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Amendments Module on GST & Customs for CA Final Nov 20

BY THARUN RAJ



**COVERING NOTIFICATIONS, CIRCULARS AND
ORDERS UNDER VARIOUS GST LAWS BETWEEN
1/11/2019 TO 30/04/2020**

PUBLICATIONS FOR CA FINAL NOV 2020

**RESOURCE BOOK ON
INDIRECT TAX LAWS
[GST, CUSTOMS & FTP]
FOR CA FINAL - NOV 20 EXAM**

[Also useful for CS/CMA
Dec 20 Exams]

COMPREHENSIVE COVERAGE OF ALL
TOPICS AS PER SYLLABUS WITH
SUMMARY CHARTS AND PRACTICAL
ILLUSTRATIONS

VOLUME - 2

Covering..

- Registration under GST
- Accounts & Records, Payment of Returns, E Way Bill, Anti Profiteer
- Assessment & Audit
- Search, Seizure & Confiscation
- Demand & Recovery
- Offences, Penalties, Prosecution & Appeal
- Appeals & Advance Ruling
- Refunds & Misc. topics

FIFTH EDITION

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COMPREHENSIVE COVERAGE OF ALL
TOPICS AS PER SYLLABUS WITH
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VOLUME - 1

Covering..

- Introduction to GST
- Meaning of supply and liability to pay GST
- Invoice and Time of Supply (TOS)
- Place of Supply (POS), Import and Export of goods/services under GST
- Value of supply (incl. Rules related to valuation)
- Input Tax Credit (ITC)
- Exemptions under GST
- Composition Scheme & Benefit of payment of reduced tax

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COMPREHENSIVE COVERAGE OF ALL
TOPICS AS PER ICAI SYLLABUS WITH
SUMMARY CHARTS AND PRACTICAL
ILLUSTRATIONS

VOLUME - 3

Covering..

- Taxable Event under Customs
- Classification of goods under Tariff
- Types of Customs duties
- Valuation in case of Import & Export
- Exemptions under Customs
- Import and Export Procedures
- Baggage & Duty Drawback
- Refund under Customs
- Foreign Trade Policy (FTP) & Various export incentives under FTP

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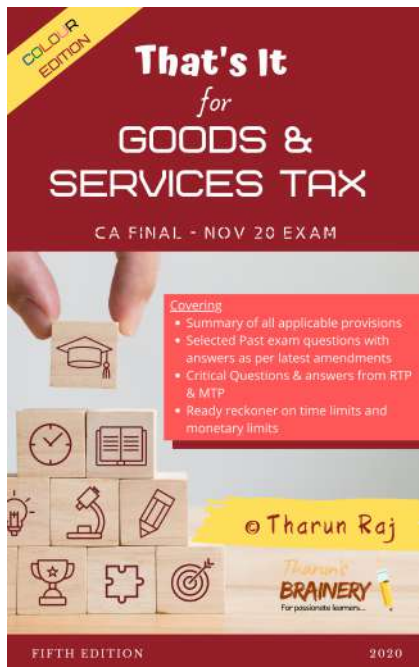
DETAILED TEXT BOOK ON INDIRECT TAX LAWS FOR NOV 20

Features:

- Detailed explanation of all provisions of GST, Customs & FTP applicable for CA Final as per ICAI syllabus and ICAI Study material
- Comprehensive text book with Bare Act provisions, explanation to each provision with charts, illustrations with answers (selected past exam and RTP questions also included)
- Interlinking aspects between various provisions are discussed in detail, as questions in exams are based on more than one chapter
- Updated provisions as per Finance Act, 2019 and Finance Act, 2020 with exam type illustrations for understanding provisions in a lucid manner
- **Ideal for:** Students appearing for Indirect Tax Laws for the first time and has minimum 3 months time for exam.

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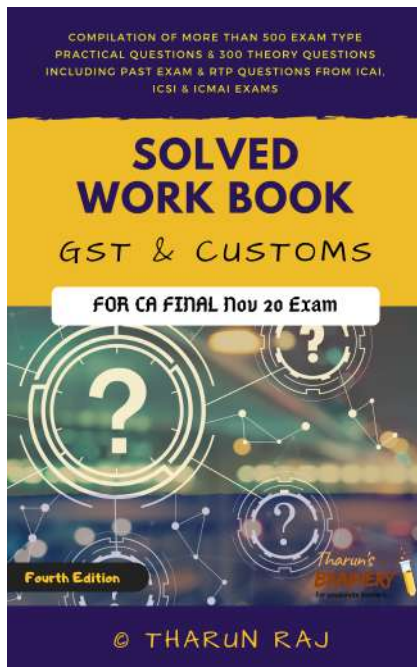
PUBLICATIONS FOR CA FINAL NOV 2020



Summary Book

Features:

- Summary on all provisions in chart presentation and Mnemonics for remembering important provisions and steps (Few practice questions included based on past exam)
- Ready Reckoner on time limits & Monetary limits included for easy reference
- **Ideal for:** Students who already prepared wanted to revise before exam



Problems & Solutions Book

Features:

- Past Exam Questions (Including RTP/ MTP) from CA Final, CMA Final and CS Professional programme covered segment wise, which is answered based on updated provisions
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 For CA Final
 Nov 2020 Exams
 (Also useful for CS Professional/
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Above Video Lectures are available from 10/7/2020

PREFACE TO FIFTH EDITION

“CTRL + R” is a shortcut for “refresh” and I have started this book for my students who attended my classes, as their period of attending classes is different from their exam attempt. The first edition of this book was made for Nov 2018 attempt. This book is mainly for CA Final students appearing for Nov 2020 Exam. However, this book is also useful for CMA Final/CS Professional students appearing in Dec 2020 Exam and an appendix is attached at the end for CMA/CS students as to extra topics/amendments that they need to know for their exams.

This Nov 2020 attempt is something unique as both Finance Act, 2019 and Finance Act, 2020 are applicable. As you are aware that changes in the law through notifications, circulars and orders upto 6 months before your exam attempt is applicable for your exams, accordingly changes upto 30/04/2020 are applicable for your Nov 2020 exams.

Changes made through Finance Act, 2019 is effective from 1/01/2020 and accordingly applicable for students who are appearing for Nov 2020 exam. Also changes made through Finance Act, 2020 are applicable for Nov 2020 students as the Finance Act, 2020 has received the president's assent on 23/03/2020 and many changes are made effective through notifications and circulars.

Further, ICAI has excluded few notifications viz. ITC implications on real estate sector, rate related notification from the applicability for May 2020 exams and few topics were also excluded for your exams. Please find the below summary of exclusions from your syllabus:

1. Rates of goods and Services
2. Exemptions & RCM in case of goods
3. ITC Reversal in case of Real Estate Projects [But, some provisions are applicable, viz. exemptions in case of real estate sector, Time of Supply in case of Real estate transactions]
4. Provisions in returns relating to GSTR - 2, GSTR - 1A, GSTR - 3, GSTR - 7 and GSTR - 8
5. Provisions relating to matching, reversal and reclaim of ITC (As these have not seen the day light)
6. Transitional provisions (As these are one time at the initial implementation)
7. Warehousing provisions under Customs
8. Appeals and Revision under Customs
9. Advance Ruling under Customs
10. Settlement Commission
11. Offences, Penalties and Prosecution provisions relating to Customs
12. Demand and Recovery under Customs

ICAI has released amendments material applicable for your exam, but this is not just a replica of that amendments material. I have included the background provisions, charts, illustrations and MCQ's to comprehend the amended provisions in an easy and lucid manner.

Thanking you and make best use of this book. Join Telegram group and post your queries there.

Yours, THARUN RAJ



Our Associates



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Segment - 1

INTRODUCTION TO GST

CONVERSION OF STATE OF JAMMU & KASHMIR TO UNION TERRITORY - CONSEQUENT CHANGES IN GST:



- Article 370 giving separate status to J&K got abrogated
- Consequently State of J&K is divided into two union territories - UT of J&K (UT with state legislature) and UT of Ladakh (UT without state Legislature)
- Therefore in UT of J&K, SGST Act is applicable and in UT of Ladakh, UTGST Act is applicable
- At present there are 29 states for which SGST Act is applicable and 3 UT's for which SGST Act is applicable. So, the total comes to 31 SGST Act's in India (The three UT's for which SGST Act is applicable are Delhi, Pondicherry & **J&K**).
- For the remaining 5 UT's (Andaman and Nicobar, Lakshadweep, Dadra and Nagar Haveli & Daman and Diu, Chandigarh & **Ladakh**), UTGST Act is applicable.
- Supply between UT of J&K and UT of Ladakh is an interstate supply and chargeable to IGST.

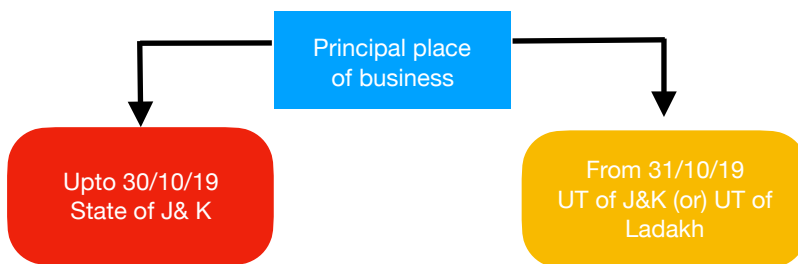
Illustration:

S.No.	Location of Supplier	Place of Supply	Nature of Supply	Type of GST
1	UT of J&K	UT of J&K	Intrastate	CGST + SGST
2	UT of Ladakh	UT of Ladakh	Intrastate	CGST + UTGST
3	UT of J&K	UT of Ladakh	Interstate	IGST out of which 50% shared with UT of Ladakh
4	Arunachal Pradesh	UT of J & K	Interstate	IGST out of which 50% shared with UT of J & K

Transition plan with respect to J&K reorganisation w.e.f. 31.10.2019 - Notification No. 62/2019-CT dt 26th November, 2019

1. Who should follow?

Those Persons whose principal place of business or place of business lies in the erstwhile State of Jammu and Kashmir till the 30th day of October, 2019; and lies in the Union territory of Jammu and Kashmir or in the Union territory of Ladakh from the 31st day of October, 2019 onwards shall follow the following special procedure till 31st Day of December, 2019 (Transition Date)



2. Tax period for payment of tax or other provisions of Act:

For October, 2019: From 1st October, 2019 to 30th October, 2019;

For November, 2019: 31st October, 2019 to 30th November, 2019;

Irrespective of the particulars of tax charged in the invoices, or in other like documents, raised from 31st October, 2019 till the transition date, pay the appropriate applicable tax in the return under section 39 of the said Act (i.e. GSTR - 3B);

3. Transfer of ITC (Optional):

They have an option to transfer the input tax credit (ITC) from the registered GSTIN, till the 31th day of December, 2019^(Amended Vide Notification No. 3/2020) in the State of Jammu and Kashmir, to the new GSTIN in the Union territory of Jammu and Kashmir or in the Union territory of Ladakh from the 1st day of January, 2020^(Amended Vide Notification No. 3/2020) by following the procedure as below:

- (a) **Intimation to officer:** the said class of persons shall intimate the jurisdictional tax officer of the transferor and the transferee regarding the transfer of ITC, **within one month of obtaining new registration;**
- (b) **Transfer to 2 UT's in turnover ratio:** The ITC shall be transferred on the basis of ratio of turnover of the place of business in the Union territory of Jammu and Kashmir and in the Union territory of Ladakh;
- (c) **No separate form of transfer:** the transfer of ITC shall be carried out through the return under section 39 of the said Act for any tax period before the transition date and the **transferor GSTIN would be debiting the said ITC from its electronic credit ledger in Table 4 (B) (2) of FORM GSTR-3B** and the **transferee GSTIN would be crediting the equal amount of ITC in its electronic credit ledger in Table 4 (A) (5) of FORM GSTR-3B**
- (d) **SGST Credit transferred as UTGST Credit:** The balance of State taxes in electronic credit ledger of the said class of persons, whose principal place of business lies in the Union territory of Ladakh from the 31st day of January, 2020^(Amended Vide Notification No. 3/2020), shall be transferred as balance of Union territory tax in the electronic credit ledger.

4. Compulsory registration not applicable:

The provisions of section 24 of the said Act shall not apply on the said class of persons making inter-State supplies between the Union territories of Jammu and Kashmir and Ladakh from the 31st day of October, 2019 till the transition date (i.e. 31st December, 2019).

UT OF DADRA AND NAGAR HAVELI & UT OF DAMAN AND DIU ARE MERGED UNDER THE PHILOSOPHY OF "MINIMUM GOVERNMENT AND MAXIMUM GOVERNANCE" INTO A SINGLE UT W.E.F 26/01/20:

Sec. 2(114) of CGST Act, 2017: "Union territory" means the territory of -

(a)	the Andaman and Nicobar Islands;
(b)	Lakshadweep;
(c)	Dadra and Nagar Haveli & <i>Daman and Diu</i> ;
(e)	Chandigarh; and
(f)	other territory.

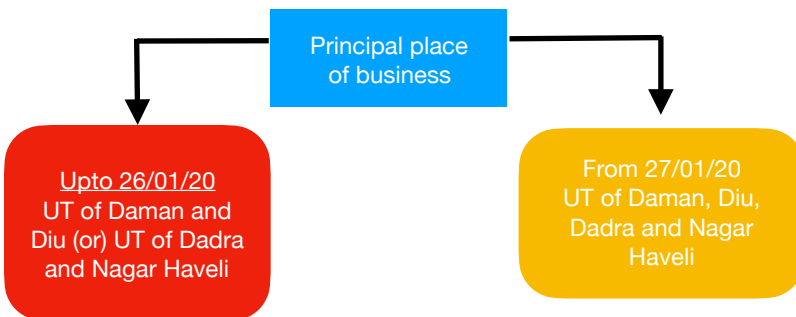


Explanation—For the purposes of this Act, each of the territories specified in sub-clauses (a) to (f) shall be considered to be a separate Union territory;

Transition plan on account of the above merger - Notification No. 10/2020 - CT (Dt: 21/03/20):

1. Who should follow?

Those Persons whose principal place of business or place of business was **in the erstwhile Union territory of Daman and Diu** or **in the erstwhile Union territory of Dadra and Nagar Haveli** till the 26th day of January, 2020; **and** is in the **merged Union territory of Daman and Diu and Dadra and Nagar Haveli** from the 27th day of January, 2020 onwards, shall follow the following special procedure till the 31st day of May, 2020 (hereinafter referred to as the transition date)



2. Tax period for payment of tax or other provisions of Act:

For January, 2020: From 1st January, 2020 to 25th January, 2020;

For February, 2020: 26th January 2020 to 29th February 2020;

Irrespective of the particulars of tax charged in the invoices, or in other like documents, raised from 26th January, 2020 till the transition date, pay the appropriate applicable tax in the return under section 39 of the said Act (i.e. GSTR - 3B);

3. Transfer of ITC (Optional):

Those who have registered Goods and Services Tax Identification Number (GSTIN) in the erstwhile Union territory of Daman and Diu and the erstwhile Union territory of Dadra and Nagar Haveli till the 25th day of January, 2019 have an option to transfer the balance of input tax credit (ITC) after the filing of the return for January, 2020, from the registered Goods and Services Tax Identification Number (GSTIN) in the erstwhile Union territory of Daman and Diu to the registered GSTIN in the new Union territory of Daman and Diu and Dadra and Nagar Haveli by following the procedure as below:-

(a) **Intimation to officer:** the said class of persons shall intimate the jurisdictional tax officer of the transferor and the transferee regarding the transfer of ITC, **within one month of obtaining new registration;**

(b) **Transfer of balance in ITC:** the ITC shall be transferred on the basis of the balance in the electronic credit ledger upon filing of the return in the erstwhile Union territory of Daman and Diu, for the tax period immediately before the transition date;

(c) **No separate form of transfer:** the transfer of ITC shall be carried out through the return under section 39 of the said Act for any tax period before the transition date and the **transferor GSTIN would be debiting the said ITC from its electronic credit ledger in Table 4 (B) (2) of FORM GSTR-3B** and the **transferee GSTIN would be crediting the equal amount of ITC in its electronic credit ledger in Table 4 (A) (5) of FORM GSTR-3B**

Segment - 2

TAXABLE EVENT UNDER GST

NO AMENDMENTS IN THIS SEGMENT

Segment - 3

INVOICE, TIME OF SUPPLY

QUICK RESPONSE (QR) CODE ON INVOICE - INSERTED BY CGST (4TH AMENDMENT) RULES, 2019 (W.E.F 1/4/20):

The Government may, by notification, on the recommendations of the Council, and subject to such conditions and restrictions as mentioned therein, specify that the tax invoice shall have Quick Response (QR) code.

Who are required to mention QR Code on invoice? - Notification No. 72/2019-CT (Dt: 13/12/19) w.e.f 1/4/20:

An invoice issued by a registered person, whose aggregate turnover in a financial year **exceeds five hundred crore rupees**, to an **unregistered person** (hereinafter referred to as B2C invoice), shall have Quick Response (QR) code:

Provided that where such registered person makes a Dynamic Quick Response (QR) code available to the recipient through a digital display, such B2C invoice issued by such registered person containing cross-reference of the payment using a Dynamic Quick Response (QR) code, shall be deemed to be having Quick Response (QR) code.

Note: QR code not required if the aggregate turnover in an financial year does not exceed ₹ 500 Crores



Deferment of implementation date of QR Code - Notification No. 14/2020 (Dt: 21/3/2020):

The date of implementation of Dynamic Quick Response (QR) code deferred to 1st October, 2020 for those registered persons whose aggregate turnover in a financial year exceeds five hundred crore rupees.

ELECTRONIC INVOICE (E-INVOICE) TO BE ISSUED BY NOTIFIED PERSONS - CGST (AMENDMENT) RULES, 2019 W.E.F 13/12/19:

As per Rule 48(4) of CGST Rules, 2017, the invoice shall be prepared by such class of registered persons as may be notified by the Government, on the recommendations of the Council, by including such particulars contained in **FORM GST INV-01** after obtaining an Invoice Reference Number by uploading information contained therein on the Common Goods and Services Tax Electronic Portal in such manner and subject to such conditions and restrictions as may be specified in the notification.



Also, as per Rule 48(5) of CGST Rules, 2017 Every invoice issued by a person to whom sub-rule (4) applies in any manner other than the manner specified in the said sub-rule shall not be treated as an invoice.

Note: A person who is required to issue E - Invoice, is not required to issue multiple copies i.e. duplicate, triplicate etc.,

Who are required to issue E - Invoice? - NOTIFICATION NO. 70/2019-CENTRAL TAX, DATED 13-12-2019 (W.e.f 1/4/2020)

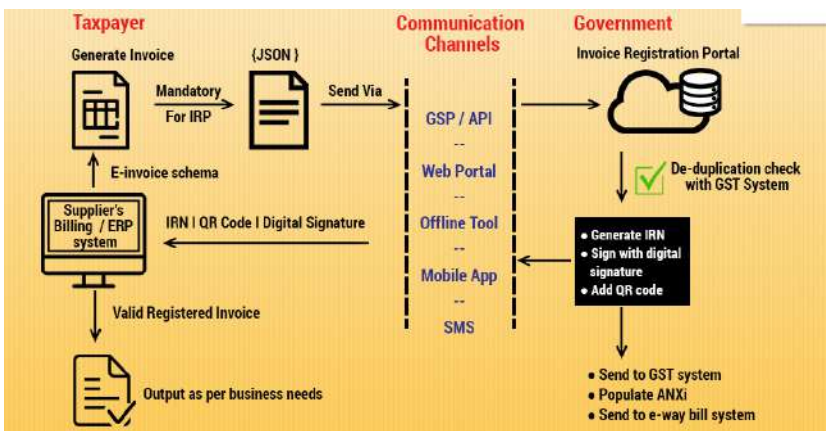
Registered person, whose aggregate turnover in a financial year **exceeds one hundred crore rupees**, shall prepare invoice in terms of sub-rule (4) of rule 48 of the said rules in respect of supply of goods or services or both **to a registered person.**

NOTIFIED COMMON GOODS AND SERVICES TAX ELECTRONIC PORTAL FOR PURPOSE OF PREPARATION OF INVOICE - NOTIFICATION NO. 69/2019- CENTRAL TAX, DATED 13-12-2019

The Central Government, on the recommendations of the Council, hereby, notifies the following as the Common Goods and Services Tax Electronic Portal for the purpose of preparation of the invoice in terms of sub-rule(4) of rule 48 of the aforesaid rules, namely:—

(i)	www.einvoice1.gst.gov.in;
(ii)	www.einvoice2.gst.gov.in;
(iii)	www.einvoice3.gst.gov.in;

(iv)	www.einvoice4.gst.gov.in;
(v)	www.einvoice5.gst.gov.in;
(vi)	www.einvoice6.gst.gov.in;
(vii)	www.einvoice7.gst.gov.in;
(viii)	www.einvoice8.gst.gov.in;
(ix)	www.einvoice9.gst.gov.in;
(x)	www.einvoice10.gst.gov.in.



Deferment of implementation date of E-invoicing - Notification

No. 13/2020- Central Tax dated 21st March 2020

The date of implementation of E-Invoicing deferred to 1st October,2020 for those registered persons whose aggregate turnover whose aggregate turnover in a financial year exceeds one hundred crore rupees.

QR code & E-Invoice not required irrespective of aggregate turnover:

Notification No. 13/2020 & No. 14/2020 (Dt: 21/3/2020) has also exempted the following persons from requirement of QR Code & E-Invoice even if the aggregate turnover exceeds the specified limit:-

GST & CUSTOMS AMENDMENTS

CTRL + R

1. Where the supplier of taxable service is an insurer or a banking company or a financial institution, including a non-banking financial company



2. Where the supplier of taxable service is a goods transport agency supplying services in relation to transportation of goods by road in a goods carriage.



3. Where the supplier of taxable service is supplying passenger transportation service



4. Where the supplier of taxable service is a registered person supplying services by way of admission to exhibition of cinematograph films in multiplex screens.



FACILITY OF DIGITAL PAYMENT TO RECIPIENT - SEC. 31A INSERTED VIDE FINANCE ACT, 2019 W.E.F 1/1/2020:

The Government may, on the recommendations of the Council, prescribe a class of registered persons who shall provide prescribed modes of electronic payment to the recipient of supply of goods or services or both made by him and give option to such recipient to make payment accordingly, in such manner and subject to such conditions and restrictions, as may be prescribed.

An advance is received by a supplier for a Service contract which subsequently got cancelled. The supplier has issued the invoice before supply of service and paid the GST thereon. Whether he can claim refund of tax paid or is he required to adjust his tax liability in his returns ?

Vide Circular No. 137/07/2020-GST (Dt: 13/4/20), it is clarified that, in case GST is paid by the supplier on advances received for a future event which got cancelled subsequently and for which invoice is issued before supply of service, the supplier is required to issue a "credit note" in terms of section 34 of the CGST Act. He shall declare the details of such credit notes in the return for the month during which such credit note has been issued. The tax liability shall be adjusted in the return subject to conditions of section 34 of the CGST Act. There is no need to file a separate refund claim.

However, in cases where there is no output liability against which a credit note can be adjusted, registered persons may proceed to file a claim under "Excess payment of tax, if any" through FORM GST RFD-01.

An advance is received by a supplier for a Service contract which got cancelled subsequently. The supplier has issued receipt voucher and paid the GST on such advance received. Whether he can claim refund of tax paid on advance or he is required to adjust his tax liability in his returns?

Vide Circular No. 137/07/2020-GST (Dt: 13/4/20), it is clarified that, in case GST is paid by the supplier on advances received for an event which got cancelled subsequently and for which no invoice has been issued in terms of section 31 (2) of the CGST Act, he is required to issue a "refund voucher" in terms of section 31 (3) (e) of the CGST Act read with rule 51 of the CGST Rules.

The taxpayer can apply for refund of GST paid on such advances by filing FORM GST RFD-01 under the category "Refund of excess payment of tax".

Goods supplied by a supplier under cover of a tax invoice are returned by the recipient. Whether he can claim refund of tax paid or is he required to adjust his tax liability in his returns ?

Vide Circular No. 137/07/2020-GST (Dt: 13/4/20), it is clarified that, in such a case where the goods supplied by a supplier are returned by the recipient and where tax invoice had been issued, the supplier is required to issue a "credit note" in terms of section 34 of the CGST Act. He shall declare the details of such credit notes in the return for the month during which such credit note has been issued. The tax liability shall be adjusted in the return subject to conditions of section 34 of the CGST Act. There is no need to file a separate refund claim in such a case.

However, in cases where there is no output liability against which a credit note can be adjusted, registered persons may proceed to file a claim under "Excess payment of tax, if any" through FORM GST RFD-01.

Segment - 4

PLACE OF SUPPLY

PLACE OF SUPPLY NOTIFIED UNDER SEC. 13(13) OF IGST ACT - NOTIFICATION No. 02/2020- INTEGRATED TAX (DT: 26/3/2020)

As per Sec. 13(13) of IGST Act, 2017 In order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, the Government shall have the power to notify any description of services or circumstances in which the place of supply shall be the place of effective use and enjoyment of a service.

1. Accordingly **vide Notification No. 04/2019**, with respect to **specified R&D services of pharmaceutical sector** provided by a person located in taxable territory to a person located in non taxable territory, the **POS shall be location of recipient**, if following conditions specified in such notification are satisfied.
 - A. Location of supplier is in India
 - B. Location of recipient is outside India
 - C. Consideration is received in foreign exchange
 - D. Supplier and recipient are not two establishments of the same person
2. In this regard, **Vide Notification No. 02/2020**, **Supply of maintenance, repair or overhaul service in respect of aircrafts, aircraft engines and other aircraft components or parts supplied to a person for use in the course or furtherance of business**, the **place of supply of services shall be the location of the recipient of service**

Segment - 5

VALUE OF SUPPLY

VALUE IN CASE OF LOTTERY - RULE 31A OF CGST RULES AMENDED VIDE NOTIFICATION No. 08/20 (DT: 2/3/20)

Before Amendment	After Amendment
<p>(a) The value of supply of lottery run by State Governments shall be deemed to be 100/112 of the face value of ticket or of the price as notified in the Official Gazette by the organising State, whichever is higher.</p> <p>(b) The value of supply of lottery authorised by State Governments shall be deemed to be 100/128 of the face value of ticket or of the price as notified in the Official Gazette by the organising State, whichever is higher.</p> <p><i>Explanation:</i>— For the purposes of this sub-rule, the expressions—</p> <p>a) "lottery run by State Governments" means a lottery not allowed to be sold in any State other than the organizing State;</p> <p>b) "lottery authorised by State Governments" means a lottery which is authorised to be sold in State(s) other than the organising State also; and</p> <p>c) "Organising State" has the same meaning as assigned to it in clause (f) of sub-rule (1) of rule 2 of the Lotteries (Regulation) Rules, 2010."</p>	<p>The value of supply of lottery shall be deemed to be 100/128 of the face value of ticket or of the price as notified in the Official Gazette by the Organising State, whichever is higher.</p> <p><i>Explanation:</i>— For the purposes of this sub-rule, the expression "Organising State" has the same meaning as assigned to it in clause (f) of sub-rule (1) of rule 2 of the Lotteries (Regulation) Rules, 2010.</p>



This amendment has been made to prescribe the uniform valuation of both State run and State authorized lottery which were valued differently earlier. as CG vide Notification No. 01/2020 has notified the uniform rate of GST on supply of Lottery w.e.f. 1st March 2020 as 28 % instead of the earlier differential rates of 12% on State run and & 28 % on State authorized lottery.

Segment - 6

INPUT TAX CREDIT (ITC)

MANNER OF DETERMINATION OF ITC W.R.TO CAPITAL GOODS AND REVERSAL THEREOF IN CERTAIN CASES - RULE 43 OF CGST RULES, 2017 - SUBSTITUTION OF EXISTING PROVISION VIDE NOTIFICATION No. 16/2020 (DT: 23/03/20):

Rule 43(a): the amount of input tax in respect of capital goods used or intended to be used exclusively for non-business purposes or used or intended to be used exclusively for effecting exempt supplies shall be indicated in FORM GSTR-3B and shall not be credited to his electronic credit ledger;

Rule 43(b): the amount of input tax in respect of capital goods used or intended to be used exclusively for effecting supplies other than exempted supplies but including zero-rated supplies shall be indicated in FORM GSTR-3B and shall be credited to the electronic credit ledger;

Before Amendment	After Amendment
<p>Rule 43(c): the amount of input tax in respect of capital goods not covered under clauses (a) and (b), denoted as 'A', shall be credited to the electronic credit ledger and the useful life of such goods shall be taken as five years from the date of the invoice for such goods:</p>	<p>Rule 43(c): the amount of input tax in respect of capital goods not covered under clauses (a) and (b), denoted as 'A', being the amount of tax as reflected on the invoice, shall credit directly to the electronic credit ledger and the validity of the useful life of such goods shall extend upto five years from the date of the invoice for such goods.</p>

“Shall credit directly” refers to taking ITC to the ECRL through GSTR-3B without reducing any amount

“Upto 5 years” signifies that registered person can take lower useful life also, but the useful life for the purpose of Rule 43 cannot exceed 5 years

Provided that where any capital goods earlier covered under clause (a) is subsequently covered under this clause, ~~the value of 'A' shall be arrived at by reducing the input tax at the rate of five percentage points for every quarter or part thereof and the amount 'A' shall be credited to the electronic credit ledger;~~

Provided that where any capital goods earlier covered under clause (a) is subsequently covered under this clause, **input tax in respect of such capital goods denoted as 'A' shall be credited to the electronic credit ledger subject to the condition that the ineligible credit attributable to the period during which such capital goods were covered by clause (a), denoted as 'Tie', shall be calculated at the rate of five percentage points for every quarter or part thereof and added to the output tax liability of the tax period in which such credit is claimed:**

Provided further that the amount 'Tie' shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in FORM GSTR-3B.

Explanation.- An item of capital goods declared under clause (a) on its receipt shall not attract the provisions of subsection (4) of section 18, if it is subsequently covered under this clause

X Ltd. Purchased a machinery on 1/1/20 for ₹ 10,00,000 (Excl. GST @ 12%) and used the same for exempted outward supply. On 3/1/21, the same is used for both taxable and exempted outward supply. What is the treatment of the same in terms of Rule 43?

Before Amendment: Common ITC available in Jan 2021 is ₹ 10,00,000 X 12% (-) 5% X 5 Quarters = 90,000
Monthly ITC for reversal from Jan 20 for next 60 months = ₹ 90,000/60 months = ₹ 1,500

After Amendment: Common ITC available in Jan 2021 is ₹ 10,00,000 X 12% = 1,20,000 & ITC to be added to liability in Jan 2021 is ₹ 1,20,000 X 5% X 5 Quarters = ₹ 30,000
Monthly ITC for reversal from Jan 20 for next 48 months = ₹ 1,20,000/48 months = ₹ 2,500 [Refer explanation in Rule 43(e)]

<p>Rule 43(d): the aggregate of the amounts of 'A' credited to the electronic credit ledger under clause (c), to be denoted as 'Tc', shall be the common credit in respect of capital goods for a tax period: Provided that where any capital goods earlier covered under clause (b) is subsequently covered under clause (c), the value of 'A' arrived at by reducing the input tax at the rate of five percentage points for every quarter or part thereof shall be added to the aggregate value 'Tc';</p>	<p>Rule 43(d): the aggregate of the amounts of 'A' credited to the electronic credit ledger under clause (c) in respect of common capital goods whose useful life remains during the tax period, to be denoted as 'Tc', shall be the common credit in respect of such capital goods: Provided that where any capital goods earlier covered under clause (b) are subsequently covered under clause (c), the input tax credit claimed in respect of such capital good(s) shall be added to arrive at the aggregate value 'Tc'</p>
<p>Rule 43(e): the amount of input tax credit attributable to a tax period on common capital goods during their useful life, be denoted as 'Tm' and calculated as $T_m = T_c/60$</p>	<p>Rule 43(e): the amount of input tax credit attributable to a tax period on common capital goods during their useful life, be denoted as 'Tm' and calculated as $T_m = T_c/60$ Explanation.- For the removal of doubt, it is clarified that useful life of any capital goods shall be considered as five years from the date of invoice and the said formula shall be applicable during the useful life of the said capital goods.</p>
<p>Rule 43(f): the amount of input tax credit, at the beginning of a tax period, on all common capital goods whose useful life remains during the tax period, be denoted as 'Tr' and shall be the aggregate of 'Tm' for all such capital goods;</p>	<p>Rule 43(f): Omitted</p>

X Ltd. Purchased a machinery on 1/1/20 for ₹ 10,00,000 (Excl. GST @ 12%) and used the same for taxable outward supply. On 3/1/21, the same is used for both taxable and exempted outward supply. What is the treatment of the same in terms of Rule 43?

Before Amendment: Common ITC (For Computation) in Jan 2021 is ₹ 10,00,000 X 12% (-) 5% X 5 Quarters = 90,000
 Monthly ITC for reversal from Jan 20 for next 60 months = ₹ 90,000/60 months = ₹ 1,500

After Amendment: Common ITC to be considered (ITC already availed) in Jan 2021 is ₹ 10,00,000 X 12% = 1,20,000
 Monthly ITC for reversal from Jan 20 for next 48 months = ₹ 1,20,000/48 months = ₹ 2,500 [Refer explanation in Rule 43(e)]

A Practical illustration to understand the above provisions:

Zurich Ltd. a registered manufacturer has the set of capital goods 'M1', 'M2', 'M3', 'M4', 'M5' and 'M6', with valid useful life in the relevant "tax period" which is June 2020.

Capital goods	Category of Capital goods	Invoice date	Amount	CGST	SGST	IGST
M1	Covered under CG1 and Subsequently covered under CG2	9/12/19	53,000	3,180	3,180	-
M2	Covered under CG1 and Subsequently covered under CG2	1/3/20	82,000	-	-	14,760
M3	Covered under CG1 and Subsequently covered under CG2	16/4/20	90,500	8,145	8,145	-
M4	Covered under CG3 and Subsequently covered under CG2	9/4/19	14,600	2,044	2,044	-
M5	Covered under CG3	1/6/20	33,000	2,970	2,970	-
M6	Covered under CG1	1/4/20	33,000	2,970	2,970	-
	Total		3,06,100	19,309	19,309	14,760

CG1 - Exclusively for taxable supplies; CG2 - Common Capital goods used for both taxable and exempt supplies and CG3 - Exclusively for exempt supplies

The "**Category of capital goods**" as per column two of above table, classifies each of the Capital goods for varied treatment as laid down for calculation under Rule 43.

The "**Invoice date**" determines the validity of the useful life of capital goods that is 'five years or 60 months (5 x 12 months) from the date of the invoice' as per Clause (c) of Rule 43 mentioned above.

The table also shows the **input taxes** reflected on the invoice for each of the capital goods.

Total Turnover during Financial Year 2020-21:

Month	Taxable turnover	Exempt turnover (E)	Total turnover (F)
April 20	800 lakhs	0	800 lakhs
May 20	360 lakhs	0	360 lakhs
June 20	269 lakhs	162 lakhs	431 lakhs
Total	1429 lakhs	162 lakhs	1591 lakhs

The company has undertaken purely taxable supplies in the month of April and May 2020. However, in the month of June 2020, it has witnessed a combination of exempt and taxable supplies because of which, the apportionment of input tax credit with respect of the capital goods as per Rule 43 is necessitated.

Below table depicts implementation of **Clauses (a) and (b) of Rule 43** (these clauses remain same under the earlier and amended versions of Rule 43).

Input Tax Credit to be claimed as per Rule 43 of CGST:

Capital goods	Amount	CGST	SGST	IGST	Reason
M5	33,000	Nil	Nil	-	M5 is exclusively used for exempt supplies - Rule 43(a)
M6	33,000	2,970	2,970	-	ITC as per invoice to be claimed in the tax period as per invoice date - Rule 43(b)

Asset 'M5' represents capital good used "exclusively for effecting exempt supplies. Input tax in respect of this asset shall not be credited to the electronic credit ledger.

Asset 'M6' represents capital good used for effecting "supplies other than exempted supplies but including zero-rated supplies". Input tax in respect of this asset shall be credited to the electronic credit ledger.

Ineligible credit 'Tie':

Particulars	CGST	SGST	IGST
ITC <u>w.r.to</u> CG that was used exclusively for effecting exempt supplier earlier and subsequently became common capital goods in the relevant tax period i.e. June 2020 [M4] Note: This calculation was not required before amendment	2,044	2,044	-
Tie [Ineligible credit attributable to the period during which the capital goods was exclusively used for exempted]	2,044 X 5% X 5 Quarters = ₹ 511	2,044 X 5% X 5 Quarters = ₹ 511	-

The above depicts implementation of amended Rule 43(c), for calculation of ineligible credit for period during which a capital goods earlier covered under Rule 43(a) is subsequently covered under Rule 43(c).

'Tie' i.e. 'ineligible input tax credit for capital goods 't' for the period during which it is used exclusively for effecting exempt supplies is calculated at the rate of 5 percent for every quarter or part thereof from the date of invoice of the asset i.e. from April 9, 2019, which comes out to five quarters or part thereof, as per calculation depicted in the table above. 'Tie' shall be added to the output tax liability of June 2020.

Reversal of Input tax credit on Capital Goods in June, 2020 [Before Amendment] - Common Credit arrived at by reducing the ITC at 5% for every quarter or part thereof:

Year	Assets	Invoice date	CGST	SGST	IGST
2020-21	M3	10/4/20	8,145 - (8,145 X 5% X 1Q) = 7,737.5	8,145 - (8,145 X 5% X 1Q) = 7,737.5	-
2019-20	M1	9/12/19	3,180 - (3,180 X 5% X 3Q) = 2,703	3,180 - (3,180 X 5% X 3Q) = 2,703	-
2019-20	M2	1/3/20	-	-	14,760 - (14,760 X 5% X 2Q) = 13,284
2020-21	M5	9/4/19	2,044 - (2,044 X 5% X 5Q) = 1,533	2,044 - (2,044 X 5% X 5Q) = 1,533	-

Year	Assets	Invoice date	CGST	SGST	IGST
Sum of "A" = Tc			11,974	11,974	13,284
Tm = Tc/60			199.57	199.57	221.40
Te = Tm X E/F			75.01	75.01	83.22

Reversal of Input tax credit on Capital Goods in June, 2020 [After Amendment] - Common Credit which is tax as per invoice:

Year	Assets	Invoice date	CGST	SGST	IGST
2020-21	M3	10/4/20	8,145	8,145	-
2019-20	M1	9/12/19	3,180	3,180	-
2019-20	M2	1/3/20	-	-	14,760
2020-21	M5	9/4/19	2,044	2,044	-
Sum of "A" = Tc			13,369	13,369	14,760
Tm = Tc/60			222.82	222.82	246
Te = Tm X E/F			83.75	83.75	92.46

The above tables depicts implementation of Clauses (c), (d), (e) and (g) of Rule 43, both under the amended and before amendment version of Rule 43. (Clause (f), being omitted under the amended Rule has not been covered)

'A' represents **input in respect of common capital goods**, whose useful life remain during the tax period June 2020. Aggregate of 'A' for all common capital goods is denoted as '**Tc**'

Tm represents input in respect of common capital goods for a single tax period which is June 2020, in our example and [Tm= Tc/60]

Finally, we arrive at '**Te**' which represents the amount of common credit attributable towards exempted supplies, in the "**Tax period**", **June 2020**.

[Te = (E x Tm)/F]

Where, E is the total exempt supplies, made, during the tax period, and 'F' is the total turnover in the State of the registered person during the tax period.

Amount of 'Te' represents the reversal of input tax to be made, on account of workings under Rule 43.

RESTRICTION ON AVAILING ITC IF SUPPLIER HAS NOT UPLOADED DETAILS OF SUPPLIES IN HIS GSTR-1 RETURN - RULE 36(4) INSERTED VIDE NOTIFICATION No. 49/2019 (DT: 09/10/2019) READ WITH CIRCULAR No. 123/12/2019 (DT: 11/11/2019) AS AMENDED BY NOTIFICATION No. 75/2019 (DT: 26/12/2019) W.E.F 1/1/2020:

Sec 16(2) mentions various conditions for availment of ITC, where in clause (c) states that subject to the provisions of section 41 or section 43A, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply.

Section 43A empowers to limit ITC in respect of ITC not showing in GSTR-2A to 20% 10% of ITC reflecting in GSTR-2A. The procedure for availing input tax credit in respect of outward supplies not furnished under sub-section (3) shall be such as may be prescribed and such procedure may include the maximum amount of the input tax credit which can be so availed, not exceeding twenty ten per cent of the input tax credit available, on the basis of details furnished by the suppliers under the said sub-section.



Rule 36(4) has been inserted in the CGST Rules, 2017-"Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers in their GSTR-1 under section 37(1), shall not exceed 20 10 per cent of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under section 37(1)"

My View: Section 43A is never made applicable and probably waiting for new return filing system. The applicability of such rule, in view of section 43A not made effective is in itself questionable.

Effectively, ITC shall not exceed 10% of the eligible credit reflected in GSTR-2A.

1. What is meaning of eligible credit for Rule 36(4)?

Eligible Credit means ITC for which taxpayer is eligible in accordance with section 16 to section 21 of the CGST Act, 2017 (i.e., which satisfies all conditions and not in blocked credit). The conditions and eligibility for the ITC that may be availed by the recipient shall continue to be governed as per the provisions of Chapter V of the CGST Act and the rules made thereunder.

2. Whether this 10% restriction is auto calculated by GST Portal?

This being a new provision, the restriction is not imposed through the common portal and it is the responsibility of the taxpayer that credit is availed in terms of the said rule and therefore, the availment of restricted credit in terms of sub-rule (4) of rule 36 of CGST Rules shall be done on self-assessment basis by the tax payers (May be in new return mechanism, this will be auto calculated)

3. What are the invoices/debit notes on which the restriction under rule 36(4) of the CGST Rules shall apply?

The restriction of availment of ITC is imposed only in respect of those invoices/debit notes, details of which are required to be uploaded by the suppliers under section 37(1) and which have not been uploaded.

Therefore, taxpayers may avail full ITC in respect of IGST paid on import, documents issued under RCM, credit received from ISD, etc., which are outside the ambit of section 37(1), provided that eligibility conditions for availment of ITC are met in respect of the same.

4. When will be these provisions effective from?

The restriction of rule 36(4) will be applicable only on the invoices/debit notes on which credit is availed after 01/01/2020. Thus, even if invoices belong to period before 01/01/2020, but ITC is availed after 01/01/2020, then this restriction will be imposed.

5. Whether the said restriction is to be calculated supplier wise or on consolidated basis?

The restriction imposed is not supplier wise. The credit available under rule 36(4) is linked to total eligible credit from all suppliers against all supplies whose details have been uploaded by the suppliers.

Further, the calculation would be based on only those invoices which are otherwise eligible for ITC. Accordingly, those invoices on which ITC is not available under any of the provision (say under section 17(5)) would not be considered for calculating 10 per cent of the eligible credit available.

6. Form GSTR-2A being a dynamic document, what would be the amount of input tax credit that is admissible to the taxpayers for a particular tax period in

respect of invoices/debit notes whose details have not been uploaded by the suppliers?

The taxpayer may have to ascertain the same from his auto populated Form GSTR 2A as available on the due date of filing of FORM GSTR-1 under section 37(1).

Illustration - 1: ABC Ltd. receives 100 invoices (for inward supply of goods or services) involving ITC of ₹10 lakhs, from various suppliers during the month of Jan, 2020 and has to claim ITC in his FORM GSTR-3B of January, to be filed by 20th Feb, 2020. Suppliers have furnished in FORM GSTR-1, 80 invoices involving ITC of ₹6 lakhs as on the due date of furnishing of the details of outward supplies by the suppliers.

Total Credit as per Invoices	₹ 10.00 Lakh
Credit as per 2A	₹ 6.00 Lakh
10% of amount as per 2A	₹ 0.6 Lakh
Total Credit can be availed in 3B	₹ 6.6 Lakh (6 + 0.6)

Illustration - 2: ABC Ltd. receives 100 invoices (for inward supply of goods or services) involving ITC of Rs. 10 lakhs, from various suppliers during the month of April, 2020 and has to claim ITC in his FORM GSTR-3B of April, to be filed by 20th May, 2020. Suppliers have furnished in FORM GSTR-1, 80 invoices involving ITC of Rs. 9 lakhs as on the due date of furnishing of the details of outward supplies by the suppliers.

Total Credit as per Invoices	₹ 10.00 Lakh
Credit as per 2A	₹ 9.50 Lakh
10% of amount as per 2A	₹ 0.95 Lakh
Total Credit can be availed in 3B	₹ 10 Lakh (9.5 + 0.5)

Note: The Maximum Credit cannot exceed ₹ 10 lakhs in this case, as the credit as per invoices is ₹ 10 lakhs, even though 10% of eligible credit can be availed.

7. When can balance ITC be claimed in case availment of ITC is restricted as per the provisions of rule 36(4)?

The balance ITC may be claimed by the taxpayer in any of the succeeding months provided details of requisite invoices are uploaded by the suppliers.

Taxpayer can claim proportionate ITC as and when details of some invoices are uploaded by the suppliers provided that credit on invoices, the details of which are not uploaded (under sub-section (1) of section 37) remains under 10 per cent of the eligible input tax credit, the details of which are uploaded by the suppliers

Illustration - 3: Total ITC for the month of Jan-2020 - Rs. 130 (100 Eligible + 30 Ineligible)

GSTR 2A Month	Reflecting in GSTR-2A relating to Jan-20	Ineligible ITC in GSTR 2A	Eligible ITC in GSTR-2A
Jan-20	80	20	60
Feb-20	30	10	20
Mar-20	10	-	10
April-20	10	-	10
Total	130	30	100

GSTR 2A Month	Reflecting in GSTR-2A relating to Jan-20 Invoices	Ineligible ITC in GSTR 2A relating to Jan-20 Invoices	Eligible ITC in GSTR-2A relating to Jan-20 Invoices	Amount of 10% + Amount as per GSTR 2A	ITC Eligibility under Rule 36(4) for the month	Cumulative Total Availed ITC in GSTR 3B
Jan-20	80	20	60	66	66	66
GSTR 2A Month	Reflecting in GSTR-2A relating to Jan-20 Invoices	Ineligible ITC in GSTR 2A relating to Jan-20 Invoices	Eligible ITC in GSTR-2A relating to Jan-20 Invoices	Amount of 10% + Amount as per GSTR 2A	ITC Eligibility under Rule 36(4) for the month	Cumulative Total Availed ITC in GSTR 3B
Feb-20	30	10	20	22	22	88
Mar-20	10	-	10	11	11	99
Apr-20	10	-	10	11	1*	100**

Total	130	30	100	-	100	-
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* Maximum 100 Rupees i.e. Eligible credit as per Bills can be availed in GSTR 3B. ₹ 99 already availed upto Mar-20. Hence only ₹ 1 Credit (100-99) can be availed in April-20 (even if mathematical calculation quantifies 11 as credit in April-20)

8. Taxpayer's Filing their own GSTR-1 on Quarterly basis, need to compute above calculations on Monthly basis or quarterly basis?

No clarity from CBIC in this regard. However, as GSTR 3B is a monthly return, GSTR 2A need to be checked on Monthly basis & GSTR 3B to be filed accordingly, i.e., for GSTR 3B of Nov-19, GSTR 2A for the month of Nov-19 to be downloaded as on 11/12/2019 and to be checked while filing GSTR 3B on or before 20/12/2019.

9. Which GSTR 2A entries to be considered - Submitted or Non Submitted Status as well?

Logically, Only Entries with Submitted Status to be considered. (No clarification from CBIC)

10. What if taxpayer avails entire ITC as per Bills without considering this Rule?

Interest u/s. 50 for Excess availment of ITC would be charged to Taxpayer.

11. 10% to be seen head wise, i.e., IGST, CGST and SGST or consolidated ITC? Head-wise i.e. separately for IGST, CGST & SGST/UTGST. (No clarification from CBIC)

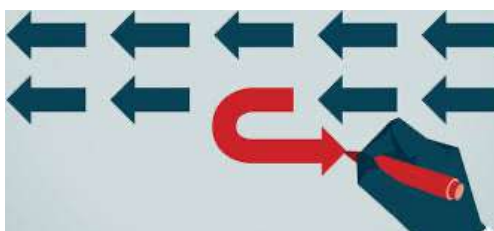
12. Whether ITC for Bill of Dec-19 can be availed in GSTR 3B of Oct 2020 due to the fact that it was not available in GSTR 2A till GSTR 3B of Sept-2020?

No, It can't over-ride specific provision of law.

CLARIFICATION IN RESPECT OF APPORTIONMENT OF INPUT TAX CREDIT (ITC) IN CASES OF BUSINESS REORGANIZATION UNDER SECTION 18 (3) OF CGST ACT READ WITH RULE 41(1) OF CGST RULES - CIRCULAR No.133 03/2020-GST (DT: 23/02/2020)

Issue - 1: In case of demerger, proviso to rule 41 (1) of the CGST Rules provides that the input tax credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme. However, it is not clear as to whether the value of assets of the new units is to be considered at State level or at all-India level.

Clarification: Under the provisions of the CGST Act, a person/ company (having same PAN) is required to obtain separate registration in different States and each such registration is considered a distinct person for the purpose of the Act.



Accordingly, for the purpose of

apportionment of ITC pursuant to a demerger under sub-rule (1) of rule 41 of the CGST Rules, the value of assets of the new units is to be taken at the State level (at the level of distinct person) and not at the all-India level.

Illustration: A company XYZ is registered in two States of M.P. and U.P. Its total value of assets is worth Rs. 100 crore, while its assets in State of M.P. and U.P. are Rs 60 crore and Rs 40 crore respectively. It demerges a part of its business to company ABC. As a part of such demerger, assets of XYZ amounting to Rs 30 Crore are transferred to company ABC in State of M.P, while assets amounting to Rs 10 crore only are transferred to ABC in State of U.P. (Total assets amounting to Rs 40 crore at all-India level are transferred from XYZ to ABC). The unutilized ITC of XYZ in State of M.P. shall be transferred to ABC on the basis of ratio of value of assets in State of M.P., i.e. $30/60 = 0.5$ and not on the basis of all-India ratio of value of assets, i.e. $40/100=0.4$. Similarly, unutilized ITC of XYZ in State of U.P. will be transferred to ABC in ratio of value of assets in State of U.P., i.e. $10/40 = 0.25$.

Issue - 2: Is the transferor required to file FORM GST ITC - 02 in all States where it is registered?

Clarification: [No] The transferor is required to file FORM GST ITC-02 only in those States where both transferor and transferee are registered.

Issue - 3: Whether the ratio of value of assets, as prescribed under proviso to rule 41 (1) of the CGST Rules, shall be applied in respect of each of the heads of input tax credit viz. CGST/ SGST/ IGST/ Cess?

Clarification: No, the ratio of value of assets, as prescribed under proviso to sub-rule (1) of rule 41 of the CGST Rules, shall be applied to the total amount of unutilized input tax credit (ITC) of the transferor i.e. sum of CGST, SGST/UTGST and IGST credit. The said formula need not be applied separately in respect of each heads of ITC (CGST/SGST/IGST). Further, the said formula shall also be applicable for apportionment of Cess between the transferor and transferee.

Illustration: The ITC balances of transferor X in the State of Maharashtra under CGST, SGST and IGST heads are 5 lakh, 5 lakh and 10 lakh respectively. Pursuant to a scheme of demerger, X transfers 60% of its assets to transferee B. Accordingly, the amount of ITC to be transferred from A to B shall be 60% of 20 lakh (total sum of CGST, SGST and IGST credit) i.e. 12 lakh.

Issue - 4: How to determine the amount of ITC that is to be transferred to the transferee under each tax head (IGST/CGST/SGST) while filing of FORM GST ITC- 02 by the transferor?

Clarification: The total amount of ITC to be transferred to the transferee (i.e. sum of CGST, SGST/UTGST and IGST credit) should not exceed the amount of ITC to be transferred, as determined under sub-rule (1) of rule 41 of the CGST Rules [refer 3 (c) (i) above]. However, the transferor shall be at liberty to determine the amount to be transferred under each tax head (IGST, CGST, SGST/UTGST) within this total amount, subject to the ITC balance available with the transferor under the concerned tax head.

Illustration:

(1)	(2)	(3)	(4)	(5)	(6)
State	Asset Ratio of Transferee	Tax Heads	ITC balance of Transferor (pre-apportionment) as on the date of filing FORM GST ITC-02)	Total amount of ITC transferred to the Transferee under FORM GST ITC- 02	ITC balance of Transferor (post-apportionment) after filing of FORM GST ITC-02) [Col (4) – Col (5)]
Delhi	70%	CGST	10,00,000	10,00,000	0

		SGST	10,00,000	10,00,000	0
		IGST	30,00,000	15,00,000	15,00,000
		Total	50,00,000	35,00,000	15,00,000
Haryana	40%	CGST	25,00,000	3,00,000	22,00,000
		SGST	25,00,000	5,00,000	20,00,000
		IGST	20,00,000	20,00,000	0
		Total	70,00,000	28,00,000	42,00,000

Issue - 5: The proviso to rule 41 (1) of the CGST Rules explicitly mentions 'demerger'. Other forms of business reorganization where part business is hived off or business is transferred as a going concern etc. have not been covered in the said rule. Wherever business reorganization results in partial transfer of business assets along with liabilities, whether the proviso to rule 41(1) of the CGST Rules, 2017 shall be applicable to calculate the amount transferable ITC?

Clarification: Yes, the formula for apportionment of ITC, as prescribed under proviso to sub-rule (1) of rule 41 of the CGST Rules, shall be applicable for all forms of business re-organization that results in partial transfer of business assets along with liabilities.

Issue - 6: In order to calculate the amount of transferable ITC, the apportionment formula under proviso to rule 41(1) of the CGST Rules has to be applied to the unutilized ITC balance of the transferor. However, it is not clear as to which date shall be relevant to calculate the amount of unutilized ITC balance of transferor.

Clarification: According to sub-section (3) of section 18 of the CGST Act, "Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilized in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed." Further, sub-rule (1) of rule 41 of the CGST Rules prescribes that the registered person shall file the details in FORM GST ITC-02 for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee.

A conjoint reading of sub-section (3) of section 18 of the CGST Act along with sub-rule (1) of rule 41 of the CGST Rules would imply that the apportionment formula shall be applied on the ITC balance of the transferor as available in electronic credit ledger on the date of filing of FORM GST ITC – 02 by the transferor.

Issue - 7: Which date shall be relevant to calculate the ratio of value of assets, as prescribed in the proviso to rule 41 (1) of the CGST Rules, 2017?

Clarification: According to section 232 (6) of the Companies Act, 2013, “The scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date”. The said legal provision appears to indicate that the “appointed date of demerger” is the date from which the scheme for demerger comes into force and it is specified in the respective scheme of demerger. Therefore, for the purpose of apportionment of ITC under rule sub-rule (1) of rule 41 of the CGST Rules, the ratio of the value of assets should be taken as on the “appointed date of demerger”.

In other words, for the purpose of apportionment of ITC under sub-rule (1) of rule 41 of the CGST Rules, while the ratio of the value of assets should be taken as on the “appointed date of demerger”, the said ratio is to be applied on the ITC balance of the transferor on the date of filing FORM GST ITC - 02 to calculate the amount to transferable ITC.

Segment - 7

EXEMPTIONS & CHARGE IN GST

EXEMPTION OF UPFRONT PAYMENT FOR LONG TERM LEASE OF INDUSTRIAL/ FINANCIAL INFRASTRUCTURE PLOTS - NOTIFICATION No. 27/2019 (W.E.F 1/1/20):

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 50% 20% or more ownership of Central Government, State Government, Union territory** to the industrial units or the developers in any industrial or financial business area.

Explanation: For the purpose of this exemption, the Central Government, State Government or Union territory shall have **50% 20% or more ownership** in the entity directly or through an entity which is wholly owned by the Central Government, State Government or Union territory.

Proviso Inserted Vide the above notification:

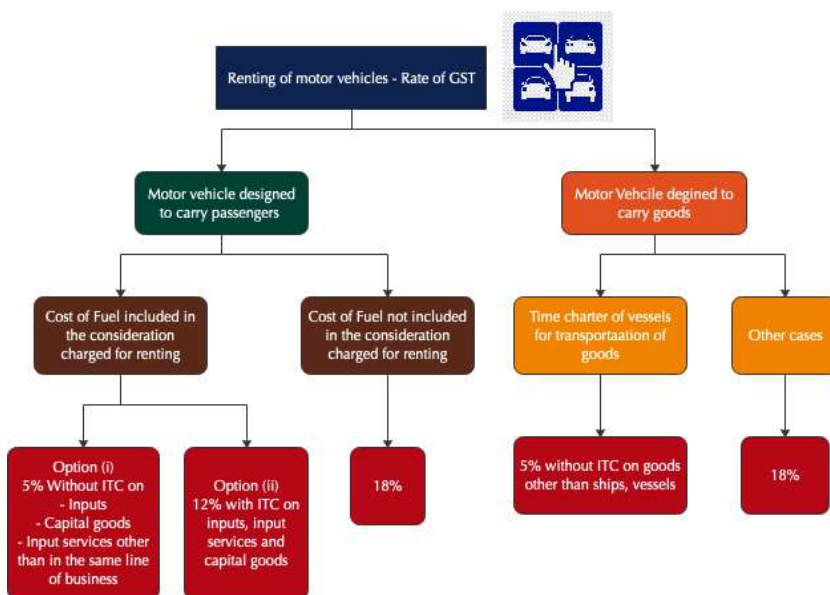
First Proviso: Provided that the leased plots **shall be used for the purpose for which they are allotted**, that is, for industrial or financial activity in an industrial or financial business area:

Second Proviso: Provided further that the **SG concerned shall monitor and enforce the above condition** as per the order issued by the State Government in this regard:

Third Proviso: Provided also that **in case of any violation or subsequent change of land use, due to any reason whatsoever**, the original lessor, original lessee as well as any subsequent lessee or buyer or owner shall be jointly and severally **liable to pay such amount** of central tax, as would have been payable on the upfront amount charged for the long term lease of the plots but for the exemption contained herein, along with the applicable interest and penalty

Fourth Proviso: Provided also that the lease agreement entered into by the original lessor with the original lessee or subsequent lessee, or sub-lessee, as well as any subsequent lease or sale agreements, for lease or sale of such plots to subsequent lessees or buyers or owners shall incorporate in the terms and conditions, the fact that the central tax was exempted on the long term lease of the plots by the original lessor to the original lessee subject to above condition and that the parties to the said agreements undertake to comply with the same.

LIABILITY TO PAY GST ON RENTING OF MOTOR VEHICLE - AMENDMENT IN RCM NOTIFICATION NO. 13/2017 VIDE NOTIFICATION NO. 29/2019 (W.E.F 31/12/2019) READ WITH CIRCULAR NO. 130/2019 (DT: 31/12/2019):



Suppliers of service by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient have an option to pay GST either at 5% with limited ITC (of input services in the same line of business) or 12% with full ITC.

The GST Council in its 37th meeting dated 20.09.2019 examined the request to place the supply of renting of motor vehicles under RCM and recommended that the said supply when provided by suppliers paying GST @ 5% to corporate

entities may be placed under RCM. RCM was not recommended for suppliers paying GST @12% with full ITC, so that they may have the option to continue to avail ITC. RCM otherwise would have blocked the ITC chain for them. Accordingly, the following entry was inserted in the RCM notification with effect from 1.10.19:

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	(2)	(3)	(4)
15	Services provided by way of renting of a motor vehicle provided to a body corporate.	Any person other than a body corporate, paying central tax at the rate of 2.5% on renting of motor vehicles with input tax credit only of input service in the same line of business	Any body corporate located in the taxable territory.

Post issuance of the notification, references have been received stating that when a service is covered by RCM, GST would be paid by the service recipient and not by the supplier.



Therefore, the wording of the notification that "any person other than a body corporate, paying central tax at the rate of 2.5%" is not free from doubt and needs amendment/ clarification from the perspective of drafting.

The matter has been examined. When any service is placed under RCM, the supplier shall not charge any tax from the service recipient as this is the settled procedure in law under RCM. There are only two rates applicable on the service of renting of vehicles, 5% with limited ITC and 12% with full ITC. The only interpretation of the notification entry in question which is not absurd would be that –

- (i) where the supplier of the service charges GST @ 12% from the service recipient, the service recipient shall not be liable to pay GST under RCM; and,
- (ii) where the supplier of the service doesn't charge GST @ 12% from the service recipient, the service recipient shall be liable to pay GST under RCM.

Though a supplier providing the service to a body corporate under RCM may still be paying GST @ 5% on the services supplied to other non body corporate clients, to bring in greater clarity, serial No. 15 of the notification No. 13/2017-CT (R) dated 28.6.17 has been amended vide notification No. 29/2019-CT (R) dated 31.12.19 to state that RCM shall be applicable on the service by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient only if the supplier fulfils all the following conditions:-

(a)	is other than a body-corporate;
(b)	does not issue an invoice charging GST @12% from the service recipient; and
(c)	supplies the service to a body corporate.

It may be noted that the present amendment of the notification is merely clarificatory in nature and therefore for the period 01.10.2019 to 31.12.2019 also, clarification given at para 5 above shall apply, as any other interpretation shall render the RCM notification for the said service unworkable for that period.

The position in regard to applicability of reverse charge in various situations is tabulated below:-

Situation	Supplier	Recipient	Whether R C M applicable	Remarks
I	Body Corporate	Body Corporate	NO	Tax to be paid under FCM by supplier.
II	Non-body Corporate	Non-body Corporate	NO	
III	Body Corporate	Non-Body Corporate	NO	
V	Non-body Corporate-where supplier issues an invoice for 5%	Body Corporate	YES	Tax to be paid Under RCM.
VI	Non-body Corporate-Where supplier issues an invoice fro 12%	Body Corporate	NO	Tax to be paid under FCM.

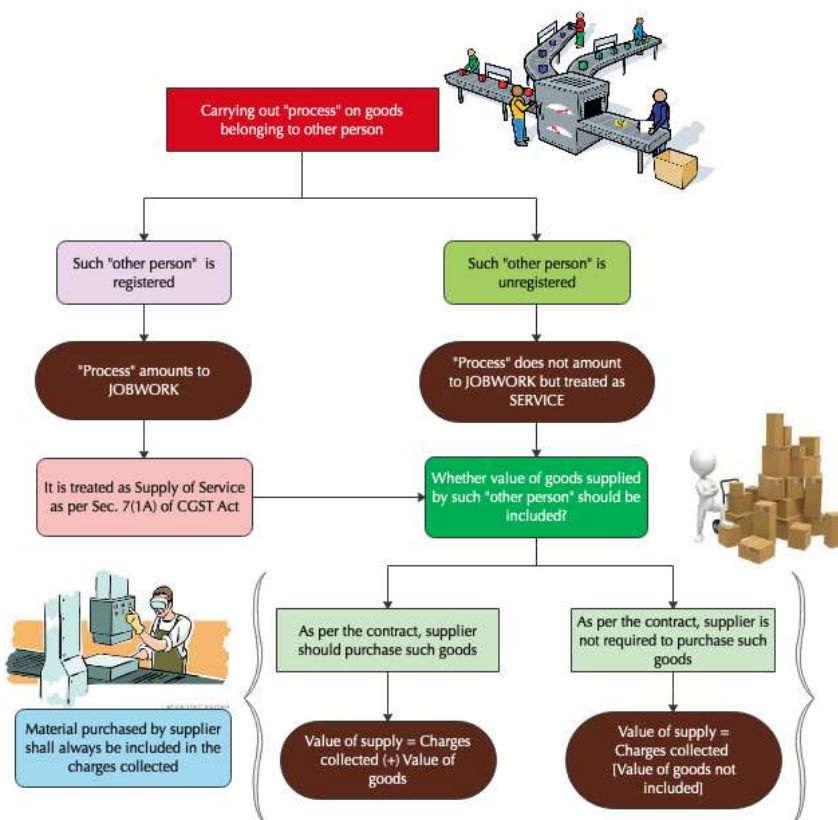
GST IMPLICATIONS ON JOB WORK:

Sec. 2(68) of CGST Act, 2017 - Meaning of "Job Work":

"Job work means any treatment or processing undertaken by a person on goods belonging to another **registered** person and the expression 'job worker' shall be construed accordingly."

- Supplier = Job worker
- Recipient = Principal Manufacturer (Who get the goods processed though a job worker)
- Supplier (i.e. Job worker) may (or) may not be registered. Supplier is required to get registered as and when the aggregate turnover exceeds the threshold limit
- Recipient (i.e. Principal manufacturer) should be registered

What if the recipient (i.e. Principal manufacturer) is unregistered?



CIRCULAR NO. 126/45/2019-GST [F. NO. 354/150/2019-TRU], DATED 22-11-2019:

The entries at items (id) and (iv) under heading 9988 read as under:

(3)	(4)	(5)
(id) Services by way of job work other than (i), (ia), (ib) and (ic) above;	6	-
(iv) Manufacturing services on physical inputs (goods) owned by others, other than (i), (ia), (ib), (ic), (id), (ii), (iia) and (iii) above.	9	-

In view of the above, it may be seen that there is a clear demarcation between scope of the entries at item (id) and item (iv) under heading 9988 of [Notification No. 11/2017-Central Tax \(Rate\) dated 28-6-2017](#). Entry at item (id) covers only job work services as defined in section 2(68) of CGST Act, 2017, that is, services by way of treatment or processing undertaken by a person on goods belonging to another **registered** person. On the other hand, the entry at item (iv) specifically excludes the services covered by entry at item (id), and therefore, covers only such services which are carried out on physical inputs (goods) which are owned by persons other than those registered under the CGST Act.

Segment - 8

COMPOSITION SCHEME

UPDATED COMPOSITION SCHEME UNDER SEC. 10 ON ACCOUNT OF VARIOUS AMENDMENTS IN FINANCE ACT, 2019 W.E.F 1/1/2020:

Section 10(1) Notwithstanding anything to the contrary contained in this Act but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, in lieu of the tax payable by him under sub-section (1) of section 9, an amount of tax calculated at such rate as may be prescribed, but not exceeding,—



(a)	1% of the turnover in State or turnover in Union territory in case of a manufacturer,
(b)	2.5% of the turnover in State or turnover in Union territory in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II, and
(c)	0.5% of the turnover in State or turnover in Union territory in case of other suppliers,

subject to such conditions and restrictions as may be prescribed:

Provided that the Government may, by notification, increase the said limit of fifty lakh rupees to such higher amount, not exceeding one crore and fifty lakh rupees, as may be recommended by the Council:

Provided further that a person who opts to pay tax under clause (a) or clause (b) or clause (c) may supply services (other than those referred to in clause (b) of paragraph 6 of Schedule II), of value not exceeding 10% of turnover in a State or Union territory in the preceding financial year or five lakh rupees, whichever is higher. - Inserted by the Central Goods and Services Tax (Amendment) Act, 2018, w.e.f. 1-2-2019

Inserted by the Finance (No. 2) Act, 2019, w.e.f. 1-1-2020

Explanation to Sec. 10(1) - For the purposes of second proviso, the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount shall not be taken into account for determining the value of turnover in a State or Union territory.

Explanation 1 to Sec. 10 - For the purposes of computing aggregate turnover of a person for determining his eligibility to pay tax under this section, the expression "aggregate turnover" shall include the value of supplies made by such person from the 1st day of April of a financial year upto the date when he becomes liable for registration under this Act, but shall not include the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

Explanation 2 to Sec. 10 - For the purposes of determining the tax payable by a person under this section, the expression "turnover in State or turnover in Union territory" shall not include the value of following supplies, namely:—

(i)	supplies from the first day of April of a financial year upto the date when such person becomes liable for registration under this Act; and
(ii)	exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

Analysis of Section 10(1) of CGST Act, 2017:

1. When a person can opt for composition scheme?

If the aggregate turnover of that person during the previous financial year \leq ₹ 150 lakhs, then such person can opt for composition scheme under Sec. 10(1) for payment of tax at concessional rates.

In case of 8 states (Arunachal Pradesh, Mizoram, Meghalaya, Manipur, Tripura, Nagaland, Sikkim and Uttarakhand), the limit should be taken as ₹ 75 lakhs.



2. Whether registration is required for a person opting for composition scheme?

- Every supplier who makes a taxable supply of goods (or) services (or) both having an aggregate turnover in a financial year exceeding threshold limit for exemption (₹40 lakhs/ ₹20 lakhs/ ₹10 lakhs) shall be liable to register.
- Section 10(1) specifically states that a registered person can opt for composition scheme. Therefore, only a registered person can opt for composition scheme.

3. What is the meaning of aggregate turnover for determining the eligibility for composition scheme?

- Aggregate turnover will be computed on the basis of turnover on an all India basis and will include value of all taxable supplies, exempt supplies and

exports made by all persons with same PAN, but would exclude inward supplies under reverse charge as well as central, State/Union Territory and Integrated taxes and cess (Same as the definition of “aggregate turnover” in registration).

- Even though consideration represented by way of interest or discount on deposits, loans and advances is exempted service, it will not be considered for calculating aggregate turnover – Explanation 1 to Sec. 10 (This point is not applicable while determining aggregate turnover for registration)
- Also aggregate turnover shall include the value of supplies made by such person from the 1st day of April of a financial year upto the date when he becomes liable for registration under this Act.

4. What is the rate of tax for compositions scheme?

Registered Person	Rate of tax under composition scheme u/s 10(1)
MANUFACTURER	CGST - 0.5% + SGST - 0.5% Total - 1% on Turnover IN THE STATE or UT
TRADER	CGST - 0.5% + SGST - 0.5% Total - 1% on TAXABLE Turnover IN THE STATE or UT
RESTAURANT SERVICE PROVIDER	CGST - 2.5% + SGST - 2.5% Total - 5% on Turnover IN THE STATE or UT

5. What is the meaning of turnover on which composite tax is payable?

The amount of composite tax is payable on turnover in a state/UT, which as per Sec. 2(112) of CGST Act, MEANS

- Aggregate value of all taxable supplies (excl. the value of inward supplies on which tax is payable under RCM)
- Exempted supplies made within a state (or) UT by a taxable person
- Export of goods (or) Services (or) Both, and
- Inter-state supplies of goods or services or both made from the State or Union Territory by the said taxable person
- But excludes central tax, state tax, union territory tax, integrated tax and cess.
- **Also Vide Explanation 2 to Sec. 10, the above turnover excludes the following:**
 - I. **Interest income on loans, advances and deposits**
 - II. **First supplies from 1st April of a Financial year till the threshold limit for registration**

6. Can composition scheme be availed of by a manufacturer/trader/Restaurant service provider who is also making supply of services other than supply of food?

If a person opting for composition scheme engaged in supply of services, other than supply of food and wanted to opt for composition scheme, they may supply services of value not exceeding 10% of turnover in a state or union territory in the previous year (or) ₹5,00,000, whichever is HIGHER. (Tax rate on such services shall be at the rate applicable to manufacturer/trader/Restaurant service provider)



Exempted services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, shall not be taken into account for the above limit. Therefore, services other than supply of food and interest income should be excluded from the value of services to determine the limit - Explanation to Sec. 10(1) of CGST Act, 2017

Illustration - 1:

Mr. Janardhan, a trader engaged in sale of provisions to household, commenced his business on 4th July, 2019 and opted for composition scheme. His GST consultant advised him not to render any services, as it is one of the condition/restriction for continuing in the composition scheme. But, he wanted to provide delivery services to his customers. Advice him suitably based on the provisions of Sec. 10 of CGST Act.

As per Second proviso to Sec. 10(1) of CGST Act, a person opting for composition scheme can render services other than supply of food upto 10% of the turnover during previous year (or) ₹ 5,00,000, whichever is HIGHER. Also, to such extent, it does not amount to non fulfilment of conditions under composition scheme. The contention of GST Consultant is not correct.

Illustration - 2:

Mr. Janardhan, a trader engaged in sale of provisions to household, commenced his business on 4th July, 2019 and opted for composition scheme. His turnover during the current financial year is as follows:

Particulars	July to Sept, 2019	Oct to Dec, 2019	Jan to March, 2020
Revenue from sale of taxable goods (Rate of GST = 12%)	₹ 40,00,000	₹ 20,00,000	₹ 20,00,000
Revenue from sale of exempted goods	₹ 15,00,000	₹ 5,00,000	₹ 10,00,000

Revenue from ancillary services viz. packing, delivery etc.	₹ 3,00,000	₹ 2,00,000	₹ 5,00,000
Total	₹ 58,00,000	₹ 27,00,000	₹ 35,00,000

Compute GST payable.

As per Second proviso to Sec. 10(1) of CGST Act, a person opting for composition scheme can render services other than supply of food upto 10% of the turnover during previous year (or) ₹ 5,00,000, whichever is HIGHER. In the present case, as there is no turnover during the previous year, services upto ₹ 5,00,000 can be provided during the current year. But, the value of services exceeds ₹ 5,00,000 by the quarter ending December, 2019 which results in non fulfilment of condition for composition scheme and Mr. Janardhan has to pay GST at normal rates for the quarter Jan to March, 2020 as follows:

Particulars	July to Sept, 2019	Oct to Dec, 2019	Jan to March, 2020
GST on Supply of taxable goods	₹ 40,00,000 X 1 % = ₹ 40,000	₹ 20,00,000 X 1 % = ₹ 20,000	₹ 20,00,000 X 12 % = ₹ 2,40,000
GST on Supply of exempt goods	-	-	-
GST on Supply of services	₹ 3,00,000 X 1 % = ₹ 30,000	₹ 2,00,000 X 1 % = ₹ 20,000	₹ 5,00,000 X 18 % = ₹ 90,000
Total GST Payable	₹ 70,000	₹ 40,000	₹ 3,30,000

Illustration - 3:

What will be your answer in the above case (Illustration - 2), if Mr. Janardhan has already commenced business and his aggregate turnover for the preceding FY: 2018-19 is ₹ 110,00,000 and he has also opted for composition scheme for the current FY:2019-20

As per Second proviso to Sec. 10(1) of CGST Act, a person opting for composition scheme can render services other than supply of food upto 10% of the turnover during previous year (or) ₹ 5,00,000, whichever is HIGHER. In the present case, as turnover during the previous year is ₹ 110,00,000, services upto ₹ 11,00,000 can be provided and Mr. Janardhan has rendered services to the

tune of ₹ 10,00,000 only and has fulfilled all the conditions for composition scheme. GST payable at composite rates as follows:

Particulars	July, 2019 to March, 2020	Composite tax
GST on Supply of taxable goods	₹ 80,00,000 X 1%	₹ 80,000
GST on Supply of exempt goods	GST payable only on taxable turnover	-
GST on Supply of services	₹ 10,00,000 X 1%	₹ 10,000
Total GST Payable		₹ 90,000

Illustration - 4:

Mr. Janardhan, a trader engaged in sale of provisions to household, commenced his business on 4th July, 2019 and opted for composition scheme. His turnover during the current financial year is as follows:

Revenue from sale of taxable goods - ₹ 80 lakhs (Rate of GST is 12%)

Revenue from sale of exempted goods - ₹ 30 lakhs

Revenue from ancillary services viz. packing, delivery etc. - ₹ 5,00,000 (Rate of GST is 18%)

Interest income on fixed deposits and advances - ₹ 3,00,000 (Exempt)

Compute GST payable.

As per Second proviso to Sec. 10(1) of CGST Act, a person opting for composition scheme can render services other than supply of food upto 10% of the turnover during previous year (or) ₹ 5,00,000, whichever is HIGHER. In the present case, as there is no turnover during the previous year, services upto ₹ 5,00,000 can be provided during the current year. As per Explanation to Sec. 10(1), While computing the value of services for computing the limit, interest income should not be included and therefore, in the present case, all the conditions for composition scheme has been fulfilled. Mr. Janardhan has to pay GST at composite rates as follows:

GST on Supply of taxable goods	₹ 80,00,000 X 1%	₹ 80,000
GST on Supply of exempt goods	GST payable only on taxable turnover	-
GST on Supply of services	₹ 5,00,000 X 1%	₹ 5,000

GST on interest income	While computing turnover interest income should not be considered - Explanation 2 to Sec. 10	-
Total GST Payable		₹ 85,000

Illustration - 5:

What will be your answer in the above case (Illustration - 4), if Mr. Janardhan is a manufacturer.

Answer is same as above, except that manufacturer shall pay GST @ 1% on total turnover

GST on Supply of taxable goods	₹ 80,00,000 X 1%	₹ 80,000
GST on Supply of exempt goods	₹ 30,00,000 X 1%	₹ 30,000
GST on Supply of services	₹ 10,00,000 X 1%	₹ 10,000
GST on interest income	While computing turnover interest income should not be considered - Explanation 2 to Sec. 10	₹ 3,000
Total GST Payable		₹ 1,23,000

7. Whether GST is payable at composite rate or normal rates in case of inward supplies received by the person opting for composition scheme, on which GST is payable on reverse charge basis?

Sec. 10(1) is subject to provisions of Sec. 9(3) and 9(4), which implies that a dealer opting for composition scheme and paying composite tax during CY is required to pay GST at normal rates on inward supplies, which are covered under RCM.

8. Can an outdoor caterer opt for composition scheme?

Suppliers making composite supply of food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption) by way of or as a part of any service viz. Restaurants, Eating Joints, Mess, Canteens, Outdoor Caterer, etc. can opt for composition scheme.

Section 10(2): The registered person shall be eligible to opt under sub-section (1), if—

- | | |
|-----|--|
| (a) | save as provided in sub-section (1), he is not engaged in the supply of services; |
| (b) | he is not engaged in making any supply of goods which are not leviable to tax under this Act; |
| (c) | he is not engaged in making any inter-State outward supplies of goods; |
| (d) | he is not engaged in making any supply of goods through an electronic commerce operator who is required to collect tax at source under section 52; |
| (e) | he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the <i>Council</i> ; and |
| (f) | he is neither a casual taxable person nor a non-resident taxable person: |



Provided that where more than one registered persons are having the same Permanent Account Number [issued under the Income-tax Act, 1961 (43 of 1961)], the registered person shall not be eligible to opt for the scheme under sub-section (1) unless all such registered persons opt to pay tax under that sub-section.

Analysis of Section 10(2) of CGST Act, 2017:

9. Will a taxable person, having multiple registrations, be eligible to opt for composition scheme only for a few registrations?

All registered persons having the same PAN have to opt for composition scheme. If one of the registration out of multiple registrations opts for normal scheme, others become ineligible for composition scheme.



10. Can a restaurant having licence to sell liquor opt for composition scheme?

Supplier making non-taxable supplies cannot opt for composition scheme. As alcohol for human consumption is non-taxable supply as per Sec. 9(1) of CGST Act, a restaurant having licence to sell liquor is ineligible to opt for composition scheme.

11. Who cannot opt for composition scheme?

- C** Casual Taxable Person
- O** Outside the state (Interstate) and outside the country (Import) purchases held in stock on the date of opting for composition scheme - Applicable during transition
- N** Non resident taxable Person
- S** Service providers (Whether taxable or exempted) other than (a) restaurant service providers; (b) Services upto a limit allowed
- U** Purchases from **Unregistered Supplier** held in stock on the date of opting for composition scheme on which GST not paid under RCM u/s 9(4)
- M** Manufacturer of certain notified goods - Icecream, Edible ice, Pan masala, Tobacco & Tobacco products, **Aerated Water (Inserted w.e.f 1.10.19)** during the current year and previous year
- E** Supplier of goods through **E Commerce Operator**, who is liable to deduct TCS u.s 52
- I** Interstate supplier of goods (Whether taxable or exempted)
- N** Non taxable Supplies

Section 10(2A) - Inserted by the Finance (No. 2) Act, 2019, w.e.f. 1-1-2020:

Notwithstanding anything to the contrary contained in this Act, but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, not eligible to opt to pay tax under sub-section (1) and sub-section (2), whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, in lieu of the tax payable by him under sub-section (1) of section 9, an amount of tax calculated at such rate as may be prescribed, but not exceeding three per cent of the turnover in State or turnover in Union territory, if he is not—



- (a) engaged in making any supply of goods or services which are not leviable to tax under this Act;

(b)	engaged in making any inter-State outward supplies of goods or services;
(c)	engaged in making any supply of goods or services through an electronic commerce operator who is required to collect tax at source under section 52;
(d)	a manufacturer of such goods or supplier of such services as may be notified by the Government on the recommendations of the Council; and
(e)	a casual taxable person or a non-resident taxable person:

Provided that where more than one registered person are having the same Permanent Account Number issued under the Income-tax Act, 1961 (43 of 1961), the registered person shall not be eligible to opt for the scheme under this sub-section unless all such registered persons opt to pay tax under this sub-section.

Analysis of Section 10(2) of CGST Act, 2017:

12. What are the differences between composition scheme under Sec. 10(1) and Sec. 10(2A)

This option under Sec. 10(2A) is same as that of composition scheme under Sec. 10(1) of CGST Act, 2017 with the following differences:



Particulars	Composition Scheme under Sec. 10(1)	Composition Scheme under Sec. 10(2A)
1. When applicable?	Aggregate turnover during previous year ≤ ₹ 1.5 Cores (₹ 75 lakhs in case of 8 special category states)	Aggregate turnover during previous year ≤ ₹ 50 lakhs
2. To whom it is applicable?	Manufacturer, Trader & Service provider engaged in Supply of food	Manufacturer, Trader & Any Service Provider
3. Benefit of reduced rates	1% (0.5% CGST & 0.5% SGST) on Total Turnover in case of Manufacturer 1% (0.5% CGST & 0.5% SGST) on Taxable Turnover in case of Trader 5% (2.5% CGST & 2.5% SGST) on Total Turnover in case of service provider engaged in supply of food	6% (3% CGST & 3% SGST) on Total Turnover

4. Current year limit for reduced rates	₹ 1.5 Crores/ ₹ 75 lakhs	₹ 50 lakhs
5. Difference in Conditions	<ol style="list-style-type: none"> 1. Cannot make interstate supply of goods 2. Should not make supply of goods through E Commerce Operator 3. Manufacturer of notified goods cannot opt for this scheme 	<ol style="list-style-type: none"> 1. Cannot make interstate supply of goods (or) Services 2. Should not make supply of goods (or) Services through E Commerce Operator 3. Manufacturer of notified goods and supplier of notified services cannot opt for this scheme

Note: All other conditions are same as applicable to composition scheme under Sec. 10(1).

13. Who are the persons not eligible for composition scheme under Sec. 10(1), but eligible for Composition Scheme under Sec. 10(2A)?

A registered person whose aggregate turnover in the preceding financial year does not exceed ₹ 50 lakh and:

- i.who is exclusively engaged in supplying services other than restaurant services, or
- ii.who is engaged in supply of services [other than restaurant services] along with supply of goods and/ or restaurant services of value exceeding the specified limit (i.e. ₹ 5 lakh, as 10% of turnover of previous year cannot be more than ₹ 5 lakh) in current FY.

14. Computation of GST payable in case of Composition scheme under Sec. 10(2A)?

As per Explanation 2 to Sec. 10 (Which is applicable for both Sec. 10(1) and Sec. 10(2A), turnover excludes supplies from the first day of April of a financial year upto the date when such person becomes liable for registration under this Act

In case of unregistered person as on 1/4/2019:

First Supplies (Taxable or Exempted) from 1/4/2019 till the the date such person has not exceeded threshold limit for registration (₹ 40 lakhs/ ₹ 20 lakhs/ ₹ 10 lakhs)	No GST Payable
Supplies (Taxable or Exempted) after the above threshold limit and upto ₹ 50 lakhs (i.e. additional upto ₹ 50 lakhs)	GST payable @ 6% (CGST 3% and SGST 3%)
Supplies (Taxable or Exempted) after ₹ 50 lakhs	GST payable at normal rates on taxable supplies

In case of registered person as on 1/4/2019:

First Supplies (Taxable or Exempted) upto ₹ 50 lakhs	GST payable @ 6% (CGST 3% and SGST 3%)
Supplies (Taxable or Exempted) after ₹ 50 lakhs	GST payable at normal rates on taxable supplies

Illustration - 1:

Ronald P. Ltd. is engaged in supplying management consultancy services in Rajasthan. In the preceding financial year, it has a turnover of ₹ 42 lakh from the management consultancy service. Further, it has also earned a bank interest of ₹ 12 lakh from the fixed deposits. Ronald P. Ltd. wishes to opt for presumptive levy under Sec. 10(2A) in the current year. You are required to advise Ronald P. Ltd. on the same.

As per Sec. 10(2A) of CGST Act, a registered person can claim the benefit of this presumptive scheme provided his aggregate turnover in the preceding financial year did not exceed ₹50 lakh. In computing aggregate turnover in order to determine eligibility of a registered person to pay tax under this notification, value of supply of exempt services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, shall not be taken account as per explanation 1 to Sec. 10.

In case before us, in computing the aggregating turnover in order to determine the eligibility of Ronald P. Ltd. for presumptive scheme, value of supply of exempt services being bank interest shall not be taken into account. Thus, the aggregate turnover of Ronald P. Ltd. is ₹ 42 lakhs (turnover from management consultancy services) and they are eligible for presumptive scheme for service suppliers under Sec. 10(2A).

Illustration - 2:

Mr. Ankur (of Delhi) started profession of Architect w.e.f. 01-04-2019. His value of intra-state taxable supplies upto 30th September 2019 was ₹ 20 lakh. He applied for registration on 1st October 2019 and opted for Presumptive scheme for service suppliers in registration application and was granted registration as per provisions of GST law. He made intra-state taxable supplies of ₹35 lakhs for the quarter ending 31-12-2019. You are required to determine his Presumptive tax liability under Sec. 10(2A) for the period 01-04-2019 to 31-12-2019.

As per Sec. 10(2A), if a registered person is eligible to take the benefit of this sub section, he shall pay GST @ 6% (3% CGST and 3% SGST) on turnover in the state/UT upto ₹50 lakhs.

As per Explanation 2 to Sec. 10, turnover shall not include the supplies from the first day of April of a financial year to the date from which he becomes liable for registration under the Act.

In simple words, Supplies made till supplier becomes liable for registration shall not be counted in turnover for payment of GST.

Supplies made after supplier becomes liable for registration shall only be counted in 'turnover' and such turnover of value upto ₹50 lakhs shall be eligible for benefit of 'presumptive levy @ 6%'.

Thus, where supplier has taken the GST registration for the first time, the presumptive tax at the rate of 6% shall be payable on the supplies made by him only after the date of registration. Thus, the amount of composition tax liability under Sec. 10(2A) will be ₹30,00,000 × 6% = ₹1,80,000. [CGST = ₹90,000 and SGST = ₹90,000]. Thereafter, on balance ₹ 5,00,000 GST is payable at normal rates, as ATO > ₹ 50 lakhs during CY and Sec. 10(2A) not applicable in terms of Sec. 10(3)

Illustration - 3:

The following information is noted from the records of X (a technical consultant located in Mumbai) and Y (a software developer located in Pune)—

	X	Y
Date of commencement of technical consultancy operation by X and software development activity by Y	July 25, 2017	April 1, 2019
	₹ in lakh	₹ in lakh
Turnover of the financial year 2018-19	43	Nil

Invoices issued by X and Y on or after April 1, 2019 —		
- Invoice No. 1/2019 on April 6, 2019	3	3
- Invoice No. 2/2019 on May 20, 2019	17	17
- Invoice No. 3/2019 on June 12, 2019	18	18
- Invoice No. 4/2019 on August 5, 2019	12	12
- Invoice No. 5/2019 on September 28, 2019	20	20
- Invoice No. 6/2019 on September 30, 2019	56	56

Person	X (technical consultant)		
Status as on 1st April, 2019 (FY 2019-20)	GST Registered supplier		
Eligibility for Composition scheme under Sec. 10(2A)	Eligible	(as PY 2018-19 aggregate turnover is 43 lakhs, i.e., not exceeding the specified threshold limit of 50 lakhs)	
Tax liability			Cumulative Turnover
Invoice No. 1/2019 on April 6, 2019	18,000 (3,00,000 * 6%)	Covered within Sec. 10(2A)	3,00,000
Invoice No. 2/2019 on May 20, 2019	1,02,000 (17,00,000 * 6%)	Covered within Sec. 10(2A)	20,00,000
Invoice No. 3/2019 on June 12, 2019	1,08,000 (18,00,000 * 6%)	Covered within Sec. 10(2A)	38,00,000
Invoice No. 4/2019 on August 5, 2019	72,000 (12,00,000 * 6%)	Covered within Sec. 10(2A)	50,00,000
Invoice No. 5/2019 on September 28, 2019	3,60,000 (20,00,000 * 18%)	Not Covered within Sec. 10(2A) as limit of ₹50,00,000 is over	70,00,000

Invoice No. 6/2019 on September 30, 2019	10,08,000 (56,00,000 * 18%)	Not Covered within Sec. 10(2A) as limit of ₹50,00,000 is already over	1,26,00,000
Person	Y (software developer)		
Status as on 1st April, 2019 (FY 2019-20)	G S T unregistered supplier		
Eligibility for composition scheme under Sec. 10(2A)	Eligible	(as PY 2018-19 aggregate turnover is 0, i.e., not exceeding the specified threshold limit of 50 lakhs)	
Tax liability			Cumulative Turnover
Invoice No. 1/2019 on April 6, 2019	0 liability	Not required to take registration as per provisions of Sec 22 and hence, not liable to pay any GST	3,00,000
Invoice No. 2/2019 on May 20, 2019	0 liability	Not required to take registration as per provisions of Sec 22 and hence, not liable to pay any GST	20,00,000
Invoice No. 3/2019 on June 12, 2019	1,08,000 (18,00,000 * 6%)	Becomes liable for registration as per provisions of Sec 22. Supplies now onwards shall be considered as 'turnover' on which GST @ 6% can be paid	38,00,000
Invoice No. 4/2019 on August 5, 2019	72,000 (12,00,000 * 6%)	Covered within Sec. 10(2A)	50,00,000
Invoice No. 5/2019 on September 28, 2019	1,20,000 (20,00,000 * 6%)	Covered within Sec. 10(2A)	70,00,000

Invoice No. 6/2019 on September 30, 2019	10,08,000 (56,00,000 * 18%)	Not Covered within Sec. 10(2A) as limit of 50,00,000 is already over	1,26,00,000
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Note:

As per Section 10(2A), if registered person is eligible to take the benefit of this subsection, he shall pay GST @6% (3% CGST and 3% SGST) on “turnover in a state/UT” upto ₹50 lakhs.

As per Explanation 2 to Sec. 10, The expression “turnover in a state/UT” shall not include the supplies from the first day of April of a financial year to the date from which he becomes liable for registration under the Act.

In simple words, Supplies made till supplier becomes liable for registration shall not be counted in 'turnover'.

Supplies made after supplier becomes liable for registration shall only be counted in 'turnover' and such first supplies of value upto ₹50 lakhs shall be eligible for benefit of 'presumptive levy @ 6%'.

Section 10(3): The option availed of by a registered person under sub-section (1) or sub-section (2A), as the case may be, shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the limit specified under sub-section (1) or sub-section (2A), as the case may be



15. A person availing composition scheme under Sec. 10(1) or 10(2A) during a financial year crosses the turnover of ₹1.5 Crores or ₹ 50 lakhs, respectively in the mid of the current year. Will he be allowed to pay tax under composition scheme for the remainder of the year i.e. till 31st March?

[No] The option availed shall lapse from the day on which his aggregate turnover during the financial year exceeds ₹1.5 Crores or ₹ 50 lakhs.

Section 10(4): A taxable person to whom the provisions of sub-section (1) or, as the case may be, sub-section (2A) apply shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.



16. Can the registered person under composition scheme claim input tax credit?

[No] Registered person under composition scheme is not eligible to claim input tax credit.

17. Can composition tax be collected from customers?

[No] The registered person under composition scheme is not permitted to collect tax. It means that a composition scheme supplier cannot issue a tax invoice.

Section 10(5): If the proper officer has reasons to believe that a taxable person has paid tax under sub-section (1) or sub-section (2A), as the case may be, despite not being eligible, such person shall, in addition to any tax that may be payable by him under any other provisions of this Act, be liable to a penalty and the provisions of section 73 or section 74 shall, mutatis mutandis, apply for determination of tax and penalty.



18. Can a person paying tax under composition levy, withdraw voluntarily from the scheme? If so, how?

[Yes] The registered person who intends to withdraw from the composition scheme can file a duly signed or verified application in FORM GST CMP-04.

Also such person, may electronically furnish, a statement in FORM GST ITC-01 for availment of ITC on closing stock, containing details of the stock of inputs and inputs contained in semi-finished or finished goods held in stock & capital goods on the date of withdrawal, within a period of 30 days of withdrawal – Sec. 18(1)(c)

19. What is the validity of composition levy?

The option to pay tax under composition levy would remain valid so long as the conditions of composition scheme are complied with. The registered person paying tax under section 10 may not file a fresh intimation every year.

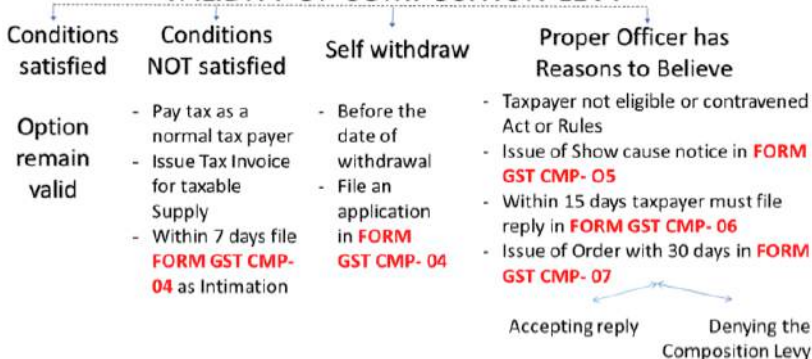
20. What action can be taken by the proper officer for contravention of any provisions of composition levy and how?

Where any contravention is observed by the proper officer wherein the registered person was not eligible to pay tax under the composition scheme or has contravened the provisions he may issue a notice to such person in FORM GST CMP-05 to show cause within 15 days of the receipt of such notice as to why the option to pay tax under the composition scheme shall not be denied.

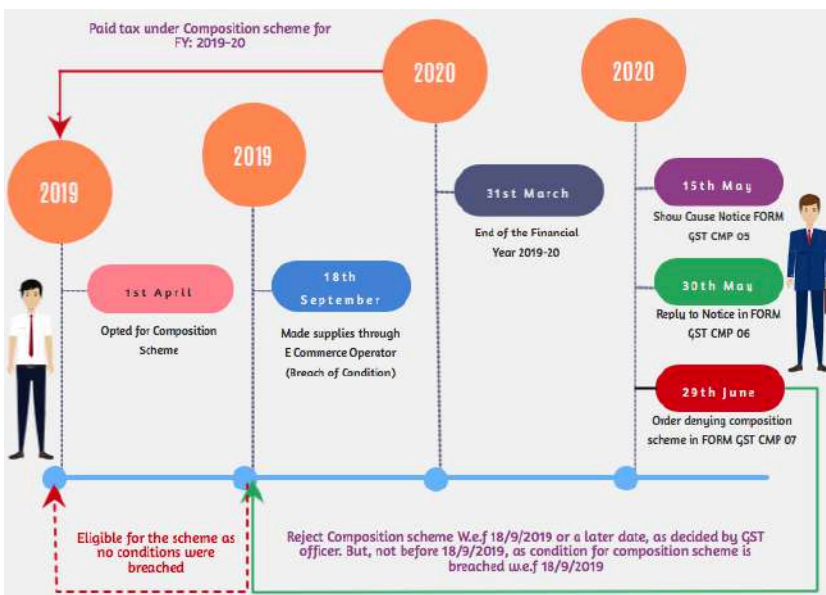
Upon receipt of the reply to the said show cause notice in FORM GST CMP-06, the proper officer shall issue an order in FORM GST CMP-07 within a period of 30 days of the receipt of such reply, either accepting the reply, or denying the option to pay tax under the composition scheme from the date of the option or from the date of the event concerning such contravention, as the case may be.

21. Denial of composition scheme on account of non fulfilment of conditions specified therein - Prospective (or) Retrospective?

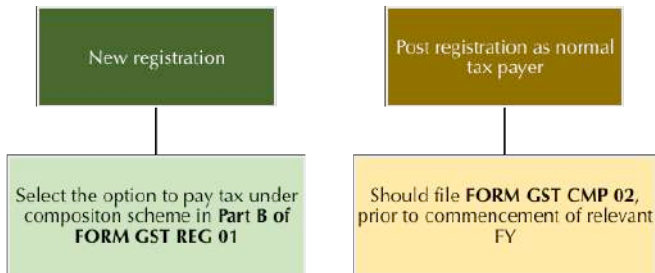
VALIDITY OF COMPOSITION LEVY



Circular No. 77/51/2018 GST dated 31.12.2018 has clarified that, In case of denial of option to pay tax under composition levy by the tax authorities, **the effective date of such denial shall be from a date, including any retrospective date, as may be determined by tax authorities.** However, such effective date shall not be prior to the date of contravention of the provisions of the CGST Act/CGST Rules.



22. What are the entry routes for composition scheme?



23. What are the procedural compliance to be followed by the person opting for composition Scheme?

- File an electronic intimation in Form GST CMP 02 prior to the commencement of financial year for which the option to pay tax under composition levy is exercised.
- Furnish a statement in FORM GST ITC 03 [For the purpose of adding ITC w.r.to closing stock (inputs and capital goods) to the output tax liability in terms of Sec. 18(4)] within 60 days from the commencement of the relevant financial year.
- File FORM GST CMP 08 providing the details of inward and outward supplies by 18th of the month following every quarter.
- Pay composite tax by 18th of the month following every quarter
- File GSTR – 4 (annual return) by 30th April of the succeeding financial year

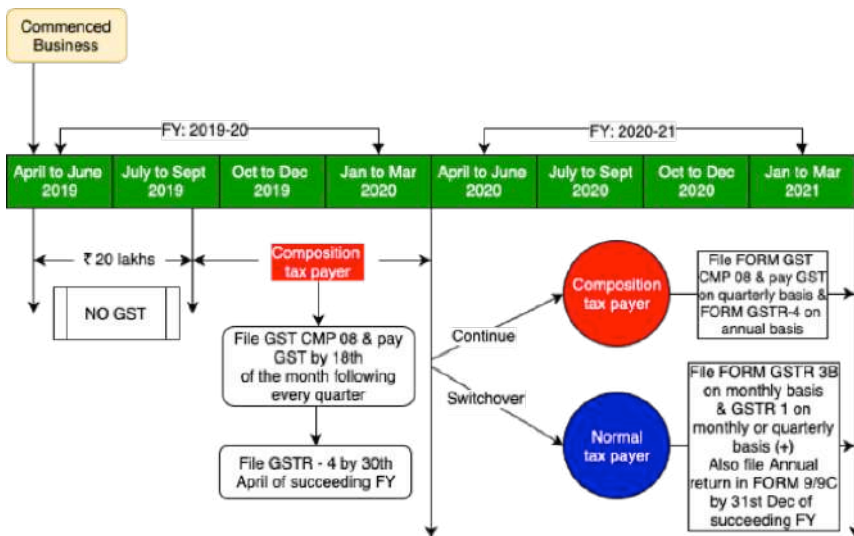
Rule 62: Form and manner of submission of statement and return - Notification No. 20/2019 (Dt: 23.04.2019)

24. Can a person opting for composition scheme make interstate purchases?

There is a restriction for opting composition scheme, if the person is having closing stock of interstate purchases as on the date of opting to the scheme. However, there is no restriction with respect to purchases from outside the state once, composition scheme is opted for. Therefore, a person opting for composition scheme, can make interstate purchases.

25. Whether the provisions of time of supply is applicable for a person opting for composition scheme?

There is no exclusion in applicability of time of supply under sec. 12 or sec. 13 for a person opting for composition scheme. Therefore, time of supply provisions



shall be applied to composition scheme. The words used in sec. 10(1) is “Notwithstanding anything CONTRARY contained in the Act”, refers to applicability of all provisions of CGST Act if no specific provision is specified under sec. 10 read with rules.

Further, Notification No. 66/2017 (GST not payable on advances in case of goods) is not applicable for a person opting for composition scheme

However, the return for payment of composition tax, states differently, which is as follows:

3. Summary of self-assessed liability

(net of advances, credit and debit notes and any other adjustment due to amendments etc.)

(Amount in ₹in all tables)

Sr. No.	Description	Value	Integrated tax	Central tax	State/ UT tax	Cess
1	2	3	4	5	6	7
1.	Outward supplies (including exempt supplies)					

As per Table 3 of GST CMP 08, person opting for composition scheme shall declare the details of outward supplies, net of advances. Therefore, on advances GST is not payable in case of goods or services supplied under composition scheme.

26. Can the customer who buys from a registered person, who is under composition scheme, claim composition tax as input tax credit?

[No] Customer who buys goods from registered person who is under composition scheme is not eligible for composition input tax credit because a composition scheme supplier cannot issue a tax invoice.

27. What are the other conditions and restrictions subject to which a person is allowed to avail of composition scheme?

The person exercising the option to pay tax under section 10 shall comply with the following other conditions, namely: -

- a) he shall mention the words “composition taxable person, not eligible to collect tax on supplies” at the top of the bill of supply issued by him; and
- b) he shall mention the words “composition taxable person” on every notice or signboard displayed at a prominent place at his principal place of business and at every additional place or places of business.

Overview of forms involved:

FORM REQUIRED	PURPOSE	DUE DATE
FORM GST CMP 01 [Applicable during transition]	To opt for composition scheme by a person who has been granted provisional registration	Prior to appointed date or within 30 days of the said date
FORM GST CMP 02	Intimation of willingness to opt for scheme by a registered person	Prior to commencement of financial year
FORM GST ITC 03	Details of inputs lying in stock, inputs in WIP and FG lying in stock and capital goods. – To be filed by a person filing FORM GST CMP 02	Within 60 days from the commencement of relevant financial year
FORM GST CMP 03 [Applicable during transition]	Details of stock and inward supplies from unregistered person – To be filed by person filing FORM GST CMP 01	Within 90 days of exercise of option

FORM GST CMP 04	Intimation of Withdrawal from Scheme	Within 7 days of occurrence of event
FORM GST CMP 05	Show Cause Notice on contravention of rules or Act	On Contravention
FORM GST CMP 06	Reply to Show Cause Notice	Within 15 days of receipt of notice
FORM GST CMP 07	Issue of Order	Within 30 days of receipt of reply
FORM GST CMP 08	Quarterly Return	Within 18 days from the end of the quarter



Case Studies on Composition Scheme:

Case Study – 1:

Explain the following in accordance with the provisions of GST Act pertaining to composition scheme under Sec. 10(1) and 10(2A): -

1. Can a registered person, who purchases goods from a taxable person paying tax under the composition scheme, avail credit of tax so paid on purchases made from the composition dealer?
2. Can a person paying tax under the composition scheme issue a tax invoice under GST?
3. Are monthly returns required to be filed by the person opting to pay tax under the composition scheme?
4. Can a person who has opted to pay tax under the composition scheme avail Input Tax Credit on his inward supplies?

Answer:

1. [No], as the composition dealer cannot collect tax paid by him on outward supplies from his customers, the registered person making purchases from a taxable person paying tax under the composition scheme cannot avail credit.
2. [No], they shall issue a bill of supply in lieu of tax invoice
3. [No], Such persons need to electronically file quarterly returns in Form GST CMP 08 on the GSTN common portal by the 18th of the month succeeding the quarter. For example, return in respect of supplies made during July 2017 to September 2017 is required to be filed by 18th October 2017.
4. As per sec 10(4), any taxable person opting to pay tax under the composition scheme cannot enter the credit chain & thus cannot avail credit on his inward supplies.

Case Study – 2:

In accordance with the provisions of CGST Act, Give answers to the following pertaining to composition scheme under Sec. 10(1) and 10(2A):-

1. Whether the composition scheme will be optional or compulsory?
2. A taxable person having same PAN can opt to pay tax under composition scheme by seeking separate registration for branches?
3. Can composition scheme be availed if the taxable person effects inter-State supplies?

Answer:

1. It is an Optional scheme provided the eligibility criteria to opt the scheme is satisfied.
2. [No] A registered person shall not be eligible to opt for the composition scheme unless all such registered persons (branches having separate registration under a single PAN) opt to pay tax under composition scheme
3. [No] Composition scheme is applicable subject to the condition that the taxable person does not affect inter-state outward supplies.

Case Study – 3:

XYZ Ltd is a manufacturing company located in Bangalore. During the financial year 2018-19 total value of supplies including inward supplies taxed under reverse charge basis are ₹ 1,54,00,000. The breakup of supplies is as follows:

Intrastate supplies of goods chargeable to Nil rate of GST	₹ 45,00,000
Intra state supplies made under forward charge -	₹ 75,00,000
Interest income from fixed deposits	₹ 20,00,000

Intra state supplies of goods exempted under section 11 of CGST Act - ₹9,00,000

Inward supplies of goods on which tax is payable under RCM - ₹ 5,00,000

Explain whether XYZ is eligible to opt for Composition scheme in Financial year 2019-20.

Answer:

As per section 10(1) of CGST Act, a registered person, whose aggregate turnover in the preceding financial year does not exceed ₹1.5 Crore may opt for payment of tax under composition scheme

Firstly, we shall compute the aggregate turnover as per section 2(6) of CGST Act, which means the aggregate value of-all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis and consideration represented by way of interest or discount of deposits, loans and advances), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be

computed on all India basis excludes Central tax, State tax, Union territory tax, integrated tax and cess.

Computation of aggregate turnover for the above case: -

S. No	Particulars	Amount in ₹
i)	Supplies chargeable to Nil rate of GST	45,00,000
ii)	Supplies made under forward charge	75,00,000
iii)	Interest income from fixed deposits (To be excluded)	Nil
iv)	Supplies of goods under exempted category	9,00,000
v)	Inward supplies of goods on which tax is payable under RCM (To be excluded)	Nil
Total		1,29,00,000

Since, the Aggregate turnover does not exceed ₹ 1,50,00,000 during the preceding financial year 2018-19, Thus XYZ Ltd shall be eligible to opt for Composition Scheme under Sec. 10(1) for the financial year 2019-20.

Note: Sec. 10(2A) is not applicable as the aggregate turnover during previous year exceeds ₹ 50 lakhs.

Case Study – 4:

A dealer 'X' has two offices in Delhi. How to determine whether 'X' is eligible to avail benefit of the composition scheme, as turnover of both the offices for the financial year is ₹ 66 lakhs and ₹ 42 lakhs respectively.

Answer:

As per section 10(1) of CGST Act, A registered person, whose aggregate turnover in the preceding FY does not exceed ₹ 1.5 Cr, may opt to pay an amount calculated at the prescribed rates during the current FY, in lieu of the tax payable by him.

In the given case Mr. X can opt to avail the composition levy scheme subject to fulfillment of condition of prescribed aggregate turnover limit as in the above case the total turnover i.e. of both the offices is ₹ 108 lacs, it is within the prescribed limit thus it can opt for composition scheme.

Note: Sec. 10(2A) is not applicable as the aggregate turnover during previous year exceeds ₹ 50 lakhs.

Case Study – 5:

ABC Industries, a manufacturer in Mumbai, is engaged in supply of goods in Mumbai as well as Chennai (i.e. inter-State supply of goods). Determine whether the ABC industries is eligible for composition scheme?

Answer:

As per section 10(2)(c) of CGST Act, A registered person engaged in making an inter-state outward supplies of goods cannot opt for composition scheme. Thus, in the above case ABC industries cannot avail the benefit of composition scheme under Sec. 10(1) or Sec. 10(2A).

Case Study – 6:

A Ltd. a manufacturing concern in Rajasthan has opted for composition scheme under Sec. 10(1) during financial year 2019-20. It requires you to determine its composition tax liability and total tax liability.

In Financial Year 2019-20 total value of supplies are ₹105,40,000. The breakup of supplies are as follows –

	Particulars	₹
(1)	Intra State Supplies of Goods X chargeable @ 5% GST	30,00,000
(2)	Intra State Supplies made which are chargeable to GST at Nil rate	18,00,000
(3)	Intra State Supplies which are wholly exempt under section 11 of CGST Act, 2017	2,40,000
(4)	Value of inward supplies on which tax payable under RCM (GST Rate 5%)	5,00,000
(5)	Intra State Supplies of Goods Y chargeable @ 18% GST	30,00,000
(6)	Interest income on fixed deposits	20,00,000

What will be your answer in the above case, if A Ltd. is a trader?

Answer:

Computation of tax liability if A Ltd. is a manufacturer:

	Particulars	₹
(1)	Taxable Supplies made under forward charge	30,00,000
(2)	Supplies made which are chargeable to GST at Nil rate	18,00,000

(3)	Supplies which are wholly exempt under section 11 of CGST Act, 2017	2,40,000
(4)	Value of inward supplies on which tax payable under RCM (GST Rate 5%) (Excluded from turnover in terms of explanation 2 to Sec. 10)	NIL
(5)	Intra State Supplies of Goods Y chargeable @ 18% GST	30,00,000
(6)	Interest income on fixed deposits (Excluded from turnover in terms of explanation 2 to Sec. 10)	NIL
	Aggregate turnover for payment of composite tax	80,40,000
	Rate of composite tax	1%
A	Total composite tax	80,400
B	Tax payable under RCM [5 lakh 5%]	25,000
	Total Tax [A + B]	1,05,400

Computation of tax liability if A Ltd. is a trader:

	Particulars	₹
(1)	Taxable Supplies made under forward charge	30,00,000
(2)	Supplies made which are chargeable to GST at Nil rate	NIL
(3)	Supplies which are wholly exempt under section 11 of CGST Act, 2017	NIL
(4)	Value of inward supplies on which tax payable under RCM (GST Rate 5%) (Excluded from turnover in terms of explanation 2 to Sec. 10)	NIL
(5)	Intra State Supplies of Goods Y chargeable @ 18% GST	30,00,000
(6)	Interest income on fixed deposits (Excluded from turnover in terms of explanation 2 to Sec. 10)	NIL
	Aggregate turnover	60,00,000
	Rate of composite tax	1%
A	Total composite tax	60,000
B	Tax payable under RCM [5 lakh 5%]	25,000
	Total Tax [A + B]	85,000

WAIVER FROM FILING GSTR-1 FOR 2019-20 FOR SPECIFIED TAXPAYER - NOTIFICATION No. 12/2020 (Dt: 21/03/2020)

The above notification has exempted those registered persons from filing GSTR-1 for 2019-20 who could not opt for availing the option of special composition scheme under notification No. 2/2019-Central Tax (Rate) dated 07.03.2019 by filing FORM CMP-02 & have furnished a return in FORM GSTR-3B instead of furnishing the statement containing the details of payment of self-assessed tax in FORM GST CMP-08 under the Central Goods and Services Tax Rules, 2017.

Segment - 9

REGISTRATION UNDER GST

AADHAR AUTHENTICATION FOR GRANTING REGISTRATION - NEW SUBSECTIONS IN SECTION 25 INTRODUCED VIDE FINANCE ACT, 2019 W.E.F 1/1/20:

Section 25(6A): Every registered person shall undergo authentication, or furnish proof of possession of Aadhaar number, in such form and manner and within such time as may be prescribed:

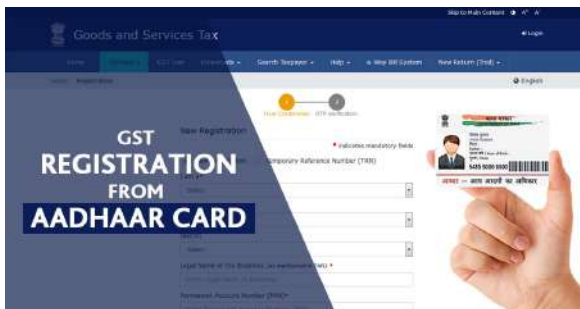
Provided that if an Aadhaar number is not assigned to the registered person, such person shall be offered alternate and viable means of identification in such manner as Government may, on the recommendations of the Council, prescribe:

Provided further that in case of failure to undergo authentication or furnish proof of possession of Aadhaar number or furnish alternate and viable means of identification, registration allotted to such person shall be deemed to be invalid and the other provisions of this Act shall apply as if such person does not have a registration.



Section 25(6A) specifies that a person who is already registered should undergo Aadhaar authentication or alternative means. Otherwise the registration granted shall be invalid and be cancelled.

Section 25(6B): On and from the date of notification, every individual shall, in order to be eligible for grant of registration, undergo authentication, or furnish proof of possession of Aadhaar number, in such manner as the Government may, on the recommendations of the Council, specify in the said notification:



Provided that if an Aadhaar number is not assigned to an individual, such individual shall be offered alternate and viable means of identification in such manner as the Govt. may, on the recommendations of the Council, specify in the said notification.

For the purpose of Section 25(6B) Notification No. 18/2020 (Dt: 23/3/20) w.e.f 1/4/20 is issued for an individual to undergo authentication through Aadhar or any other means

Section 25(6C): On and from the date of notification, every person, other than an individual, shall, in order to be eligible for grant of registration, undergo authentication, or furnish proof of possession of Aadhaar number of the Karta, Managing Director, whole time Director, such number of partners, Members of Managing Committee of Association, Board of Trustees, authorised representative, authorised signatory and such other class of persons, in such manner, as the Government may, on the recommendation of the Council, specify in the said notification:

Provided that where such person or class of persons have not been assigned the Aadhaar Number, such person or class of persons shall be offered alternate and viable means of identification in such manner as the Government may, on the recommendations of the Council, specify in the said notification.

For the purpose of Section 25(6C) Notification No. 19/2020 (Dt: 23/3/20) w.e.f 1/4/20 is issued for the following class of persons to undergo authentication through Aadhar or any other means

- 1. Authorised signatory of all types**
- 2. Managing and authorised partners of a partnership firm, and**
- 3. Karta of a HUF**



Section 25(6B) & 25(6C) specifies that a person desirous of obtaining registration, should undergo Aadhar authentication or alternative means by such person or class of persons.

Aadhar Authentication for granting registration - Notification No.

16/2020 - CT (w.e.f 1.04.20) - Newly Inserted provision

- As per Rule 8(4A) of CGST Rules, 2017 the applicant while submitting an application, undergo authentication of Aadhar number for grant of registration
- As per proviso to Rule 9, where a person fails to undergo authentication of Aadhar number, then registration shall be granted only after physical verification of the principal place of business in the presence of the said person, within 60 days from the date of application and the provisions of deemed registration¹ is not applicable in such case.



The above amendments is to stop fraudulent persons to get registered under GST and to curb fake invoicing and fraudulent passing of ITC by fraudulent businesses.

PHYSICAL VERIFICATION OF BUSINESS PREMISES - - NOTIFICATION No. 16/2020 - CT (W.E.F 1.04.20) - SUBSTITUTION IN EXISTING PROVISION:

Before Amendment	After Amendment
Where the proper officer is satisfied that the physical verification of the place of business of a registered person is required after the grant of registration, he may get such verification done and the verification report along with the other documents, including photographs, shall be uploaded in FORM GST REG-30 on the common portal within a period of fifteen working days following the date of such verification.	Where the proper officer is satisfied that the physical verification of the place of business of a person is required due to failure of Aadhaar authentication before the grant of registration, or due to any other reason after the grant of registration, he may get such verification of the place of business, in the presence of the said person , done and the verification report along with the other documents, including photographs, shall be uploaded in FORM GST REG-30 on the common portal within a period of fifteen working days following the date of such verification.

¹Deemed Registration: If the proper officer fails to take any action, —

- within a period of three working days from the date of submission of the application (i.e. within 3 working days from FORM GST REG 01, neither Certificate of registration in FORM GST REG 06 nor Intimation in FORM GST REG 03 is received by the person); or
- Within a period of seven working days from the date of the receipt of the clarification, information or documents furnished by the applicant (i.e. within 7 working days from reply in FORM GST REG 04 for intimation in FORM GST REG 03, neither certificate of registration in FORM GST REG 06 nor Rejection in FORM GST REG 05 is received by the person), the application for grant of registration shall be deemed to have been approved.

Section 25(6D): The provisions of sub-section (6A) or sub-section (6B) or sub-section (6C) shall not apply to such person or class of persons or any State or Union territory or part thereof, as the Government may, on the recommendations of the Council, specify by notification.



Section 25(6D) specifies that for certain persons or class of persons who got registered or desirous of obtaining registration, Aadhar authentication or alternative means of authentication is not required.

Persons desirous of obtaining registration not required to undergo Aadhar Authentication - Notification No. 17/2020 - CT (w.e.f 1.04.20) - Newly Inserted provision

- a) Person who is not a Citizen of India
- b) Class of persons other than the following:
 - i. Individual
 - ii. authorised signatory of all types;
 - iii. Managing and Authorised partner; and
 - iv. Karta of an Hindu undivided family.



However, they are required to undergo Aadhar authentication or alternative means of authentication, once they are registered, as the notification is issued for persons or class of persons covered in Section 25(6B) and Section 25(6C) but not Section 25(6A).

THRESHOLD LIMIT FOR A PERSON ENGAGED IN EXCLUSIVE SUPPLIER OF GOODS - THIRD PROVISO TO SEC. 22(1) INSERTED VIDE FINANCE ACT, 2019 W.E.F 1/1/2020:

The Government may, at the request of a State and on the recommendations of the Council, enhance the aggregate turnover from twenty lakh rupees to such amount not exceeding forty lakh rupees in case of supplier who is engaged exclusively in the supply of goods, subject to such conditions and limitations, as may be notified.

Explanation.—For the purposes of this sub-section, a person shall be considered to be engaged exclusively in the supply of goods even if he is engaged in exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

Analysis of above amendment:

1. For 4 North Eastern States (MMTN) - Manipur, Mizoram, Tripura & Nagaland - ₹ 10 lakhs limit for both goods and Services
2. For (USTAMP) - Uttarakhand, Sikkim, Telangana, Arunachal Pradesh, Meghalaya & Pondicherry - ₹ 20 lakhs limit for both goods and services
3. For all other 21 states - ₹ 20 lakhs limit for services and ₹ 40 lakhs limit for goods.

**Important Points:**

- The limit of ₹ 40 lakhs is applicable only in case of exclusive supply of goods.
- If a person is engaged in exclusive supply of services (or) supply of both goods and services, the limit of ₹ 20 lakhs/10 lakhs should be considered.

Example: ABC Ltd. commences business in T.N on 12.5.2019 and is engaged in sale of electronic items with a turnover of ₹ 35 lakhs and renders delivery and installation services with a turnover of ₹ 5 lakhs for the FY: 2019-20. ABC Ltd. is required to get registered in T.N even though aggregate turnover has not exceeded ₹ 40 lakhs, as the applicable threshold limit to ABC Ltd. is ₹ 20 lakhs as they are not exclusively engaged in supplying goods. However, if ABC Ltd. is engaged in exclusive supply of goods, then they are not liable to get registered in the present case.

- However, if a person is engaged in supply of goods and has interest income, such person to be considered as engaged in supply of goods and the threshold limit of ₹ 40 lakhs is only applicable - Explanation to Sec. 22(1).

Example: XYZ Ltd. commences business in K.A on 12.5.2019 and is engaged in sale of electronic items with a turnover of ₹ 35 lakhs and has an interest income on loans and advances of ₹ 5 lakhs for the FY: 2019-20. The applicable threshold limit to XYZ Ltd. is ₹ 40 lakhs, in terms of explanation to Sec. 22(1) and they not required to get registered in K.A as their aggregate turnover has not exceeded ₹ 40 lakhs.

- The limit of ₹ 40 lakhs is not applicable in the following cases:
 1. Persons who voluntarily got registered
 2. Persons who are compulsorily required to get registered under sec. 24
 3. Persons making supply of ice cream, edible ice, Pan Masala, Tobacco and tobacco products

Segment - 10

GST PAYMENT PROCESS

RE-CREDIT INTO ELECTRONIC CREDIT LEDGER - RULE 86(4A) - NEWLY INSERTED PROVISION VIDE NOTIFICATION No. 16/2020 (Dt: 23/3/20):

Where a registered person has claimed refund of any amount paid as

- tax wrongly paid or
- paid in excess for which debit has been made from the electronic credit ledger,

the said amount, if found admissible, shall be re-credited to the electronic credit ledger by the proper officer by an order made in FORM GST PMT- 03.



PROPER OFFICER IS EMPOWERED TO ACTION REFUND IN BOTH CASH AND CREDIT IN CASE OF EXCESS PAYMENT OF TAX - NEWLY INSERTED RULE 92(1A) VIDE NOTIFICATION No. 16/2020 (Dt: 23/3/20):

Where, upon examination of the application of refund of any amount paid as tax other than the refund of tax paid on zero-rated supplies or deemed export, the proper officer is satisfied that a refund under sub- section (5) of section 54 of the Act is due and payable to the applicant, he shall make an order in FORM RFD-06 sanctioning the amount of refund to be paid, in cash, proportionate to the amount debited in cash against the total amount paid for discharging tax liability for the relevant period, mentioning therein the amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable and for the remaining amount which has been debited from the electronic credit ledger for making payment of such tax, the proper officer shall issue FORM GST PMT-03 re-crediting the said amount as Input Tax Credit in electronic credit ledger.

CONDITIONS OF USE OF AMOUNT AVAILABLE IN ELECTRONIC CREDIT LEDGER - NEWLY INSERTED RULE 86A VIDE NOTIFICATION No. 75/2019 (DT: 26/12/2019):

(1) The Commissioner or an officer authorised by him in this behalf, not below the rank of an Assistant Commissioner, having reasons to believe that credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible in as much as-

a) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36-

i. issued by a registered person who has been found non-existent or not to be conducting any business from any place for which registration has been obtained; **or**

ii. without receipt of goods or services or both; or

b) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36 in respect of any supply, the tax charged in respect of which has not been paid to the Government; or

c) the registered person availing the credit of input tax has been found non-existent or not to be conducting any business from any place for which registration has been obtained;

d) the registered person availing any credit of input tax is not in possession of a tax invoice or debit note or any other document prescribed under rule 36,

may, for reasons to be recorded in writing, not allow debit of an amount equivalent to such credit in electronic credit ledger for discharge of any liability under section 49 or for claim of any refund of any unutilized amount.

(2) The Commissioner, or the officer authorised by him under sub-rule (1) may, upon being satisfied that conditions for disallowing debit of electronic credit ledger as above, no longer exist, allow such debit.

(3) Such restriction shall cease to have effect after the expiry of a period of one year from the date of imposing such restriction.



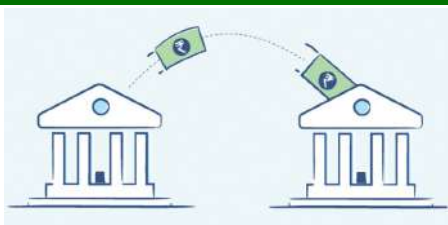
The objective of above rule is to disallow usage of fake credits which is obtained based on fake invoices. As per Rule 86A of CGST Rules, 2017 GST officer has power to disallow the setoff of provisional credit against GST payable, for a maximum period of 1 year, if he is of the opinion that -

- ITC availed against an invoice issued by a supplier, who is not in existence (or) not doing business from the place where supplier has obtained registration.
- ITC availed by a recipient who is not in existence (or) not doing business from the place where recipient has obtained registration.

- ITC availed without receipt of goods
- ITC availed against an invoice, for which supplier has not paid tax to Government.
- Invoice or Debit note against which ITC availed is not in existence.

ADJUSTMENT BETWEEN MINOR HEADS AND MAJOR HEADS IN ELECTRONIC CASH LEDGER - SEC. 49(10) & 49(11) INSERTED VIDE FINANCE ACT, 2019 W.E.F 1/1/2020:

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



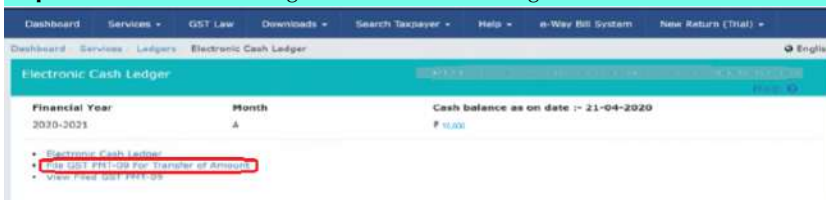
Where any amount has been transferred to the electronic cash ledger under this Act, the same shall be deemed to be deposited in the said ledger as provided in sub-section (1).

Vide Notification No. 37/2020 (Dt: 28/4/2020), FORM GST PMT 09 is with effect from 21/4/2020

Procedure for transfer (Not for Exam):

Step 1: Log in to the GST Portal.

Step 2: Select Services>Ledger>Electronic cash ledger.



Step 3: Select 'File GST PMT-09 for transfer of amount'.

Suppose a registered person has ₹ 5,000 in CGST as tax and ₹ 5,000 in IGST as tax and willing to transfer ₹ 5,000 in IGST tax to SGST tax, he can do the following way:

CASH LEDGER BALANCE

Add record

Transfer amount from			Transfer amount to		
Major head	Minor head	Amount available	Major head	Minor head	Amount
IGST	Tax	₹5,000.00	SGST	Tax	₹5,000.00
				Interest	₹0.00
				Penalty	₹0.00
				Fee	₹0.00
				Others	₹0.00

BACK SAVE

Cash ledger balance-preview of updated balance

Description	Cash ledger balance				
	Integrated tax (€)	Central tax (€)	State/UT tax (€)	Cess (€)	Total (€)
Tax	₹0.00	₹5,000.00	₹5,000.00	₹0.00	₹10,000.00
Interest	₹0.00	₹0.00	₹0.00	₹0.00	₹0.00
Fee	₹0.00	₹0.00	₹0.00	₹0.00	₹0.00
Penalty	₹0.00	₹0.00	₹0.00	₹0.00	₹0.00
Others	₹0.00	₹0.00	₹0.00	₹0.00	₹0.00

Step 4: Save the details

Step 5: Verification

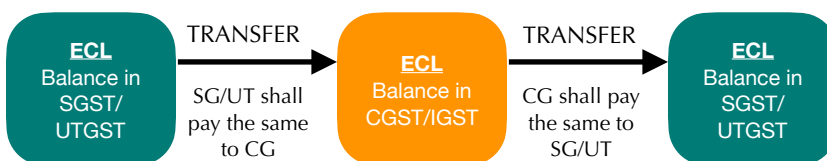
Step 6: Add Signatory: Click on the declaration checkbox and select the authorised signatory.

TRANSFER OF CERTAIN AMOUNTS - SEC. 53A OF CGST ACT, 2017 INSERTED VIDE FINANCE ACT, 2019 W.E.F 1/1/20:

Where any amount has been transferred from the electronic cash ledger under this Act to the electronic cash ledger under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, the Government shall, transfer to the State tax account or the Union territory tax account, an amount equal to the amount transferred from the electronic cash ledger, in such manner and within such time as may be prescribed.

TRANSFER OF CERTAIN AMOUNTS - SEC. 17A OF IGST ACT, 2017 INSERTED VIDE FINANCE ACT, 2019 W.E.F 1/1/20:

Where any amount has been transferred from the electronic cash ledger under this Act to the electronic cash ledger under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, the Government shall transfer to the State tax account or the Union territory tax account, an amount equal to the amount transferred from the electronic cash ledger, in such manner and within such time, as may be prescribed.



POWER TO EXTEND THE TIME LIMIT FOR FURNISHING RETURN AND ANNUAL STATEMENT FOR AN E COMMERCE OPERATOR LIABLE TO DEDUCT TCS UNDER SEC. 52 - INSERTED VIDE FINANCE ACT, 2019 W.E.F 1/1/2019:

The Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the statement for such class of registered persons as may be specified therein:

Provided further that any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

The Commissioner may, on the recommendations of the Council and for reasons to be recorded in writing, by notification, extend the time limit for furnishing the annual statement for such class of registered persons as may be specified therein:

Provided further that any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

Segment - 11

RETURNS UNDER GST

RESTRICTION ON FURNISHING OF INFORMATION IN PART A OF FORM GST EWB-01 - RULE 138E OF CGST RULES, 2017 INSERTED W.E.F 24/11/19

Notwithstanding anything contained in sub-rule (1) of rule 138, no person (including a consignor, consignee, transporter, an e-commerce operator or a courier agency) shall be allowed to furnish the information in PART A of FORM GST EWB-01 in respect of a registered person, whether as a supplier or a recipient, who,—

(a)	being a person paying tax under section 10, has not furnished the statement in FORM GST CMP-08] for two consecutive quarters; or
(b)	being a person other than a person specified in clause (a), has not furnished the returns for a consecutive period of two months:
(c)	being a person other than a person specified in clause (a), has not furnished the statement of outward supplies for any two months or quarters, as the case may be. - Inserted Vide Notification No. 75/2019 (Dt: 26/11/19) w.e.f 11.01.2020

Provided that the Commissioner may, on receipt of an application from a registered person in **FORM GST EWB-05**, on sufficient cause being shown and for reasons to be recorded in writing, by order, in **FORM GST EWB-06** allow furnishing of the said information in PART A of FORM GST EWB- 01, subject to such conditions and restrictions as may be specified by him:

Provided further that no order rejecting the request of such person to furnish the information in PART A of FORM GST EWB-01 under the first proviso shall be passed without affording the said person a reasonable opportunity of being heard:

Provided also that the permission granted or rejected by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be granted or, as the case may be, rejected by the Commissioner.

Explanation.—For the purposes of this rule, the expression "Commissioner" shall mean the jurisdictional Commissioner in respect of the persons specified in clauses (a) and (b).

FILING OF GSTR - 3B IN A STAGGERED MANNER - NOTIFICATION No. 29/2020 (DT: 23/03/2020) FOR APRIL 2020 TO SEPT 2020:



Annual Turnover	State	Due date of GSTR-3B
≥ ₹ 5 Cores	Any	20th of following month
< ₹ 5 Crores	Chhattisgarh, Madhya Pradesh, Gujarat, Daman and Diu, Dadra and Nagar Haveli, Maharashtra, Karnataka, Goa, Lakshadweep, Kerala, Tamil Nadu, Puducherry, Andaman and Nicobar Islands, Telangana and Andhra Pradesh	22nd of following month
< ₹ 5 Crores	Jammu and Kashmir, Laddakh, Himachal Pradesh, Punjab, Chandigarh, Uttarakhand, Haryana, Delhi, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand and Odisha	24th of following month

RELAXATION FROM FURNISHING AUDIT REPORT IN FORM GSTR-9C:

1. Registered person whose ATO during FY: 18-19 > ₹ 5 Crores shall get their books audited and furnish audit report in GSTR-9C - Newly inserted provision vide Notification No. 16/2020 (Dt: 23/3/20)



This provision is to increase the threshold limit for filing GSTR-9C and thereby relaxing the said compliance for SME's having turnover ≤ ₹ 5 Crores. However this provision is applicable only for the FY:2018-19.

2. Foreign company in the business of airlines - Notification No. 09/2020 (Dt: 16/3/2020)



However, they are required to submit a statement of receipts and payments for the financial year in respect of its Indian Business operations, duly authenticated by a practicing CA for each GSTIN by the 30th September of the succeeding financial year.

POWER TO EXTEND THE TIME LIMIT FOR FILING ANNUAL RETURN - PROVISIO TO SEC. 44 INSERTED VIDE FINANCE ACT, 2019:

The Commissioner may, on the recommendations of the Council and for reasons to be recorded in writing, by notification, **extend the time limit for furnishing the annual return** for such class of registered persons as may be specified therein:

Provided further that any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

STANDARD OPERATING PROCEDURE TO BE FOLLOWED IN CASE OF NON-FILERS OF RETURNS - CIRCULAR NO. 129/48/2019-GST (Dt: 24/12/2019)

Doubts have been raised across the field formations in respect of the appropriate procedure to be followed in case of non-furnishing of return under section 39 or section 44 or section 45 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act"). It has further been brought to the notice that **divergent practices are being followed in case of non-furnishing of the said returns.**



Section 39 - Monthly Return (GSTR - 3B) to be filed by a person other than those opting for composition scheme (or) Quarterly return (GST CMP 08) to be filed by a person opting for composition scheme (or) all other monthly returns (GSTR - 5, GSTR - 5A, GSTR - 6, GSTR - 7 and GSTR - 8)

Section 44 - Annual Return (GSTR - 9/GSTR - 9B) to be filed by a person other than those opting for composition scheme (or) Annual Return (GSTR - 4) to be filed by a person opting for composition scheme

Section 45 - Final Return (GSTR - 10) to be filed at the time of cancellation of registration

Section 46 of the CGST Act read with rule 68 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the "CGST Rules") requires issuance of a notice in **FORM GSTR-3A** to a registered person who fails to furnish return under section 39 or section 44 or section 45 (hereinafter referred to as the "defaulter") requiring him to furnish such return within fifteen days. Further section 62 provides for assessment of non-filers of return of registered persons who fails to furnish return under section 39 or section 45 even after service of notice under section 46. **FORM GSTR-3A** provides as under:

As such, no separate notice is required to be issued for best judgment assessment under section 62 and in case of failure to file return within 15 days of issuance of **FORM GSTR-3A**, the best judgment assessment in **FORM ASMT-13** can be issued without any further communication.

Following guidelines are hereby prescribed to ensure uniformity in the implementation of the provisions of law across the field formations:

(i)	Preferably, a system generated message would be sent to all the registered persons 3 days before the due date to nudge them about filing of the return for the tax period by the due date.
(ii)	Once the due date for furnishing the return under section 39 is over, a system generated mail/message would be sent to all the defaulters immediately after the due date to the effect that the said registered person has not furnished his return for the said tax period; the said mail/message is to be sent to the authorized signatory as well as the proprietor/partner/director/karta, etc.
(iii)	Five days after the due date of furnishing the return, a notice in FORM GSTR-3A (under section 46 of the CGST Act read with rule 68 of the CGST Rules) shall be issued electronically to such registered person who fails to furnish return under section 39, requiring him to furnish such return within fifteen days;

(iv)	In case the said return is still not filed by the defaulter within 15 days of the said notice, the proper officer may proceed to assess the tax liability of the said person under section 62 of the CGST Act, to the best of his judgement taking into account all the relevant material which is available or which he has gathered and would issue order under rule 100 of the CGST Rules in FORM GST ASMT-13 . The proper officer would then be required to upload the summary thereof in FORM GST DRC-07 ;
(v)	For the purpose of assessment of tax liability under section 62 of the CGST Act, the proper officer may take into account the details of outward supplies available in the statement furnished under section 37 (FORM GSTR-1), details of supplies auto-populated in FORM GSTR-2A , information available from e-way bills, or any other information available from any other source, including from inspection under section 71;
(vi)	In case the defaulter furnishes a valid return within thirty days of the service of assessment order in FORM GST ASMT-13 , the said assessment order shall be deemed to have been withdrawn in terms of provision of sub-section (2) of section 62 of the CGST Act. However, if the said return remains unfurnished within the statutory period of 30 days from issuance of order in FORM ASMT-13 , then proper officer may initiate proceedings under section 78 and recovery under section 79 of the CGST Act;

In deserving cases, based on the facts of the case, the Commissioner may resort to provisional attachment to protect revenue under section 83 of the CGST Act before issuance of **FORM GST ASMT-13**.

Further, the proper officer would initiate action under sub-section (2) of section 29 of the CGST Act for cancellation of registration in cases where the return has not been furnished for the period specified in section 29.

Section 29 - Cancellation of registration

In case where a person opting for composition scheme not filed 3 consecutive returns (or) a person other than opting for compositions scheme not filed 6 consecutive returns, the officer shall issue a notice proposing cancellation of registration of such registered person who has not filed returns

SOP for Non-filers of GST Returns



SMS to registered mobile with GSTIN

Atleast 3 days before due date of filing GSTR-3B

SMS on or before 17th August, 2020



GST return not filed - System generated Mail to registered Email ID with GSTIN

If GSTR-3B not filed by the due date (i.e. 20th August, 2020) then a mail will be sent immediately to file GSTR-3B



Form GSTR-3A to file return issued within 5 days from due date of filing return

Notice to be issued on or before 25th August, 2020

Due date of filing GST return

GSTR - 3B: Monthly Return

For July, 2020 the due date of filing of return is 20th August, 2020

GST Return filed

If GSTR-3B filed by 20th August, 2020 (i.e due date of filing return), no consequence shall arise



GST Return filed

After the notice if the return is filed within 15 days (i.e. by 9th September, 2020), only interest and late fee shall be payable



GST Return filed - Withdrawal of BJA order

If GSTR-3B filed within 30 days from



Best Judgement assessment

Form GST ASMT-13 shall be passed after 9th September, 2020 specifying the tax, interest and penalty payable

GST return not filed

If GSTR - 3B not filed within 15 days from the date of notice (i.e. by 9th September, 2020) then officer shall proceed to make best judgement assessment (or) can initiate cancellation of registration, if return not filed for consecutive 6 months.

Note: Even though the above chart depicts SOP for non filing of GSTR - 3B, the same shall be applicable for other returns to be filed under section 39, section 44 and section 45.

FURNISHING OF ANNUAL RETURN BY THOSE REGISTERED PERSONS WHOSE AGGREGATE TURNOVER DOES NOT EXCEED ₹ 2 CRORES - CLARIFICATION VIDE CIRCULAR No. 124/43/2019-GST:

Vide Notification no. 47/2019 (Dt: 9/10/19) it is provided that those registered persons whose aggregate turnover in a financial year does not exceed ₹ 2 crores, the annual return shall be deemed to be furnished on the due date if it has not been furnished before the due date for the financial year 2017-18 and 2018-19.

The Board, hereby clarifies the issues raised as below:-

- | | |
|----|---|
| a. | As per proviso to rule 80(1) of the CGST Rules, a person paying tax under section 10 is required to furnish the annual return in FORM GSTR-9A . Since the said notification has made it optional to furnish the annual return for FY 2017-18 and 2018-19 for those registered persons whose aggregate turnover in a financial year does not exceed two crore rupees, it is clarified that the tax payers under composition scheme, may, at their own option file FORM GSTR-9A for the said financial years before the due date. After the due date of furnishing the annual return for the year 2017-18 and 2018-19, the common portal shall not permit furnishing of FORM GSTR-9A for the said period. |
| b. | As per rule 80(1) of the CGST Rules, every registered person other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return as specified under section 44 electronically in FORM GSTR-9 . Further, the said notification has made it optional to furnish the annual return for FY 2017-18 and 2018-19 for those registered persons whose aggregate turnover in a financial year does not exceed two crore rupees. Accordingly, it is clarified that the tax payers, may, at their own option file FORM GSTR-9 for the said financial years before the due date. After the due date of furnishing the annual return for the year 2017-18 and 2018-19, the common portal shall not permit furnishing of FORM GSTR-9 for the said period. |

Section 73 of the said Act provides for voluntary payment of tax dues by the taxpayers at any point in time. Therefore, irrespective of the time and quantum of tax which has not been paid or short paid, the taxpayer has the liberty to self-ascertain such tax amount and pay it through **FORM GST DRC-03**. Accordingly, it is clarified that if any registered tax payer, during course of reconciliation of his accounts, notices any short payment of tax or ineligible availment of input tax credit, he may pay the same through **FORM GST DRC-03**.

EXEMPTION TO NOTIFIED FOREIGN AIRLINES TO FILE FORM GSTR - 9C [NOTIFICATION No. 9/2020 DATED 16/3/2020]:

Foreign company which is an airlines company covered under the notification issued under section 381(1) of the Companies Act, 2013 and who have complied with the sub-rule (2) of rule 4 of the Companies (Registration of Foreign Companies) Rules, 2014, shall not be required to furnish reconciliation statement in **FORM**

GSTR-9C, Provided that a statement of receipts and payments for the financial year in respect of its Indian Business operations, duly authenticated by a practicing Chartered Accountant in India or a firm or a Limited Liability Partnership of practicing Chartered Accountants in India is submitted for each GSTIN by the 30th September of the year succeeding the financial year.

Segment - 12

ACCOUNTS & RECORDS UNDER GST

NO AMENDMENTS IN THIS SEGMENT

Segment - 13

ASSESSMENT & AUDIT

NO AMENDMENTS IN THIS SEGMENT

Segment - 14

APPEALS & REVISION

APPOINTMENT OF REVISIONAL AUTHORITY UNDER CGST ACT, 2017 - NOTIFICATION No. 5/2020 (DT: 13/01/2020)

The Central Government vide above notification, authorises the following as the Revisional Authority under section 108 of the CGST Act, 2017.

For decisions (or) orders Passed by	Revisional Authority
The Additional or Joint Commissioner of Central Tax	The Principal Commissioner or Commissioner of Central Tax
The Deputy Commissioner or Assistant Commissioner or Superintendent of Central Tax.	The Additional or Joint Commissioner of Central Tax

CLARIFICATION IN RESPECT OF APPEAL IN REGARD TO NON-CONSTITUTION OF APPELLATE TRIBUNAL - CIRCULAR No.132/2/2020-GST ,DATED 18TH MARCH, 2020

CBIC has examined the issue of appellate process being kept pending by several appellate authorities on the grounds that the appellate tribunal has been not constituted and that till such time no remedy is available against their Order-in-Appeal, such appeals cannot be disposed.

The Board has clarified the following:-

- The appeal against the order passed by appellate authority under Section 107 of the CGST Act lies with appellate tribunal. Relevant provisions for the same is mentioned in the Section 112 of the CGST Act which reads as follows: -
 “112 (1) Any person aggrieved by an order passed against him under section 107 or section 108 of this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to the Appellate Tribunal against such order within three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal.”

- The appellate tribunal has not been constituted in view of the order by Madras High Court in case of Revenue Bar Assn. v. Union of India and therefore the appeal cannot be filed within three months from the date on which the order sought to be appealed against is communicated.
- In order to remove difficulty arising in giving effect to the above provision of the Act, the Government, on the recommendations of the Council, has issued the Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019. It has been provided through the said Order that the appeal to tribunal can be made within three months (six months in case of appeals by the Government) from the date of communication of order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.
- Hence, as of now, the prescribed time limit to make application to appellate tribunal will be counted from the date on which President or the State President enters office.
- The appellate authority while passing order may mention in the preamble that appeal may be made to the appellate tribunal whenever it is constituted within three months from the President or the State President enters office.
- Accordingly, it is advised that the appellate authorities may dispose all pending appeals expeditiously without waiting for the constitution of the appellate tribunal.

**CENTRAL GOODS AND SERVICES TAX (NINTH REMOVAL OF DIFFICULTIES)
ORDER, 2019**

**ORDER NO. 9/2019-CENTRAL TAX [F.NO.20/06/07/2019-GST], DATED
3-12-2019**

WHEREAS, sub-section (1) of section 112 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this Order referred to as the said Act) provides that any person aggrieved by an order passed against him under section 107 or section 108 of this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to the Appellate Tribunal against such order within three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal;

AND WHEREAS, sub-section (3) of section 112 of the said Act provides that the Commissioner may, on his own motion, or upon request from the Commissioner of State tax or Commissioner of Union territory tax, call for and examine the record of any order passed by the Appellate Authority or the Revisional Authority under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act for the purpose of satisfying himself as to the legality or propriety of the said order and may, by order, direct any officer subordinate to him to apply to the Appellate Tribunal within six months from the date on which

the said order has been passed for determination of such points arising out of the said order as may be specified by the Commissioner in his order;

AND WHEREAS, section 109 of the said Act provides for the constitution of the Goods and Services Tax Appellate Tribunal and Benches thereof;

AND WHEREAS, for the purpose of filing the appeal or application as referred to in sub-section (1) or sub-section (3) of section 112 of the said Act, as the case may be, the Appellate Tribunal and its Benches are yet to be constituted in many States and Union territories under section 109 of the said Act as a result whereof, the said appeal or application could not be filed within the time limit specified in the said sub-sections, and because of that, certain difficulties have arisen in giving effect to the provisions of the said section;

NOW, THEREFORE, in exercise of the powers conferred by section 172 of the Central Goods and Services Tax Act, 2017, the Central Government, on the recommendations of the Council, hereby makes the following Order, to remove the difficulties, namely:—

Short title

1. This Order may be called the Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019.

2. For the removal of difficulties, it is hereby clarified that for the purpose of calculating,—

(a)	the "three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal" in sub-section (1) of section 112, the start of the three months period shall be considered to be the later of the following dates:—
(i)	date of communication of order; or
(ii)	the date on which the President or the State President, as the case may be, of the Appellate Tribunal after its constitution under section 109, enters office;
(b)	the "six months from the date on which the said order has been passed" in sub-section (3) of section 112, the start of the six months period shall be considered to be the later of the following dates:—
(i)	date of communication of order; or
(ii)	the date on which the President or the State President, as the case may be, of the Appellate Tribunal after its constitution under section 109, enters office.

Segment - 15

SEARCH, SEIZURE & CONFISCATION

PROCEDURE IN RESPECT OF SEIZED GOODS - RULE 141 AMENDED VIDE NOTIFICATION NO. 16/2020 (DT: 23/3/2020):

In Rule 141(2), for the word "Commissioner" the words "proper officer" shall be substituted.



This sub-rule has been amended to empower the proper officer to dispose of the seized goods or things & adjust the amount realized thereby against the tax, interest, penalty, or any other amount payable in respect of such goods or things in cases where the taxable person fails to pay such amount in respect of the said goods or things. Earlier, only the Commissioner was empowered to take such action.

Segment - 16

OFFENCES, PENALTIES & PROSECUTION

No Amendments in this segment

Segment - 17

ADVANCE RULING

No Amendments in this segment

Segment - 18

DEMAND & RECOVERY

No Amendments in this segment

Segment - 19

REFUND OF TAX

FIXATION OF CEILING ON VALUE OF EXPORT SUPPLY FOR COMPUTING REFUND OF ITC ON ACCOUNT OF ZERO RATED SUPPLIES - SUBSTITUTION OF RULE 89(4)(C) VIDE NOTIFICATION No. 16/2020 (DT: 23/3/20):

Before Amendment	After Amendment
Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking, other than the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or (4B) or both	Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both

Illustration:

Kailash Global (P) Ltd. supplies various goods in domestic and international markets. It is engaged in both manufacturing and trading of goods. The company is registered under GST in the State of Karnataka. The company exports goods without payment of tax under letter of undertaking in accordance with the provisions of section 16(3)(a) of the IGST Act, 2017.

The company has made the following supplies during a tax period:

S.No.	Particulars	₹
(i)	Export of product 'A' to UK for \$ 10,000. Assessable value under customs in Indian rupees. [Export duty is levied on product 'A' at the time of exports]	7,00,000

S.No.	Particulars	₹
(ii)	Domestic supplies of taxable product 'B'* during the period [excluding tax @ 5%] [Inputs used in manufacturing of such goods are taxable @18%] *not notified as a product, in respect of which refund of unutilised ITC shall not be allowed under section 54(3)(ii) of the CGST Act, 2017	10,00,000
(iii)	Supply of goods to Export Oriented Unit [excluding tax @ 18%] [ITC has been claimed by the recipient]	5,00,000
(iv)	Export of exempt supplies of goods [Similar goods sold in domestic market at ₹ 5,00,000]	6,00,000

The ITC available for the above tax period is as follows:

S.No.	Particulars	₹
(i)	On inputs (including ₹ 50,000 on export of exempt supplies)	3,50,000
(ii)	On capital goods	1,20,000
(iii)	On input services (including ₹ 18,000 on outdoor catering)	2,00,000

Determine the maximum amount of refund admissible to Kailash Global (P) Ltd. for the given tax period.

Answer:

Computation of maximum amount of refund admissible to Kailash Global (P) Ltd.

S.No.	Particulars	Nature of Supply for payment of GST	Whether refund admissible	Amount of Refund
(i)	Exports of product 'A' to UK	Zero rated Supply - Sec. 16 of IGST Act	As the said transaction in export without payment of tax, refund of unutilized ITC is applicable. But, refund of unutilized ITC is not available as goods are subject to export duty - Proviso to Sec. 54	N.A

S.No.	Particulars	Nature of Supply for payment of GST	Whether refund admissible	Amount of Refund
(ii)	Domestic supplies of taxable product 'B' during the period	Taxable	As the rate of GST on outward supply is less than the rate of GST on inward supply, the same is inverted tax structure and refund of unutilised ITC is available. [Also the goods are neither notified for ineligibility of refund nor they are exempted or nil rated]	₹ 75,000 [Refer Note 1 Below]
(iii)	Supply of goods to export oriented unit	Deemed Export - Sec. 147	In respect of supplies regarded as deemed exports, the application of refund can be filed by the supplier of deemed export supplies only in cases where the recipient does not avail of ITC on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund. Therefore, since in the given case, the recipient is claiming ITC, cannot claim refund.	N.A
(iv)	Export of exempt supplies of goods	Zero rated Supply - Sec. 16 of IGST Act (Even though it is exempted)	As the said goods are exported without payment of tax, refund of unutilised ITC on account of zero rated supply is available in the present case	₹ 1,14,000 [Refer Note 2 below]

Notes to above:

1. Rule 89(5) of the CGST Rules, 2017 stipulates that in the case of refund on account of inverted duty structure, refund of ITC is granted as per the following formula –

$$\text{Maximum Refund} = [\text{Net ITC} \times (\text{Turnover of Inverted rate supply} / \text{Adjusted total turnover})] - \text{Tax payable on such inverted rate supply}$$

Where-

“Net ITC” means ITC availed on inputs during the relevant period other than the ITC availed for which refund is claimed under sub- rules (4A) or (4B) or both.

Here, Net ITC = ₹3,50,000

“Adjusted total turnover” means the sum total of the value of:

(a) the turnover in a State/ Union territory, as defined under section 2(112), excluding turnover of services; &

(b) the turnover of zero-rated supply of services determined in terms of specified manner and non-zero-rated supply of services, excluding:

(i) the value of exempt supplies other than zero-rated supplies; and

(ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any,

during the relevant period.

“Relevant period” means the period for which the claim has been filed.

Adjusted Total Turnover = ₹28,00,000 [₹7,00,000 + ₹10,00,000 + ₹5,00,000 + ₹6,00,000] and Turnover of inverted rated supply of goods = ₹10,00,000

Thus, maximum refund amount under rule 89(5) = ₹3,50,000 x ₹10,00,000 / ₹28,00,000 - ₹ 50,000 = ₹ 75,000

2. Rule 89(4) of the CGST Rules, 2017 stipulates that in the case of zero- rated supply of goods or services or both without payment of tax under bond/LUT in accordance with the provisions of section 16(3) of the IGST Act, 2017, refund of ITC shall be granted as per the following formula:

$$\text{Maximum Refund} = \text{Net ITC} \times [(\text{Turnover of zero rated supply of goods} + \text{Turnover of zero rated supply of services}) / \text{Adjusted total turnover}]$$

where-

“Net ITC” means ITC availed on inputs and input services during the relevant period other than the ITC availed for which refund is claimed under sub-rules (4A) or (4B) or both. **Here, Net ITC = ₹ 5,32,000 (ITC on outdoor catering disallowed under section 17(5) of CGST Act, 2017)**

"Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking **or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less**, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both

"Adjusted total turnover" means the same as explained in point 2 above.

Here, Turnover of zero rated supply of goods = ₹6,00,000 (or) ₹5,00,000 X 1.5 = ₹7,50,000, whichever is lower i.e. ₹ 6,00,000

and Adjusted Total Turnover = ₹28,00,000 (as computed in point 2 above)

Thus, maximum refund amount under rule 89(4) = ₹5,32,000 x ₹6,00,000/ ₹28,00,000 = ₹1,14,000.

REFUND OF IGST PAID ON EXPORT OF GOODS OR SERVICES - EXPLANATION ADDED TO RULE 96 VIDE NOTIFICATION NO. 16/2020 (DT: 23/3/20) W.E.F 23/10/2017 - RETROSPECTIVE AMENDMENT:

For the purpose of this sub-rule, the benefit of the notifications mentioned therein shall not be considered to have been availed only where the registered person has paid Integrated Goods and Services Tax and Compensation Cess on inputs and has availed exemption of only Basic Customs Duty (BCD) under the said notifications

RECOVERY OF REFUND OF UNUTILISED INPUT TAX CREDIT OR INTEGRATED TAX PAID ON EXPORT OF GOODS WHERE EXPORT PROCEEDS NOT REALIZED - RULE 96B INSERTED VIDE NOTIFICATION NO. 16/2020 (DT: 23/3/20):

(1) Where any refund of unutilised input tax credit on account of export of goods or of integrated tax paid on export of goods has been paid to an applicant but the sale proceeds in respect of such export goods have not been realised, in full or in part, in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, the person to whom the refund has been made shall deposit the amount so refunded, to the extent of non realisation of sale proceeds, along with applicable interest within thirty days of the expiry of the said period or, as the case may be, the extended period, failing which the amount refunded shall be recovered in accordance with the provisions of section 73 or 74 of the Act, as the case may

be, as is applicable for recovery of erroneous refund, along with interest under section 50:

Provided that where sale proceeds, or any part thereof, in respect of such export goods are not realised by the applicant within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), but the Reserve Bank of India writes off the requirement of realisation of sale proceeds on merits, the refund paid to the applicant shall not be recovered.

(2) Where the sale proceeds are realised by the applicant, in full or part, after the amount of refund has been recovered from him under sub- rule (1) and the applicant produces evidence about such realisation within a period of three months from the date of realisation of sale proceeds, the amount so recovered shall be refunded by the proper officer, to the applicant to the extent of realisation of sale proceeds, provided the sale proceeds have been realised within such extended period as permitted by the Reserve Bank of India.

STANDARD OPERATING PROCEDURE (SOP) – DETAILED SCRUTINY OF SELECTED EXPORTERS CLAIMING REFUND - CIRCULAR NO. 131/1/2020-GST, DATED 23-1-2020

As you are aware, several cases of monetisation of credit fraudulently obtained or ineligible credit through refund of Integrated Goods & Service Tax (IGST) on exports of goods have been detected in past few months. On verification, several such exporters were found to be non-existent in a number of cases. In all these cases it has been found that the Input Tax Credit (ITC) was taken by the exporters on the basis of fake invoices and IGST on exports was paid using such ITC.

2. To mitigate the risk, the Board has taken measures to apply stringent risk parameters-based checks driven by rigorous data analytics and Artificial Intelligence tools based on which certain exporters are taken up for further verification. Overall, in a broader time frame the percentage of such exporters selected for verification is a small fraction of the total number of exporters claiming refunds. The refund scrolls in such cases are kept in abeyance till the verification report in respect of such cases is received from the field formations. Further, the export consignments/shipments of concerned exporters are subjected to 100 % examination at the customs port.

3. While the verifications are caused to mitigate risk, it is necessary that genuine exporters do not face any hardship. In this context it is advised that exporters whose scrolls have been kept in abeyance for verification would be informed at the earliest possible either by the jurisdictional CGST or by Customs. To expedite the verification, the exporters on being informed in this regard or on their own volition should fill in information in the format attached as Annexure 'A' to this Circular and submit the same to their jurisdictional CGST authorities for verification by them. If required, the jurisdictional authority may seek further

additional information for verification. However, the jurisdictional authorities must adhere to timelines prescribed for verification.

3.1 Verification shall be completed by jurisdiction CGST office within 14 working days of furnishing of information in proforma by the exporter. If the verification is not completed within this period, the jurisdiction officer will bring it the notice of a nodal cell to be constituted in the jurisdictional Pr. Chief Commissioner/Chief Commissioner Office.

3.2 After a period of 14 working days from the date of submission of details in the prescribed format, the exporter may also escalate the matter to the Jurisdictional Pr. Chief Commissioner/Chief Commissioner of Central Tax by sending an email to the Chief Commissioner concerned (email IDs of jurisdictional Chief Commissioners are in Annexure B).

3.3 The Jurisdictional Pr. Chief Commissioner/Chief Commissioner of Central Tax should take appropriate action to get the verification completed within next 7 working days.

4. In case, any refund remains pending for more than one month, the exporter may register his grievance at www.cbic.gov.in/issue by giving all relevant details like GSTIN, IEC, Shipping Bill No., Port of Export & CGST formation where the details in prescribed format had been submitted etc.. All such grievances shall be examined by a Committee headed by Member GST, CBIC for resolution of the issue.

5. It is requested that suitable trade notices may be issued to publicize the contents of this circular. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

CLARIFICATION ON REFUND RELATED ISSUES - CIRCULAR No.135/05/2020-GST ,DATED 31ST MARCH, 2020:

1. Removal of restriction of Bunching of refund claims across Financial Years:

It has been decided to remove the restriction on clubbing of tax periods across Financial Years. Accordingly, circular No. 125/44/2019-GST dated 18.11.2019 stands modified to that extent i.e. the restriction on bunching of refund claims across financial years shall not apply. Therefore, bunching of financial year would be allowed.

2. Refund of accumulated input tax credit (ITC) on account of reduction in GST Rate:

It has been clarified that refund of accumulated ITC under section 54 of the CGST Act would not be applicable in cases where the input and the output supplies are the same.

That is, refund of unutilized ITC is not admissible on account of inverted duty structure where the inversion is due to change in the GST rate on the same goods.

3. Change in manner of refund of tax paid on supplies other than zero rated supplies:

Any refund of tax paid on supplies other than zero rated supplies will now be admissible proportionately in the respective original mode of payment i.e. in cases of refund, where the tax to be refunded has been paid by debiting both electronic cash and credit ledgers (other than the refund of tax paid on zero-rated supplies or deemed export), the refund to be paid in cash and credit shall be calculated in the same proportion in which the cash and credit ledger has been debited for discharging the total tax liability for the relevant period for which application for refund has been filed. Such amount, shall be accordingly paid by issuance of order in FORM GST RFD-06 for amount refundable in cash and FORM GST PMT-03 to re-credit the amount attributable to credit as ITC in the electronic credit ledger.

4. Guidelines for refunds of Input Tax Credit under Section 54(3):-

It has been decided that the refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant.

5. New Requirement to mention HSN/SAC in Annexure 'B':-

It has been recommended that a column relating to HSN/SAC Code should be added in the statement of invoices relating to inward supply so as to easily identify between the supplies of goods and services.

The issue has been examined and considering that such a distinction is important in view of the provisions relating to refund where refund of credit on Capital goods and/or services is not permissible in certain cases, it has been decided to amend the said statement. Accordingly, Annexure-B of the circular No. 125/44/2019-GST, dated 18.11.2019 stands modified to that extent.

A suitably modified statement format has been prescribed for applicants to upload the details of invoices reflecting in their FORM GSTR-2A. The applicant is, in addition to details already prescribed, now required to mention HSN/SAC code which is mentioned on the inward invoices. In cases where supplier is not mandated to mention HSN/SAC code on invoice, the applicant need not mention HSN/SAC code in respect of such an inward supply.

Segment - 20

MISCELLANEOUS PROVISIONS

SPECIAL PROCEDURE TO BE FOLLOWED BY CORPORATE DEBTORS UNDERGOING CORPORATE INSOLVENCY RESOLUTION PROCESS - NOTIFICATION No. 11/2020-CENTRAL TAX DATED 21ST MARCH 2020:

The following special procedures to be followed by the corporate debtors under the provisions of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), undergoing the corporate insolvency resolution process and the management of whose affairs are being undertaken by interim resolution professionals (IRP) or resolution professionals (RP), from the date of the appointment of the IRP/RP till the period they undergo the corporate insolvency resolution process, as mentioned below.

Registration: The said class of persons shall, with effect from the date of appointment of IRP / RP, be treated as a distinct person of the corporate debtor, and shall be liable to take a new registration (hereinafter referred to as the new registration) in each of the States or Union territories where the corporate debtor was registered earlier, within thirty days of the appointment of the IRP/RP:

Provided that in cases where the IRP/RP has been appointed prior to the date of this notification, he shall take registration within thirty days from the commencement of this notification, with effect from date of his appointment as IRP/RP.

Return: The said class of persons shall, after obtaining registration file the first return under section 40 of the said Act, from the date on which he becomes liable to registration till the date on which registration has been granted.

Input tax credit:

(1) The said class of persons shall, in his first return, be eligible to avail input tax credit on invoices covering the supplies of goods or services or both, received since his appointment as IRP/RP but bearing the GSTIN of the erstwhile registered person, subject to the conditions of Chapter V of the said Act and the

rules made thereunder, except the provisions of section 16(4) of the said Act and rule 36(4) of the Central Goods and Service Tax Rules, 2017 (hereinafter referred to as the said rules).

(2) Registered persons who are receiving supplies from the said class of persons shall, for the period from the date of appointment of IRP / RP till the date of registration as required in this notification or thirty days from the date of this notification, whichever is earlier, be eligible to avail input tax credit on invoices issued using the GSTIN of the erstwhile registered person, subject to the conditions of Chapter V of the said Act and the rules made thereunder, except the provisions of sub-rule (4) of rule 36 of the said rules.

Refund:

Any amount deposited in the cash ledger by the IRP/RP, in the existing registration, from the date of appointment of IRP/RP to the date of registration in terms of this notification shall be available for refund to the erstwhile registration.

Explanation: For the purposes of this notification, the terms "corporate debtor", "corporate insolvency resolution professional", "interim resolution professional" and "resolution professional" shall have the same meaning as assigned to them in the Insolvency and Bankruptcy Code, 2016 (31 of 2016).

CLARIFICATION IN RESPECT OF ISSUES UNDER GST LAW FOR COMPANIES UNDER INSOLVENCY AND BANKRUPTCY CODE, 2016 - CIRCULAR No.134/04/2020-GST (DT: 23/03/2020)**Background:**

As per IBC, once an entity defaults certain threshold amount, Corporate Insolvency Resolution Process (hereafter referred to as "CIRP") gets triggered and the management of such entity (Corporate Debtor) and its assets vest with an interim resolution professional (hereafter referred to as "IRP") or resolution professional (hereafter referred to as "RP"). It continues to run the business and operations of the said entity as a going concern till the insolvency proceeding is over and an order is passed by the National Company Law Tribunal (hereinafter referred to as the "NCLT")

To address the aforementioned problems, notification No.11/2020- Central Tax, dated 21.03.2020 has been issued by the Government prescribing special procedure for the corporate debtors who are undergoing CIRP under the provisions of IBC and the management of whose affairs are being undertaken by IRP/RP.

In order to ensure uniformity in the implementation of the provisions of the law, the Board, hereby clarifies various issues:-

Issue - 1: How are dues under GST for pre-CIRP period be dealt?

Clarification: In accordance with the provisions of the IBC and various legal pronouncements on the issue, no coercive action can be taken against the corporate debtor with respect to the dues for period prior to insolvency commencement date. The dues of the period prior to the commencement of CIRP will be treated as 'operational debt' and claims may be filed by the proper officer before the NCLT in accordance with the provisions of the IBC. The tax officers shall seek the details of supplies made / received and total tax dues pending from the corporate debtor to file the claim before the NCLT.

Issue - 2: Moreover, section 14 of the IBC mandates the imposition of a moratorium period, wherein the institution of suits or continuation of pending suits or proceedings against the corporate debtor is prohibited.

Should the GST registration of corporate debtor be cancelled?

Clarification: It is clarified that the GST registration of an entity for which CIRP has been initiated should not be cancelled under the provisions of section 29 of the CGST Act, 2017. The proper officer may, if need be, suspend the registration. In case the registration of an entity undergoing CIRP has already been cancelled and it is within the period of revocation of cancellation of registration, it is advised that such cancellation may be revoked by taking appropriate steps in this regard.

Issue - 3: Is IRP/RP liable to file returns of pre-CIRP period?

Clarification: [No] In accordance with the provisions of IBC, 2016, the IRP/RP is under obligation to comply with all legal requirements for period after the Insolvency Commencement Date. Accordingly, it is clarified that IRP/RP are not under an obligation to file returns of pre-CIRP period.

Issue - 4: Should a new registration be taken by the corporate debtor during the CIRP period?

Clarification: The corporate debtor who is undergoing CIRP is to be treated as a distinct person of the corporate debtor and shall be liable to take a new registration in each State or Union territory where the corporate debtor was registered earlier, within thirty days of the appointment of the IRP/RP. Further, in cases where the IRP/RP has been appointed prior to the issuance of notification No.11/2020- Central Tax, dated 21.03.2020, he shall take registration within thirty days of issuance of the said notification, with effect from date of his appointment as IRP/RP .

Issue - 5: How to file First Return after obtaining new registration?

Clarification: The IRP/RP will be liable to furnish returns, make payment of tax and comply with all the provisions of the GST law during CIRP period. The IRP/RP is required to ensure that the first return is filed under section 40 of the CGST Act, for the period beginning the date on which it became liable to take registration till the date on which registration has been granted.

Issue - 6: How to avail ITC for invoices issued to the erstwhile registered person in case the IRP/RP has been appointed before issuance of notification No.11/2020- Central Tax, dated 21.03.2020 and no return has been filed by the IRP during the CIRP ?

Clarification: The special procedure issued under section 148 of the CGST Act has provided the manner of availment of ITC while furnishing the first return under section 40.

The said class of persons shall, in his first return, be eligible to avail input tax credit on invoices covering the supplies of goods or services or both, received since appointment as IRP/RP and during the CIRP period but bearing the GSTIN of the erstwhile registered person, subject to the conditions of Chapter V of the CGST Act and rule made thereunder, except the provisions of sub-section (4) of section 16 of the CGST Act and sub-rule (4) of rule 36 of the CGST Rules. In terms of the special procedure under section 148 of the CGST Act issued vide notification No.11/2020- Central Tax, dated 21.03.2020. This exception is made only for the first return filed under section 40 of the CGST Act.

Issue - 7: How to avail ITC for invoices by persons who are availing supplies from the corporate debtors undergoing CIRP, in cases where the IRP/RP was appointed before the issuance of the notification No.11/2020 - Central Tax, dated 21.03.2020?

Clarification: Registered persons who are receiving supplies from the said class of persons shall, for the period from the date of appointment of IRP / RP till the date of registration as required in this notification or 30 days from the date of this notification, whichever is earlier, be eligible to avail input tax credit on invoices issued using the GSTIN of the erstwhile registered person, subject to the conditions of Chapter V of the CGST Act and rule made thereunder, except the provisions of sub-rule (4) of rule 36 of the CGST Rules.

Issue - 8: Some of the IRP/RPs have made deposit in the cash ledger of erstwhile registration of the corporate debtor. How to claim refund for amount deposited in the cash ledger by the IRP/RP?

Clarification: Any amount deposited in the cash ledger by the IRP/RP, in the existing registration, from the date of appointment of IRP / RP to the date of notification specifying the special procedure for corporate debtors undergoing

CIRP, shall be available for refund to the erstwhile registration under the head refund of cash ledger, even though the relevant FORM GSTR-3B/GSTR-1 are not filed for the said period.

The instructions contained in Circular No. 125/44/2019-GST dt. 18.11.2019 stands modified to this extent.

E-WAY BILL SYSTEM - VERIFICATION OF VEHICLE NUMBER IN EWB PORTAL - FREQUENTLY ASKED QUESTIONS - PRESS RELEASE, DATED 12-2-2020

1. What is verification of vehicle number in EWB Portal?

Ans: E-Way bill has been integrated with Vahan System of Transport Department. Vehicle number entered in e-way bill will now be verified with the Vahan System. If Vehicle no. is not available in the Vahan system user will get 'Alert Message' about the non-availability of vehicle number in vahan database. However, later, such vehicle numbers will not be allowed for the generation of e-way bill.

2. Why am I getting alert message when I enter vehicle number in E-way Bill?

Ans: The vehicle number entered in the EWB is not available in Vahan Database, you are requested to check and update the vehicle registration with your concerned Regional Transport Office (RTO), otherwise after sometime this vehicle number will not be allowed for e-way bill generation.

3. When I enter Vehicle number, I get a message that Vehicle is registered in more than one RTO, what should I do ?

Ans: This message indicates that the Vehicle details are found in more than one RTOs. You need to approach your RTO and request for updation of the office. Once the details are updated this message will not appear again. Not doing so , later it will be treated as Vehicle no. is not existent and may not be allowed for e-way bill generation.

4. In spite of having a Valid RC of my Vehicle, I am getting alert message from e-way bill portal. What can I do?

Ans: In case, Vehicle number entered in the e-way bill is registered and system still showing 'Alert Message' it is suggested to reach to your concerned RTO. Once the vehicle details are updated in Vahan system, the status in e-Way bill system will subsequently get updated.

5. How do I check my vehicle number is available in Vahan system?

Ans: Vahan System provides a nationwide search over the digitized data of Registered Vehicles. You can always check your vehicle number in Vahan system below; <https://vahan.nic.in/nrservices/faces/user/searchstatus.xhtml>

6. I am unable to find my vehicle details on Vahan. How to get vehicle details added to the Vahan System?

Ans: You need to visit your RTO with original RC and other documents and get the details updated in the Vahan Database.

7. I am moving vehicles with Temporary Registration. Will these Vehicle numbers be allowed for e-way bill registration.

Ans: If the Vehicle number is with temporary registration, the details are not verified and enter the temporary number starting with TR.

8. Details of my Vehicle number are shown in Vahan website, however, in e-way bill portal it shows not available. What should I do ?

Ans: You can contact the E-way bill Helpdesk and submit your grievance. Specify the Vehicle number which is there in Vahan system but not available in e-way bill portal.

GENERATION AND QUOTING OF DOCUMENT IDENTIFICATION NUMBER (DIN) ON ANY COMMUNICATION ISSUED BY THE OFFICERS OF THE CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS (CBIC) TO TAXPAYERS AND OTHER CONCERNED PERSONS - CIRCULAR NO. 122/41/2019-GST, DATED 5-11-2019:

- In keeping with the Government's objectives of transparency and accountability in indirect tax administration through widespread use of information technology, the CBIC is implementing a system for electronic (digital) generation of a Document Identification Number (DIN) for all communications sent by its offices to taxpayers and other concerned persons.
- To begin with, the DIN would be used for search authorization, summons, arrest memo, inspection notices and letters issued in the course of any enquiry. This measure would create a digital directory for maintaining a proper audit trail of such communication. Importantly, it would provide the recipients of such communication a digital facility to ascertain their genuineness.
- Subsequently, the DIN would be extended to other communications. Also, there is a plan to have the communication itself bearing the DIN generated from the system.

CBIC Introduces
Document Identification Number (DIN)

- The tax payers can verify the genuineness of all communication sent by CBIC
- Any communication without DIN is invalid
- Verify your document on CBIC website



 Leveraging Technology for Serving Taxpayers

- Electronic generation and quoting of Document Identification Number (DIN) shall be done in respect of all communications (including e-mails) sent to tax payers and other concerned persons by any office of the CBIC across the country w.e.f. 24th December, 2019.
- Further, in order to standardize the format of search authorizations, summons, arrest memos, inspection notices etc. issued by the GST/Central Excise/Service Tax formations across the country, the Board had constituted a committee of officers to examine and suggest modifications in the formats of these documents which has submitted its recommendations.
- The standardized documents have since been uploaded by DDM and are ready to be used. When downloaded and printed, these standardized documents would bear a pre-populated DIN thereon. Accordingly, the Board directs that all field formations shall use the standardized authorization for search, summons, inspection notice, arrest memo and provisional release order (the formats are provided).

PENALTY LEVIABLE BY ANTI - PROFITEERING AUTHORITY - SEC. 171(3A) INSERTED VIDE FINANCE ACT, 2019 W.E.F 1/1/20:

Where the National Anti-profiteering authority after holding examination as required under the said sub-section comes to the conclusion that any registered person has profiteered, such person shall be liable to pay **penalty equivalent to 10% of the amount so profiteered**

Provided that **no penalty** shall be leviable if the profiteered amount is deposited within thirty days of the date of passing of the order by the Authority.

Explanation.—For the purposes of this section, the expression "profiteered" shall mean the amount determined on account of not passing the benefit of reduction in rate of tax on supply of goods or services or both or the benefit of input tax credit to the recipient by way of commensurate reduction in the price of the goods or services or both.

Segment - 21

TAXABLE EVENT UNDER CUSTOMS

NO AMENDMENTS IN THIS SEGMENT

Segment - 22

CLASSIFICATION OF GOODS

PROCEDURE REGARDING CLAIM OF PREFERENTIAL RATE OF DUTY [SEC. 28DA OF CUSTOMS ACT, 1962 INSERTED VIDE FINANCE ACT, 2020 W.E.F 1/4/20]:

Background:

Imports are chargeable to customs duty at standard rate of duty and preferential rate of duty. CG by notification specify the goods and the countries for preferential rate of duty and imports of such goods from such countries attract the preferential rate.

Also, as per explanatory note 3 to the Customs Tariff, In any entry, if no preferential rate of duty has been notified, the standard rate of duty shall be applicable.

Tariff Item	Description of goods	Unit	Rate of duty	
			Standard	Preferential Areas
(1)	(2)	(3)	(4)	(5)
0801	COCONUTS, BRAZIL NUTS AND CASHEW NUTS, FRESH OR DRIED, WHETHER OR NOT SHELLLED OR PEELED			
	- <i>Coconuts :</i>			
0801 11 00	-- Desiccated	kg.	70%	60%
0801 12	-- <i>In the inner shell (endocarp) :</i>			
0801 12 10	--- Fresh	kg.	70%	60%
0801 12 20	--- Dried	kg.	70%	60%
0801 12 90	--- Other	kg.	70%	60%
0801 19	-- <i>Other:</i>			
0801 19 10	--- Fresh	kg.	70%	60%
0801 19 20	--- Dried	kg.	70%	60%
0801 19 90	--- Other	kg.	70%	60%
	- <i>Brazil nuts :</i>			
0801 21 00	-- In shell	kg.	30%	20%
0801 22 00	-- Shelled	kg.	30%	20%

Sec. 28DA(1) of Customs Act, 1962 - Conditions for claiming preferential rate of duty:

An importer making claim for preferential rate of duty, in terms of any trade agreement, shall,—

- (i) **make a declaration that goods qualify** as originating goods for preferential rate of duty under such agreement;
- (ii) **possess sufficient information** as regards the manner in which country of origin criteria, including the regional value content and product specific criteria, specified in the rules of origin in the trade agreement, are satisfied;
- (iii) **furnish such information** in such manner as may be provided by rules;
- (iv) **exercise reasonable care** as to the accuracy and truthfulness of the information furnished.

How importer can prove that he is eligible for preferential rate of duty?

The importer has to submit a Certificate of Origin [means a certificate issued in accordance with a trade agreement certifying that the goods fulfil the country of origin criteria and other requirements specified in the said agreement]. As per Sec. 28DA(2) of Customs Act, The fact that the importer has submitted a certificate of origin issued by an Issuing Authority shall not absolve the importer of the responsibility to exercise reasonable care.

Can preferential rate of duty claim be refused by proper officer?

As per Sec. 28DA(3) of Customs Act, Where the proper officer has reasons to believe that country of origin criteria has not been met, he may require the importer to furnish further information, consistent with the trade agreement, in such manner as may be provided by rules.

As per Sec. 28DA(4) of Customs Act, Where importer fails to provide the requisite information for any reason, the proper officer may,—

- (i) cause further verification consistent with the trade agreement in such manner as may be provided by rules;
- (ii) pending verification, temporarily suspend the preferential tariff treatment to such goods

What is the consequence to the importer if application of preferential duty is temporarily suspended for retirement of information?

Provisional Assessment - Either security for differential duty or payment of differential duty:

As per Sec 28DA(5) of Customs Act, Where the preferential rate of duty is suspended under section 28DA(4), the proper officer may, on the request of the importer, release the goods subject to furnishing by the importer a security

amount equal to the difference between the duty provisionally assessed under section 18 and the preferential duty claimed.

Provided that the Principal Commissioner of Customs or the Commissioner of Customs may, instead of security, require the importer to deposit the differential duty amount in the ledger maintained under section 51A.

Finalisation of provisional assessment:

As per Sec. 28DA(6) of Customs Act, **Upon temporary suspension** of preferential tariff treatment, the proper officer **shall inform the Issuing Authority** [means any authority designated for the purposes of issuing certificate of origin under a trade agreement] **of reasons for suspension** of preferential tariff treatment, and seek specific information as may be necessary to determine the origin of goods within such time and in such manner as may be provided by rules. As per Sec. 28DA(9) of Customs Act, Unless otherwise specified in the trade agreement [means an agreement for trade in goods between the Government of India and the Government of a foreign country or territory or economic union], **any request for verification shall be sent within a period of five years from the date of claim of preferential rate of duty by an importer.**

Issuing authority (or exporter (or) Producer, furnishes the specific information within specified time:

As per Sec. 28DA(7), the proper officer may, on being satisfied with the information furnished, restore the preferential tariff treatment.

Issuing authority (or) exporter (or) Producer, does not furnish the specific information within specified time (or) the information furnished is found non satisfactory:

As per Sec. 28DA(8), the proper officer shall disallow the preferential tariff treatment for reasons to be recorded in writing. Provided that in case of receipt of incomplete or non-specific information, the proper officer may send another request to the Issuing Authority stating specifically the shortcoming in the information furnished by such authority, in such circumstances and in such manner as may be provided by rules.

Can preferential rate of duty claim be refused by officer without verification?

As per proviso to Sec. 28DA(4) of Customs Act, on the basis of the information furnished by the importer or the information available with him or on the relinquishment of the claim for preferential rate of duty by the importer, the Principal Commissioner of Customs or the Commissioner of Customs may, for reasons to be recorded in writing, **disallow the claim** for preferential rate of duty, **without further verification.**

As per Sec. 28DA(10) of Customs Act, Notwithstanding anything contained in this section, the preferential tariff treatment may be refused without verification in the following circumstances, namely:—

- (i) the tariff item is not eligible for preferential tariff treatment;
- (ii) complete description of goods is not contained in the certificate of origin;
- (iii) any alteration in the certificate of origin is not authenticated by the Issuing Authority;
- (iv) the certificate of origin is produced after the period of its expiry, and in all such cases, the certificate of origin shall be marked as "INAPPLICABLE".
- (v) Where the verification under this section establishes non-compliance of the imported goods with the country of origin criteria, the proper officer may reject the preferential tariff treatment to the imports of identical goods [means goods that are same in all respects with reference to the country of origin criteria under the trade agreement] from the same producer or exporter, unless sufficient information is furnished to show that identical goods meet the country of origin criteria.

Segment - 23

TYPES OF CUSTOMS DUTIES

POWER OF CENTRAL GOVERNMENT TO APPLY SAFEGUARD MEASURES. [SUBSTITUTION OF NEW SECTION FOR SECTION 8B OF CUSTOMS TARIFF ACT, 1975 VIDE FINANCE ACT, 2020 W.E.F 1/4/20]:

Imposition of Safeguard duty:

- If the Central Government, after conducting such enquiry as it deems fit, is satisfied that any article is imported into India in **such increased quantity** and under such conditions **so as to cause or threaten to cause serious injury to domestic industry**, it may, by notification in the Official Gazette, apply such safeguard measures on that article, as it deems appropriate.
- The safeguard measures shall include
 - imposition of Safeguard duty,
 - application of tariff-rate quota or
 - such other measure, as the Central Government may consider appropriate, to curb the increased quantity of imports of an article to prevent serious injury to domestic industry

Safeguard duty is product specific and once levied, applicable on imports of that product from any country

Non applicability of Safeguard Duty:

- i. On article originating from a developing country so long as the share of imports of that article from that country does not exceed 3% or
- ii. Where the article is originating from more than one developing country, then, so long as the aggregate of the imports from each of such developing countries with less than 3% import share taken together, does not exceed 9% of the total imports of that article into India

Exemption from Safeguard Duty: Central Government may, by notification in the Official Gazette, exempt such quantity of any article as it may specify in the notification, when imported from any country or territory into India, from payment of the whole or part of the safeguard duty leviable thereon.

Illustration – 1 on safeguard duty:

	Developing Countries				Developed countries	Total Imports
	A	B	C	D		
Product – X (₹ in lakhs)	₹5000	₹2000	₹1500	₹600	₹8000	₹17100
% of each country's import to total import	29%	12%	9%	4%	47%	100%
Whether it exceeds 3%	Yes	Yes	Yes	Yes	Yes	

Therefore, Safeguard duty is levied on product X imported by all countries

Illustration – 2 on safeguard duty:

	Developing Countries				Developed countries	Total Imports
	A	B	C	D		
Product – Z (₹ in lakhs)	₹800	₹700	₹600	₹500	₹25000	₹27600
% of each country's import to total import	3%	3%	2%	2%	91%	100%
Whether it exceeds 3% for each country	No	No	No	No	Yes	
Whether it exceeds 9% cumulatively for all developing countries	Yes (3+3+2+2 = 10%)					

Therefore, safeguard duty is levied on product Z imported by all countries

Tariff rate Quota#:

Where tariff-rate quota is used as a safeguard measure, the Central Government shall not fix such quota lower than the average level of imports in the last three representative years for which statistics are available, unless a different level is deemed necessary to prevent or remedy serious injury.

The Central Government may allocate such tariff-rate quota to supplying countries having a substantial interest in supplying the article concerned, in such manner as may be provided by rules.

*In a tariff rate quota regime, if imports are coming in within a set 'quota', i.e. threshold for imports, a lower or no tariff rate will be charged on the imports. A higher tariff rate is charged for imports above the concessionary level. This allows for imports to freely enter the country to fill the demand-supply gap which may exist in the country. However, it protects the domestic industry and its market share by imposing a duty on imports which exceed the threshold.

The said quota is determined in compliance with Article 5 of the Agreement on Safeguards ("AoS") and cannot be below the level of the average imports during the last three representative years of which statistics are available. The proposed amendment incorporates this requirement in its text. To illustrate, imports for 'Item X' have been as follows:

	2017-18	2018-19	2019-20
Item - X	10,000 MT	15,000 MT	20,000 MT

Average of the last 3 years = 15,000 MT

In such a situation, the following tariff quota regime can be introduced for Item X:

Upto 15,000 units (In-quota tariff) - Nil

> 15,000 units (Out-quota tariff) - 10%

Source: <https://www.lakshmisri.com/insights/articles/tariff-rate-quotas-a-balanced-safeguard/>

Provisional Safeguard Duty:

Determination on provisional basis: The Central Government may, pending the determination of safeguard measures, apply provisional safeguard measures under this sub-section on the basis of a preliminary determination that increased imports have caused or threatened to cause serious injury to a domestic industry

Refund upon final determination: On final determination, the Central Government is of the opinion that increased imports have not caused or threatened to cause serious injury to a domestic industry, it shall refund the safeguard duty so collected

Duration: Any provisional safeguard measure shall not remain in force for more than two hundred days from the date on which it was applied (i.e. Upto 200 days).

Imports by 100% EOU (or) a unit in SEZ:

Any safeguard measures applied, shall not apply to articles imported by a 100% export-oriented undertaking or a unit in a special economic zone, unless—

- (i) it is specifically made applicable in such notification or to such undertaking or unit;
- (ii) such article is either cleared as such into the domestic tariff area or used in the manufacture of any goods that are cleared into the domestic tariff area, in which case, safeguard measures shall be applied on the portion of the article so cleared or used, as was applicable when it was imported into India.

Other Conditions:

- The safeguard duty imposed under this section shall be in addition to any other duty imposed under this Act or under any other law for the time being in force.
- The safeguard measures applied under this section shall, unless revoked earlier, cease to have effect on the expiry of 4 years from the date of such application
- If the CG is of the opinion that the domestic industry has taken measures to adjust to such injury or threat thereof and it is necessary that the safeguard measures should continue to be applied, it may extend the period of such application
- In no case the safeguard measures shall continue to be applied beyond a period of ten years from the date on which such measures were first applied.
- The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short-levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.

Power to make rules in this regard:

The CG may, make rules for the purposes of this section, and may provide for—

- (i) the manner in which articles liable for safeguard measures may be identified;
- (ii) the manner in which the causes of serious injury or causes of threat of serious injury in relation to identified article may be determined;
- (iii) the manner of assessment and collection of safeguard duty;
- (iv) the manner in which tariff-rate quota on identified article may be allocated among supplying countries;
- (v) the manner of implementing tariff-rate quota as a safeguard measure;
- (vi) any other safeguard measure and the manner of its application.

Meaning of Certain terms:

- (a) “developing country” means a country notified by the Central Government in the Official Gazette;
- (b) “domestic industry” means the producers—
 - (i) as a whole of the like article or a directly competitive article in India; or
 - (ii) whose collective output of the like article or a directly competitive article in India constitutes a major share of the total production of the said article in India;
- (c) “serious injury” means an injury causing significant overall impairment in the position of a domestic industry;
- (d) “threat of serious injury” means a clear and imminent danger of serious injury.

Segment - 24

VALUATION UNDER CUSTOMS

PROCEDURE FOR VALUATION OF SECOND HAND MACHINERY - CIRCULAR NO. 07/2020- CUSTOMS DATED 5TH FEBRUARY 2020:

1. Inspection/appraisal report shall accompany the goods imported: All imports of second-hand machinery/used capital goods shall be ordinarily accompanied by an inspection/appraisal report^[As prescribed by CBIC] issued by an overseas Chartered Engineer or equivalent, prepared upon examination of the goods at the place of sale.

2. Inspection/appraisal in India, if imported goods does not accompany report: In the event of the importer failing to procure an overseas report of inspection/appraisal of the goods, he may have the goods inspected by any one of the Chartered Engineers empanelled locally by the respective Custom Houses^[Format of report prescribed by CBIC].

3. Comparison of declared value with reported value and depreciated value: The value declared by the importer shall be examined with respect to the report of the Chartered Engineer. Similarly, the declared value shall be examined with respect to the depreciated value of the goods ^[Determined in terms of the circular No. 493/124/86].

4. Action based on Comparison:

- If such comparison does not create any doubt regarding the declared value of the goods, the same may be appraised under rule 3 of the CVR, 2007 [Value declared by importer i.e. transaction value].
- If there are significant differences arising from such comparison, Rule 12 of the CVR, 2007 requires that the proper officer shall seek an explanation from the importer justifying the declared value. The proper officer may then evaluate the evidence put forth by the importer and after giving due consideration to factors such as depreciation, refurbishment or reconditioning (if any), and condition of the goods, determine whether the declared transaction value conforms to Rule 3 of CVR, 2007. Otherwise, the proper officer may proceed to determine the value of the goods, sequentially, in terms of rule 4 to 9.

Segment - 25

CUSTOMS IMPORT & EXPORT PROCEDURES

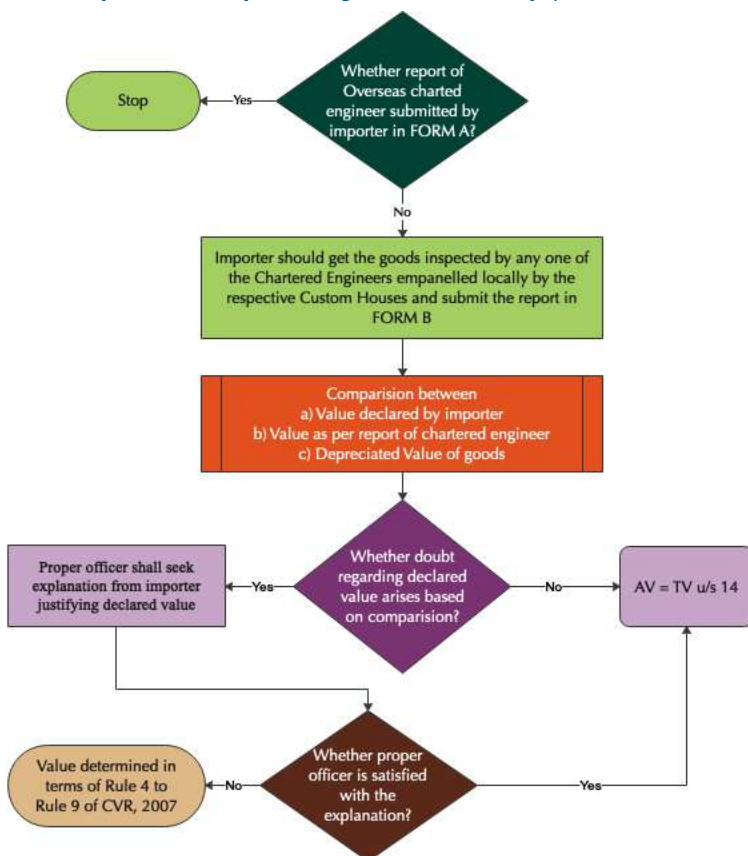
STREAMLINING EXPORT DATA TO INCLUDE DISTRICT LEVEL DETAILS IN SHIPPING BILLS - CIRCULAR NO. 09/2020 DATED 5TH FEBRUARY 2020

- The Central Government clarified the incorporation of **additional attributes in the Shipping Bill** to enable the Customs System to capture the Districts and States of Origin for goods being exported.
- It will help to boost domestic manufacturing and promote exports. It is also aimed at bringing uniformity with the data/information captured in the Goods and Services Tax Network (GSTN).
- Accordingly, w.e.f 15/2/20, apart from the data/information required to be furnished in the present electronic form of electronic integrated declaration, **the following additional information** will be required to be furnished for every item in the Shipping Bill:
 - (i) The State of Origin of goods
 - (ii) District of Origin of goods
 - (iii) Details of Preferential Agreements under which the goods are being exported, wherever applicable.
 - (iv) Standard Unit Quantity Code (SQC) for that CTH as per the first schedule of the Customs Tariff Act, 1975.

Report of inspection/appraisalment of goods:

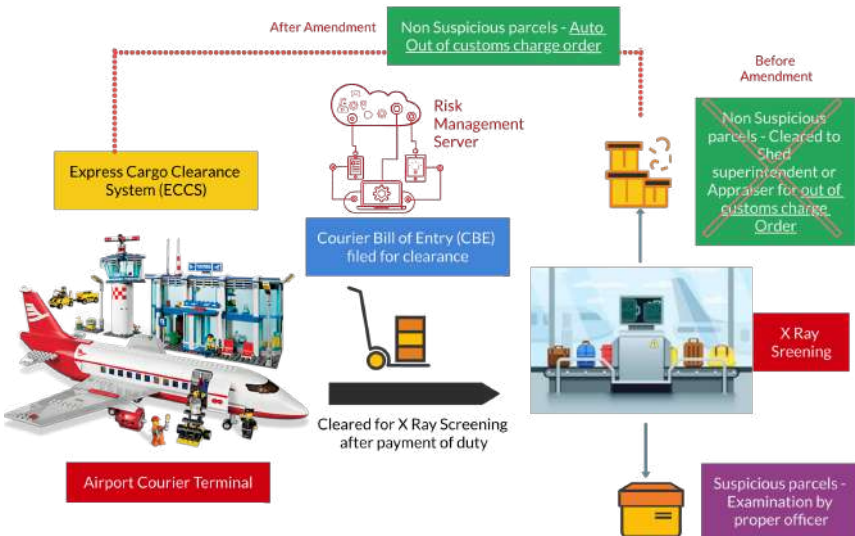
1. The report of the overseas chartered engineer or equivalent should be as per the Form A as provided along with this circular.
2. In the event of the importer failing to procure an overseas report of inspection/appraisalment of the goods, he may have the goods inspected by any one of the Chartered Engineers empanelled locally by the respective Custom Houses.
3. In cases where the report is to be prepared by the Chartered Engineers empanelled by Custom Houses, the same shall be in the Form B as provided along with this circular.
4. The value declared by the importer shall be examined with respect to the report of the Chartered Engineer. Similarly, the declared value shall be examined with

- respect to the depreciated value determined in terms of the circular No. 493/124/86-Cus. If such comparison does not create any doubt regarding the declared value, the same may be appraised under rule 3 of the CVR, 2007.
5. If there are significant differences arising from such comparison, Rule 12 of the CVR, 2007 requires that the proper officer shall seek an explanation from the importer justifying the declared value.
 6. The proper officer may then evaluate the evidence put forth by the importer and after giving due consideration to factors such as depreciation, refurbishment or reconditioning (if any), and, determine whether the declared transaction value conforms to Rule 3 of CVR, 2007.
 7. Otherwise, the proper officer may proceed to determine the value of the goods, sequentially, in terms of rule 4 to 9.
 8. **The declaration of GSTIN shall also be mandatory in import/export documents for the importers and exporters registered as GST taxpayers.**



AUTO OUT OF CHARGE UNDER EXPRESS CARGO CLEARANCE SYSTEM (ECCS) IN CASE OF IMPORT THROUGH COURIER - CIRCULAR No. 40/2019 - CUS (DT: 29/11/19):

- Courier Bills of Entry (CBE) filed for clearance of imported cargo under ECCS are subjected to Risk Management System. The Risk Management Server either facilitates or interdicts a CBE. The facilitated CBEs after payment of duty, if any are diverted for X-ray screening before final out of charge.
- The X-ray screening of goods may either 'clear' the goods or mark them as 'suspicious'. The goods marked 'suspicious' have to undergo examination by the proper officer. However, CBEs in respect of X-ray cleared goods are sent to the Shed Superintendent or Appraiser for Out Of Charge (OOC) order.
- Express Industry Council of India (EICI) has stated that all Customs procedures including assessment, duty payment etc., for a shipment are electronically complete before the facilitated shipment is subjected to Customs X-ray screening; once the shipment is 'cleared' on X-ray screening, there may not be a requirement for a Customs officer to issue an Out of Charge order.
- EICI has requested to introduce 'Auto Out of Charge' for such imported shipments as this will help in mitigating delays. Over the years, cross-border movement of express cargo has increased significantly which mandates simplification of procedure. Sending a CBE after X- ray screening to the Shed Superintendent/Appraiser, merely for giving out of charge order, adds an avoidable step in the automated clearance process.
- ECCS should automatically give out of charge to goods covered under facilitated CBE which has been 'cleared' on Customs X-ray screening.



IMPLEMENTATION OF AUTOMATED CLEARANCE ON ALL-INDIA BASIS:**Background provision:**

Section 47 - Clearance of goods for home consumption: Where the proper officer is satisfied that any goods entered for home consumption are **not prohibited goods** and the importer has paid the import duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer **may make an order permitting clearance of the goods for home consumption**

Provided that such order **may also be made electronically through the customs automated system** on the basis of risk evaluation through appropriate selection criteria.

Automated clearance on pilot basis:

Earlier, para 3 of Circular No 09/2019-Customs dated 28.02.2019 provides that in terms of the 1st proviso to Section 47(1), the Customs Automated System would electronically give clearance to Bill(s) of Entry, on completion of Customs Compliance Verification (CCV) and payment of duty by the importer. **This was tested on a pilot basis in Chennai and Mumbai customs.**

Automated clearance on Pan India basis:

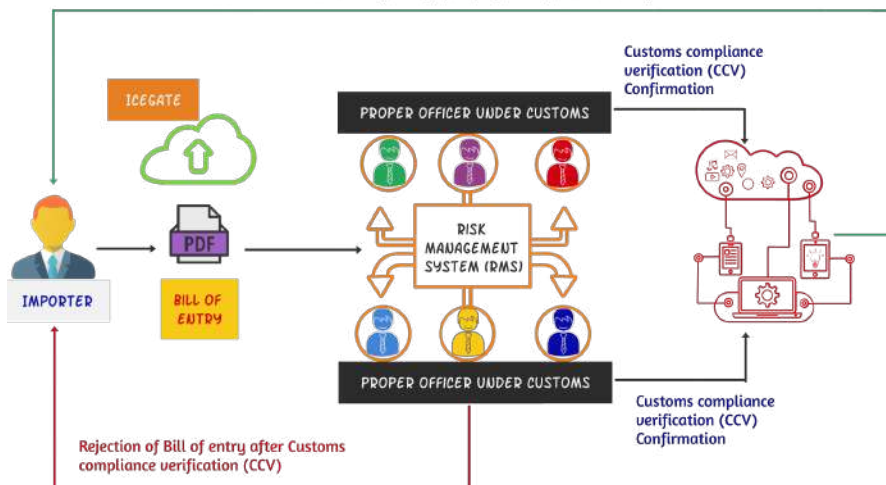
The Central Board of Indirect Taxes & Customs vide Circular No. 15/2020-Customs dated 28th February, 2020 **has extended the facility of automated clearance of Bills of Entry to all customs formations where the Customs EDI system is operational, with effect from 05.03.2020.**

The important features of the automated clearance are as follows:-

- i. The facility will only be for Indian Customs EDI System (ICES) locations where RMS is enabled and fully functional.
- ii. All the Customs Compliance Verification (CCV) requirements under the Customs Act, rules, instructions etc will be done by the designated proper officer of Customs.
- iii. The CCV would operate even while duty has not been paid or payment is under process.
- iv. After completion of CCV, the proper officer of customs, on satisfaction that the goods are ready for clearance, will confirm the completion of the CCV for the particular Bill of Entry in the Customs System.
- v. On confirmation of payment of applicable duty, the Customs System will then electronically give clearance to the Bill of Entry.



Electronic Clearance to Bill of Entry upon payment of Customs duty



TRANSPORTATION OF GOODS (THROUGH FOREIGN TERRITORY), REGULATIONS, 2020 - NOTIFICATION 16/2020-CUSTOMS (N.T.) DATED 21/2/2020:

Applicability: These regulations shall apply to the movement of goods, -

- (i) under the Agreement on the Use of Chattogram and Mongla Ports for Movement of Goods to and from India between the People’s Republic of Bangladesh and the Republic of India (hereinafter referred to as ‘ACMP’);
- (ii) under the Protocol on Inland Water Transit and Trade between the People’s Republic of Bangladesh and the Republic of India (herein after referred to as ‘PIWTT’): Provided that the regulations shall not apply to the movement of export-import cargo between India and Bangladesh or export to third countries under the PIWTT; and

(iii) from one part of India to another through a land route which lies partly over the territory of a foreign country, not being a movement covered under (i) and (ii) above.



Documentation: For the movement of the goods under these regulations, the consignor of the goods or the carrier of the goods or their authorised agent shall, at the customs station of exit in India, -

- (i) File a Customs Transit Declaration, -
 - (a) in Annexure 'A', for movements under clause (i) above;
 - (b) in Annexure 'B' for movements under clauses (ii) and (iii) above ; and
- (ii) Execute a bond, for the value of the goods, to ensure safe transportation of the goods up to the destination declared in the Customs Transit Declaration, as per Annexure 'C'.

Approval of Customs Transit Declaration: Upon the compliance of above documentation, by the consigner of the goods or the carrier of the goods or their authorized agent, the proper officer shall approve the Customs Transit Declaration.

Permission to load goods: No person-in-charge of a conveyance shall allow the loading of goods under these regulations unless the Customs Transit Declaration relating to such goods has been approved by the proper officer.

Permission for transhipment: Where pursuant to the approval, goods have been loaded on the conveyance, the proper officer shall, -

- (a) Ensure that the cargo is sealed securely with a customs one-time-lock
Provided that the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, may having regard to the nature of goods or manner of transport, permit the movement of goods under these regulations without affixing a customs one-time-lock;
- (b) Endorse the Customs Transit Declaration with the one-time-lock number.

Arrival at the customs station of re-entry:

1. The proper officer at the customs station of re-entry shall check the intactness of the customs one-time-lock affixed at the customs station of exit and if the one-time-lock is found intact, he shall endorse the Customs Transit Declaration and allow clearance of the goods.
2. In case the customs one-time-lock affixed at the customs station of exit is not found intact, the proper officer shall make due verification of the goods to check whether the goods are in accordance with the Customs Transit Declaration and upon being satisfied that there is no irregularity, he shall endorse the Customs Transit Declaration and allow clearance of the goods.
3. In case the goods are not in accordance with the Customs Transit Declaration, the proper officer shall inform the customs station of exit about the irregularity for further action.
4. The consignor of the goods or the carrier of the goods or their authorised agent shall submit copy of the Customs Transit Declaration duly endorsed by the proper officer at the customs station of re-entry in India, to the customs officer at the customs station of exit in India, as a proof of due arrival of the goods at the customs station of re-entry to India, within 3 months of the departure from the customs station of exit, which may be extended by a further period not exceeding six months by the proper officer.
5. The customs officer at the customs station of exit in India shall after receipt of the duly endorsed Customs Transit Declaration, credit or close the bond, as the case may be, unless the said endorsement indicates that the goods have not arrived into India as per the Customs Transit Declaration.
6. Notwithstanding the above, where the customs officer at the customs station of re-entry in India makes an electronic entry accessible to the customs station of exit regarding the due arrival of the goods, the endorsed Customs Transit Declaration shall not be required to be submitted.

ELECTRONIC DUTY CREDIT LEDGER FOR DUTY CREDIT [SEC. 51B OF CUSTOMS ACT, 1962 INSERTED VIDE FINANCE ACT, 2020 W.E.F 1/4/20]:

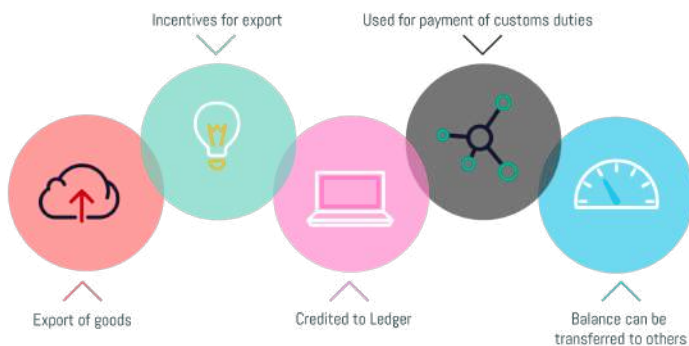
(1) The Central Government may, by notification in the Official Gazette, specify the manner^(Not yet specified) in which **it shall issue duty credit**.—

- (a) In lieu of remission of any duty or tax or levy, chargeable on any material used in the manufacture or processing of goods or for carrying out any operation on such goods in India that are exported; or
- (b) In lieu of such other financial benefit subject to such conditions and restrictions as may be specified therein.

(2) The duty credit issued under sub-section (1) **shall be maintained in the customs automated system** in the form of an electronic duty credit ledger of the person who is the recipient of such duty credit, in such manner as may be prescribed^(Not yet prescribed).

(3) The duty credit available in the electronic duty credit ledger may be used by the person to whom it is issued **or the person to whom it is transferred**, towards making payment of duties payable under this Act or under the Customs Tariff Act, 1975 in such manner and subject to such conditions and restrictions and within such time as may be prescribed^(Not yet prescribed).

ELECTRONIC DUTY CREDIT LEDGER



Segment - 26

EXEMPTIONS UNDER CUSTOMS

NO AMENDMENTS IN THIS SEGMENT

Segment - 27

ASSESSMENT & AUDIT UNDER CUSTOMS

NO AMENDMENTS IN THIS SEGMENT

Segment - 28

DUTY DRAWBACK

NO AMENDMENTS IN THIS SEGMENT

Segment - 29

BAGGAGE

NO AMENDMENTS IN THIS SEGMENT

Segment - 30

FOREIGN TRADE POLICY (FTP)

FACILITATION UNDER FOREIGN TRADE POLICY (FTP) 2015- 20 BY DGFT OWING TO COVID 19:

Extension of FTP beyond 31st March 2020: The Foreign Trade Policy (FTP)

2015-2020 and Handbook of Procedures (HBP) which was valid till 31st March 2020, have been extended by one year till 31st March 2021.

Advance Authorizations and EPCG Authorizations: Extension of Export
Obligation Period etc

1. In respect of those Advance Authorizations and EPCG Authorizations wherein the extended Export Obligation Period has either expired or is expiring between 1st February, 2020 to 31st July, 2020, the Export Obligation Period has been extended for further six months from the date of expiry.
2. In respect of those Advance Authorizations and EPCG Authorizations wherein the import validity period has either expired or is expiring between 1st February, 2020 to 31st July, 2020, the import validity period has been extended for further six months from the date of expiry.
3. In respect of those EPCG Authorizations wherein Block period to fulfill the Block-wise export obligation has either expired or is expiring between 1st February, 2020 to 31st July, 2020, the Block period has been extended for further six months from the date of expiry.
4. In respect of those EPCG Authorizations wherein the time period to produce the Installation Certificate before the RA concerned has either expired or is expiring between 1st February, 2020 to 31st July, 2020, the time period has been extended for further six months from the date of expiry.

Extension of validity of Registration cum Membership Certificate (RCMC) beyond 31st March, 2020:

It has been decided that Regional Authorities (RAs) of DGFT will not insist on valid RCMC (in cases where the same has expired on or before 31 March, 2020) from the applicants for any incentive/authorizations till 30 September, 2020.

Service Exports from India Scheme (SEIS):

The last date for filing annual claims under SEIS is 12 months from the end of relevant financial year of the claim period, which is expiring for 2018-19 claims on 31st March, 2020, has been extended to 31st December, 2020.

Merchandise Exports from India Scheme (MEIS):

The last date for filing MEIS claims is 1 year from the Let Export Order (LEO) date of each Shipping Bill, and another 2 years beyond that with imposition of a late cut. The last date of filing MEIS claims without late cut for all Shipping Bills for which the initial one year period expired / will be expiring on or after 1st Feb 2020 and on or before 31st May 2020, has been extended by 3 months beyond the expiry date of the initial one-year period.

Rebate of State and Central Taxes and Levies (RoSCTL):

The last date for filing RoSCTL claims for export shipments between 7 March to 31 December, 2019 of 30th June, 2020, has been extended to 31st December 2020.

Status Holder:

The validity period of all Status Certificates issued under FTP 2015-20 to an IEC holder has been extended up to 31st March, 2021.

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