

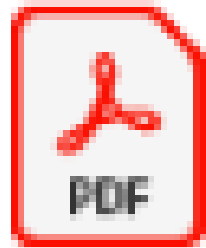
Recent Amendments in GST Law including Budget Amendments

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BANGALORE

Finance Bill- 2023:



Finance Bill_GST
Amendment

Input Tax Credit on Corporate Social Responsibility (CSR) Expenses.

Supply of Warehouse goods before clearance for home consumption (In-bond sales)- Exempt Supply/Rule 42/Rule 43.

Composition Taxpayers- Intrastate Supply of goods through E-commerce Operators

ITC Reversal for non-payment of consideration within 180 days to supplier, -
Not an output tax liability/Interest Tax liability

Section 23 is Independent of Section 22/Section 24- Retrospective from
01.7.2017

Return cannot be filed after 3 years of the due date specified for such return
like GSTR 1, GSTR 3B , CMP 08 , TCS, GSTR-9 and GSTR-9C other than TDS/ISD

The Interest on delayed Refund would be in prescribed manner in various
scenarios. Earlier it was 60 days in all the scenarios.

Finance Bill- 2023:

In Schedule III to the Central Goods and Services Tax Act, paragraphs 7 and 8 and the Explanation 2 thereof from the 1st day of July, 2017. 12 of 2017.

No refund shall be made of all the tax which has been collected,- Schedule III

Non furnishing of unregistered dealer/Composition dealer information in TCS return. – E- commerce Operator

Penalty equal to higher of Rs 10.000/- or amount of tax involved as if dealer is registered person- E Commerce Operator

Non punishable Offence- Section 132 (g) (j) (k)

One crore for the offences related to issuance of invoices without supply of goods or services or both i.e. clause 132(1)(b).

other offences listed in sec 132(1) threshold of punishment is Rs. 2 crore and above

Finance Bill-2023:

Compounding of offence is not applicable to issuance of invoices without supply of goods or services or both- 132(1)(b)

Compounding of offence now made applicable- Section 132 (1) (g) (j) (k)

Compounding of offence Not applicable – Repetitive offence 132 (1) except above

Quantum of compounding

Minimum : 10,000 or 50% the tax involved, whichever is higher, and the

Maximum amount : 30,000/-or 150%. of the tax, whichever is higher

Proposed

Minimum 25%. of the tax involved and the

Maximum amount not being more than 100% of the tax involved

Definition of Non taxable Online recipient confined only to unregistered person. And person specified in section in 51 – Removed business or commerce or trade- Forward charge

OIDAR definition expanded – essentially automated and minimal human involvement- restrictions removed. Therefore scope expanded/clarified

Section 12(8) of iGST Act – Proviso removed circular 184/16/2022 dated 27.12.2022 and 96 Foreign country In GSTR 1 (place of supply)

**Payment under
ST/Excise :**

Payments through DRC-03 under GST Regime is not a valid mode of payment for making payment pre deposits under **Central Excise or Service Tax law.**

CBIC-GST integrated portal (<https://cbic-gst.gov.in>)..aces.login Board Circular 1070/3/2019-CX dated 24th June 2019

Johnson Mathey Chemical India Pvt Limited Vs Assistant Commissioner CGST (CESTAT Allahabad) deposit cannot be made by way of debit in the ECL

Circular issued CBIC -240137/14/2022- Service Tax Section –CBEC

Payment made through Form GST DRC-03 is not a valid mode for making pre-deposit Payments

Utilisation of credit balance:

Section 49(4) – The amount available in the Electronic Credit Ledger may be used for making any payment towards **output tax** under this Act

ECL any self-assessed liability

liability arising as a consequence of any proceeding

ECL cannot be used any RCM liability, any erroneous refund sanctioned by Cash and payment of any interest / penalty / late fee etc

ECL for filing GSTR 9 / 9C

Can credit be utilized for pre- deposit at the time of filing appeal? *Yes (Roma Builders Pvt Ltd Vs State of Maharashtra (Writ Petition No 23507 of 2022) (circular 172 2022)*

**Filing of GSTR 1
and GSTR 3B:**

Vide Notification 18/2022 dated 28.9.2022/ Section 37(4)/ 39(10)

The Taxpayers shall not be allowed to file GSTR-1 if previous GSTR-1 is not filed.

The Taxpayer shall not be allowed to file GSTR-3B, if GSTR-1 for the same tax period is not filed.

Filing of GSTR-1 will also be mandatory before filing GSTR 3B.

Mismatch in GSTR-1 vs GSTR-3B- DRC-01B will issue to pay tax or give explanation

Rule 21 – GSTR 1 > GSTR 3B- lead to cancellation of Registration (94/2020/ dated 22.12.2020)

**Filing of GSTR 1
and GSTR
3B:Notification
No. 26 / 2022 –
Central Tax
dated 26.12.2022**

Taxpayer will be given an intimation in Part-A of Form GST DRC-01B highlighting such difference and can either:

(i) Pay the differential tax liability, along with interest through FORM GST DRC-03 and furnish the details thereof in Part B of FORM GST DRC-01B; .

The Taxpayer shall not be allowed to file GSTR-3B, if GSTR-1 for the same tax period is not filed.

Furnish a reply explaining the reasons for the differential tax liability in Part B of FORM GST DRC-01B within 7 days of issuance of DRC-01B like typo errors

In case of non-compliance, recovery proceedings would be initiated against such taxpayer.

The defaulting taxpayer will not be allowed to file Form GSTR-1 for the subsequent tax periods, until a response to such form has been furnished or payment of tax has been made.

Interest would not be applicable on outward liability discharged by utilizing the input tax credit provided the liability is disclosed in the return for the tax period to which the liability pertains to. (**Past liability cannot be adjusted with future credits**)

Any liability declared in the subsequent tax period will not enjoy this benefit and interest will have to be paid on entire liability irrespective of whether this has been discharged by utilizing the credit or by discharging the cash.

Except when such returns is furnished after initiation of proceedings u/s 73 or 74 of CGST Act

Outward Supply of	Reported in the returns of	Return Filed on	Interest
July 2022	July 2022	August 20, 2022	No Interest
July 2022	July 2022	August 25, 2022	Interest applicable on liability discharged by utilizing cash ledger
July 2022	August 2022	September 20, 2022	Interest applicable for 1 month on the total liability of July reported in the returns for the month of August

Computation of Interest

• Section 50(3) Notified Retrospectively

- Applicable in case of ITC wrongly availed **and** utilized
- Rate of 18% will be continued – for 50(3) (Not9/2022)
- Section 50(1) applicable only in case of short payment / non payment of tax
- Computation Mechanism prescribed for calculation of interest
 - Excess Credit Balance – No interest
 - Credit Balance below the wrongly availed ITC – Interest from the date of utilization **only** to the extent of utilization
 - Utilization linked to Date of Filing of Return or debit to DRC 03 as the case may be

Month	Incorrect Credit Availed	Balance in ECL	Interest Applicable
1	100	500	No
2		200	No
3		90	Only on Rs 10

Formula for Inverted Duty Structure Refund (Rule 89(5))

Revised formula for claiming refund of unutilized ITC on account of inverted rate structure:

Maximum Refund Amount =

{(Turnover of inverted rated supply of goods and services) x Net ITC Adjusted Total Turnover} - [{tax payable on such inverted rated supply of goods and services x (Net ITC ÷ ITC availed on inputs and Input services)}].

- This amendment will lead to increase in refund
- Whether Application can be filed for earlier period with revised formula- yes based on circular 181/13/2022 dated 10.11.2022

Formula for Inverted duty structure has been modified

Particulars	Value	Tax
IDS Turnover – 5%	10,000	500
Regular Turnover – 18%	2,500	450
Total Outward Supply	12,500	950
Input Tax Credit		
Inputs	5,000	
Input Services	1,250	
	Before Amendment	After Amendment
Net ITC	5,000	5,000
Proportionate Credit	4,000	4,000
Reduction for tax paid on IDS turnover	500	400
Eligible Refund	3,500	3,600

• Changes in Form GSTR 3B

- Changes will impact the manner in which the ITC is being reported in the monthly returns
- Taxpayer should report the credit in the monthly returns based on the entries appearing in **Form GSTR 2B** and not based on the balance in their ITC register.
- A detailed Circular to explain the new credit disclosure mechanism has been issued [Circular No. 170/02/2022-GST]
- The manner of availing the credit in Form GSTR 3B once the revised tables are updated on the GST Portal are as follows.

Credit Type	Present Mechanism	Henceforth
Eligible Credit	Report in GSTR 3B in Table 4A	No Change
Ineligible Credit – Blocked Credit	Only Reported in GSTR 3B in Table 4D (not availed and reversed)	(1) To be availed in Table 4A of Form GSTR 3B and then (2) reversed in Table 4B
Ineligible Credit – Time Barred or PoS issue	Not reported in GSTR 3B	To be reported in GSTR 3B as ineligible credit in Table 4D
Eligible Credit but few conditions for availment not satisfied	Availed in the month in which all the conditions for availing credit are satisfied	(1) Avail the credit in Table 4A and (2) reverse the same in Table 4B. (3) Re-avail once all the conditions are satisfied in Table 4A and (4) separately disclose the same in Table 4D ₆

Sl No	Present	Amended	
4.	Eligible ITC		
(A)	ITC Available (whether in Full or Part)		
(1)	Import of Goods		
(2)	Import of Services		
(3)	Inward Supplies liable to RCM (other than 1 and 2 above)		
(4)	ISD Credit		
(5)	All Other ITC		
(B)	ITC Reversed		
(1)	As per Rule 42 & 43	+ Rule 38 and Section 17(5)	Permanent Reversal
(2)	Others	Rule 37 and Section 16(2)	Temporary Reversal
(C)	Net ITC Available (A) – (B)		
(D)	Ineligible ITC	Other Details	Does not impact ITC Ledger
(1)	As per Section 17(5)	ITC reclaimed which was reversed under Table 4(B)(2) in earlier tax period	
(2)	Others	Ineligible ITC under section 16(4) and ITC restricted due to PoS provisions	

- **Refund Application by customers in case of cancellation of flats**
- **Notification No 26/2022- Central Tax dated 26-12-2022**
- Primarily there was no mechanized procedure for claiming *Refund of GST by customers in case of cancellation of flats* especially in case of construction services.
- Generally, the construction contracts are long duration contracts and the time limit to issue credit note is regulated and accordingly customers were not refunded the GST component due to the restriction of time to issue of GST credit note.
- To avoid further concerns, the procedure has been specified for filing the refund application along with the supporting documents in RFD-01 by the customers.
- The separate application should be filed for different suppliers and should apply in the same state in which the supplier is registered, or else such person can obtain the temporary registration in the respective state.
- Where the time limit to issue the credit note is not expired, then in such instance the supplier can refund such taxes to the customer by issuing credit note. (*Circular No. 188/20/2022-GST*).

Residential Dwelling

Services of renting of residential dwelling now covered under RCM:

Services of renting of residential dwelling to a registered person is now taxable and covered under Reverse Charge Mechanism.

Accordingly, effective 18.07.2022, the recipient of such services i.e. the registered person, is liable to discharge GST under RCM for receipt of services of renting of residential dwelling.

It may be noted that services of renting of residential dwelling for use as residence to an unregistered person continues to be exempt from GST. ***Notification No. 05/2022 – Central Tax (Rate) dated 13.07.2022***

Renting of Residential Dwelling by a registered proprietorship in his personal capacity is exempt.

Renting of residential dwelling by a registered proprietor of a proprietorship concern in his personal capacity and not for use in the course of business is exempt from GST.

The exemption is subject to the fact that such renting is done on his own account and not on account of the proprietorship concern.

Notification No.15/2022 – Central Tax (Rate) dated 30.12.2022

Treatment of statutory dues under GST where the proceedings have been finalized under IBC:

- The CBIC has clarified that - where a demand by the tax authorities has been confirmed for recovery of Government dues against a corporate debtor.
- The Proceedings have been finalized against the corporate debtor under Insolvency and Bankruptcy Code, 2016 (IBC) by reducing the statutory dues payable under the CGST Act, 2017 or under the existing laws,
- then in such cases, the Jurisdictional Commissioner shall issue an intimation in FORM GST DRC-25 reducing such demand,
- to the taxable person or any other person as well as the appropriate authority with whom recovery proceedings are pending.
- **CBIC Circular No. 187/19/2022-GST, dated 27.12.2022**

- ***Mandatory declaration on the invoice issued by persons exempted from e-invoicing:***
- All invoices to be issued by persons exempted from e-invoicing i.e. SEZ units, Insurance Co., Banking Co. (including NBFC's), GTA, Passenger transportation service provider, Cinema Exhibitors, but crossing the threshold limit for applicability for e-invoicing are required to mandatorily include the following DECLARATION in the tax invoice:

“I/We hereby declare that though our aggregate turnover in any preceding financial year from 2017-18 onwards is more than the aggregate turnover notified under sub-rule (4) of rule 48, we are not required to prepare an invoice in terms of the provisions of the said subrule”. Notification No. 14/2022 – Central Tax dated 05.07.2022

CBIC Circular No. 186/18/2022-GST dated 27.12.2022

•E-Invoice:

- Certain entities/sectors have been exempted from mandatory generation of e-invoices. Basically, the exemption from generation of **e-invoices is for the entity as a whole** and is not restricted by the nature of supply being made by the said entity.
- **For Example:** A Banking Company providing banking services may also be involved in making supply of some goods, including bullion.
- The said banking company is exempted from mandatory issuance of e-invoice for all supplies of goods and services and thus, will not be required to issue e-invoice with respect to any supply made by it.

Facility introduced for cross transfer of amounts in e-cash ledger:

- The CBIC has introduced a facility for transfer of any amount lying unutilized in e-cash ledger from one account head to another and transfers between distinct persons / establishment of distinct persons viz., different GSTINs under same PAN, vide Form PMT-09.
- Such transfer is allowed only if there is no balance outstanding in the electronic liability register of the transferor's GSTIN.
- Further, the transfer of balances of e-cash ledger from 'CGST' to 'SGST' or vice versa is not permitted between different GSTINs under the same PAN.
- Notification No. 9/2022 – Central Tax & Notification No. 14/2022 – Central Tax both dated 05.07.2022***

•Reversal and re-availment of ITC in the case of non-payment of taxes by the supplier:

•Rule 37A

- The CBIC has prescribed a mechanism for reversal and re-availment of input tax credit ('ITC') in cases where the supplier has not remitted the taxes to the Government as under:
- If ITC has been availed in Form GSTR-3B, but the supplier has not remitted the relevant in Form GSTR-3B until 30th September of the following financial year, ITC is to be reversed by the recipient in Form GSTR-3B on or before 30th November following the end of such financial year during which such input tax credit has been availed.
- The ITC so reversed can be re-availed, if the supplier subsequently pays the taxes by filing Form GSTR-3B for the said tax period.
- Non-reversal of ITC within the aforesaid time limit will attract interest at 18%.
- Notification No. 26 / 2022 – Central Tax dated 26.12.2022**

- **Clarification on treatment of differences in ITC as per GSTR-2A and as claimed in GSTR3B for FY 2017-18 & 2018-19:**
- **CBIC Circular No. 183/15/2022-GST dated 27.12.2022**

Scenario

- Form GSTR-1 not filed by Supplier
- Tax invoice not declared in Form GSTR-1 of Supplier
- Supply reported as B2C instead of B2B
- Wrong GSTIN of the recipient is mentioned in Form GSTR-1 (In all the cases, GSTR-3B has been filed by the supplier)

• **Procedure to be followed by the Proper Officer:**

• Proper officer should seek details of tax invoices on which ITC was availed in Form GSTR-3B but are not reflecting in GSTR-2A and ensure that the following conditions are satisfied by the recipient:

- ✓ He is in possession of tax invoice or debit note;
- ✓ The goods and / or services are received;
- ✓ The invoice value in full has been paid to the supplier;
- ✓ ITC has been availed within the prescribed time limit; and
- ✓ ITC is not required to be reversed under Section 17 or 18 of the CGST Act, 2017.

Additionally, to verify that the supplier has remitted the applicable taxes, the following procedure is to be followed:

- Where ITC difference (supplier-wise)
- Exceeds Rs. 5 lakhs : A certificate from a Chartered Accountant (CA) or Cost Accountant (CMA) to be produced to the effect that the supplier has actually supplied goods / services and has remitted the taxes through Form GSTR-3B
- Is up to Rs. 5 lakhs: A certificate from the supplier to the effect that he has actually supplied goods/ services and has remitted the taxes through Form GSTR-3B.

- For FY 2017-18, the aforesaid relaxation shall not apply,
- where ITC is claimed in FORM GSTR-3B after the due date of furnishing return for September 2018 till the due date of furnishing return for March 2019,
- if supplier had not furnished the details till the due date of furnishing FORM GSTR-1 for the March 2019.
- ***Wipro Limited India Vs Assistant Commissioner of Central Taxes (Karnataka HC)***
- ***The Assessee is allowed to rectify the bonafide errors committed in filing of forms and GST Returns for Financial Year 2017-2020- Identical errors in 2019-2020***

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• **CBIC Circular No. 183/16/2022-GST dated 27.12.2022**

• **Procedural amendments with respect to Appeals:**

• Certain procedural amendments have been made with respect to appeals as under:

• Submission of a certified copy of the order appealed against and the issuance of a final acknowledgement by the appellate authority.

• Facility for withdrawal of an appeal prior to issuance of an order or issuance of a show cause notice (where a demand is enhanced in remanded matter) has been introduced.

• The withdrawal will be subject to approval, where the final acknowledgement of appeal is already issued.

• **Notification No. 26 / 2022 – Central Tax dated 26.12.2022**

•Time limit for re-determination of tax liability where charges of fraud, willful misstatement or suppression of facts is not established:

•Where the Appellate Authority or the GST Tribunal or a Court concludes that the show cause notice (SCN) issued by a proper officer (Officer) on account of a fraud / willful-misstatement / suppression of facts is not established and directs the officer to re-determine the tax liability under Section 73 of the said Act, in such cases, the following mechanism for re-determination of the tax liability is to be followed.

•Time limit for re-determination of tax liability and issuance of order:

•The officer shall issue a demand order re-determining the tax liability within 2 years from the date of communication of the direction by the appellate authority/tribunal or the court. However, such order can only be issued where the SCN is issued by the officer within the normal period of limitation. If the SCN is issued beyond the normal period of limitation, the entire proceeding would have to be dropped.

• **Re-determination of tax liability and issuance of order where a single SCN covers multiple financial years:**

• If the SCN is issued within the normal period of limitation for 1 FY and beyond normal period of limitation for one/other years, the officer is empowered to redetermine the tax liability only for such financial year(s) where the SCN was issued within the normal period of limitation.

• **Illustration:** A single SCN u/s 74(1) is issued for the period July 2017 to March 2021. Assuming that the normal period of limitation has expired only for FY 2017-18, the redetermination of the tax liability can be done only for the FY 2018-19 to FY 2020-21 and the entire proceedings for FY 2017-18 would have to be dropped.

• **CBIC Circular No 185/17/2022 –GST dated 27.12.2022**

Period of limitation (time limit) extended for conclusion of assessment, application for refund and recovery of erroneous refund:

Effective 01.03.2020, the CBIC has extended the time limit for issuance of order towards recovery of tax not paid / short paid or ITC wrongly availed or utilized under Section 73(9) of the CGST Act, 2017 up to 30.09.2023.

Hitherto the last date for issuance of order was 05.02.2023.

Further, the period from 01.03.2020 to 28.02.2022 is to be excluded for computation of period of limitation for filing of refund applications and for computation of period of limitation for issuance of order.

Notification No. 13/2022 – Central Tax dated 05.07.2022

• **Tax invoice issued to an unregistered person to contain recipient's details:**

- Tax invoices issued for taxable supplies made to unregistered persons by / through an e-commerce operator or by a supplier of OIDAR services should now contain recipient's name and address along with the PIN code in addition to the existing particulars.
- The additional requirements would be mandatory, irrespective of the value of such supply and the said address and the State shall be deemed to be the address on record of the recipient.
- **Notification No. 26 / 2022 – Central Tax dated 26.12.2022**

• **Proportionate reversal of ITC for non-payment of consideration to the supplier to continue:**

- Suitable amendments have been made to the GST laws to provide that, effective 01.10.2022, a taxpayer is required to pay or reverse ITC only proportionate to the amount not paid to the supplier within 180 days from the date of invoice.
- Accordingly, the facility of availing ITC proportionate to the payment made to the vendors, which was availed from the inception of GST, would continue.
- **Notification No. 26 / 2022 – Central Tax dated 26.12.2022**

- **Manner of processing of IGST refunds which are withheld w.r.t. ‘Risky Exporters’, prescribed:**
- The CBIC has issued detailed guidelines with respect to processing and sanctioning of IGST refund applications made by exporters (of goods).
- The verification to be performed by the Directorate General of Analytics and Risk Management (DGARM) is summarized below:
- The system will withhold the IGST refunds of the exporter classified as ‘risky exporter’ by DGARM.
- Details of such exporter along with the risk parameters used and the auto-generated refund claim would be made available to the jurisdictional officer on the GSTN portal.
- The jurisdictional officer should immediately process them in a manner similar to other RFD-01 refunds claims filed.
- The officer to pass a detailed speaking order of the refund claim, following the timelines prescribed and upload the same with the refund sanction order in GST RFD06.
- The detailed guidelines may be accessed on this link .
- **Instruction No. 04/2022-GST dated 28.11.2022**

- **Advisory on the sequential filing of GSTR 1 dated 21.10.2022**
- Implementation of mandatory mentioning of HSN codes in Form GSTR-1:
- Effective 01.11.2022, taxpayers having annual aggregate turnover of up to Rs. 5 crores in the preceding financial year would be required to report 4-digit HSN codes in table 12 of Form GSTR-1.
- It may be noted that taxpayers having aggregate turnover of more than Rs. 5 crores are required to report 6-digit HSN in table 12 of Form GSTR-1.
- Advisory on implementation of mandatory mentioning of HSN codes in GSTR-1 dated 22.10.2022

- **Legislative changes made vide Finance Act, 2022 - notified from 01st October 2022: Notification 18/2022**
- **Additional conditions prescribed for entitlement of Input Tax Credit:**
- Additional condition has been introduced for entitlement of input tax credit (in short, 'ITC') wherein in it is provided that ITC can be claimed only if such ITC has not been restricted in the Form GSTR-2B.

- **Following are the conditions on which ITC is eligible:**
- Possession of tax invoice/ debit note/any other documents. –
- Receipt of Goods / Services. –
- Taxes on supply has been paid to the Government by the supplier.
- Filing of GST Returns (Form GSTR-3B).

- **Additional Condition introduced Section 38(2) read with section 16(ba)**
- ITC should not be restricted in Form GSTR-2B u/s 38 of the CGST Act, 2017.
- Restrictions are on supplies from suppliers: - who have taken new registration under the GST law for a limited period (period to be prescribed).
- who have defaulted in payment of taxes continuously for a prescribed period.
- Where output tax payable as per Form GSTR1 exceeds in output taxes paid in Form GSTR3B.
- Who have availed ITC in excess of the limit prescribed (limit to be prescribed) as made available in Form GSTR-2B during a prescribed period. –
- where output tax is not discharged by the supplier in prescribed manner through Electronic Cash Ledger.

• **Availment of ITC on a Self-assessment basis:**

- The credit of eligible input tax shall be availed by a registered person in his electronic credit ledger on a ‘self-assessed basis’ in the returns filed by such person.
- Hitherto, credit of eligible input tax was available to a registered person on a ‘provisional basis’.
- Further, if the supplier is not paid taxes on which ITC is availed, then the recipient of the supply is required to reverse the ITC along with interest.
- Such ITC reversed can be re-availed by the recipient only upon payment of taxes by the supplier.

• **Input Tax Credit entitlement and Credit Note – Extension of due date:**

- The time limit for claim of ITC relating to a particular financial year has been extended till 30th November of next financial year.
- Similarly, time limit for declaration of credit notes relating to a particular financial year has been extended till 30th November of next financial year.
- Thus, ITC on invoices/debit notes relating to a financial year is to be claimed in the Form GSTR-3B of October of the next financial year.
- Further, issuance and declaration of credit note relating to a financial year is to be undertaken in Form GSTR 1 and in Form GSTR-3B of October of the next financial year. (Hitherto, it was 20th October of next financial year i.e. due date of Form GSTR-3B of September).
- Press release issued by Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs dated 04.11.2022 has clarified that the extended timelines is applicable to compliances for financial year 2021-22.

- **Cancellation of GST Registration on account of non-filing of returns:**
- **GST registration may now be cancelled if:**
- **Composition Taxpayer:** If he has not furnished the return for a financial year beyond three months from the due date of furnishing the said return.
- Earlier, the **cancellation** was permitted only if returns were not filed for three consecutive tax periods.
- **Regular Taxpayer:** If he has not furnished his returns for such a continuous tax period (not yet prescribed).
- Earlier, the cancellation was permitted only if returns were not filed for six consecutive tax periods.

- **Relevant Date for supplies made to SEZ:**

- In order to claim a refund with respect to supplies made to SEZ units / developer, the registered person is required to file a refund application before the expiry of 2 years from the “Relevant Date”.
- Owing to lack of clarity on the relevant date for refund claims with respect to SEZ supplies, suitable amendments have been made to state that the “Relevant Date” for supplies made to SEZ units / developer would be the “due date for furnishing of return under section 39 in respect of such supplies”.

- **Late fee – delay in filing of returns by E-commerce operator:**

- Failure to furnish the statement of TCS in Form GSTR-8 within the due date (10th of the following month) will attract a late fee of Rs. 100/- day for the period of default subject to a maximum of Rs. 5,000/-.
- Earlier, there was no levy of late fee for delay in filing of the said Form GSTR-8.
- **Notification No.18/2022–Central Tax, dated 28.09.2022; Press Release, dated 04.10.2022**

Restriction/conditions for usage of Electronic Credit Ledger:

- The Government has been empowered to specify the maximum proportion of output tax liability which may be discharged by way of utilizing the balance lying in the electronic credit ledger for a specific class of registered persons.
- As a result, Rule 86B of CGST Rules, 2017, which provides a maximum threshold limit of the utilization of input tax credit lying in the electronic credit ledger to the extent of 99% of total output tax liability, has now been given legal backing.

Mandatory e-Invoicing if turnover crosses Rs. 10 Crores:

- The CBIC has further reduced the threshold limit of ‘aggregate turnover’ for the applicability of e-invoicing provisions from Rs. 20 crores to Rs. 10 crores effective 01.10.2022.
- Therefore, effective 01.10.2022, any registered person, whose aggregate turnover (under the same PAN computed on all India basis) in any preceding financial year from 2017-18 onwards exceeds Rs. 10 Crores, is required to comply with the e-invoicing provisions for B2B transactions and exports.
- An invoice issued in non-compliance with the e-invoicing provisions will not be treated as a valid tax invoice.

Notification No. 17/2022 – Central Tax, dated 01.08.2022

Educational Institutions:

Fees charged from prospective students for entrance or admission; issuance of eligibility certificate in the process of their entrance/admission;

issuance of migration certificates by educational institutions to the leaving / ex-students Is exempt from GST and is covered by exemption

under Serial. No. 66 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 (Exemption Notification for Services).

Selling of space for advertisement in “souvenirs” published as books:

- Sale of space for advertisement in souvenir book will attract GST at 5% [covered under Sl. No. 21(i) of Notification No. 11/2017-Central Tax (Rate) (Rate Notification for Services)] on the interpretation that books cover souvenir books also.
- Accordingly, GST at 5% applicable to sale of space for advertisement in print media will apply for sale of space for advertisement in books / souvenir books also.

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

- Land may be sold either as it is or after some development such as levelling, laying down of drainage lines, water lines, electricity lines, etc. It is clarified that sale of such developed land is also sale of land and is covered by Sr. No. 5 of Schedule III of the Central Goods and Services Tax Act, 2017 and accordingly does not attract GST.
- However, it may be noted that any **service provided** for development of land, like levelling, laying of drainage lines (as may be received by developers) shall attract GST at applicable rate for such services.

RCM liability - renting of motor vehicles designed to carry passengers:

It has been clarified that, where a the body corporate hires a motor vehicle (for transport of employees etc.) for a period of time, during which the motor vehicle shall be at the disposal of the body corporate, the same is liable GST under RCM in the hands of the body corporate.

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

Hiring of vehicles by firms for transportation of their employees to and from work:

GST exemption would apply to passenger transportation services by non-air-conditioned contract carriages (HSN 9964) where according to explanatory notes, transportation takes place over pre-determined route on a pre-determined schedule.

GST exemption is not applicable where contract carriage is hired for a period of time, during which the contract carriage is at the disposal of the service recipient and the recipient is free to decide the manner of usage (route and schedule) subject to conditions of the agreement entered with the service provider.

Circular No. 177/09/2022-TRU, dated 03.08.2022

Retrospective change in the rate of interest where ITC has been wrongly availed and utilised:

- The rate of interest applicable where a registered person has wrongly availed and utilized ITC has been retrospectively reduced from 24% p.a. to 18% p.a.
- Earlier, interest at the rate of 24% was applicable where ITC had been wrongly availed, irrespective of its utilization.
- ***Notification No. 9/2022 – Central Tax dated 05.07.2022***

Deemed revocation of suspension of Registration upon furnishing of Pending returns:

- In cases where a taxpayer's registration was suspended for non-filing of returns,
- the CBIC has provided for deemed revocation of suspension of registration,
- once the pending returns are filed by such taxpayer.
- The said deemed revocation would not be applicable where the registration is already cancelled by proper officer.

Notification No. 14/2022 – Central Tax dated 05.07.2022

No Reversal of common Input Tax Credit on supply of duty credit scrips:

- For the limited purpose of computation of reversal of common input tax credit under Rule 42 and 43 of CGST Rules, 2017 the value of supply of duty credit scrips are to be excluded from the aggregate value of 'exempt supplies.
- However, the supply of duty credit scrips should be continued to be declared as exempt supplies in Form GSTR-1, GSTR-3B, GSTR-9 and GSTR-9C.

Notification No. 14/2022 – Central Tax dated 05.07.2022

- Additional modes of payment introduced:
 - IMPS & UPI have been added as an authorized mode of payment for deposit of amounts (towards tax, interest, penalty, fees, or any other amount) into the e-cash ledger.
 - *Notification No. 14/2022 – Central Tax dated 05.07.2022*
-
- **Re-credit to e-credit ledger on depositing amounts relating to erroneous refunds received:**
 - Where a registered person deposits the amount of erroneous refund sanctioned to him by utilizing the electronic cash ledger in Form GST DRC-03,
 - the proper officer shall re-credit an amount equivalent to the amount of erroneous refund deposited by the registered person to the electronic credit ledger of such person in Form GST PMT-3A.
 - *Notification No. 14/2022 – Central Tax dated 05.07.2022 & Circular No. 174/06/2022 – GST dated 06.07.2022*

- Value of export of goods explained for claiming refund:
- For claiming refund of accumulated ITC on account of export of goods under LUT, the value of export of goods has been defined to mean lower of:
 - Declared FOB value in the Shipping Bill / Bill of Export; or
 - Value declared in the tax invoice / bill of supply.
- ***Notification No. 14/2022 – Central Tax dated 05.07.2022***

- **Withdrawal of refund of tax paid by Duty Free Shops:**
- Refund of taxes will no longer be available to a Retail Outlet,
- where such supplies are further made tax free to an outgoing International Tourist.
- **Notification No. 14/2022 – Central Tax dated 05.07.2022 & Circular No. 176/08/2022 dated 06.07.2022 (deemed that it is deleted from 01.7.2019) Rule 95-A is deleted**

• **Date of Refund Application – Involving amendment to Shipping Bill:**

- A shipping bill will be deemed to be a refund application w.r.t. refund of IGST paid on export of goods, only when mismatches (if any) between data as per Form GSTR-1 and Shipping Bill are rectified.
- In such cases, the date of filing refund application will be deemed to be the date on which such mismatch is rectified by the exporter.
- **Effective date: 01.07.2017 Notification No. 14/2022 – Central Tax dated 05.07.2022**

- **Clarification on refund of Input Tax Credit claimed by recipient of deemed export supplies:**
- It has been clarified that ITC of tax paid on deemed export supplies was allowed to the recipients as ‘ITC’ only for the purpose of claiming refund of such tax paid.
- The said amounts do not qualify as ‘ITC’ under the GST laws and hence, would not be subjected to provisions of Section 17 of the CGST Act, 2017 i.e. blocked credits.
- Consequentially, such amounts are NOT to be included in the computations of “Net ITC” for refunds pertaining to zero rated supplies or supplies under inverted duty structure.
- **Circular No. 172/04/2022 dated 06.05.2022**

- **Perquisites: Circular No. 172/04/2022 dated 06.05.2022**

- Perquisites provided to employee based on the Employment Contract will not be subject to GST.
- No clarification on recoveries from employees
- Perquisite given outside the Employment contract
- Perquisite as detailed in Employment contract
- Perquisite- Income Tax Act?
- Can agreement be altered with employees retrospectively/prospectively?

Change in Tax Rates

• **Accommodation Services**

- Clinical establishments- Room Rent > Rs 5,000 (except ICU and the likes)
- Concept of composite supply-
- Hotel Accommodation less than Rs 1,000 liable to tax- short term accommodation
- GST on hostels/PG- Is it different from hotel accommodation- dahar vasudevan ambrish Karnataka HC)- Hostels are residential dwelling/circular 38
- Residential dwelling to registered person – Liable to tax under RCM- 48 council meeting
- Whether Input tax credit is eligible/

• **Goods Transport Agency – Complete overhaul of rate structure**

- Definition of Consignment Note added
- Option to pay taxes under FCM / RCM at the beginning of the year
- FCM – Option to charge 5% w/o ITC or 12% with ITC
- Submission of Annexure V by August 16 for FY 2022-2023
- Invoice to carry declaration
- Exemption of Rs 750 and Rs 1,500 withdrawn

- **Filing of Appeal**

- Where the decision or order appealed against is uploaded on the common portal, a final acknowledgment, indicating appeal number, shall be issued in **FORM GST APL-02** by the Appellate Authority or an officer authorised by him in this behalf and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal.
- Where the decision or order appealed against is not uploaded on the common portal, the appellant shall submit a self-certified copy of the said decision or order within a period of seven days from the date of filing of **FORM GST APL-01** and a final acknowledgment, indicating appeal number, shall be issued in **FORM GST APL-02** by the Appellate Authority and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal.
- Where the self-certified copy of the decision or order is not submitted **within a period of seven days from the date of filing of FORM GST APL-01**, the date of submission of such copy shall be considered as the date of filing of appeal.

Compensation and penalty arising out of breach of contract or other provisions of law - Circular No. 178/10/2022-GST, dated 03-08-2022

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

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

Supply	Old Rate	New Rate
Construction / Works Contract Services like (a)Construction of Dams, Canals, Roads (b)Construction of Single Residential Unit (c)Low cost houses constructed under Affordable Housing Scheme (d)Pollution Control or Effluent Treatment Plant	12%	18%
Services by way of licensing, registration and analysis or testing of food samples supplied by FSSAI	Exempt	18%
Training or Coaching in recreational activities relating to art or culture provided by		
Individuals	Exempt	Exempt
Other than Individuals	Exempt	18%
E Waste	5%	18%
Solar Water Heater and System	5%	12%
Diamonds (Other than Rough diamonds or simply sawn diamonds, industrial or non-industrial)	0.25%	1.5%
Supplies to Research Institutions, Government Laboratories, Regional Cancer Centre (covered under Notification 45/2017 till July 17, 2022)	5%	Applicable Tax Rate

▪ Rate changes

S No	Particulars	Amendment
1	Husk of pulses including chilka and concentrates including chuni/churi, khanda	5% to NIL
2	Ethyl alcohol supplied to refineries for blending with motor spirit (petrol)	18% to 5%
3	Supply of “Mentha arvensis”	Under Reverse Charge now
4	Rab (rab-salawat)	Classifiable under CTH 1702 @18%
5	fryums manufactured using the process of extrusion	fryums manufactured using the process of extrusion
6	Motor vehicle fulfilling all 4 conditions namely 1. it is popularly known as SUV, 2. has engine capacity exceeding 1500 Cc, 3. length exceeding 4000 mm, 4. ground clearance of 170 mm or above	Higher Compensation cess of 22% is applicable

7	goods falling in lower rate category of 5% under schedule I of notification No. 1/2017-CTR imported for petroleum operations.	will attract lower rate of 5%
8	goods falling in other higher than 12% rate category of notification No. 1/2017-CTR imported for petroleum operations)	Will attract 12%

- The Council decided to regularise the intervening period starting from the date of issuance of Circular (3.08.2022) in respect of GST on ‘husk of pulses including chilka and concentrates including chuni/churi, khanda’ on “as is basis” on account of genuine doubts.

Common Issues in Notice :

- 1. Holding/Subsidiary Company transactions**
- 2. Loan Processing**
- 3. Corporate Guarantee- Centre is also contemplating this issue**
- 4. 180 days payment**
- 5. RCM Payments**
- 6. GSTR 2A Vs GSTR 3B**
- 7. 50 of GSTR 9C- Break up and explanation why not taxable**
- 8. DRC 03 for difference in Tables of GSTR 9**



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