

NEWSLETTER

Volume VI – 2022-23

J P Chawla & Co. LLP

Chartered Accountants

Taxation | Audit | Outsourcing | Regulatory | Transaction Advisory | Business Intelligence



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The world is talking about recession, but the Indian economy continues to grow by 7% and demand continues to be robust. Although the dollar continues to strengthen against the rupee putting pressure on imports, as per the Indian Finance minister, it is not as the rupee is sliding but because of the dollar strengthening.

India's stable economic conditions have established India as the world's trusted partner, where 'make in India' is picking up, with apple announcing manufacturing plans in India

The World expects India to mobilize genuine efforts to deliver on the 2030 Development Agenda, Addis Ababa Agreement and the Paris Climate Agreement as India inherits the presidency of the G20.

The country received the largest ever FDI inflows of US\$ 83.6 billion in 2021-22. The robust economic reforms and ease of doing business have enabled India to be on track and receive USD 100 Billion in FDI in FY 22-23.

In Indirect taxes, GST authorities have released detailed clarifications and guidelines in the Finance Act 2022, in order to implement amendments made by the government.

In Direct Taxes, the Central Board of Direct Taxes has issued revised guidelines and amendments under the Income Tax Act of 1961. The tax department reported a 17% increase in advance tax payments at Rs. 2.95 lakh crore (US\$ 37.03 billion), a huge uptake.

In regulations, the Ministry of Corporate Affairs ('MCA') vide its general circular no. 09/2022, has decided to allow the filing of e-form DIR-3-KYC and web-form DIR-3-KYC-WEB without filing fee up to 15th October 2022.

We sincerely hope this volume of the newsletter will update you regarding new developments in the area of Business, Tax, Assurance & Accounting and regulations.

Happy Reading!!
Sincerely Yours,

Rajat Chawla
Director & CEO
New Delhi

Indian Economy to Grow by 7.3% in FY23 according to S&P

The latest projection of S&P (global rating agency) confirms that the Indian economy is anticipated to expand by 7.3% in the current fiscal year ending in March'23, whereas the inflation is expected to continue above the RBI's upper tolerance level of 6%.

Services Sector Exports Strategy - Skilling and Internationalization Of Higher Education

The commerce minister at the inaugural session of SEPC's India@2047 appreciated the strong export performance of the service sector and urged stakeholders to concentrate on India's globally competitive advantages prioritize innovation and go for a more contemporary and practical approach.

India to Attract FDI Worth USD 100 Billion this Fiscal

The robust economic reforms and ease of doing business have enabled India to be on track and receive USD 100 Billion in FDI in FY 22-23. The country received the largest ever FDI inflows of US\$ 83.6 billion in 2021-22.

Advance Tax Payment Up by 17%

The tax department reported a 17% increase in advance tax payments at Rs. 2.95 lakh crore (US\$ 37.03 billion) giving policymakers consolation. According to the government, the processing of ITRs submitted in the current fiscal year has accelerated noticeably, with about 93% of the confirmed ITRs completed as of September 17th alone.

MSMEs Contribute 30% to India's GDP, to Grow Further

Minister of Micro, Small and Medium Enterprises, the MSME sector, accounts for one-third of India's GDP and has room for expansion in coming years. The MSME sector will be essential to achieving the ambitious goal of a US\$ 5 trillion economy with a 25% contribution from the manufacturing sector.

India's consumer market, a US\$ 1 trillion investment opportunity

India's growth rate is among the fastest in the world, retail inflation has moderated, buffer food stockpiles are plentiful, and currency reserves are sizable. One of the key engines of India's economic growth historically has been domestic consumption, which is now rebounding strongly. Strong domestic consumption thus leads to robust economic growth.

India Surpasses China in Creating New Unicorns in H1

Despite a slow fundraising winter afflicting South Asian entrepreneurs, India surpassed China in the number of new unicorns—startups valued at US\$ 1 billion or more—created in the first half of 2022. According to the Hurun Global Unicorn Index 2022, India added 14 new unicorns during the period, while China added 11.

Indirect Tax

Analysis of GST Circulars

Notification 18/2022-Central Tax

Implementation of Amendment made in Finance Act 2022

The government in its annual budget speech had made various amendments in GST regulation but in the absence of notifications all such amendments were not applicable till date. In order to make such amendments applicable the government has introduced this notification.

The few implications of this notification are as follows:

1. Taxpayer is now allowed to take ITC of previous year till 30th November of following year to which such invoice belongs. Earlier the date was due date of GSTR-3B of September month of following year.
2. Taxpayer can make amendment in outward supplies till 30th November of following year to which such invoice belongs. Earlier the date was due date of GSTR-3B of September month of following year.
3. Taxpayer can issue credit note till 30th November of following year to which such invoice belongs. Earlier the date was due date of GSTR-3B of September month of following year.
4. Suspension of GST registration in case of non filling of GSTR-3B for a continuous period of 6 months or 2 quarter (whichever is applicable)
5. Non resident taxable person shall required to furnish return up to 13th of the subsequent month. Earlier the same was the 20th of the subsequent month.
6. Interest on wrong availment of ITC shall be levied only in case of ITC availed and utilized. Earlier the interest was levied on wrong availment irrespective of utilization of such ITC.

Notification 19/2022-Central Tax

Implementation of Amendment made in Finance Act 2022

In order to give effect of amendments made in Finance Act 2022, government had also made various changes in CGST Rules 2017 through this notification.

1. Suspension of GST registration in case of non filling of GSTR-3B for a continuous period of 6 months or 2 quarter (whichever is applicable)
2. ITC may be availed by the registered person if invoice contains the details of the amount of tax charged, description of goods or services, total value of supply of goods or services or both, GSTIN of the supplier and recipient and place of supply in case of inter-State supply
3. The matching concept of ITC vide GSTR-2 has been deleted from the rules and hence therefore the word GSTR-2 wherever referred in the said rules has been deleted but the concept of matching GSTR-2A and GSTR-2B with GSTR-3B remain.

A. Circular No. 170/02/2022 Dated 06.07.2022

Mandatory furnishing of correct and proper information in Form GSTR-3B and Form GSTR-1

a. Furnishing of information in table 3.2 of GSTR-3B: Now, it is mandatory to report the following details in Form GSTR-3B separately as well, namely:

- i. Inter-state supplies made to un-registered person.
- ii. Supplies made to composition taxpayers and any amendment therein.
- iii. Supplies made to UIN holders like WHO, WTO and any other.
- iv. Detail of advance received and adjusted.

The details reported in table 3.2 is being auto-populated in Form GSTR-3B on the basis of details furnished in Form GSTR-1. Here, it is advisable to report the details correctly in GSTR-1 return making inter-state supplies.

Here, the following supplies have been considered in table 3.2 of Form GSTR-3B.

- a. Un-registered supplies reported in B2C-Others (Table 7), B2C Large Invoices (Table-5) and amendment of such supplies shall be considered.
- b. Detail of supplies made to composition taxable person, UIN holders and any amendment thereof should also report.
- c. Details of advance received during the period shall also report in the table 3.2 of Form GSTR-3B.

To provide the correct and fair details the registered person requires to correct his database and ensure that correct place of supply has been declared in the return.

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

Supplies made to Unregistered Persons	+
Supplies made to Composition Taxable Persons	+
Supplies made to UIN holders	+

CANCEL CONFIRM

b) Furnishing of information regarding ITC availed, reversal thereof and ineligible ITC:

Form GSTR-2B is providing the invoice wise details of ITC available to the registered person along with the details of input on account of import of goods. Details of Form GSTR-2B is carried forward in Form GSTR-3B in table 4 except the following as delineated below:

- a. Input that is not available to the registered person on account of limitation as per sub-section (4) of Section 16.
- b. Where the place of supply is located in different State/UT in case of intra-state supply.

For reporting of information in Form GSTR-3B the following procedure should be adopted as detailed hereunder:

- A. Total Input shall be auto-populated in table 4A of Form GSTR-3B.
- B. Reversal of input which cannot be re-claimed on account of reversal as per Rule 38, Rule 42 and Rule 43 in relation to the exempt supply of goods or services and ineligible/block credit as per Section 17(5) of CGST Act will report under **Table 4(B)(1)**.
- C. Reversal of Input which can be reclaimed in future subject to the fulfillments of conditions as per Rule 37 and Section 16(2) (b) and Section 16(2) (C). Such **reclaimed ITC will report in Table 4(D)(1) of return**.
- D. Under Table 4(B)(2) such ITC will report which is claimed by the registered person in previous tax period due to some inadvertent mistakes.
- E. Ineligible ITC will not be required to be provided in Table 4(D)(1) separately, hence the details already have been provided in Table 4(B).
- F. ITC which is not available as per the provision of Section 16(4) of CGST Act or where the recipient of intra-state supply is located in different State/UT will report in Table 4(D)(2) of GSTR-3B return.

Thus, it is clarified that reversal of ineligible credit as per Section 17(5) or any other provision required to be made under Table 4 (B) and not under Table 4(D) of Form GSTR-3B.

Note: - Changes have been made on gst portal by the GSTIN, taxpayer should take proper action to avoid any lapses in reporting.

4. Eligible ITC Help ?				
Details	Integrated Tax (₹)	Central Tax (₹)	State/UT Tax (₹)	CESS (₹)
(A) ITC Available (whether in full or part)				
(1) Import of goods	0.00			0.00
(2) Import of services	0.00			0.00
(3) Inward supplies liable to reverse charge (other than 1 & 2 above)	0.00	0.00	0.00	0.00
(4) Inward supplies from ISD	0.00	0.00	0.00	0.00
(5) All other ITC	0.00	0.00	0.00	0.00
(B) ITC Reversed				
(1) As per rules 38,42 & 43 of CGST Rules and section 17(5)	0.00	0.00	0.00	0.00
(2) Others	0.00	0.00	0.00	0.00
(C) Net ITC Available (A) - (B)				
	0.00	0.00	0.00	0.00
(D) Other Details				
(1) ITC reclaimed which was reversed under Table 4(B)(2) in earlier tax period	0.00	0.00	0.00	0.00
(2) Ineligible ITC under section 16(4) & ITC restricted due to PoS rules	0.00	0.00	0.00	0.00

B. Circular No. 171/03/2022 Dated 06.07.2022

Clarification on issues relating to demand and penalty in respect of transaction involved fake invoices.

If any taxpayer who is issuing any tax invoice without the actual supply of goods or services or both referred as fake or bogus invoice. In general practice, it came to notice that many taxpayers are following this method for evasion of tax and utilizing the input fraudulently.

GST Department has issued the detailed circular on applicability of demand and penalty under the Act and clarified the issues thereunder.

Sl. No	Issues	Clarifications
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 has 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.
2	A registered person "A" has issued tax invoice to another registered person "B" without any underlying supply of goods or services or both. 'B' avails input tax credit on the basis of the said tax invoice. B further issues invoice along with underlying supply of goods or services or both to his buyers and utilizes ITC availed on the basis of the above-mentioned invoices issued by 'A', for payment of his tax liability in respect of his said outward supplies. Whether 'B' will be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 73 or section 74 or any other provisions of the CGST Act	Since the registered person 'B' has availed and utilized fraudulent ITC on the basis of the said tax invoice, without receiving the goods or services or both, in contravention of the provisions of section 16(2)(b) of CGST Act, he shall be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 74 of the CGST Act, along with applicable interest under provisions of section 50 of the said Act. Further, as per provisions of section 75(13) of CGST Act, if penal action for fraudulent availment or utilization of ITC is taken against 'B' under section 74 of CGST Act, no penalty for the same act, i.e., for the said fraudulent availment or utilization of ITC, can be imposed on 'B' under any other provisions of CGST Act, including under section 122.

3	<p>A registered person 'A' has issued tax invoice to another registered person 'B' without any underlying supply of goods or services or both. 'B' avails input tax credit on the basis of the said tax invoice and further passes on the said input tax credit to another registered person 'C' by issuing invoices without underlying supply of goods or services or both. Whether 'B' will be liable for the demand and recovery and penal action, under the provisions of section 73 or section 74 or any other provisions of the CGST Act.</p>	<p>In this case, the input tax credit availed by 'B' in his electronic credit ledger on the basis of tax invoice issued by 'A', without actual receipt of goods or services or both, has been utilized by 'B' for passing on of input tax credit by issuing tax invoice to 'C' without any underlying supply of goods or services or both. As there was no supply of goods or services or both by 'B' to 'C' in respect of the said transaction, no tax was required to be paid by 'B' in respect of the same. The input tax credit availed by 'B' in his electronic credit ledger on the basis of tax invoice issued by 'A', without actual receipt of goods or services or both, is ineligible in terms of section 16 (2) (b) of the CGST Act. In this case, there was no supply of goods or services or both by 'B' to 'C' in respect of the said transaction and also no tax was required to be paid in respect of the said transaction. Therefore, in these specific cases, no demand and recovery of either input tax credit wrongly/ fraudulently availed by 'B' in such case or tax liability in respect of the said outward transaction by 'B' to 'C' is required to be made from 'B' under the provisions of section 73 or section 74 of CGST Act. However, in such cases, 'B' shall be liable for penal action both under section 122(1)(ii) and section 122(1) (vii) of the CGST Act, for issuing invoices without any actual supply of goods and/or services as also for taking/ utilizing input tax credit without actual receipt of goods and/or services.</p>
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On the basis of above Seller who issue the invoice without supply of goods or services may be liable for penalty under Section 122 (1) (ii) of CGST Act 2017 for violation of provision under the Act.

However, the buyer shall be liable for demand and recovery of ITC under Section 16(2)(b) of CGST Act, penalty under Section 74 for suppression of facts along with applicable interest under Section 50 of the said Act.

In cases of wrongful/fraudulent availment and utilization of input tax credit or issuances of invoices without the supply of goods or services or both, provision of punishment under the Act may also be applicable.

C. Circular No. 172/04/2022 Dated 06.07.2022

Clarifications on various issues pertaining to the GST

I. Refund claimed by the recipients of supplies regarded as deemed exports

S.No-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.

Ans: In Circular No. 125/11/2019 GST – dated 18.11.2019 has placed a condition that recipient of deemed export supplies shall file a declaration that he has not availed ITC on invoices for which refund has been claimed.

Due to the limitation recipient of deemed export were facing the problem to file the refund application on common portal. Due to the limitation on gst portal to debit the amount of Electronic Credit Ledger for filing refund. In order to ensure uniformity and ease of filing application with reference to the Circular No. 147/03/2021 GST- dated 12.03.2021 input shall be available as ITC to the recipients only for claiming such refunds on portal. Therefore, ITC availed by recipient of deemed export supplies would not be subject to the provision of Section 17 of CGST Act.

S.No-2. Whether the ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is to be included in the “Net ITC” for computation of refund of unutilised ITC under rule 89(4) & rule 89 (5) of the CGST Rules, 2017.

Ans: Hence, the provisions of Section 17 of CGST Act are not applicable in recipient of deemed export supplies claiming GST refund of such tax paid under the Act. Therefore, such ITC shall not be included in Net ITC on account of claiming refund under Zero Rate Supplies or Inverted Duty Structure as per the CGST Rules.

II. Clarification on various issues of section 17(5) of the CGST Act

S.No-1. Whether the proviso at the end of clause (b) of sub-section (5) of section 17 of the CGST Act is applicable to the entire clause (b) or the said proviso is applicable only to sub-clause (iii) of clause (b)?

Ans: The proviso is as follows:

Input credit shall be available in respect of goods or services where it is obligatory for an employer to provide the same to its employee under any law for the time being in force.

Input tax credit is blocked in respect of goods or services like Food and Beverages, outdoor catering, renting, or hiring motor vehicles, life, or health insurance etc. unless such services used for making outward taxable supplies by registered person.

On recommendation of GST council meeting held in July -2018 and as per the amendment in CGST act “it would now be made available in respect of Goods or services which are obligatory for an employer to provide to its employees, under any law for the time being in force.” Hence, it is clarified that the proviso is applicable to the whole of clause (b) of sub-section (5) of section 17 of the CGST Act.

S.No-2. Whether the provisions of sub-clause (i) of clause (b) of sub-section (5) of section 17 of the CGST Act bar availment of ITC on input services by way of “leasing of motor vehicles, vessels or aircraft” or ITC on input services by way of any type of leasing is barred under the said provisions?

Ans: As per the provision of Section 17(5) of CGST Act input is not available or blocked-in respect of goods or services such as transportation services, leasing of motor vehicles, vessels, foods and beverages, health cosmetics etc. provided that recipient of such goods or services are making taxable supplies as element of a taxable, composite, and mixed supply. The said circular said clarified that input is restricted to leasing of motor vehicles, vessels and aircrafts only and not to leasing of any other items. Accordingly, availment of ITC is not barred under sub-clause (i) of clause (b) of sub-section (5) of section 17 of the CGST Act in case of leasing, other than leasing of motor vehicles, vessels, and aircrafts.

III. Perquisites provided by employer to the employees as per the contractual agreement:

S.No-1. Whether various perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are liable for GST?

Ans: Services rendered by employee to his employer in course of his employment are neither a supply of goods nor services, hence question to levied GST shall not raise during the term of his employment.

As clarified, if Any perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are in lieu of the services provided by employee to the employer in relation to his employment. It follows therefrom that perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST when the same are provided in terms of the contract between the employer and employee.

IV. Utilisation of amount available in Electronic Credit Ledger and Electronic Cash Ledger for payment of tax and other liabilities:

S.No-1. Whether the amount available in the electronic credit ledger can be used for making payment of any tax under the GST Laws?

Ans: (1) An amount available in electronic credit ledger is utilized towards payment of output CGST/SGST and IGST in the manner provided under the Act. The manner of utilisation input tax credit that integrated tax firstly should be utilised fully towards payment.

The manner of utilisation input tax credit is as follows:

1. IGST input shall use towards payment of integrated tax, Central Tax and State Tax in order.
2. CGST input shall use firstly payment of CGST and the remaining amount for payment of IGST.
3. SGST input shall use firstly payment of SGST and the remaining amount for payment of IGST.
4. Input of CGST not adjust against SGST output liability.
5. Input of SGST not adjust against CGST output liability.

The amount of ECL can also be used in following conditions as well:

- a. towards payment of output tax determined while filing Annual Return in Form GSTR-09.
- b. towards payment of output tax determined on the basis of proceedings instituted by GST Department under the law.
- c. Any reversal of input tax which were wrongly availed in the subsequent period.

As defined in Section 2(82) of CGST Act, "Output tax" in relation to a taxable person, means the tax chargeable under this Act on taxable supply of goods or services or both made by him or by his agent but **excludes tax payable by him on reverse charge basis.**

S.No-2. Whether the amount available in the electronic credit ledger can be used for making payment of any liability other than tax under the GST Laws?

Ans: As stated above, the amount available in ECL can only be used for making of output taxable liabilities under the Act. Any other amount like interest, penalty, fees, or any other amount payable under the act do not come under the definition of output tax therefore cannot pay through the ECL ledger.

Moreover, erroneous sanction refund of input can also not pay through the ECL where the amount is received by taxpayer in Cash.

S.No-3. Whether the amount available in the electronic cash ledger can be used for making payment of any liability under the GST Laws?

Ans: Yes, as per sub – section (3) of section 49 of the CGST Act, the amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees, or any other amount payable under the provisions of the GST Laws.

D. Circular No.173/05/2022 Dated 06.07.2022

Clarification on claiming GST Refunds under inverted duty structure

In this circular clarification has been made in relation to the refund of accumulated input tax credit on concessional rate where the input and output supply are same.

*As per Circular No, 135/05/2020-GST dated 31st March 2022 refund on account of **inverted duty shall not be allowed where the input and output supply are same, para 3.2 of the circular is reproduced below:***

The above circular does not cover the supply where the supplier is making supply of goods under concessional rate notification and the output tax rate is less than rate of tax on input supply.

Now, the GST department has clarified that refund on account of inverted duty shall be allowed where the outward supply is made on concessional rate. Accordingly, the para 3.3 in Circular No 135/05/2020 in inserted as under with the substituted para 3.2.

3.2 It may be noted that refund of accumulated ITC in terms of clause (ii) of first proviso to sub-section (3) of section 54 of the CGST Act is available where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. It is noteworthy that, the input and output being the same in such cases, though attracting different tax rates at different points in time, do not get covered under the provisions of clause (ii) of the first proviso to sub-section (3) of section 54 of the CGST Act.

3.3 There may however, be cases where though inputs and output goods are same, but the output supplies are made under a concessional notification due to which the rate of tax on output supplies is less than the rate of tax on inputs. In such cases, as the rate of tax of output supply is less than the rate of tax on inputs at the same point of time due to supply of goods by the supplier under such concessional notification, the credit accumulated on account of the same is admissible for refund under the provisions of clause(ii) of the first proviso to sub-section (3) of section 54 of the CGST Act, other than the cases where output supply is either Nil rated or fully exempted, and also provided that supply of such goods or services are not notified by the Government for their exclusion from refund of accumulated ITC under the said clause.”

E. Circular No. -174/06/2022 – Dated 06.07.2022

Manner of re-credit input in electronic credit ledger using Form GST PMT-03A

The GSTN has developed a Form PMT-03A which allows the proper officers to re-credit the amount in the electronic credit ledgers of related taxpayers.

Refer to the Rule 4B of Rule 86 of the CGST Rules, as stated below for reference:

(4B) Where a registered person deposits the amount of erroneous refund sanctioned to him –

- a. under sub-section (3) of section 54 of the Act, or
- b. under sub-rule (3) of rule 96, in contravention of sub-rule (10) of rule 96,

along with interest and penalty, wherever applicable, through FORM GST DRC-03, in cash, on his own or on being pointed out, an amount equivalent to the amount of erroneous refund deposited by the registered person shall be re-credited to the electronic credit ledger by the proper officer by an order made in FORM GST PMT-03A.

Here, the categories of refund sanctioned where the amount can be re-credited in using Form PMT-03A:

- a. Refund of IGST obtained in contravention of sub-rule (10) of rule 96.
- b. Refund of unutilised ITC on account of export of goods/services without payment of tax.
- c. Refund of unutilised ITC on account of zero-rated supply of goods/services to SEZ developer/Unit without payment of tax.
- d. Refund of unutilised ITC due to inverted tax structure.

Procedure for the re-credit amount in Electronic Credit Ledger:

1. The taxpayer shall deposit the amount of erroneous refund along with applicable interest and penalty wherever applicable, shall be deposit through **Form DRC-03**.
2. The taxpayers shall clearly mention the reason of making payment in the text box as **“Deposit of erroneous refund of unutilised ITC”** or **“Deposit of the erroneous refund of IGST obtained in contravention of sub-rule (10) of Rule 96 of the CGST Rules”**.
3. A request letter in format Annexure-A require to be submitted to the jurisdictional office to re-credit the amount to the Electronic Credit Ledger.
4. Where the proper officer is being satisfied that the erroneous refund amount has been paid by the taxpayers, the officer shall pass an order in Form GST PMT-03 with the 30 days from the date of receipt of request for re-credit the amount in “Electronic Credit Ledger”.

F. Manner of filing of refund on account of export of electricity (Circular No- 175/07/2022):

Circular No. 175/02/2022 Dated 06.07.2022 has prescribed the following procedure for filing and processing of unutilized input tax on account of export of electricity.

- a. Necessary changes are required to be carried on GST portal; till the time an application shall be filed under “Any Other” head electronically in Form GST RFD-01, on the portal.
- b. In remark column of the application, the taxpayer would enter **“Export of electricity-without payment of tax (accumulated ITC)”**.
- c. The applicant is not required to make any debit from the electronic credit ledger while filing the refund application.
- d. The applicant would be required to upload Statement -3B in portal having the details of export invoices, details of energy exported, tariff of unit for export of electricity.
- e. The applicant will also be required to upload the copy of statement of scheduled energy for electricity exported by the Generation Plants in format refer as Annexure-I in the said circular.

Relevant date for filing return:

The period of two years has been specified from the relevant date has been specified for filing a refund application. However, in case of electricity it is not possible to determine the specific date on which specific unit is pass through the frontier.

Here, it is clarified that the relevant date shall be the last date of the month in which the electricity has been exported as per monthly Regional Energy Account (REA) issued by the Regional Power Committee of CERC Regulation,2020.

Processing of Refund claim by proper officer:

1. The Calculation of refund as delineated below:

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

2. Quantum of Schedule Energy exported as reflected in the Regional Energy Account (REA) issued by the 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.
 3. The quantum of electricity exported as specified in statement of schedule energy exported and on invoice should be same.
 4. If the turnover of export electricity does not match in such cases, the turnover of export shall be calculated using the lower of the quantum of electricity exported mention on statement of schedule energy and that mention on issued invoice.
 5. Since GST is wholly exempt from the levy of GST, therefore in calculation of adjusted total turnover for export of electricity, the turnover of electricity supplied domestically shall be excluded while calculating the turnover. The adjusted total turnover shall be calculated as per the clause (E) of sub-rule 4 of Rule 89.
 6. The proper officer shall verify that no ITC has been availed on the inputs and input services utilized making zero rated supply of electricity.
 7. If the proper officer is satisfied that the amount is admissible as refund, he shall request to the applicant in writing to debit the amount from the electronic credit ledger through Form DRC-03 and submit the proof of payment.
 8. The proper officer shall proceed to issue the refund order in Form GST RFD-06 and payment order in Form GST RFD-05 respectively.
- G. Withdraw of Circular No. 106/25/2019 -GST dated 29.06.2019 which provide the refund of taxes paid on inward supplies when the goods are supplied to outgoing international tourist against foreign exchange (Circular No. 176/08/2022).**

As per the Circular No 106/25/2019 dated 29.06.2019 taxpayers were allowed to take refund on taxes paid on inward supplies of indigenous goods received by them for the purpose of subsequent supply to the international tourist against foreign exchange through the retail store established at departure area of international airport.

However, with reference to the **Circular No. 176/08/2022-GST dated 06.07.2022** the above-mentioned circular has been omitted/withdraw with the retrospective effect from **01.07.2019**.

H. Circular No. 177/09/2022 Dated 03rd August 2022

Clarification regarding GST rates and exemptions on certain services

The following are clarifications made by the GST department in relation to the following issues as stated below:

a. **Rate of GST on ice-cream parlor during the period 01.07.2017 to 05.10.2021**

As already clarified in Circular No. 164/20/2021 -GST dated 06.10.2021 that ice cream parlor sells already manufacture ice cream and they do not have a custom of restaurants. Hence, ice cream parlor and similar outlets will attract standard rate of GST @ 18% with ITC with effect from 06.10.2021.

In the absence of clarifications prior to issue of the of Circular dated 06.10.2021, initially the ice cream parlors have paid the GST @5% as per existing practice and did not avail any input benefit. In the issued Circular No. 177/09/2022 dated 03.08.2022 the GST Department has clarified that the ice cream parlors who have paid the GST @5% without ITC for the period 01.07.2017 to 05.10.2021 shall be considered as fully GST paid to avoid un-necessary litigation. It is pertinent to mention that the taxpayer cannot refund the amount who has already paid GST with 18% for the said period.

The purpose of the circular is to regularize the practice to charged GST @18% with ITC effective from 06.10.2021

b. **Applicability of GST on application fees charged for entrance, issuance of eligibility certificate or issuance of migration certificate**

Educational services provided by educational institutions to its students are exempt from GST vide notification no. 12/2017 Central Tax (Rate) dated 28.06.2017 under the entry no. 66.

The relevant entry of notification is read as follows:

Services provided –

a.by an educational institution to its students, faculty, and staff.

[(aa) by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee;]..."

As stated above in the notification service provided by an “educational institutions’ to its students are exempted from GST. The exemption notification is sufficed to provide the exemption on fees charged on entrance exams, application fees, issuance of eligibility certificate. Moreover, the services provided on account of issuance of migration certificate to leaving or ex-students are also covered under the notification.

c. **Whether storage or warehousing of cotton in baled or ginned form is covered under entry 24B of Notification No. 12/2017-Central Tax (Rate) which exempted services by way of storage and warehousing of raw vegetable fibres such as cotton before 18.07.2022.**

As per entry no. 24B in the exemption notification no. 12/2017 Central Tax- Rate dated 28.06.2017 following services are exempted in GST as delineated below

“Any services provided by way of storage or warehousing of cereals, pulses, fruits, nuts and vegetables, spices, copra, sugarcane, jaggery, **raw vegetable fibres such as cotton**, flax, jute etc., indigo, unmanufactured tobacco, betel leaves, tendu leaves, coffee, and tea”.

“**barnhardcotton.net**” defines ‘cotton staple, virgin cotton or raw cotton’ as cotton fibers that are removed from the cotton seed by the gin.

CESTAT Chandigarh in the case of R.K.& Sons vs CCE, Rohtak dated 14th July 2016 has observed as under:

“Cotton (with seeds) as plucked from cotton plants can hardly be called cotton fibre in which case cotton fibre would come into existence only after the seeds are ginned away from cotton plucked from cotton plants. Cotton fibre obtained by ginning cotton plucked cotton plants is nothing but raw cotton fibre because there cannot be rawer form of cotton fibre obtained from cotton-with-seeds plucked from cotton plants.”

Hence, it is clarified that service by way of storage or warehousing of cotton in baled or ginned form shall be covered under entry no. 24B of notification no. 12/2017-Central Tax (Rate) dated 28.06.2017

However, it is pertinent to mention that such exemption has been withdrawn by the GST department with effect from 18.07.2017 vide notification no. 04/2022 Central Tax (Rate) dated 13th July 2022.

The substitute notification is read as follows:

“Services by way of storage or warehousing of cereals, pulses, fruits and vegetables.”.

d. Whether exemption under Sl. No. 9B of notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 covers services associated with transit cargo both to and from Nepal and Bhutan.

As per the notification no. 30/2017 Central Tax (Rate) dated 29.09.2017 the GST department has amended the exemption notification and inserted a new entry no. 9B in exemption notification no. 12/2017 -Central Tax (Rate) in relation to the transportation service for Nepal and Bhutan.

The inserted entry is as follows:

Supply of services associated with transit cargo to Nepal and Bhutan (landlocked countries).

As per the recommendation of council, it is clarified that exemption under Sl.no 9B of Notification No. 12/2017 Central Tax -Rate covers services associated with transit cargo both **to and from** Nepal and Bhutan.

Hence, it is also clarified that if empty containers from Nepal and Bhutan after the delivery of goods is also a service associated with the transit cargo to Nepal and Bhutan, therefore shall be covered under the exemption.

Before movement of any cargo to Nepal and Bhutan regulations/procedure as governed under Custom Act, Treaties for Trade and Transit in Nepal and Bhutan should be followed.

- a. An alpha numeric identifier for the container should be declared.
- b. Custom broker, Shipping line and carrier is responsible for making trace and track facility for locating goods brought for transshipment.

- c. The authorised carrier should execute a bond as directed by the proper officer.
- d. An Electronic Cargo Tracking System (ECTS) should procure from appointed service provider.

The above regulations have to followed in addition to the electronic track and trace facility, this facility is used to locate the container and to verify the empty container who are returning form Nepal and Bhutan is the same container used for delivery of goods. Moreover, the bond submitted by the authorised carrier shall be discharged or recredit on pursuant of ECTS trip report.

e. Applicability of GST on sanitation and conservancy services supplied to Army and other Central and State Government departments.

The exemption provided in notification no. 12/2017 -Central Tax (Rate) dated 28.06.2017 vide entry no. 3 and 3A as follows:

Entry No.3, “Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority **by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.**

Entry No.3A, “Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent. of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution”.

The above exemptions shall be available when the Central Government, State Government, Union Territories and Local Authorities procured any supplies for performing functions listed in the 11th and 12th Schedule of Constitution.

It is clarified that the sanitation and conservancy services received by India Army or any other Government which does not perform functions listed in 11th and 12th schedule for general public, the same are not eligible for exemption under S.no 3 and 3A of exemption notification.

f. Whether the activity of selling of space for advertisement in souvenirs is eligible for concessional rate of 5%.

Selling of space for advertisement in print media shall attract GST @5%.

Print media means-

- i. ‘book’ as defined in sub-section (1) of section 1 of the Press and Registration of Books Act, 1867 (25 of 1867), but does not include business directories, yellow pages and trade catalogues which are primarily meant for commercial purposes.
- ii. ‘book’ as defined in sub-section (1) of section 1 of the Press and Registration of Books Act, 1867 (25 of 1867), but does not include business directories, yellow pages and trade catalogues which are primarily meant for commercial purposes.

Further, sub-section (1) of section 1 of the Press and Registration of Books Act, 1867 defines 'book' as follows:

"Book" includes every volume, part or division of a volume, and pamphlet, in any language and every sheet of music, map, chart or plan separately printed.

Books has been defined in Press and Registration of Books Act, 1867 in a manner with a wide ambit of souvenir books also.

Hence, it is clarified that 5% GST will be levied on advertisement in souvenir book, which is covered under notification no. 11/2017 Central Tax (Rate).

g. Taxability and applicable rate of GST on transport of minerals from mining pit head to railway siding, beneficiation plant etc., by vehicles deployed with driver for a specific duration of time.

There is an ambiguity among the taxpayers whether the transportation service with driver will covered as exempt service under the notification no. 12/2017 Central Tax (Rate), which **exempts transportation of goods by road except GTA.**

Generally, mining companies hire or lease dumper, tippers, loader, and truck etc. These vehicles along with drivers are at disposal at mining place with the driver and the mining operator use them as per their requirement.

Generally, these services shall be considered as a **"rental services of transport vehicles"**. The person who takes the vehicle on rent is used as per his determined schedules, routes, and timing. Therefore, the person who gives the vehicle on rent with operator cannot said that he is supplying service by way of transportation of goods services.

It is clarified that rent of vehicles for a specific period of time will come under the **"rental services of transport vehicles"** falling under heading 9966 and not a service of transportation of goods. Where the cost of fuel is included in consideration charged from the recipient, GST will be charged @12% with effect from 18.07.2022, prior that it was 18%.

h. Whether location charges or preferential location charges (PLC) collected in addition to the lease premium for long term lease of land constitute part of the lease premium or of upfront amount charged for long term lease of land and are eligible for the same tax treatment.

As per entry 41 of the notification No. 12/2017-Central Tax (Rate) dated 28.06.2017-
upfront amount, which is defined as "upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease (of thirty years, or more) of industrial plots or plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having 20 per cent or more ownership of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area", is exempt from GST.

It is clarified that location charges or preferential location charges (PLC) paid upfront in addition to the lease premium for long term lease of land constitute part of upfront amount charged for long term lease of land and are eligible for the same tax treatment, and thus eligible for exemption under Sl. No. 41 of notification no. 12/2017-Central Tax (Rate) dated 28.06.2017.

i. Applicability of GST on payment of honorarium to the Guest Anchors.

Sansad TV and other TV channels invite guest anchors for participating in their shows and pays remuneration to them in the form of honorarium. Some of the guest anchors have requested payment of GST @ 18% on the honorarium paid to them for such appearances.

It is to be noted that all supply of goods and services are taxable unless exempt or declare **“neither a supply of goods nor supply of service”** therefore services provided by the guest anchors in lieu of honorarium shall attract GST liability. Threshold limit (does not exceeds 20 Lakh) shall be applicable to take registration and pay GST.

j. Whether the additional toll fees collected in the form of higher toll charges from vehicles not having fastag is exempt from GST.

Entry 23 of notification No.12/2017-Central Tax (Rate) dated 28th June 2017 exempts service by way of access to a road or a bridge on payment of toll charges.

As directed by the Ministry of Road Transport & Highways (MORTH) to collect the additional amount from the user's extent two times of the fees applicable to the category of vehicle which not having a valid functional fast tag.

Essentially the additional amount collected from the users of the road not having a functional fast tag is in the nature of toll charges and should be treated as additional toll charges.

It has already been clarified vide circular number 164/20/2021-GST dated 06.10.2021, that overloading charges at toll plazas would get the same treatment as given to toll charges.

Therefore, it is clarified that additional fee collected in the form of higher toll charges from vehicles not having Fastag is essentially payment of toll for allowing access to roads or bridges to such vehicles and may be given the same treatment as given to toll charges

k. Applicability of GST on services in form of Assisted Reproductive Technology (ART)/In vitro fertilization (IVF)

Health care services is defined vide 2(zg) of the notification No. 12/2017-Central Tax (Rate) dated 28.06. 2017 as –

“health care services” means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma

The abnormality/disease/ailment of infertility is treated using ART procedure such as IVF. It is clarified that services by way of IVF are also covered under the definition of health care services for the purpose of above exemption notification.

I. Whether sale of land after levelling, laying down of drainage lines etc., is taxable under GST

As per Sl no. (5) of Schedule III of the Central Goods and Services Tax Act, 2017, 'sale of land' is neither a supply of goods nor a supply of services, therefore, sale of land does not attract GST.

Land may be sold either as it is or after some development such as levelling, laying down of drainage lines, water lines, electricity lines, etc. It is clarified that sale of such developed land is also sale of land and is covered by Sr. No. 5 of Schedule III of the Central Goods and Services Tax Act, 2017 and accordingly does not attract GST.

m. Situations in which corporate recipients are liable to pay GST on renting of motor vehicles designed to carry passengers.

Services provided by a non-body corporate to a body corporate by way of renting of any motor vehicle for transport of passengers, tax is required to be paid by the body corporate under RCM.

There is an uncertainty whether the RCM is applicable on service on transportation of passenger fall under heading 9964 or renting of motor-vehicle design to carry passengers fall under heading 9966.

Service covered under "renting of motor vehicles" (heading 9966) to carry passenger for a period of time where the routes, timing, and other operational considerations are at the discretion of renter.

Whereas "passenger transportation services" covers (under heading 9964) passenger transport service over pre-determined routes and schedules.

Therefore, a clear distinction exists in service of transport of passengers and renting of a vehicle that is used for transport.

Accordingly, as recommended by the GST Council, it is clarified that where the body corporate hires the motor vehicle (for transport of employees etc.) for a period of time, during which the motor vehicle shall be at the disposal of the body corporate, the service would fall under Heading 9966, and the body corporate shall be liable to pay GST on the same under RCM.

However, where the body corporate avails the passenger transport service for specific journeys or voyages and does not take vehicle on rent for any particular period of time, the service would fall under Heading 9964 and the body corporate shall not be liable to pay GST on the same under RCM.

n. Whether hiring of vehicles by firms for transportation of their employees to and from work is exempt under Sr. No. 15(b) of Notification No.12/2017-Central Tax (Rate) transport of passengers by non-air-conditioned contract carriage.

Sr. No. 15 (b) of notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 exempts "transport of passengers, with or without accompanied belongings, by non-air-conditioned contract carriage, other than radio taxi, for transport of passengers, **excluding tourism, conducted tour, charter, or hire.**

It is clarified that 'charter or hire' excluded from the above exemption entry is charter or hire of a motor vehicle for a period of time, where the renter defines how and when the vehicles will be operated, determining schedules, routes, and other operational considerations.

It is apposite to mention that the said exemption would apply where the passenger transportation services falling under head 9964 and transportation take place of pre-determined schedule. The exemption shall not be applicable where contract carriage is hired for a period of time, during which the contract carriage is at the disposal of the service recipient and the recipient is thus free to decide the manner of usage (route and schedule).

o. Whether supply of service of construction, supply, installation, and commissioning of dairy plant on turn-key basis constitutes a composite supply of works contract service and is eligible for concessional rate of GST prior to 18.07.2022

In case of a turnkey project for construction, supply, installation, and commissioning of a 2.00 LLPD dairy plant, it has been held by Advance Ruling Authorities of Bihar and Gujarat that the same does not result into an immovable property and is therefore not a supply of works contract. This being so, such supply is not eligible for concessional rate of 12% applicable on works contract supplied by way of construction, erection, commissioning, or installation of original works pertaining to mechanized food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages.

In this regard, it may be seen that prior to 18.07.2022, serial number 3(v)(f) of notification no. 11/2017 Central Tax (Rate) dated 28.06.2017 prescribes GST rate of 12 % on the composite supply of works contract by way of construction, erection, commissioning, or installation of original works pertaining to mechanized food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages.

It is clarified that a contract of the nature described here for construction, installation and commissioning of a dairy plant constitutes supply of works contract. There is no doubt that dairy plant which comes into existence as a result of such contracts is an immovable property

It is also clarified that such works contract services were eligible for concessional rate of 12% GST under serial number 3(v)(f) of notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 prior to 18.07.2022. With effect from 18.07.2022, such works contract services would attract GST at the rate of 18% in view of amendment carried out in notification No. 11/2017-Central Tax (Rate) vide notification No. 03/2022-Central Tax (Rate).
way of IVF are also covered under the definition of health care services for the purpose of above exemption notification.

p. Applicability of GST on tickets of private ferry used for passenger transportation

It has been stated that private ferries are used as means of transport from one island to another island in Andaman-Nicobar Islands and representation sought on applicability of GST on private ferry ticket.

As per Sl. No 17 (d) of notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 –

“Transportation of passengers by public transport, other than predominantly for tourism purpose, in a vessel between places located in India is exempted.

It is clarified that this exemption would apply to tickets purchased for transportation from one point to another irrespective of whether the ferry is owned or operated by a private sector enterprise or by a PSU/government.

The expression ‘public transport’ used in the exemption notification only means that the transport should be open to public. It can be privately or publicly owned. Only exclusion is on transportation which is predominantly for tourism, such as services which may combine with transportation, sightseeing, food and beverages, music, accommodation such as in shikara, cruise etc.

I. Circular No. 178/10/2022 dated 03rd August 2022

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

Due to the uncertainty among the taxpayer's question have been raised regarding taxability of an activity or transaction as the supply of service of agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act.

Applicability of GST on payments in the nature of liquidated damage, compensation, penalty, cancellation charges, late payment surcharge etc. arising out of breach of contract or otherwise and scope of the entry at para 5 (e) of Schedule II of Central Goods and Services Tax Act, 2017 (hereinafter referred to as, "CGST Act") in this context has been examined in the following paragraphs.

"Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act" has been specifically declared to be a supply of service in para 5 (e) of Schedule II of CGST Act if the same constitutes a "supply" within the meaning of the Act.

The said expression has following three limbs: -

i. Agreeing to the obligation to refrain from an acts

The activities covered in this part would include non-compete agreements, where one party agrees not to compete with the other party in a product, service, or geographical area against a consideration paid by other party.

Eg: builder refraining from constructing more than a certain number of floors, even though permitted to do so by the municipal authorities, against a compensation paid by the neighboring housing project, which wants to protect its sunlight, or an industrial unit refraining from manufacturing activity during certain hours against an agreed compensation paid by neighbouring school, which wants to avoid noise during those hours.

ii. Agreeing to the obligation to tolerate an act or a situation-

This would include activities such a shopkeeper allowing a hawker to operate from the common pavement in front of his shop against a monthly payment by hawker, on RWA tolerating the use of loudspeakers for early morning prayers by a school located in the colony subject to the school paying an agreed sum to the RWA as compensation.

iii. Agreeing to the obligation to do an act-

This would include the case where an industrial unit agrees to install equipment for zero emission/discharge at the behest of the RWA of a neighbouring residential complex against a consideration paid by such RWA, even though the emission/discharge from the industrial unit was within permissible limits and there was no legal obligation upon the individual unit to do so.

Over the years doubts have persisted regarding various transactions being classified under the said description, some of the important examples of cases where Service Tax/GST demands on-

- » Liquidated damages paid for breach of contract.
- » Compensation given to previous allottees of coal blocks for cancellation of their licenses pursuant to Supreme Court Order.
- » Cheque dishonor fine/penalty charged by a power distribution company from the customers.
- » Penalty paid by a mining company to State Government for unaccounted stock of riverbed material.
- » Bond amount recovered from an employee leaving the employment before the agreed period.
- » Late payment charges collected by any service provider for late payment of bills.
- » Fixed charges collected by a power generating company from State Electricity Boards (SEBs) or by SEBs/DISCOMs from individual customer for supply of electricity.
- » Cancellation charges recovered by railways for cancellation of tickets, etc

GST authorities have considered it appropriate to charge GST during the investigation and audit conducted by them, even Advance Ruling authorities have upheld the taxability.

Here, the taxability in details have been discussed in followings paragraphs.

Liquidated Damages

Mainly the losses occurs when there is breach of contracts due to non-performance of contract by one party to another party. **Section 73 of Contract Act, 1972 said that when a contract has been broken, the party which suffers by such breach is entitled to receive from the other party compensation for any loss or damaged cause to him by such breach.** The compensation is not by way of consideration for any other independent activity, it is an event in the course of performance of that contract. Such compensation clause should be written in contracts for breach of non-performance of the contract or parties of the contract is referred as liquidated damages.

Black's Law Dictionary defines 'Liquidated Damages' as cash compensation agreed to by a signed, written contract for breach of contract, payable to the aggrieved party.

"Liquidate damages" is only an amount paid by one party to another party to compensate the loss, damage suffered by aggrieved party due to breach of contract and there is no agreement, express, implied by aggrieved party receiving the liquidated damages, to refrain from or to tolerate an act.

Liquidate damages is mere flow of money from the person causes breach of contract to the person who suffers losses or damages due to such breach. Such payments due not constitute consideration for a supply and not taxable. Example of liquidated damages are damage to property, negligence, piracy, unauthorized use trade of name, copy right etc.

Compensation for cancellation of Coal Blocks

There was no agreement between the prior allottees of coal blocks and the Government that the previous allottees shall agree to or tolerate cancellation of the coal blocks allocated to them if the Government pays compensation to them. No such promise or offer was made by the prior allottees to the Government. The allottees had no option but to accept the cancellation.

The compensation was given to them for such cancellation, not under a contract between the allottees and the Government, but under the provisions of the statute and in pursuance of the Supreme Court Order. Therefore, it would be incorrect to say that the prior allottees of the coal blocks supplied a service to the Government by way of agreeing to tolerate the cancellation of the allocations made to them by the Government or that the compensation paid by the Government for such cancellation in pursuance to the order of the Supreme Court was a consideration for such service. Therefore, the compensation paid for cancellation of coal blocks pursuant to the order of the Supreme Court in the above case was not taxable.

Cheque dishonor fine/penalty

Cheque is valid instrument where the supplier promises to pay against the supply. When a cheque is given against the supply of goods or service, then supplier agree to pay the amount against the goods or services. There is no implied or express offer or willingness on part of the supplier that he would tolerate deposit of an invalid, fake or unworthy instrument in form of cheque dishonor fine or penalty.

The fine or penalty imposes by the bank or supplier for dishonoring of cheque not for tolerating an act or situation. Therefore, cheque dishonor fine or penalty is not a consideration for any service and not taxable

Penalty imposes for violation of laws

Any penalty imposes by the Central or State Government for violation of laws such as traffic norms, pollution norms or any other law not consideration of any supply received and are not taxable. In some cases where the penalties and fine are imposes on mining companies for discovering of excess mining beyond the permissible limit. Such penalties and fine cannot be regarded as consideration charged by the government.

It was also clarified vide Circular No. 192/02/2016-Service Tax, dated 13.04.2016 that fines and penalty chargeable by Government or a local authority imposed for violation of a statute, byelaws, rules or regulations are not leviable to Service Tax. The same holds true for GST also

Forfeiture of salary or payment of bond amount in the event of the employee leaving the employment before the minimum agreed periods

The provisions for forfeiture of salary or recovery of bond amount in the event of the employee leaving the employment before the minimum agreed period are incorporated in the employment contract to discourage non-serious candidates from taking up employment. The said amounts are recovered by the employer not as a consideration for tolerating the act of such premature quitting of employment but as penalties for dissuading the non-serious employees from taking up employment and to discourage and deter such a situation. Further, the employee does not get anything in return from the employer against payment of such amounts. Therefore, such amounts recovered by the employer are not taxable as consideration for the service of agreeing to tolerate an act or a situation.

Compensation for not collecting toll charges

During the time of demonetization, NHAI directed the toll operators to allow free access of toll roads to the user for the period 08.11.2016 to 01.12.2016 for which loss of toll charges shall be paid by the NHAI as per the instructions of Ministry of Road Transportation and Highways.

“Service by way of access to a road or a bridge on payment of toll charges is in the negative list of service and is not taxable”.

It has been clarified vide Circular No. 212/2/2019-ST dated 21.05.2019 that the service that is provided by toll operators is that of access to a road or bridge, toll charges being merely a consideration for that service. During the period from 8.11.2016 to 1.12.2016, the service of access to a road or bridge continued to be provided without collection of toll from users. Consideration came from the project authority. The fact that for this period, for the same service, consideration came from a person other than the actual user of service does not mean that the service has changed.

Late Payment Surcharge or fees

The facility of accepting late payments with interest or late payment fee, fine or penalty is a facility granted by supplier naturally bundled with the main supply. This service is described as a service of tolerating the act of late payment, it is an ancillary supply naturally bundled and supplied in conjunction with the principal supply, and therefore should be assessed as the principal supply.

Since it is ancillary to and naturally bundled with the principal supply such as of electricity, water, telecommunication, cooking gas, insurance etc. It should be assessed at the same rate as the principal supply. However, the same cannot be said of cheque dishonor fine or penalty as discussed in the preceding paragraphs

Fixed capacity charges for Power

The price charged for electricity by the power generating companies from the State Electricity Boards (SEBs)/ DISCOMS or by SEBs/DISCOMs from individual customers has two components, namely, a minimum fixed charge (or capacity charge) and variable per unit charge. The minimum fixed charges have to be paid by the SEBs/ DISCOMS/individual customers irrespective of the quantity of electricity scheduled or purchased by them during a month. They take care of the fixed cost of generating/ supplying electricity. The variable charges are charged per unit of electricity purchased and increase or decrease every month depending on the quantity of electricity consumed.

The fact that the minimum fixed charges remain the same whether electricity is consumed or not or it is scheduled/ consumed below the contracted or available capacity or a minimum threshold, does not mean that minimum fixed charge or part of it is a charge for tolerating the act of not scheduling or consuming the minimum the contracted or available capacity or a minimum threshold.

Both the components of the price, the minimum fixed charges/capacity charges and the variable/energy charges are charged for sale of electricity and are thus not taxable as electricity is exempt from GST. Power purchase agreements may have provisions that the power producer shall not supply electricity to a third party without approval of buyer. Such agreements which ensure assured supply of power to State Electricity Boards/DISCOMS are ancillary arrangements; the contract is essentially for supply of electricity.

Cancellation Charges

The supplier may allow cancellation of supply by customer within a certain specific time period on payment of cancellation fees on booking of hotel accommodation, railway tickets, air tickets and an entertainment event. Cancellation fees charged by the supplier as per the terms of contract. Cancellation facility provide by the supplier of service for a certain period of time before intended supplies. Services like transportation and travel services are considered bundled of services where all other services like online ticket booking, lounge facility, water and cleaning facilities are naturally bundled with principal supply.

Therefore, facilitation supply of allowing cancellation of an intended supply against payment of cancellation fee or retention or forfeiture of a part or whole of the consideration or security deposit in such cases should be assessed as the principal supply. For example, cancellation charges of railway tickets for a class would attract GST at the same rate as applicable to the class of travel (i.e., 5% GST on first class or air-conditioned coach ticket and nil for other classes such as second sleeper class). Same is the case for air travel.

J. Circular No. 179/11/2022 dated 03rd August 2022

Following clarifications regarding classification of goods and gst rate on the recommendation of GST council.

Electric vehicles whether or not fitted with a battery pack, attract GST rate of 5%

The explanation of 'Electrically operated vehicles' in entry 242A of Schedule I of notification No. 1/2017-Central Tax (Rate) reads as:

'Electrically operated vehicles which run solely on electrical energy derived from an external source or from one or more electrical batteries fitted to such road vehicles and shall include E-bicycles.'

As is evident from the explanation above, 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).

Stones otherwise covered in S. No. 123 of Schedule-I (such as Napa stones), which are not mirror polished, are eligible for concessional rate under said entry.

Napa Stone is a variety of dimensional limestone, which is a brittle stone and cannot be subject to extensive mirror polishing. Currently, S. No. 123 of Schedule-I prescribes GST rate of 5% for 'E caussine and other calcareous monumental or building stone; alabaster [other than marble and travertine], other than mirror polished stone which is ready to use.' However, being brittle in nature, stones like Napa Stone, even though ready for use, are not subject to extensive polishing. Therefore, such minor polished stones do not qualify as mirror polished stones.

Therefore, it is clarified that S. No. 123 in schedule-I to the notification No. 1/2017-Central Tax (rate) dated 28.06.2017 covers minor polished stones

Mangoes under CTH 0804 including mango pulp, but other than fresh mangoes and sliced, dried mangoes, attract GST at 12% rate:

On the basis of the recommendation of the GST Council in its 22nd Meeting, the GST rate on 'Mangoes sliced, dried', falling under heading 0804, was reduced from 12% to 5% [S. No. 30A of Schedule I of notification No. 1/2017-Central Tax (Rate) dated the 28th of June, 2017]. However, the GST rate on all forms of dried mangoes (other than sliced and dried mangoes), falling under heading 0804, including mango pulp, was always meant to be at the rate of 12%.

Accordingly, it is hereby clarified that mangoes, fresh falling under heading 0804 are exempt; Mangoes, sliced and dried, falling under 0804 are chargeable to a concessional rate of 5%; while all other forms of dried mango, including Mango pulp, attract GST at the rate of 12%. To bring absolute clarity, the relevant entry at S. No. 16 of Schedule-II of notification no. 1/2017-Central Tax (Rate), dated 28th June 2017, has been amended vide notification No. 6/2022-Central Tax (Rate), dated the 13th of July 2022.

Fresh mangoes, falling under heading 0804, continue to remain exempt from GST [S. No. 51 of notification No. 2/2017-Central Tax (Rate), dated the 28th of June 2017]

Treated sewage water attracts Nil rate of GST

In general, Water, falling under heading 2201, with certain specified exclusions, is exempt from GST vide entry at S. No. 99 of notification No. 2/2017-Central Tax (Rate), dated the 28th of June 2017.

Accordingly, it is hereby clarified that supply of treated sewage water, falling under heading 2201, is exempt under GST. Further, to clarify the issue, the word 'purified' is being omitted from the above-mentioned entry vide notification No. 7/2022-Central Tax (Rate), dated the 13th of July 2022.

Nicotine Polacrilex Gum attracts a GST rate of 18%

The WCO 2022 HS Codes has inter alia introduced a new entry 2404 91 00 comprising of products for oral application containing nicotine and intended to assist tobacco use cessation with effect from 01.01.2022. Accordingly, a technical change, without any consequential rate change, has been made vide notification No. 18/2021 – Central Tax (Rate), dated the 28th of December, 2021, wherein S. No. 26B in Schedule III of notification no. 1/2017-Central Tax (Rate), dated the 28th June, 2017, has been inserted to include products for oral application containing nicotine and intended to assist in cessation of use of tobacco, and falling under tariff item 2404 91 00. The same is supplemented by the HS Explanatory notes 2022 which states that heading 2404 includes nicotine containing products for recreational use, as well as nicotine replacement therapy (NRT) products intended to assist tobacco use cessation, which are taken as part of a nicotine intake reduction programme in order to lessen the human body's dependence on this substance.

Accordingly, it is hereby clarified that the Nicotine Polacrilex gum which is commonly applied orally and is intended to assist tobacco use cessation is appropriately classifiable under tariff item 2404 91 00 with applicable GST rate of 18% [Sl. No. 26B in Schedule III of notification no. 1/2017-Central Tax (Rate), dated the 28th June, 2017].

Fly ash bricks and aggregate - condition of 90% fly ash content applied only to fly ash aggregate, and not fly ash bricks:

As per entry at S. No. 176B of the Schedule II the items of description “Fly ash bricks or fly ash aggregate with 90 per cent. or more fly ash content; Fly ash blocks” attracts a GST rate of 12%. Confusion has arisen about the applicability of 90 per cent. condition on fly ash aggregates and fly ash bricks. As per the recommendations of the GST Council in the 23rd Meeting, the condition of 90% or more fly ash content was applicable only for fly ash aggregate.

Therefore, it is clarified that the condition of 90 per cent. or more fly ash content applied only to Fly Ash Aggregates and not to fly ash bricks and fly ash blocks. Further, with effect from 18th July 2022 the condition is omitted from the description.

Applicability of GST on by-products of milling of Dal/ Pulses such as Chilka, Khanda and Churi

The by-products of milling of pulses/ dal such as Chilka, Khanda and Churi are appropriately classifiable under heading 2302 that consists of goods having description as bran, sharps, and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of cereals or of leguminous plants.

The applicable GST rate on goods falling under heading 2302 is detailed in the Table below.

Entry No & Notification	Description	GST Rate
S. No. 102 of notification No. 2/2017-Central Tax (Rate), dated the 28th June, 2017	Aquatic feed including shrimp feed and prawn feed, poultry feed & cattle feed, including grass, hay & straw, supplement & husk of pulses, concentrates & additives, wheat bran & de-oiled cake[other than rice bran]	NIL
S.No. 103A of Schedule-I of notification No. 1/2017-Central Tax (Rate), dated 28th June, 2017	Bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of cereals or of leguminous plants [other than aquatic feed including shrimp feed and prawn feed, poultry feed and cattle feed, including grass, hay and straw, supplement and husk of pulses, concentrates and additives, wheat bran and de-oiled cake]	5%
S.No. 103B of Schedule-I of notification No. 1/2017-Central Tax (Rate), dated 28th June, 2017	Rice bran (other than de-oiled rice bran)	5%

GST Analysis of Notifications

K. Notification No. 09/2022 CT Dated 05.07.2022:

- Section 49(10) of CGST Act has been effective from 05th July 2022 where the “Transfer of Cash balance” from “Electronic Cash Ledger” of one state to another state GST having the same PAN has been allowed. The registered person is allowed to transfer only Cash balance related to IGST and CGST head. Such transfer of cash balance shall be considered as “Refund of Cash Balance”.
- With the retrospective effective from 01st July 2017 to the Section 50(3) of CGST Act 2017 the liability to pay interest only on input tax which is **wrongly availed and utilised to discharge the liability**.

L. Notification No. 10/2022 Dated 05.07.2022

- The registered person having turnover up to Rs. 2 Crore in the preceding financial year is exempt from filing Annual Return in Form GSTR-09.

M. Notification No. 10/2022 Dated 05.07.2022

- Composition dealer can file their return in Form CMP-08 for the period April 2022- June 2022 till the date of 31st July 2022.
- The due date for filing Form GSTR-04 for the period April 2021-March 2022 has been extended till the date of 28th July 2022.

N. Notification No. 10/2022 Dated 05.07.2022

As per the notification the following amendments are retrospectively effective from 01st day of March 2020 to give effect to the delay in compliances and assessment due to the pandemic:

- a. The time period has been extended till the date of 30th September 2023 to issued order under sub-section 10 of Section 73 on account of tax not paid, short paid or input tax wrongly availed and utilised in respect of tax period 2017-2018.
- b. Excludes the time period from 01st March 2020 to 28th February 2022 for computation of period for limitation of time period for order of recovery for erroneous refund.
- c. Excludes the time period from 01st March 2020 to 28th February 2022 for computation of period for filing refund under section 54 and section 55. As the time period is 2 Year for filing refund from the end of relevant tax period.

Illustration: ITC refund application for exports without payment of tax for the period Sep,2018, which would ordinarily be time barred in Sep2020,shall now become time barred in Sep 2022.

O. Notification No. 14/2022 Dated 05.07.2022

The following amendments have been proposed in Central Goods and Services Tax Rules:

1. Where the GST registration has been suspended due to non-filing of return for a continuous period of three (for composition dealer) or six months (for regular taxpayers) as applicable. Such suspension shall be revoked upon filing of all pending returns.
2. As per the inserted explanation in Rule 43, the supply of duty credit scrip like MEIS shall be excluded from the calculation of exempted turnover for the purpose of reversal of input tax credit as per Rule 42 or Rule 43.
3. All the taxpayers who are exempted from issuing e-invoices (SEZ Units, Insurance and Banking companies, GTA) under Rule 48 (4) by way of notification, required to emboss the following declaration on their supply invoices- **(insert new clause “s” in Rule 46 of CGST Rules)**
 - **“I/We hereby declare that though our aggregate turnover in any preceding financial year from 2017-18 onwards is more than the aggregate turnover notified under sub-rule (4) of rule 48, we are not required to prepare an invoice in terms of the provisions of the said sub-rule”.**
4. As per the inserted sub-rule 4B in Rule 86 of CGST Rules, for re-credit of input in electronic credit ledger amount of refund along with interest and penalty shall be paid by filing Form DRC-03 and debit the amount of electronic cash ledger. The proper officer shall re-credit the amount in electronic credit ledger by issuing order in Form PMT-03A.
5. Following amendments made in Rule 87 pertains to the electronic cash ledger for discharge of liability without the technical glitches.
 - Insert clause (ia) in sub-rule 3, UPI Payment from any bank.
 - Insert clause (ib) in sub-rule 3, IMPS from any bank

In sub-rule 5 the word “Immediate Payment Service” shall also be inserted.

Insert sub-rule 14 to notify Form PMT-09 for transfer of balance of cash ledger related to IGST and CGST head to other state having the same PAN, provided that no transfer shall be allowed if any-unpaid liability is due in the GSTIN of transferor.

Note: The above inserted changes yet to be notified on gst portal.

6. As per inserted new Rule 88B the following manner is prescribed for calculation of interest, namely:
- Any return is furnished after the due date, due to the proceeding commenced under section 73 or section 74 in respect of the said period. The interest liability shall be calculated only the amount which is paid in Cash by debiting electronic cash ledger.
 - In other cases, liability of interest shall be calculated on the amount which is not paid during the period. In other words, interest will be calculated on total tax payable for delay in filing returns.
 - Where the interest is liable to be paid under Section 50(3) for wrongly availed and utilised of input tax credit, the period for calculation for interest shall be considered from the date of utilisation of input till the date of reversal of such credit. The rate of interest shall be 24% for wrong availment and utilisation.

For this purpose, date of utilisation shall be-

- » When the amount of electronic credit ledger goes below the amount of wrongly availed input.
- » Where the wrongly availed amount utilised in return, the due date of return or date of filing of return whichever is earlier shall be considered for this purpose.

7. In Rule 89 following proviso and explanations have been inserted as follows-

- an explanation inserted in sub-rule (1)-

Explanation. — For the purposes of this sub-rule, specified officer means a “specified officer” or an “authorised officer” as defined under rule 2 of the “Special Economic Zone Rules, 2006”.

- in sub-rule 2 -
 - » in clause (b) the word after the word “on account of export of goods [other than electricity shall be inserted]
 - » clause (ba) has been inserted where the details information like export invoices, details of energy exported, tariff unit etc. in respect of export of electricity has been notified on account of refund for unutilised input.
- in sub-rule 4 an explanation inserted for the purpose of value of exported goods-

The value of export goods shall be the FOB value mentioned in shipping bills or export invoices OR the value declared in tax invoice or bill of supply whichever is less.

8. in sub-rule 5 of the formula of inverted duty has been modified, the new formula is-

Maximum Refund Amount =

$(\text{Turnover of inverted rated supply of goods and services}) \times \text{Net ITC Adjusted Total Turnover} - \{\text{tax payable on such inverted rated supply of goods and services} \times (\text{Net ITC} \div \text{ITC availed on inputs and input services})\}$

9. Rule 95A have been omitted from 01st July 2019 where taxpayers were allowed to take refund on input in respect of goods sale to international tourist through the established retail outlets in international airport in exchange of foreign currency.
10. Changes made in Rule 96 in respect of Refund on IGST paid on goods or services exported outside India shall be effective from 01st July 2017-
 - In sub-rule (1) clause (b), the applicant has furnished a valid in Form GSTR-3B. Provided that if any discrepancies found in exporter details furnished in shipping bill and Form GSTR-1 return, the date of application shall be deemed to have been filed on such date when such mismatch have been rectified by exporter.
 - The commissioner has allowed the power to the authorised officers to verify the details of exporter, scrutiny of input availed by the exporter is consider necessary for granting of refund in terms of export of goods or services for unclaimed Input.
 - Necessary changes made as incorporated in Rule 96.
11. Following changes made in Form GSTR-3B rules namely-
 - a. new section 3.1.1 has been inserted for separate reporting of supplies on which tax is to be paid by Electronic Commerce Operator under section 9(5) of CGST Act.
 - b. Reversal of input related to rule 38, rule 42 and rule 43 shall be reported in table 4(B)(1).
 - c. in table 4(D) (1) reporting of re-claimed ITC which were reversed earlier.
 - d. in table 4(D)(2) reporting of ITC ineligible as per Rule 16(4) and restricted due to place of supply.
12. Changes in form GSTR-09 rules
 - a. Non-GST supply shall be reported separately in column 5F of return.
 - b. Registered persons have option to report supply as NIL rate or exempted supply or detail of these two heads consolidate under “exempt supply”.
 - c. Reporting of HSN wise details against outward supplies is mandatory to report in return.

P. Notification No. 15/2022 Dated 13.07.2022

Any person engaged in the supply of fly ash bricks, fly ash aggregates, fly ash blocks is mandatory to obtain registration under the act, even if the turnover does not exceed forty lakh rupees in a financial year.

Q. Notification No. 16/2022 Dated 13.07.2022

As per the notification fly ash bricks, fly ash aggregates, fly ash blocks manufacturer are excluded from obtaining registration under the composition scheme.

R. Notification No. 16/2022 Dated 13.07.2022

Mandatory of issuing e-Invoice for the taxpayers having turnover exceeding 10 Cr. from 01st Oct,2022

Every registered person who is making B2B supplies, export of goods or services or both and whose aggregate turnover has been extended 10 Crores in a financial year shall be eligible to issue an e-invoice from 01st October 2022 as per Rule 48(4) of CGST Rules.

If any registered person to whom e-invoice is applicable however the said person issue invoice in any manner such invoice shall not be treated as valid invoice.

Note: If the turnover of any registered person does not exceed 10 Crore in preceding financial year however the same has been exceeded in the current financial year. The e-invoice would be applicable from beginning of new financial year.

S. Notification No. 16/2022 Dated 13.07.2022

Government wide this notification had made various changes in rate of supply of services as follows:

1. The work contract services which is earlier taxable at lower rate is now taxable at 18% with effect from 18th July 2022.
2. Exemption to accommodation services where value of supply is up to Rs 1000 has been removed Now, accommodation services shall be taxable at 12 if the value of supply of such service is up to Rs 7500.
3. Transportation of passenger and goods by ropeway will now be taxable at 5%. Earlier the same was taxed at 18%.
4. Goods Transport Agencies (GTA) shall now be taxable at 5% without ITC or 12% with ITC under forward charge mechanism. GTA is required to file a declaration with the department for opting to pay tax under forward charge by 15th March of every year. However, for the year 2022-23 the option is available up to 16th August 2022. In case no declaration filed then RCM will be applicable, and recipient will be required to pay tax under RCM.
5. Renting of goods carriage, where the cost of fuel is included in the consideration, shall be taxable at 12 This service was earlier covered under the residuary rate of 18%.
6. Service provided by the clinical establishment by way of room rental charges or by any other name (other than ICU/ NICU) where room rent charges exceeds INR 5000 per day shall now be taxable at 5%.
7. Service of treatment of biomedical waste is now taxable at 12%

T. Notification No. 04/2022-Central Tax (Rate) Dated 13.07.2022

Government wide this notification had made various changes in exempt supply of services as follows:

1. Service by the Department of Posts shall become taxable fully, irrespective of the turnover or constitution of the recipient or value of such services.
2. Air travel in the class above economy class shall now be taxable in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal at the rate of 18%. Earlier the same was exempt.
3. Earlier the renting of residential dwelling is exempted supplies. Now the change was made in such exemption to exclude the renting of residential dwelling to a registered person. The same is now taxable under reverse charge mechanism.
4. Exemptions to GTAs for goods transport services to a single consignee for consideration up to Rs 750 and total consignment value of single carriage with consideration up to Rs 1500 have been omitted Such services shall now be taxable at the prescribed rates irrespective of value of consideration.
5. Services by way of storage or warehousing of nuts, spices, copra, sugarcane, jaggery, raw vegetable fibres such as cotton, flax, jute etc indigo, unmanufactured tobacco, betel leaves, tendu leaves, coffee and tea shall become taxable.
6. Following services is removed from exemption list and now been made taxable
 - Services by the Reserve Bank of India.
 - Services provided by the Insurance Regulatory and Development Authority of India to insurers.
 - Services provided by the SEBI by way of protecting the interests of investors in securities and to promote the development of, and to regulate, the securities market.
 - Services by way of licensing, registration and analysis or testing of food samples supplied by the Food Safety and Standards Authority of India (FSSAI) to Food Business Operators.
 - Services provided by the Goods and Services Tax Network to the Central Government or State Governments or Union territories for implementation of Goods and Services Tax.
7. Services by way of storage or warehousing of nuts, spices, copra, sugarcane, jaggery, raw vegetable fibres such as cotton, flax, jute etc indigo, unmanufactured tobacco, betel leaves, tendu leaves, coffee and tea shall become taxable.

U. Notification No. 05/2022-Central Tax (Rate) Dated 13.07.2022

Government wide this notification had made various changes in taxability of services covered under reverse charge mechanism as follows:

1. GTA service is now covered under reverse charge mechanism subject to declaration filed by the GTA for opting to pay tax under forward charge mechanism.
2. Renting of residential dwelling to a registered person shall be fully covered under RCM Tax shall be by the recipient who is registered under the act in all cases.

Direct Tax

Amendment of Rule 114BB

The CBDT has amended the 114BB of Income Tax Rules, 1962 which specifies the transactions for which quoting of PAN mandatory in the specified transactions. The CBDT has provided exemption to the Central Government, State Government or the Consular Office from the quoting of PAN for the specified transactions.

- [Notification No. 105/2022]

Substitution of Rule 121A and Form 52A

The CBDT has substituted the rule 121A of Income Tax Rules, 1962 which specifies the statement to be furnished by the person who is engaged in production of cinematograph film or specified activity. The statement in Form 52A has also been substituted.

- [Notification No. 109/2022]

Notification of ITR-A

The CBDT has inserted a new rule 12AD which specifies the procedure for filing of ITR-A i.e. the Income tax return to be furnished by the successor company as mentioned in the Section 170A of Income Tax Act, 1961.

- [Notification No. 110/2022]

Notification of Rule 132

The CBDT has notified rule 132 which specifies the procedure for recomputation of Income under section 155(18) of Income Tax Act, 1961. As per Section 155(18) of Income Tax Act, 1961, any deduction of cess or surcharge which is not allowable as deduction u/s 40, has been claimed and allowed in the Income Tax return will be considered as under-reporting of Income.

However, if the assessee files an application in Form 69 to the assessing officer for recomputation of Income without allowing the cess or surcharge and the assessee make the payment of additional taxes on recomputation of income and file the details of payment of taxes in Form 70. It will be considered that there is no under-reporting of Income.

- [Notification No. 111/2022]

Revised Guidelines for compounding of offences under the Income Tax Act, 1961

In conformity with the Government's policy of facilitating Ease of Doing Business and decriminalization of offences, CBDT has taken steps in this direction and issued revised Guidelines for Compounding of offences under the Income-tax Act, 1961 (the 'Act') dated 16.09.2022 with reference to various offences covered under the prosecution provisions of the Act.

Some of the major changes made for the benefit of taxpayers include making offence punishable under Section 276 of the Act as compoundable. Further, the scope of eligibility for compounding of cases has been relaxed whereby case of an applicant who has been convicted with imprisonment for less than 2 years being previously non-compoundable, has now been made compoundable. The discretion available with the competent authority has also been suitably restricted. The time limit for acceptance of compounding applications has been relaxed from the earlier limit of 24 months to 36 months now, from the date of filing of complaint. Procedural complexities have also been reduced/simplified.

Specific upper limits have been introduced for the compounding fee covering defaults across several provisions of the Act. Additional compounding charges in the nature of penal interest @ 2% per month up to 3 months and 3% per month beyond 3 months have been reduced to 1% and 2% respectively.

- **[Press Release]**



Audit and Assurance

Release of Educational Material on Ind AS 34, Interim Financial Reporting

Given the link between climate change and corporate performance, many entities are reporting their sustainability performance for internal management purposes and are making external disclosure to various stakeholders, by preparing reports such as:

- Business Responsibility and Sustainability Reporting (BRSR)
- Sustainability/ ESG Report
- Integrated Report
- Task Force on Climate-Related Financial Disclosures (TCFD) Report
- Other reports as per global/ local sustainability standards

This is primarily on account of:

- a. Regulatory disclosure regime.
- b. Informing investors and other stakeholders on a voluntary basis.

To meet the above objective, exposure draft on Assurance Engagements SSAE 3000 for comments has been introduced for assurance on entities sustainability information

SSAE 3000 is an umbrella standard applicable to all assurance engagements on sustainability information. In case there is subject matter information to which a specific assurance standard applies (eg. GHG emissions), SSAE 3000 will apply in addition the subject matter specific standard (eg. SSAE 3410).

Where the engagement is subject to laws or regulations, SSAE 3000 does not override those laws, regulations, or provisions. In the event that laws or regulations differ from this standard, an engagement conducted in accordance with laws or regulations, or the provisions of a particular scheme will not automatically comply with SSAE 3000. The assurance practitioner is entitled to represent compliance with this SSAE 3000 in addition to compliance with laws or regulations only when all applicable requirements of SSAE 3000 have been met.

This standard note that an assurance engagement may be either an attestation engagement or a direct reporting engagement. SSAE 3000 deals only with attestation engagements.

Regulations

MCA

Extension of Due Date for DIR 3 KYC of Directors (Web) FY 2021-22

Ministry of Corporate Affairs (MCA), vide General Circular number 9/2022, dated September 28, 2022, has extended the due date for filing of Form DIR-3 KYC (including DIR 3 KYC Web) in respect of Financial Year 2021-22 from September 30, 2022, to October 15, 2022.

MCA revises threshold for paid-up capital of “Small Companies”

MCA has taken several measures in the recent past towards ease of doing business and ease of living for the corporates. These included decriminalization of various provisions of the Companies Act, 2013 & the LLP Act, 2008, extending fast-track mergers to start-ups, incentivizing incorporation of One Person Companies (OPCs) etc.

Earlier, the definition of “small companies” under the Companies Act, 2013 was revised by increasing their thresholds for paid-up capital from “not exceeding Rs 50 lakh” to “not exceeding Rs 2 crore” and turnover from “not exceeding Rs 2 crore” to “not exceeding Rs 20 crore”. This definition has, now, been further revised by increasing such thresholds for paid up Capital from “not exceeding Rs. 2 crores” to “not exceeding Rs. 4 crores” and turnover from “not exceeding Rs. 20 crores” to “not exceeding Rs. 40 crores” w.e.f September 16, 2022.

Additionally, we have highlighted below some of the benefits of reduction in compliance burden as a result of the revised definition for small companies are as under:

- No need to prepare a cash flow statement as part of the financial statement.
- Advantage of preparing and filing an Abridged Annual Return.
- Mandatory rotation of auditor not required.
- An Auditor of a small company is not required to report on the adequacy of the internal financial controls and its operating effectiveness in the auditor’s report.
- Holding only two board meetings in a year.
- Annual Returns of the company can be signed by the company secretary, or where there is no company secretary, by a director of the company.
- Lesser penalties for small companies.

The Companies (Corporate Social Responsibility Policy) Amendment Rules, 2022

The Ministry of Corporate Affairs (MCA) vide its notification dated September 20, 2022, has notified “the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2022” which has come into force on the date of its publication in the Official Gazette.

The following key changes have been brought about by the Amendment Rules:

1. Alignment of Rule 3 with section 135(1):

The CSR Rules earlier had authorised up to 5% of overall CSR expenditures, or Rupees 50 lakh, whichever was less for impact assessment. The Amendment Rules provide that the cost of social impact assessments, which can be considered as CSR spending, cannot be greater than 2% of all CSR expenditures for the applicable financial year or Rupees 50 lakh, whichever is higher. The amendment permits greater impact assessment spending in the event of substantial CSR projects.

2. Change in Expenditure for Impact Assessment

The CSR Rules earlier had authorised up to 5% of overall CSR expenditures, or Rupees 50 lakh, whichever was less for impact assessment. The Amendment Rules provide that the cost of social impact assessments, which can be considered as CSR spending, cannot be greater than 2% of all CSR expenditures for the applicable financial year or Rupees 50 lakh, whichever is higher. The amendment permits greater impact assessment spending in the event of substantial CSR projects.

3. Requirement of the constitution of the CSR Committee:

Insertion of the second proviso to Rule 3(1): Considering that the monitoring of CSR activities will continue to be required for the amount spent from the unspent CSR account, so long that there is any amount lying in the unspent CSR account of the company, the CSR Committee will have to be continued and cannot be dissolved.

4. Revised format for an annual report on CSR activities

The Amendment Rules provide for a new format for the annual report on CSR activities. The same has now been rationalized by omitting the requirement of mentioning the details of each project (ongoing and others). There are a few more rejigs done in the sequencing of the information.

SEBI

Master Circular on Surveillance of Securities Market

To ensure the availability of comprehensive information mentioned in the circulars pertaining to the Surveillance of the Securities Market in one place, the Security Exchange Board of India (SEBI) has been issuing Master Circular dated September 22, 2022. The circular covers various circulars issued till August 31, 2022, by Integrated Surveillance Department.

SEBI comes out with daily price limits framework for commodity futures contracts

SEBI came out with a new framework through a circular dated September 27, 2022, for daily price limit for commodity futures contracts in a bid to resolve the difference in closing price at domestic exchange and global bourse. The Daily Price Limits (DPLs) define the maximum range within which the price of a commodity futures contract can move in one trading session. Such limits protect investors from sudden and extreme price movements and provide a cooling-off period to re-assess the information and fundamentals impacting the price of the commodity futures contract. The Indian bourses have informed that closing price on domestic exchange differs from closing price on international exchanges, after necessary currency conversion, because of a difference in methodology of calculation of closing price, the Securities and Exchange Board of India (SEBI) said in a circular.

SEBI rolls out a framework for credit rating agencies

Markets regulator SEBI came out with a new framework for Credit Rating Agencies (CRAs), involving ratings of securities having explicit credit enhancement features. The new framework, applicable from January 1, 2023, is aimed at enhancing transparency and improving the rating process. Under the rule, CRAs can assign the suffix 'CE' (Credit Enhancement) to the rating of instruments having explicit credit enhancement. To enable investors to understand the extent of credit enhancement provided by a third party or parent or group company and support considerations specified by the regulator, including debt backed by a pledge of shares and a letter of comfort, SEBI said that the press release for credit ratings, with or without the CE-suffix, backed by such support considerations need to contain certain disclosures.

RBI

Late Submission Fee for reporting delays under Foreign Exchange Management Act, 1999

The Reserve Bank of India (RBI) has introduced a Late Submission Fee for reporting delays under FEMA through a notification dated September 30, 2022. The Late Submission Fee (LSF) was introduced for reporting delays in Foreign Investment (FI), External Commercial Borrowings (ECBs), and Overseas Investment related transactions with effect from November 7, 2017, January 16, 2019, and August 22, 2022, respectively.

It has now been decided to bring uniformity in the imposition of LSF across functions in the manner mentioned as follows; -

No.	Type of Reporting delays	LSF Amount (INR)
1	Form ODI Part-II/ APR, FCGPR (B), FLA Returns, Form OPI, evidence of investment or any other return which does not capture flows or any other periodical reporting	7500
2	FC-GPR, FCTRS, Form ESOP, Form LLP(I), Form LLP(II), Form CN, Form DI, Form InVi, Form ODI-Part I, Form ODI-Part III, Form FC, Form ECB, Form ECB-2, Revised Form ECB or any other return which captures flows or returns which capture reporting of non-fund transactions or any other transactional reporting.	$[7500 + (0.025\% \times *A \times **n)]$ *“A” is the amount involved in the delayed reporting. **n” is the number of years of delay in submission rounded upwards to the nearest month and expressed up to 2 decimal points.

Form ODI Part-II/ APR, FCGPR (B), FLA Returns, Form OPI, evidence of investment or any other return which does not capture flows or any other periodical reporting

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