Accordingly, the tax on supplies of restaurant service supplied through e-commerce operators shall be paid by the e-commerce operator. In this regard notification No. 17/2021 dated 18.11.2021 has been issued.

Sl. No	Issue	Clarification
1.	Would ECOs have to still collect TCS in compliance with section 52 of the CGST Act, 2017?	As 'restaurant service' has been notified under section 9(5) of the CGST Act, 2017, the ECO shall be liable to pay GST on restaurant services provided, with effect from the 1st January, 2022, through ECO. Accordingly, the ECOs will no longer be required to collect TCS and file GSTR 8 in respect of restaurant services on which it pays tax in terms of section 9(5).  On other goods or services supplied through ECO, which are not notified u/s 9(5), ECOs will continue to pay TCS in terms of section 52 of CGST Act, 2017 in the same manner at present.
2.	Would ECOs have to mandatorily take a separate registration w.r.t supply of restaurant service [notified under 9(5)] through them even though they are registered to pay GST on services on their own account?	As ECOs are already registered in accordance with rule 8(in Form GST-REG 01) of the CGST Rules, 2017 (as a supplier of their own goods or services), there would be no mandatory requirement of taking separate registration by ECOs for payment of tax on restaurant service under section 9(5) of the CGST Act, 2017.
3.	Would the ECOs be liable to pay tax on supply of restaurant service made by unregistered business entities?	Yes. ECOs will be liable to pay GST on any restaurant service supplied through them including by an unregistered person.
4.	What would be the aggregate turnover of person supplying 'restaurant service' through ECOs?	It is clarified that the aggregate turnover of person supplying restaurant service through ECOs shall be computed as defined in section 2(6) of the CGST Act, 2017 and shall include the aggregate value of supplies made by the restaurant through ECOs. Accordingly, for threshold consideration or any other purpose in the Act, the person providing restaurant service through ECO shall account such services in his aggregate turnover.

5.	Can the supplies of restaurant service made through ECOs be recorded as inward supply of ECOs (liable to reverse charge) in GSTR 3B?	No. ECOs are not the recipient of restaurant service supplied through them. Since these are not input services to ECO, these are not to be reported as inward supply (liable to reverse charge).
6.	Would ECOs be liable to reverse proportional input tax credit on his input goods and services for the reason that input tax credit is not admissible on 'restaurant service'?	<p>ECOs provide their own services as an electronic platform and an intermediary for which it would acquire inputs/input service on which ECOs avail input tax credit (ITC). The ECO charges commission/fee etc. for the services it provides. The ITC is utilised by ECO for payment of GST on services provided by ECO on its own account (say, to a restaurant). The situation in this regard remains unchanged even after ECO is made liable to pay tax on restaurant service. ECO would be eligible to ITC as before. Accordingly, it is clarified that ECO shall not be required to reverse ITC on account of restaurant services on which it pays GST in terms of section 9(5) of the Act.</p> <p>It may also be noted that on restaurant service, ECO shall pay the entire GST liability in cash (No ITC could be utilised for payment of GST on restaurant service supplied through ECO)</p>
7.	Can ECO utilize its Input Tax Credit to pay tax w.r.t 'restaurant service' supplied through the ECO?	No. As stated above, the liability of payment of tax by ECO as per section 9(5) shall be discharged in cash.
8.	<p>Would supply of goods or services other than 'restaurant service' through ECOs be taxed at 5% without ITC?</p>	<p>ECO is required to pay GST on services notified under section 9(5), besides the services/other supplies made on his own account.</p> <p>On any supply that is not notified under section 9(5), that is supplied by a person through ECO, the liability to pay GST continues on such supplier and ECO shall continue to pay TCS on such supplies.</p> <p>Thus, present dispensation continues for ECO, on supplies other than restaurant services. On such supplies (other than restaurant services made through ECO) GST will continue to be billed, collected and deposited in the same manner as is being done at present. ECO will deposit TCS on such supplies.</p>
9.	Would 'restaurant service' and goods or services other than restaurant service sold by a restaurant to a customer under the same order be billed differently? Who shall be liable for raising invoices in	Considering that liability to pay GST on supplies other than 'restaurant service' through the ECO, and other compliances under the Act, including issuance of invoice to customer, continues to lie with the respective suppliers (and ECOs being liable only to collect tax at source (TCS) on such supplies), it is advisable that ECO raises separate bill on restaurant service in such cases

	such cases?	where ECO provides other supplies to a customer under the same order.
<b>10.</b>	Who will issue invoice in respect of restaurant service supplied through ECO - whether by the restaurant or by the ECO?	The invoice in respect of restaurant service supplied through ECO under section 9(5) will be issued by ECO.
<b>11.</b>	Clarification may be issued as regard reporting of restaurant services, value and tax liability etc in the GST return	<p>A number of other services are already notified under section 9(5). In respect of such services, ECO operators are presently paying GST by furnishing details in GSTR 3B.</p> <p>The ECO may, on services notified under section 9 (5) of the CGST Act, 2017, including on restaurant service provided through ECO, may continue to pay GST by furnishing the details in GSTR3B, reporting them as outward taxable supplies for the time being. Besides, ECO may also, for the time being, furnish the details of such supplies of restaurant services under section 9(5) in Table 7A(1) or Table 4A of GSTR-1, as the case maybe, for accounting purpose.</p> <p>Registered persons supplying restaurant services through ECOs under section 9(5) will report such supplies of restaurant services made through ECOs in Table 8 of GSTR- 1 and Table 3.1 (c) of GSTR-3B, for the time being.</p>

**For further details please visit:** <https://taxinformation.cbic.gov.in/view-pdf/1003081/ENG/Circulars>

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## Lesson 12- Basic Concepts of Customs Law

### 1. Clarification regarding applicability of Social Welfare Surcharge on goods exempted from basic and other customs duties / cesses

**Circular No. 03/2022 - Customs dated February 01, 2022**

Social Welfare Surcharge (SWS) is levied and collected, as a duty of customs, and is calculated at the rate of 10% on the aggregate of duties, taxes and cesses which are levied and collected by the Central Government as a duty of customs on goods imported into India.

It may be noted that at present SWS applies at the rate of 10% of the aggregate of customs duties payable on import of goods and not on the value of imported goods. If aggregate customs duty payable is zero on account of an exemption, the SWS shall be computed as 10% of value equal to 'Nil' (as aggregate amount of customs duties payable is zero). Law does not require computation of SWS on a notional customs duty calculated at tariff rate where applicable aggregate of duties of customs is zero. It is clarified that the amount of Social Welfare Surcharge payable would be 'Nil' in cases where the aggregate of customs duties (which form the base for computation of SWS) is zero even though SWS has not been exempted.

**For further details please visit:** <https://taxinformation.cbic.gov.in/view-pdf/1003086/ENG/Circulars>

### 2. CBIC has issued the Customs Brokers Licensing (Amendment) Regulations 2022

**(Notification No. 52/2022-Customs (N.T.) dated June 24, 2022)**

Each Customs Broker shall enroll himself as a member of the Customs Brokers' Association at every jurisdiction he operates, if there is such an Association registered in the Customs Station, where the Customs Broker is operating and recognised by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be. No Customs Broker shall enroll himself in more than one Association, at a given time, in a particular jurisdiction.

#### **Brief Analysis**

The Board (CBIC), Notifies the Regulation 20, for sub-regulations (1) and (2) of Customs Brokers Licensing (Amendment) Regulations, 2022. If Customs Broker is registered in the Customs Station than shall enroll himself in not more than one association as a member of the Customs Brokers' Association at every jurisdiction he operate.

**For further details please visit:** <https://taxinformation.cbic.gov.in/view-pdf/1009355/ENG/Notifications>

### 3. Amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 50/2017-Customs, dated the 30th June, 2017

**(Notification No. 02/2023-Customs New Delhi, dated February 01, 2023)**

In the said notification, It is inserted as; If, at the time of import, the importer produces to the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, a certificate from an Officer not below the rank of Joint Secretary to the Government of India in the Ministry of Heavy Industries certifying that the imported goods (having regard to their description, quantity and technical specification) are intended for use by testing agencies specified in List 37 for testing and/or certification

purposes only; This notification came into force from February 02, 2023.

### **Brief Analysis**

In the said notification, the Central Government, hereby makes the further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 50/2017-Customs, dated the 30th June, 2017 by inserting few entries in the said Table regarding Pecan nuts, Fish lipid oil, Crude glycerin, Algal Prime (flour), Acid grade fluorspar and in the in the Annexure, - Condition No. 113 inserted, and List 36 and List 37 and the entries relating thereto in the matter of Petrol/ Diesel Vehicles, Automotive Research Association, International Centre for Automotive Technology etc.

**For further details please visit:** <https://taxinformation.cbic.gov.in/view-pdf/1009620/ENG/Notifications>

#### **4. Amendment in Project Imports Regulations, 1986, to insert a new regulation**

##### **(Notification No. 07/2023-Customs New Delhi, dated February 01, 2023)**

Central Board of Indirect Taxes and Customs (CBIC) has issued Project Imports (Amendment) Regulations, 2023 to amend the Project Imports Regulations, 1986, same came into force from February 02, 2023.

**For further details please visit:** <https://taxinformation.cbic.gov.in/view-pdf/1009625/ENG/Notifications>

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## **Lesson 13 -Valuation & Assessment of Imported and Export Goods & Procedural Aspects**

### **1. 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://taxinformation.cbic.gov.in/view-pdf/1000221/ENG/Circulars>

### **2. Shipping Bill (Post export conversion in relation to instrument based scheme) Regulations, 2022**

**(Notification No. 11/2022 - Customs (N.T.) dated February 22, 2022)**

Shipping Bill (Post export conversion in relation to instrument based scheme) Regulations, 2022 shall apply to shipping bills or bills of export filed on or after the date of publication of these regulations in the Official Gazette. The application for conversion shall be filed in writing within a period of one year from the date of order for clearance of goods under sub-section (1) of section 51 or section 69 of the Act.

**For further details please visit:** <https://taxinformation.cbic.gov.in/view-pdf/1009230/ENG/Notifications>

### **3. Customs (Assistance in Value Declaration of Identified Imported Goods) Rules, 2023 (CAVR, 2023)**

**(Notification No. 03/2023-Customs (N.T.) January 11, 2023)**

After information to and feedback from public and stakeholders, including Directorates involved in implementation CBIC has notified the Customs (Assistance in Value Declaration of Identified Imported Goods) Rules, 2023. The rules provide guidance to both, the person making the reference to the Board, as well as in the undertaking of detailed examination. The operation of the CAVR, 2023 dated 11th January 2023 shall come into effect on February 11, 2023.

#### **Brief Analysis**

Under this notification the Central Government, hereby makes new rules by the name of Customs (Assistance in Value Declaration of Identified Imported Goods) Rules, 2023 and the same shall come into force on 11th day of February, 2023.

**For further details please visit:** <https://taxinformation.cbic.gov.in/view-pdf/1009611/ENG/Notifications>

### **4. Fixation of Tariff Value of Edible Oils, Brass Scrap, Areca Nut, Gold and Silver**

**(Notification No. 09/2023-CUSTOMS (N.T.), New Delhi, February 15, 2023)**

The Central Board of Indirect Taxes & Customs, being satisfied that it is necessary and expedient to do so, hereby makes amendments in TABLE-1, TABLE-2, and TABLE-3 for fixation of Tariff Value of Edible Oils like Crude Palm Oil, RBD Palm Oil & Others – Palm Oil, Brass Scrap, Areca Nut, Gold and

Silver. This notification came into force with effect from February 16, 2023.

### **Brief Analysis**

By the said notification the Central Government, hereby brings changes in Tariff Value (US \$) of certain goods like Edible Oils, Brass Scrap, Areca Nut, Gold and Silver etc. in TABLE-1, TABLE-2, and TABLE-3. This change will be effective from February 16, 2023.

**For further details please visit:** <https://taxinformation.cbic.gov.in/view-pdf/1009637/ENG/Notifications>

**5. Custom notification for amendment in HSN code 8908 00 00 vide  
(Notification No. 13/2023- Customs, New Delhi, February 23, 2023)**

The Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes further amendments in the notification of the Government of India, Ministry of Finance (Department of Revenue), No. 50/2017-Customs, dated the 30th June, 2017 in relation to HSN code 8908 00 00. This notification came into force with effect from February 24, 2023.

**For further details please visit:** <https://taxinformation.cbic.gov.in/view-pdf/1009641/ENG/Notifications>

**6. Notification regarding change in Tariff value of Crude oil, Crude Palmolein, Brass Scrap, Gold, Silver, and  
Areca nuts etc.  
(Notification No. 11/2023-Customs (N.T.) New Delhi, February 28, 2023)**

The Central Board of Indirect Taxes & Customs, being satisfied that it is necessary and expedient to do so, hereby makes the amendments in the notification No. 36/2001-Customs (N.T.), dated the August, 3rd, 2001, regarding change in Tariff value of Crude oil, Crude Palmolein, Brass Scrap, Gold, Silver, Medallions and silver coins, Gold bars, and Areca nuts. This notification came into force with effect from March 01, 2023.

### **Brief Analysis**

By the said notification the Central Government, hereby brings changes in Tariff Value (US \$) of certain goods like Edible Oils, Brass Scrap, Areca Nut, Gold and Silver etc. in TABLE-1, TABLE-2, and TABLE-3. This change will be effective from March 01, 2023.

**For further details please visit:** <https://taxinformation.cbic.gov.in/view-pdf/1009656/ENG/Notifications>

**7. Custom exemption notification regarding tag, tracking device or data logger  
(Notification No. 14/2023-Customs, New Delhi, the February 28, 2023)**

The Central Government, makes the further amendments in the notification No. 104/94-Customs. As In the said notification, after the Second proviso, an Explanation shall be inserted, regarding a device such as tag, tracking device or data logger already affixed on the container at the time of import shall also be eligible for exemption from the duty of customs and the integrated tax.

## **Brief Analysis**

As per this notification of the Central Government, a device such as tag, tracking device or data logger already affixed on the container at the time of import shall also be eligible for exemption from the duty of customs and the integrated tax.

**For further details please visit:** <https://taxinformation.cbic.gov.in/view-pdf/1009655/ENG/Notifications>

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## **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://taxinformation.cbic.gov.in/view-pdf/1000220/ENG/Circulars>

### **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://taxinformation.cbic.gov.in/view-pdf/1000216/ENG/Circulars>

### **3. Exemption of COVID-19 vaccine (Notification No. 01 /2023 – Customs, dated January 13, 2023)**

The Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table below, falling within the Chapter, heading, sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) specified in column (2) of the said Table, when imported into India by Central Government or State Governments, from the whole of the duty of customs leviable thereon under the said First Schedule.

## **Brief Analysis**

As per this notification, the Central Government hereby exempts the COVID-19 vaccine from the whole of the duty of customs leviable thereon under the said First Schedule.

**For further details please visit:** <https://taxinformation.cbic.gov.in/view-pdf/1009613/ENG/Notifications>

**4. Amendment in Circular No. 29/2020-Customs dated 22.06.2020 for allowing transshipment of Bangladesh export cargo to third countries through Delhi Air Cargo - reg. (Circular No. 03/2023-Customs, New Delhi dated February 07, 2023)**

The Circular allows inter alia transshipment of Bangladesh export cargo through Kolkata Air Cargo. The goods loaded on containers/ closed bodied trucks enter India from LCS Petrapole, move by road to Kolkata Air Cargo, from where they are airlifted and transported to third countries. It has been represented to allow this movement through Delhi Air Cargo also, for better cargo evacuation and improved logistics efficiency.

**For further details please visit:** <https://taxinformation.cbic.gov.in/view-pdf/1003145/ENG/Circulars>

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## Lesson 15 - Advance Ruling, Settlement Commission, Appellate Procedure, Offences and Penalties

### 1. **Amendments to the Finance Act 2022 has been notified w.e.f. October 01, 2022** **(Notification No. 18/2022 - Central Tax dated September 28, 2022)**

CBIC has notified October 01, 2022 as the date on which provisions of sections 100 to 114 related to amendments in Central Goods and Services Tax Act, 2017, except clause (c) of section 110 and section 111 of Finance Act, 2022 shall come into force.

#### **Brief Analysis**

As per this Notification, the Central Government hereby appoints the 1st day of October, 2022 in the matter of the provisions of sections 100 to 114 except clause (c) of section 110 and section 111, as of the said Act comes into effect by Notification No. 9/2017 –Central Tax-New Delhi, the 28th June, 2017.

**For further details please visit:** <https://taxinformation.cbic.gov.in/view-pdf/1009513/ENG/Notifications>

### 2. **Central Goods and Services Tax (Second Amendment) Rules, 2022** **(Notification No. 19/2022 – Central Tax dated September 28, 2022)**

This notification seeks to make amendments (Second Amendment, 2022) to the CGST Rules, 2017. In rule 96 of the said rules, in sub-rule (3), for the words, letters and figures, —FORM GSTR3 or FORM GSTR-3B, as the case may be, the letters and figure, —FORM GSTR-3B shall be substituted. FORM GSTR-1A, FORM GSTR-2 and FORM GSTR-3 of the said rules shall be omitted.

#### **Brief Analysis**

CBIC notifies, the amendment in Rule 21, for filing return monthly and quarterly for not filing return continuous for 6 months and two tax periods respectively and in Rule 36, Rule 37, Rule 38 the word, letters and figure,-in FORM GSTR-2 shall be omitted; Rule 42, rule 96 for the words, letters and figures,-FORM GSTR-3 or FORM GSTR-3B, as the case may be, the letters and figure,-FORM GSTR- 3B shall be substituted and in others.

**For further details please visit:** <https://taxinformation.cbic.gov.in/view-pdf/1009514/ENG/Notifications>

### 3. **Central Goods and Services Tax (Second Amendment) Rules, 2022** **(Notification No. 19/2022 - Central Tax dated September 28, 2022)**

This notification seeks to make amendments (Second Amendment, 2022) to the CGST Rules, 2017. In rule 96 of the said rules, in sub-rule (3), for the words, letters and figures, —FORM GSTR3 or FORM GSTR-3B, as the case may be, the letters and figure, —FORM GSTR-3B shall be substituted. FORM GSTR-1A, FORM GSTR-2 and FORM GSTR-3 of the said rules shall be omitted.

#### **Brief Analysis**

The CBIC (Board) issue this notification to make further amendment in Rule 21, by adding clause (h) being a registered person required to file return under subsection (1) of section 39 for each month or part thereof, has not furnished returns for a continuous period of six months; (i) being a registered person required to file return under proviso to subsection (1) of section 39 for each quarter or part thereof, has not furnished returns for a continuous period of two tax periods and changes Rule 36, Rule37, Rule 38, Rule 89 and other are taken place.

**For further details please visit:** <https://taxinformation.cbic.gov.in/view-pdf/1009514/ENG/Notifications>

**4. Faceless Assessment – Standard Examination Orders (SEOs) through RMS - Phased implementation of Standardized Examination Orders through RMS (Circular No. 02/2023-Customs-January 11, 2023)**

Considering the on track implementation and feedback from the National Customs Targeting Centre (NCTC) in Assessment Groups 4, the Board has decided to implement Standard Examination Orders (SEOs) through the Risk Management System across other assessment groups, National Assessment Centre (NAC) wise as per specified schedule.

**Brief Analysis**

In this Notification, CBIC (board) has decided to implement Standard Examination Orders (SEOs) for goods covered under Assessment Groups through the Risk Management System across assessment groups, National Assessment Centre (NAC) wise as per the given schedule and getting feedback from the National Customs Targeting Centre (NCTC) in such assessment groups.

**For further details please visit:** <https://taxinformation.cbic.gov.in/view-pdf/1003142/ENG/Circulars>

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