



# July 2022 to January 2023

**39**

Notifications,  
Instructions,  
Advisories &  
Circulars

**2**

Council  
Meetings (47  
and 48)

**66**

Changes for  
discussion today

# Input Credits

- **Securing the differences between GSTR-2A vs GSTR-3B for FY 2017-18 and 2018-19**  
**(ONLY)-S. 16 r/w R. 36(4):**
  - Up to Rs. 5 Lakhs per year per supplier Self-certification from the supplier
  - Exceeds Rs. 5 Lakhs Certificate from a CA / CMA
- **ITC reversal only to the extent of value of supply unpaid- R.37:**  
Not the full amount of GST in the invoice but proportionately to the extent it remains unpaid beyond 180 days (*wref 01.10.2022*)

# Input Credits

- **Mechanism for reversal and re-availment of ITC where tax is subsequently paid by supplier- R.37A**

(i) ITC to be reversed on or before 30th November of the following FY if the supplier has not paid the taxes on such invoices vide the GSTR-3B until 30th September (ii) discharge interest for reversal beyond 30.11 (iii) Re-avail the same if taxes are subsequently discharged by the supplier.
- **Availment of ITC on a self-assessment basis- S.41**

ITC shall be availed in ECL on a 'self-assessed basis', rather than provisional basis

# Input Credits

- **Retrospective change in interest rate where ITC is wrongly availed and utilized-S.50:**  
Reduced from 24% p.a. to 18% p.a. Hitherto, @ 24% irrespective of its utilization
- **Reversals under R. 42 and R. 43 for duty credit scrips:**  
Value of duty credit scrips to be excluded from the aggregate value of 'exempt supplies' for computation of reversals under Rule 42 & 43; however, sale value duty credit scrips to be declared as exempt supplies in returns

# Input Credits

## **GSTN's actions – ITC will be restricted in GSTR 2B if:**

- Supplier is newly registered (upto a period yet to be prescribed) – if your vendor is newly registered under GST, do not purchase!
- Supplier has continuously defaulted in payment of tax – ‘default’ could be, not paying within due dates, paying wrong taxes etc.
- Supplier's 3B is understated in comparison to GSTR 1
- Supplier has availed more ITC than what he is eligible to (could be incorrect or ineligible credits or even if claimed in excess of 2B)
- Supplier has not complied with 99% rule (atleast 1% of output tax to be paid thru ECaL)
- Supplier belongs to ‘such other class of persons’ as may be prescribed

# Input Credits

- **Restriction / conditions for usage of balance in ECrL**

ENABLING SECTION for Rule 86B (?) specifies maximum proportion of output tax liability which may be discharged by way of utilizing the balance lying in the ECL (*ITC to the extent of 99% of output tax liability*)

# Some Clarifications

- **“Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act”** - declared to be a supply of service in terms of Para 5 (e) of Schedule II – EXPLAINED
- **Liquidated damages** – suffered due to breach of contract – NOT TAXABLE
- **Fixed capacity charges for power**  
Minimum fixed charge (or capacity charge) and variable per unit charge, both are towards ‘supply of electricity’ – hence, not taxable as supply of electricity is exempt from GST
- **Penalty imposed for violation of laws** – not taxable

# Some Clarifications

- **Late payment surcharge or fee taxable as naturally bundled to the main supply**

Facility of accepting late payments with interest or late payment fee

- **Cancellation charges**

Is for facilitation and therefore considered to naturally bundled – will be a composite supply  
*(including retention or forfeiture monies and whether directly paid or adjusted from deposits)*

- **Cheque dishonor fine / penalty**

Not a fee for tolerating, penalizing or to discourage such an act / situation and is not imposed for tolerating the act – not a supply; not a service – not taxable



# Some Clarifications

- **Forfeiture of salaries from employees**

Premature leaving results in disruption of work. Forfeiture of salary or recovery of bond amount are incorporated to discourage non-serious candidates from taking up employment.

Employee does not get anything in return from the employer against payment of such amounts

– not taxable

- **Demand of tax and penalty with respect to fake invoicing matters-Cir No. 171/03/2022**

Applicability of demand and penalty with respect to fake invoicing matters has been clarified by way of scenario-based illustrations (no tax, but only penalty based on fundamental principles)

# Some Clarifications

- **Blocked ITC-S.17(5):** It has been clarified that ITC would be available on any goods or services which are mandated to be provided by an employer to its employees under any law, including food and beverages, life insurance & rent-a-cab. ITC is blocked only on leasing, renting or hiring of motor vehicles, vessels or aircrafts only and NOT of leasing, renting or hiring of any other items
- **Employer to employee perquisites - Not taxable-** *Circular No. 172/04/2022-GST:*  
Perquisites in terms of the contractual agreement are in lieu of services provided by the employee to the employer in relation to employment and hence, will not be subjected to GST

# Some Clarifications

- **Utilization of amount in ECrL- S.49(3) r/w Circular No. 172/04/2022-GST:**

Can be utilized for discharge of output tax only (whether self-assessed in the return or payable because of any GST proceedings); Since output tax does not include tax payable under RCM, it cannot be used for the same

# Some Clarifications - Rate

*Clarifications through Circular No. 177/09/2022-TRU*

Nature of Service	Clarification
Fees charged by educational institutions from students for admission, issuance of certain certificates, etc.	Exempt and covered under Sl. No. 66 of exemption notification.
Selling of space for advertisement in "souvenirs" published as books.	Taxable at 5% ( <i>on the interpretation that books cover souvenir books also</i> ).
PLC collected for long term lease of land.	To be treated as upfront lease charges and eligible for exemption.
Additional toll fees collected from vehicles not having fast tags.	Such additional toll fees will be taxable on par with toll charges.

# Some Clarifications - Rate

Nature of Service	Clarification
Sale of land after levelling, laying down of drainage lines etc.	Is sale of land covered under Schedule III and accordingly does not attract GST. However, levelling, laying of drainage lines shall attract GST at applicable rates.
RCM liability – renting of passenger transport motor vehicles.	If at the disposal of the body corporate-RCM will trigger. If passenger transport service availed for specific journeys- NO trigger of RCM.
Hiring of vehicles for transportation of employees to and from work.	Exemption would apply for non-air-conditioned contract carriages over a <b>pre-determined route</b> on a <b>pre-determined schedule</b> .

# Exemption

- **Renting of residential dwelling and RCM implications**

<b>Taxability</b>	<b>Recipient</b>
Supplier (RP)	Tax payable by the recipient under RCM at 18% whether or not used as residence.
Supplier (URP)	ITC available to recipient if used in the course furtherance of business.  Not taxable if used as residence

# Some changes in time limits

- **Adjusting the GST impact on account of Credit / Debit notes- S.34:**

Time limit for declaration of credit/debit notes for any FY year extended till 30<sup>th</sup> November the of next financial year (*hitherto due date of furnishing return for Sept of the following year*)

- **Time limit for claim of ITC- S.16(4):**

Claim of ITC relating to a particular FY has been extended up to 30th November of the next FY

# Invoicing

- **Absolute exemption from e-invoicing-** *r/w Circular No. 186/18/2022-GST*

For the following, irrespective of the nature of supplies (i) Government department (ii) Special Economic Zone unit (iii) Insurance company and Financial institution (iv) GTA or a passenger transport service provider (v) Multiplex theatres, exemption from e-invoice is absolute and not restricted by nature of supply

- **Invoice cum bill of supply-** *R. 46A:*

To be issued by Registered persons supplying taxable as well as exempted goods and / or services to an unregistered person (*specifics in Rule 46 (Tax Invoice), Rule 49 (Bill of Supply) and Rule 54 (Tax invoice in special cases)*)

# Invoicing

- **Tax invoice issued by an E-commerce operator or an OIDAR for taxable services- R.46:**

To contain the name and address along with the PIN code of the unregistered person to whom invoice is issued.

- **Mandatory e-Invoicing if turnover crosses Rs. 10 crores- R. 48(4) r/w Notf. No. 17/2022–**

*Central Tax:*

Effective 1<sup>st</sup> October 2022, for cases where the aggregate turnover in any preceding FY (from 2017-18) onwards exceeds Rs. 10 crores, e-invoicing provisions for B2B and export transactions is mandatory

# Invoicing

- **Declaration on the invoice issued by persons not issuing e-invoices-R. 46:**

Declaration to be provided by taxpayers exempted from e-invoicing (SEZs, Insurance Cos) – I  
*/ We hereby declare that though our aggregate turnover in any preceding financial year from 2017-18 onwards is more than the aggregate turnover notified under sub-rule (4) of rule 48, we are not required to prepare an invoice in terms of the provisions of the said sub-rule.*

# Returns

- **4/6 digit HSN code in Table 12 of GSTR 1 mandatory**

Effective 01.11.2022, 6 digits if the turnover is > Rs. 5 Crores and 4 digit in all other cases

- **Sequential filing of GSTR-1 mandatory**

GSTR-1 for a tax period cannot be filed unless filed for the previous tax period

- **Rectification of any errors or omissions** in Form GSTR-1

Earlier of: (i) 30th November of the following FY or (ii) Date of furnishing of annual return

- **Differences in GSTR-1 and GSTR-3B** (*Rule 88C*)

Intimation in Part A of GST DRC-01B and Direction to: PAY OR EXPLAIN REASONS within 7 days

- **Changes in the disclosures in Form GSTR-3B- ITC related (Table 4)**

# Returns

- **Non-Resident taxable persons to file returns in GSTR 5- S. 39(5):**

At the earliest of (i) within the 13<sup>th</sup> of the following month (*hitherto 20th*); or (ii) within 7 days after the last day of the period of registration.

- **QRMP scheme taxpayers can now opt to pay taxes as under- S. 39:**

Self-assessment basis - after considering inward and outward supplies, input tax credit availed and such other particulars during the month; **OR**

An amount determined in a specified manner (*not yet prescribed*)

- **Introduction of Single Click Nil Filing of GSTR-1- News and updates, GSTIN: Checkbox "File NIL GSTR-1**

# Returns

- **Facility introduced for transfer of amounts in ECaL – R. 87(13) and 87(14)**

Form PMT-09 can be used to transfer unutilized amounts in in ECaL from (i) one account head to another OR (ii) transfers between different GSTINs under same PAN.

Allowed only if no balance is outstanding in electronic liability register.

Transfers across CGST and SGST will not be allowed

- **Computation of interest on delayed payment of taxes- R. 88B:**

Belated declaration of output taxes – applicable only for tax remitted thru ECaL

ITC wrongly availed and utilized - interest to be calculated from the date of utilization till the date of reversal / payment of tax

# Registrations

- **TDS / TCS registration cancellations**

Facility introduced to enable registered persons who are no longer liable to deduct or collect tax, for suo moto cancellation of registrations

- **Safeguards** in registrations

Bio-metric-based Aadhar authentication, capturing photographs of the applicant, verification of original copies of documentation required for granting GST registration certificates

Mobile and e-mail address to be linked to PAN

- **Registrations will be cancelled for non-filing of returns**

Composition Taxpayers - Non-filing beyond three months from due date

Regular Taxpayers - Non-filing for XXX continuous tax periods from the due date

# Refunds

- **ITC availability on transportation of goods to a place outside India-S.12(8) of IGST Act:**  
Recipient of service of transportation of goods shall be eligible for ITC of IGST charged by supplier, where goods are transported to a place outside India, notwithstanding that PoS is the destination of such goods
- **Claim of refund of taxes by URPs enabled – S.54(1) r/w Circ 188/2022-GST:**  
Where the time limit to issue a credit note has lapsed, for cancellation of contract / agreement for services of construction of flats / buildings AND premature termination of long-term insurance policy  
“Relevant date” would be the date of issuance of letter of cancellation of the contract / agreement

# Refunds

- **Inverted tax structure- S. 54(3) r/w R. 89(5):**

Prospective application of modified formula for refunds under inverted tax structure

Reduction of output tax on inverted rated supplies to be done in the same ratio in which ITC has been availed on input and input services during the relevant period (wef 05.07.2022)

- **Refund of Tax - Relevant Date for supplies made to SEZs- S.54:**

“Relevant Date” for claim of refunds for supplies made to SEZs would be the “due date for furnishing of return under S. 39 in respect of such supplies” (*furnishing of return by Supplier or SEZ?*)

# Refunds

- **Re-credit to ECrL on depositing amounts relating to erroneous refunds- R. 86(4B):**  
Erroneous refunds, repaid by taxpayer utilizing electronic cash ledger in Form GST DRC-03 will be recredited into the ECrL through Form GST PMT-3A
- **Specified officer** - Endorsing documents (invoices) for refund application in respect of supplies made to SEZs would be a "specified officer" or an "authorised officer" as defined under Rule 2 of the Special Economic Zone Rules, 2006 – DEVELOPMENT COMMISSIONER
- **Value of 'export of goods' for claiming refund explained -R.89 (2) (ba):** would be the lower of:
  - (i) Declared FOB value in the Shipping Bill / Bill of Export OR
  - (ii) Value declared in the tax invoice / bill of supply.

# Refunds

- **Direct procedure for refund of ITC paid by Duty Free Shops removed** - *R.95A*: Refund of such ITC would have to be claimed as 'exporter of goods'
- **Date of Refund Application in cases of amendments to Shipping Bills**-*R.96*: Would be the date of amended shipping bill for exports with payment of tax
- **Scope for withholding refunds expanded**-*R.96*: Refund may now be withheld in cases involving verification of credentials of exporters (in the opinion of the Commissioner or Board based on data analysis and risk parameters)

# Refunds

- **Mandatory verification of refund claims where refund of IGST paid on export is by risky exporters:** *Inst 4/2022 dated 28.11.2022* – Refunds for risky exporters as identified by GSTN will be automatically withheld; jurisdictional officer will be intimated and has to undertake a thorough scrutiny of the complete claim
- **Refund under inverted duty structure for concessional rate supplies:** Refund of accumulated ITC will be allowed even on supply of goods against concessional rate of tax

# Refunds

- **Clarification on refund of ITC claimed by recipient of deemed export supplies:** *Circ No. 172/04/2022*

ITC of tax paid on deemed export 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 S. 17 of the CGST Act, 2017 (blocked credits). Consequently, 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

# Appeals

- *Rule-108*: Date of issuance of provisional acknowledgment shall be considered as the date of filing of appeal
  - Where the decision or order appealed against is uploaded on the GST portal at the time of filing an appeal;
  - Where the decision or order appealed against is not uploaded on the common portal, but the appellant has submitted a self-certified copy of the said decision or order within a period of 7 days from the date of filing of appeal in FORM GST APL-01.

Where self-certified copy is not submitted within 7 days - date of submission of such copy shall be considered as the date of filing of appeal

# Appeals

- **Facility for withdrawal of appeal filed before the Appellate Authority**
  - Rule 109C has been inserted to enable withdrawal of an appeal prior to issuance of an order or issuance of a show cause notice in case where a demand is enhanced.
  - However, where a final acknowledgment is issued accepting an appeal - may be withdrawn post the approval of the Appellate Authority who shall decide the same within 7 days of filing such application
  - An Appellant is further provided with a facility to re-file a fresh appeal post such withdrawal, however such appeal must be filed within the prescribed time limit

# Others

- S. 75(2): Time limit for re-determination of tax liability and issuance of order will be 2 years from the date of direction for issue of demand order for cases on which notice has been issued under Section 74(1), but subsequently not established. However, such order can be raised only for such financial years where the show cause notice is issued by the PO within the normal period of limitation.

Re-determination of tax liability where show cause is issued under Section 74 of the CGST Act, 2017 for multiple financial years: In such cases, the PO shall re-determine the tax liability only for such financial years where such notice was issued within the normal period of limitation

# Others

- **Treatment of statutory dues under GST where the proceedings have been finalized under IBC, 2016- S.84:**

Government dues (*operational debt*), against a corporate debtor is covered under the term 'other proceedings' under S. 84. Accordingly, where any Government dues under GST law is reduced in an appeal, revision or other proceedings - an intimation in FORM GST DRC-25 must be given by the jurisdictional Commissioner, corporate debtor and to the appropriate authority with whom the recovery proceedings are pending for recovery of such dues.

- **Competition Commission of India- S.171:** empowered to handle anti-profiteering cases w.e.f 01.12.2022

# Others

- **Period of limitation (time limit) extended for conclusion of assessment, application for refund and recovery of erroneous refund- S.73:**

Effective 01.03.2020, the time limit for issuance of order under Section 73(9) has been extended up to 30.09.2023. Hitherto date being 05.02.2023

Period from 01.03.2020 to 28.02.2022 to be excluded for computation of period of limitation for refund applications and computation of period of limitation for issuance of order

# Others

- **Deemed revocation of suspended registrations-** *R. 21A:*

Registrations suspended on account non-filing of returns, shall stand deemed revoked upon filing of pending returns. Revocation would not be applicable where the registration is specifically cancelled by proper officer due to any other reason

- **Additional modes of payment introduced-** *S.49 r/w R.87* - IMPS & UPI have been added as an authorized mode of payment for deposit of amounts into the ECaL

# Few rulings

- **Mohit Minerals** - *ocean freight not liable to tax, as import of services*
- **Safari Retreats** – *input credit on commercial projects*
- **Gameskraft** – *value of services in case of online gaming*
- **Northern Operating Systems** - *secondment on employees is deputation of manpower and liable to Service tax (~ GST)*
- **Munjal Manishbhai Bhatt** – *deemed value of land @ 1/3 is unconstitutional*
- **Nipun Praveen Singhvi** - *constitutional validity of the AAAR bench*

**Hope it was a useful discussion**

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