



Dhadda & Co.  
CHARTERED ACCOUNTANTS

# DCoD

DCo Digest

September-October 2021 Edition

# Newsletter



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The 45th GST Council meeting was held on 17th September, 2021 in Lucknow. This was the first physical meet of GST Council since outbreak of COVID-19 Pandemic. The GST Council had made several recommendations relating to changes in GST rates on supply of goods and services and changes related to GST law and procedure. This edition encompasses all the significant recommendations (Industry wise) which were subsequently notified.

This edition elaborates the taxability of Leasing of Goods with Operator, along with two landmark judgements of VKC Footsteps and BMG Informatics. In addition to this, we have also covered the new feature that have been enabled on portal by the government. We hope this edition of our newsletter turns out to be as enlightening as the earlier ones.

Enjoy Reading!

# Preface



## GST Rate Changes Applicable From 01.10.2021

Several notifications have been issued to notify the changes in the applicable rate of GST (including exemptions) pursuant to the decisions taken at the 45th GST Council Meeting. The given changes are applicable from 01.10.2021. Rates have been increased with a special focus on the industries mainly operating under the inverted rate structure. We have referred to the notifications issued under the CGST Act, 2017 in the present write-up. Parallel notifications have also been issued under the IGST Act, 2017.

The summary of the changes (industry-wise) are as follows:

### Renewable energy industry

The rate of tax for the following goods have been increased from 5% to 12% (refer Notification No. 8/2021-CT (Rate)):

Sl. No. of Notification No. 1/2017 – CT (Rate)	Chapter, Heading, Subheading or Tariff item	Description	Rate
201A (Schedule II)	84, 85 or 94	Following renewable energy devices and parts for their manufacture:- (a) Bio-gas plant; (b) Solar power based devices; (c) Solar power generator; (d) Wind mills, Wind Operated Electricity Generator (WOEG); (e) Waste to energy plants / devices; (f) Solar lantern / solar lamp; (g) Ocean waves/tidal waves energy devices/plants; (h) Photo voltaic cells, whether or not assembled in modules or made up into panels. Explanation:- If the goods specified in this entry are supplied, by a supplier, along with supplies of other goods and services, one of which being a taxable service specified in the entry at S. No. 38 of the Table mentioned in the notification No. 11/2017-Central Tax (Rate), dated 28th June, 2017 [G.S.R. 690(E)], the value of supply of goods for the purposes of this entry shall be deemed as seventy per cent. of the gross consideration charged for all such supplies, and the remaining thirty per cent. of the gross consideration charged shall be deemed as value of the said taxable service.	12%

## Applicability of GST rates on Solar PV Power Projects

Representations have been received seeking clarification regarding the GST rates applicable on Solar PV Power Projects on or before 1st January, 2019. The issue seems to have arisen in the context of Notification No.24/2018- Central Tax (Rate), dated 31st December, 2018. An explanation was inserted vide the said notification that GST on specified Renewable Energy Projects can be paid in terms of the 70:30 ratio for goods and services, respectively, with effect from 1st January, 2019. The request has been that same ratio (for deemed value) may be applied in respect of supplies made before 1.1.2019

As per this explanation, if the goods specified in this entry are supplied, by a supplier, along with supplies of other goods and services, one of which being a taxable service specified in the entry at S. No. 38 of the Table mentioned in the notification No. 11/2017-Central Tax (Rate), dated 28th June, 2017, the value of supply of goods for the purposes of this entry shall be deemed as seventy per cent. of the gross consideration charged for all such supplies, and the remaining thirty per cent. of the gross consideration charged shall be deemed as value of the said taxable service. This mechanism for valuation of supply was recommended by the Council considering that it adequately represented the value of goods and services involved in the supply.

The GST Council has now decided to clarify that GST on such specified Renewable Energy Projects can be paid in terms of the 70:30 ratio for goods and services, respectively, for the period of 1st July, 2017 to 31st December, 2018, in the same manner as has been prescribed for the period on or after 1st January, 2019, as per the explanation in the Notification No.24/2018 dated 31st December, 2018. However, it is specified that, no refunds will be granted if GST already paid is more than the amount determined using this mechanism.

## Railway industry

The rate of tax for the following goods have been increased from 12% to 18% (refer Notification No. 8/2021-CT (Rate)):

Sl. No. of Notification No. 1/2017 – CT (Rate) (Schedule III)	Description of Goods	Description of Goods	HSN	Rate
398A	8601	Rail locomotives powered from an external source of electricity or by electric accumulators.	86011000 86012000	18%
398B	8602	Other rail locomotives; locomotive tenders; such as Diesel electric locomotives, Steam locomotives and tenders thereof	86021000 86029010 86029090	18%

# Updates

Sl. No. of Notification No. 1/2017 – CT (Rate) (Schedule III)	Description of Goods	Description of Goods	HSN	Rate
398C	8603	Self-propelled railway or tramway coaches, vans and trucks, other than those of heading 8604.	86031000 86039000	18%
398D	8604	Railway or tramway maintenance or service vehicles, whether or not self-propelled (for example, workshops, cranes, ballast tampers, track liners, testing coaches and track inspection vehicles).	86040000	18%
398E	8605	Railway or tramway passenger coaches, not self-propelled; luggage vans, post office coaches and other special purpose railway or tramway coaches, not self-propelled (excluding those of heading 8604).	86050000	18%
398F	8606	Railway or tramway goods vans and wagons, not self-propelled.		18%
398G	8607	Parts of railway or tramway locomotives or rolling-stock; such as Bogies, bissel-bogies, axles and wheels, and parts thereof.		18%
398H	8608	Railway or tramway track fixtures and fittings; mechanical (including electro-mechanical) signalling, safety or traffic control equipment for railways, tramways, roads, inland waterways, parking facilities, port installations or airfields; parts of the foregoing.”;	860800 86080010 86080020 86080030 86080040 86080090	18%

## Packaging industry

The rate of tax for the following goods have been increased from 12% to 18% (refer Notification No. 8/2021-CT (Rate)):

Sl. No. of Notification No. 1/2017 – CT (Rate) (Schedule III)	Chapter, Heading, Subheading or Tariff item	Description of Goods	HSN	Rate
153A	4819	Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibres; box files, letter trays, and similar articles, of paper or paperboard of a kind used in offices, shops or the like.	48191010 48191090	18%

### Circular No. 163/19/2021-GST

Hitherto, corrugated boxes and cartons, falling under heading 4819 attracted GST at the rate of 12% (entry 122 of 12% rate schedule), while other cartons falling under this heading attracted GST at the rate of 18%. Disputes have arisen as regards applicable GST on fibre drums, which is partially corrugated (as to whether it is be treated as corrugated or otherwise). This dispute gets resolved on account of the recommendation of the GST Council, in its 45th meeting, to prescribe a uniform GST rate of 18% on all goods classifiable under heading 4819 (with effect from 1st October, 2021 under S. No. 153A of Schedule III of notification No.1/2017-Central Tax (Rate) dated 28.6.2017).

For the period prior to 1.10.2021, the Council upon taking note of the fact that there was an ambiguity regarding the GST rates applicable on a Fibre Drums, because of its peculiar construction (partially corrugated), has decided that supplies of such Fibre Drums even if made at 12% GST (during the period from 1.7.2017 to 30.9.2021), would be treated as fully GST-paid. Therefore, no action for recovery of differential tax (over and above 12% already paid) would arise. However, as this decision has only been taken to regularize the past practice in view of certain ambiguity, as detailed in para 14.1, no refund of GST already paid shall be allowed if already paid at 18%.

### Waste/scrap industry

The rate of tax for the following goods have been increased from 5% to 18% (refer Notification No. 8/2021-CT (Rate):

Sl. No. of Notification No. 1/2017 – CT (Rate) (Schedule III)	Chapter, Heading, Subheading or Tariff item	Description of Goods	HSN	Rate
153A	4819	Waste, Parings and Scrap, of Plastics.	39151000 39152000 39153010 39153090 39159010 39159021 39159029 39159030 39159041 39159042 39159049 39159050 39159061 39159062 39159063 39159071 39159072 39159073 39159074 39159075 39159090	18%

### Printing industry

The rate of tax for the following goods have been increased from 12% to 18% (refer Notification No. 8/2021-CT (Rate):

Sl. No. of Notification No. 1/2017 – CT (Rate) (Schedule III)	Chapter, Heading, Subheading or Tariff item	Description of Goods	HSN	Rate
157A	4906 00 00	Plans and drawings for architectural, engineering, industrial, commercial, topographical or similar purposes, being originals drawn by hand; hand-written texts; photographic reproductions on sensitised paper and carbon copies of the foregoing		18%
157B	4907	Unused postage, revenue or similar stamps of current or new issue in the country in which they have, or will have, a recognised face value; stamp-impressed paper; banknotes; cheque forms; stock, share or bond certificates and similar documents of title (other than Duty Credit Scrips).	49070010 49070020 49070030 49070090	18%
157C	4908	Transfers (decalcomanias).	49081000 49089000	18%

Sl. No. of Notification No. 1/2017 – CT (Rate) (Schedule III)	Chapter, Heading, Subheading or Tariff item	Description of Goods	HSN	Rate
157D	4909	Printed or illustrated postcards; printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings.	49090010 49090090	18%
157E	4910	Calendars of any kind, printed, including calendar blocks	49100010 49100090	18%
157F	4911	Other printed matter, including printed pictures and photographs; such as Trade advertising material, Commercial catalogues and the like, printed Posters, Commercial catalogues, Printed inlay cards, Pictures, designs and photographs, Plan and drawings for architectural engineering, industrial, commercial, topographical or similar purposes reproduced with the aid of computer or any other devices.	49111010 49111020 49111030 49111090 49119100 49119910 49119920 49119990	18%

Further the concessional rate of tax of 12% applicable on the services by way of printing of all goods falling under Chapter 48 or 49 [including newspapers, books (including Braille books), journals and periodicals], which attract CGST @ 6 per cent or 2.5 per cent or Nil, where only content is supplied by the publisher and the physical inputs including paper used for printing belong to the printer has been omitted. Now all such services shall attract the rate of 18%. The following substituted entry in this regard reads as under (refer Notification no. 06/2021-CT (Rate) :

Sr. No. of Notification No. 11/2017 – CT (Rate)	Description	HSN	Rate
27(ii)	Other manufacturing services; publishing, printing and reproduction services; material recovery services	998912	18%

### Pen industry

The rate of tax for the following goods have been increased from 12% to 18% (refer Notification No. 8/2021-CT (Rate)):

Sl. No. of Notification No. 1/2017 – CT (Rate) (Schedule III)	Chapter, Heading, Subheading or Tariff item	Description of Goods	HSN	Rate
447	9608	Ball point pens; felt tipped and other poroustipped pens and markers; fountain pens; stylograph pens and other pens; duplicating stylos; pen holders, pencil holders and similar holders; parts (including caps and clips) of the foregoing articles, other than those of heading 9609.	960810 96082000 96083021 96083022 96083029	18%

### Carbonated Fruit Drink industry

Hitherto there was confusion as regards the applicable rate of tax on the Carbonated Beverages of Fruit Drink or Carbonated Beverages with Fruit Juice. Now the following entry has been inserted (refer Notification No. 8/2021-CT (Rate)):

Sl. No. of Notification No. 1/2017 – CT (Rate) (Schedule IV)	Chapter, Heading, Subheading or Tariff item	Description of Goods	Rate
12B	2202	Carbonated Beverages of Fruit Drink or Carbonated Beverages with Fruit Juice.	28%

### Mining industry

The rate of tax for the following goods have been increased from 5% to 18% (refer Notification No. 8/2021-CT (Rate)):

Sl. No. of Notification No. 1/2017 – CT (Rate) (Schedule III)	Chapter, Heading, Subheading or Tariff item	Description of Goods	Rate
26C	2601	Iron ores and concentrates, including roasted iron pyrites.	18%
26D	2602	Manganese ores and concentrates, including fer-ruginous manganese ores and concentrates with a manganese content of 20% or more, calculated on the dry weight.	18%
26E	2603	Copper ores and concentrates.	18%
26F	2604	Nickel ores and concentrates.	18%
26G	2605	Cobalt ores and concentrates.	18%

Sl. No. of Notification No. 1/2017 – CT (Rate) (Schedule III)	Chapter, Heading, Subheading or Tariff item	Description of Goods	Rate
26H	2606	Aluminium ores and concentrates.	18%
26E	2603	Copper ores and concentrates.	18%
26F	2604	Nickel ores and concentrates.	18%
26G	2605	Cobalt ores and concentrates.	18%
26I	2607	Lead ores and concentrates.	18%
26J	2608	Zinc ores and concentrates.	18%
26K	2609	Tin ores and concentrates	18%
26L	2610	Chromium ores and concentrates.	18%

### Amusement parks industry

Hitherto there was confusion as regards the applicable rate of tax (i.e. 18% or 28%) as regards the supply of services by way of admission to various amusement parks via-a-vis casinos or race clubs or sporting events like IPL. Now the following entries have been substituted as under (refer Notification no. 06/2021-CT (Rate)) :

Sr. No. of Notification No. 11/2017 – CT (Rate)	Description	Rate
34(iii)	Services by way of admission to; (a) theme parks, water parks and any other place having joy rides, merry- go rounds, go carting, or (b) ballet, - other than any place covered by (iiia) below	18%
34(iiia)	Services by way of admission to (a) casinos or race clubs or any place having casinos or race clubs or (b) sporting events like Indian Premier League.	28%

### Pharmaceutical industry

The concessional rates/exemptions have been granted on the specified goods as under (the same shall be applicable only till 31.12.2021) (refer Notification No. 12/2021-CT (Rate)):

Sl. No.	Chapter, Heading, Subheading or Tariff item	Description of Goods	Rate
1	30	Tocilizumab	Nil
2	30	Amphotericin B	Nil
3	30	Remdesivir	5%
4	30	Heparin (anti-coagulant)	5%
5	30	Itolizumab	5%
6	30	Posaconazole	5%
7	30	Infliximab	5%

Sl. No.	Chapter, Heading, Subheading or Tariff item	Description of Goods	Rate
8	30	Bamlanivimab & Etesevimab	5%
9	30	Casirivimab & Imdevimab	5%
10	30	2-Deoxy-D-Glucose	5%
11	30	Favipiravir	5%

### **Circular No. 163/19/2021-GST**

#### **Scope of GST rate on all pharmaceutical goods falling under heading 3006**

Entry at S. No. 65 of Schedule II of notification No. 1/2017-Central Tax (Rate) dated 28.6.2017, reads as *“Pharmaceutical goods specified in Note 4 to this Chapter [i.e. Sterile surgical catgut, similar sterile suture materials (including sterile absorbable surgical or dental yarns) and sterile tissue adhesives for surgical wound closure; sterile laminaria and sterile laminaria tents; sterile absorbable surgical or dental haemostatics; sterile surgical or dental adhesion barriers, whether or not absorbable; Waste pharmaceuticals] [other than contraceptives]”*

S. No. 65 of Second Schedule of Notification 1/2017- Central Tax (Rate) dated 28.6.2017 refers to the note 4 to Chapter 30 of the First schedule of the Customs Tariff Act, 1975 while mentioning an illustrative list. Certain representations were received seeking clarification on the applicable rate of goods falling under heading 3006 that are not specifically mentioned in the Entry at S. No. 65 of Schedule II of notification No. 1/2017-Central Tax (Rate) dated 28.6.2017.

Note 4 to Chapter 30 of the First schedule of the Custom Tariff Act, 1975 reads as follows:

- “(a) sterile surgical catgut, similar sterile suture materials (including sterile absorbable surgical or dental yarns) and sterile tissue adhesives for surgical wound closure;*  
*(b) sterile laminaria and sterile laminaria tents;*  
*(c) sterile absorbable surgical or dental haemostatics sterile surgical or dental adhesion barriers, whether or not absorbable;*  
*(d) opacifying preparations for X-ray examinations and diagnostic reagents designed to be administered to the patient, being unmixed products put up in measured doses or products consisting of two or more ingredients which have been mixed together for such uses;*  
*(e) blood-grouping reagents;*  
*(f) dental cements and other dental fillings; bone reconstruction cements;*  
*(g) first-aid boxes and kits;*  
*(h) chemical contraceptive preparations based on hormones, on other products of heading 2937 or on spermicides;*  
*(i) gel preparations designed to be used in human or veterinary medicine as a lubricant for parts of the body for surgical operations or physical examinations or as a coupling agent between the body and medical instruments; and*  
*(j) waste pharmaceuticals, that is, pharmaceutical products which are unfit for their original intended purpose due to, for example, expiry of shelf-life.*

Sl. No.	Chapter, Heading, Subheading or Tariff item	Description of Goods	Rate
8	30	Bamlanivimab & Etesevimab	5%
9	30	Casirivimab & Imdevimab	5%
10	30	2-Deoxy-D-Glucose	5%
11	30	Favipiravir	5%

### **Circular No. 163/19/2021-GST**

#### **Scope of GST rate on all pharmaceutical goods falling under heading 3006**

Entry at S. No. 65 of Schedule II of notification No. 1/2017-Central Tax (Rate) dated 28.6.2017, reads as *“Pharmaceutical goods specified in Note 4 to this Chapter [i.e. Sterile surgical catgut, similar sterile suture materials (including sterile absorbable surgical or dental yarns) and sterile tissue adhesives for surgical wound closure; sterile laminaria and sterile laminaria tents; sterile absorbable surgical or dental haemostatics; sterile surgical or dental adhesion barriers, whether or not absorbable; Waste pharmaceuticals] [other than contraceptives]”*

S. No. 65 of Second Schedule of Notification 1/2017- Central Tax (Rate) dated 28.6.2017 refers to the note 4 to Chapter 30 of the First schedule of the Customs Tariff Act, 1975 while mentioning an illustrative list. Certain representations were received seeking clarification on the applicable rate of goods falling under heading 3006 that are not specifically mentioned in the Entry at S. No. 65 of Schedule II of notification No. 1/2017-Central Tax (Rate) dated 28.6.2017.

Note 4 to Chapter 30 of the First schedule of the Custom Tariff Act, 1975 reads as follows:

- “(a) sterile surgical catgut, similar sterile suture materials (including sterile absorbable surgical or dental yarns) and sterile tissue adhesives for surgical wound closure;*  
*(b) sterile laminaria and sterile laminaria tents;*  
*(c) sterile absorbable surgical or dental haemostatics sterile surgical or dental adhesion barriers, whether or not absorbable;*  
*(d) opacifying preparations for X-ray examinations and diagnostic reagents designed to be administered to the patient, being unmixed products put up in measured doses or products consisting of two or more ingredients which have been mixed together for such uses;*  
*(e) blood-grouping reagents;*  
*(f) dental cements and other dental fillings; bone reconstruction cements;*  
*(g) first-aid boxes and kits;*  
*(h) chemical contraceptive preparations based on hormones, on other products of heading 2937 or on spermicides;*  
*(i) gel preparations designed to be used in human or veterinary medicine as a lubricant for parts of the body for surgical operations or physical examinations or as a coupling agent between the body and medical instruments; and*  
*(j) waste pharmaceuticals, that is, pharmaceutical products which are unfit for their original intended purpose due to, for example, expiry of shelf-life.*

*(k) appliances identifiable for ostomy use, that is colostomy, ileostomy and urostomy pouches cut to shape and their adhesive wafers or faceplates.”*

Thus, it is clarified that said entry 65 covers all goods as specified in Chapter Note 4 and Chapter Note 4 in turn covers all goods covered under Heading 3006. Therefore, said entry 65 covers all goods falling under heading 3006, irrespective of the fact that such goods are specifically mentioned in said entry. Therefore, all goods falling under heading 3006 attract GST rate of 12% under entry 65 in the 12% rate schedule.

### Bio-diesel industry

Hitherto the applicable rate of tax on bio-diesel was 12%. Now two separate entries have been inserted in this regard as under (refer Notification no. 08/2021-CT (Rate)):

Sr. No. of Notification No. 1/2017 – CT (Rate)	Description	Rate
186A (Schedule I)	Bio-diesel supplied to Oil Marketing Companies for blending with High Speed Diesel	5%
80A (Schedule II)	Bio-diesel (other than bio-diesel supplied to Oil Marketing Companies for blending with High Speed Diesel)	12%

### Export freight (for exporters)

The exemption in existence as regards the export freight has been extended till 30.09.2022. The amended entries read as under (refer Notification no. 07/2021-CT (Rate)):

Sr. No. of Notification No. 12/2017 – CT (Rate)	Description	Rate
19A	Services by way of transportation of goods by an aircraft from customs station of clearance in India to a place outside India	Nil (till 30.09.2022)
19B	Services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India.	12 Nil (till 30.09.2022)%

### Job-work (alcohol)

There was confusion as regards the applicable rate of tax on the job work transactions in relation to the manufacture of alcoholic liquor for human consumption. If the alcoholic liquor for human consumption is equated with food products, the rate of tax was 5%. Now the following new entry has been inserted in this regard as under (refer Notification no. 06/2021-CT (Rate)) :

Sr. No. of Notification No. 11/2017 – CT (Rate)	Description	Rate
26(ica)	Services by way of job work in relation to manufacture of alcoholic liquor for human consumption	18%

### Intellectual Property (IP) right

Hitherto there was a distinction as regards the applicable rate of tax on the supply of services in the nature of temporary or permanent transfer or permitting the use or enjoyment of Intellectual Property (IP). The applicable rate of tax was 12% if the IP was in respect of goods (other than software) and the applicable rate of tax was 18% if the IP is in respect of software. The said distinction as regards the applicable rate of tax has now been done away with. The amended entry is as under (refer Notification no. 06/2021-CT (Rate)) :

Sr. No. of Notification No. 11/2017 – CT (Rate)	Description	Rate
17(ii)	Temporary or permanent transfer or permitting the use or enjoyment of Intellectual Property (IP) right	18%

### Charitable entities

Hitherto certain specified services supplied by/to the entities registered u/s 12AA of the Income Tax Act, 1961 enjoyed exemption/concessional rate of tax. In view of the amendments made under the Income Tax Act, 1961 in terms of insertion of Sec. 12AB (requiring the charitable entities to henceforth obtain registration under the said new provision), an issue had arisen as regards the exemptions/concessions under GST that were still linked with Sec. 12AA and not Sec. 12AB. Now the said anomaly has been corrected by incorporating reference to Sec. 12AB in the following entries (refer Notification no. 06/2021-CT (Rate) & Notification no. 07/2021-CT (Rate)) :

Sr. No. of Notification No. 11/2017 – CT (Rate) or 12/2017 CT (Rate)	Description	Rate
3(iv)(g)(NN 11/2017)	Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, {other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above} supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,- (g) a building owned by an entity registered under section 12AA or 12AB of the Income Tax Act, 1961 (43 of 1961), which is used for carrying out the activities of providing, centralised cooking or distribution, for mid-day meals under the mid-day meal scheme sponsored by the Central Government, State Government, Union territory or local authorities.	12%
1(NN 12/2017)	Services by an entity registered under section 12AA or 12AB of the Income-tax Act, 1961 (43 of 1961) by way of charitable activities	Nil
9D(NN 12/2017)	Services by an old age home run by Central Government, State Government or by an entity registered under section 12AA or 12AB of the Income-tax Act, 1961 (43 of 1961) to its residents (aged 60 years or more) against consideration upto twenty-five thousand rupees per month per member, provided that the consideration charged is inclusive of charges for boarding, lodging and maintenance.	Nil
74A(NN 12/2017)	Services provided by rehabilitation professionals recognised under the Rehabilitation Council of India Act, 1992 (34 of 1992) by way of rehabilitation, therapy or counselling and such other activity as covered by the said Act at medical establishments, educational institutions, rehabilitation centers established by Central Government, State Government or Union territory or an entity registered under section 12AA or 12AB of the Incometax Act, 1961 (43 of 1961).	Nil
80(NN 12/2017)	Services by way of training or coaching in recreational activities relating to- (a) arts or culture, or (b) sports by charitable entities registered under section 12AA or 12AB of the Incometax Act.	Nil

### Other changes

- a. Exemption has been granted to the services by way of granting National Permit to a goods carriage to operate throughout India / contiguous States (refer Notification No. 7/2021 – CT (Rate)).
- b. Exemption has been granted to the provided to the Central Government, State Government, Union territory administration under any training programme for which 75% or more of the total expenditure is borne by the Central Government, State Government, Union territory administration (refer Notification No. 7/2021 – CT (Rate)).
- c. Exemption has been granted to the services by way of right to admission to the events organised under AFC Women’s Asia Cup 2022 (refer Notification No. 7/2021 – CT (Rate)).
- d. Exemption in respect of the services of leasing of assets (rolling stock assets including wagons, coaches, locos) by the Indian Railways Finance Corporation to Indian Railways has been withdrawn (refer Notification No. 7/2021 – CT (Rate)).
- e. Fortified Rice Kernel (Premix) supply for ICDS or similar scheme duly approved by the Central Government or any State Government shall attract the concessional rate of tax of 5% (refer Notification No. 11/2021 – CT (Rate)).

- f. The following entry has been inserted in Notification No.4/2017-CT (Rate) to provide for the payment of tax under RCM (refer Notification No. 10/2021 – CT (Rate)):

S. No.	Tariff item, subheading, heading or Chapter	Description of Goods	Supplier of goods	Recipient of supply
3A	33012400, 33012510, 33012520, 33012530, 33012540	Following essential oils other than those of citrus fruit namely: - a) Of peppermint (Menthapiperita); b) Of other mints : Spearmint oil (exmenthaspicata), Water mint-oil (exmentha aquatic), Horsemint oil (exmenthasylvestries), Bergament oil (ex-mentha citrate).	Any Unregistered Person	Any Registered Person.

### Other Clarification:

#### 1.Services by cloud kitchens/central kitchens:

Representations have been received requesting for clarification regarding the classification and rate of GST on services rendered by Cloud kitchen or Central Kitchen.

The explanatory notes to the classification of service state that „restaurant service” includes services provided by Restaurants, Cafes and similar eating facilities including takeaway services, room services and door delivery of food. Therefore, it is clear that takeaway services and door delivery services for consumption of food are also considered as restaurant service and, accordingly, service by an entity, by way of cooking and supply of food, even if it is exclusively by way of takeaway or door delivery or through or from any restaurant would be covered by restaurant service. This would thus cover services provided by cloud kitchens/central kitchens. Accordingly, as recommended by the Council, it is clarified that service provided by way of cooking and supply of food, by cloud kitchens/central kitchens are covered under „restaurant service”, as defined in notification No. 11/2017- Central Tax (Rate) and attract 5% GST [ without ITC].

#### 2.Supply of ice cream by ice cream parlors:

Ice cream parlors sell already manufactured ice- cream and they do not have a character of a restaurant. Ice-cream parlors do not engage in any form of cooking at any stage, whereas, restaurant service involves the aspect of cooking/preparing during the course of providing service. Thus, supply of ice-cream parlor stands on a different footing than restaurant service. Their activity entails supply of ice cream as goods (a manufactured item) and not as a service, even if certain ingredients of service are present. Accordingly, as recommended by the Council, it is clarified that where ice cream parlors sell already manufactured ice- cream and do not cook/prepare ice-cream for consumption like a restaurant, it is supply of ice cream as goods and not as a service, even if the supply has certain ingredients of service. Accordingly, it is clarified that ice cream sold by a parlor or any similar outlet would attract GST at the rate of 18%.

### **3.GST on overloading charges at toll plaza:**

As recommended by the GST Council, it is clarified that overloading charges at toll plazas would get the same treatment as given to toll charges.

### **4.Renting of vehicles to State Transport Undertakings and Local Authorities:**

As recommended by the GST Council, it is clarified that the expression “giving on hire” in Sl. No. 22 of the Notification No. 12/2017-CT (Rate) includes renting of vehicles. Accordingly, services where the said vehicles are rented or given on hire to State Transport Undertakings or Local Authorities are eligible for the said exemption irrespective of whether such vehicles are run on routes, timings as decided by the State Transport Undertakings or Local Authorities and under effective control of State Transport Undertakings or Local Authorities which determines the rules of operation or plying of vehicles.

### **5.Services by way of grant of mineral exploration and mining rights:**

#### **6.Services supplied by contract manufacturers to brand owners for manufacture of alcoholic liquor for human consumption**

As recommended by GST Council, it is clarified that the expression “food and food products” in the said entry excludes alcoholic beverages for human consumption. As such, in common parlance also alcoholic liquor is not considered as food. Accordingly, services by way of job work in relation to manufacture of alcoholic liquor for human consumption are not eligible for the GST rate of 5% prescribed under the said entry. GST Council recommended that such job work would attract GST at the rate of 18%.

### **{Circular No. 164 /20 /2021-GST}**

#### **1.Applicability of GST on fresh and dried fruits and nuts:**

Representations have been received seeking clarification regarding the distinction between fresh and dried fruits and nuts and applicable GST rates.

At present, fresh nuts (almond, walnut, hazelnut, pistachio etc) falling under heading 0801 and 0802 are exempt from GST, while dried nuts under these headings attract GST at the rate of 5%/ 12%. The general Explanatory Notes to chapter 08 mentions that this chapter covers fruit, nuts intended for human consumption. They may be fresh (including chilled), frozen (whether or not previously cooked by steaming or boiling in water or containing added sweetening matter) or dried (including dehydrated, evaporated or freeze-dried). Thus, HS chapter differentiates between fresh, frozen and dried fruits and nuts. Fresh fruit and nuts would thus cover fruit and nuts which are meant to be supplied in the state as plucked. They continue to be fresh even if chilled. However, fruit and nuts do not qualify as fresh, once frozen (cooked or otherwise), or intentionally dried to dehydrate including through sun drying, evaporation or freezing, for supply as dried fruits or nuts. It may be noted that in terms of note 3 to Chapter 8, dried fruits, even if partially re-hydrated, or subject to preservation say by moderate heat treatment, retain the character of dried fruits or dried nuts.

Therefore, exemption from GST to fresh fruits and nuts covers only such products which are not frozen or dried in any manner as stated above or otherwise processed. Supply of dried fruits and nuts, falling under heading 0801 and 0802 attract GST at the rate of 5%/12% as specified in the respective rate Schedules.

2. Tamarind seeds meant for any use other than sowing shall attract the tax @ 5% (refer Notification No. 8/2021 – CT (Rate) & 9/2021 – CT (Rate)).

### **Applicability of GST on tamarind seeds:**

Representations have been received seeking clarification regarding classification and applicable GST rates on tamarind seeds. The dispute is in classification of tamarind seeds between tariff heading 1207 and 1209.

As per general Explanatory Notes to HS 2017, heading 1209, covering seeds, fruit and spores, of a kind used for sowing, covers tamarind seeds. As per Chapter note 3 to Chapter 12, for the purposes of heading 1209, beet seeds, grass and other herbage seeds, seeds of ornamental flowers, vegetable seeds, seeds of forest trees, seeds of fruit trees, seeds of vetches (other than those of the species *Vicia faba*) or of lupines are to be regarded as “seeds of a kind used for sowing”. Thus, tamarind seeds, even if used for any purpose other than sowing, is liable to be classified under heading 1209 and hitherto attracted nil GST rate, irrespective of its use (for the period 01.07.2017 to 30.09.2021).

The GST council in its 45th meeting recommended GST rate on seeds, falling under heading 1209, meant for any use other than sowing to 5% (S. No. 71A of schedule I of notification No. 1/2017- Central Tax (Rate) dated 28.06.2017) and Nil rate would apply only to seeds for this heading if used for sowing purposes (S. No. 86 of schedule of notification No. 2/2017- Central Tax (Rate) dated 28.06.2017). Hence, with effect from 1.10.2021, tamarind and other seeds falling under heading 1209, (i.e. including tamarind seeds), if not supplied as seed for sowing, would attract GST at the rate of 5%.

### **3. Clarification of definition of Copra:**

Representations have been received seeking clarification regarding the definition of Copra and applicable GST rates.

As per Explanatory Notes to HS (2017 edition) to heading 1203, Copra is dried flesh of coconut generally used for the extraction of coconut oil. Coconut kernel turns into copra, when it separates from the shell skin, while still being inside the shell. The whole unbroken kernel could be taken out of shell only when it converts to copra. Once taken out of shell, copra could be supplied either whole or broken.

As per the Explanatory Notes to HS, the heading 0801 covers coconut fresh or dried but excludes Copra. Thus, exemption available to Coconut, fresh or dried, whether or not shelled or peeled, vide entry at S. No. 47 of notification No. 2/2017-Central Tax (Rate) dated 28.6.2017, is not available to Copra. Accordingly, Copra, classified under heading 1203, attracts GST rate of 5% vide entry at S. No. 66 of Schedule I of 1/2017-Central Taxes (Rate) dated 28.06.2017, irrespective of use.

#### **4. Applicability of GST on pure henna powder and leaves:**

Representations have been received seeking clarification regarding classification and applicable GST rates on henna powder and henna leaves.

As per the Explanatory Notes to HS 2017, heading 1404 is vegetable products not elsewhere specified or included. Further, as per the said Explanatory Notes, heading 1404 includes raw vegetable materials of a kind used primarily in dyeing or tanning. Such products are used primarily in dyeing or tanning either directly or in preparation of dyeing or tanning extracts. The material may be untreated, cleaned, dried, ground or powdered (whether or not compressed).

Accordingly, it is clarified that pure henna powder and henna leaves, having no additives, is classifiable under tariff item 1404 90 90 and shall attract GST rate of 5% (S. No. 78 of schedule I of notification No. 1/2017-Central Tax (Rate) dated 28.06.2017).

Further, the GST rate on *mehndi* paste in cones falling under heading 1404 and 3305 shall be 5% (S. No. 78A of schedule I of notification No. 1/2017-Central Tax (Rate) dated 28.06.2017).

#### **5. Applicability of GST on scented sweet supari & flavored and coated illaichi:**

Representations have been received seeking clarification regarding classification and applicable GST rates on flavored and coated *illaichi*, and scented sweet *supari*. Scented sweet *supari* falls under tariff item 2106 90 30 as "Betel nut product" known as "*Supari*" and attracts GST rate of 18% vide entry at S. No. 23 of Schedule III of notification No. 1/2017-Central Tax (Rate) dated 28.6.2017.

Flavored and coated *illaichi* generally consists of Cardamom Seeds, Aromatic Spices, Silver Leaf, Saffron, Artificial Sweeteners. It is distinct from *illaichi* or cardamom (which falls under heading 0908). It is clarified that flavored and coated *illaichi* is a value added product and falls under sub-heading 2106. It accordingly attract GST at the rate of 18% (S. No. 23 of schedule III of notification No. 1/2017-Central Tax (Rate) dated 28.06.2017).

#### **6. Applicability of GST on Brewers' Spent Grain (BSG), Dried Distillers' Grains with Soluble [DDGS] and other such residues:**

Representations have been received seeking clarification regarding classification and applicable GST rates on Brewers' spent grain (BSG), Dried distillers' grains with soluble [DDGS] and other such residues of starch manufacture and similar residues, beet-pulp, bagasse and other waste of sugar manufacture, brewing or distilling dregs and waste, whether or not in the form of pellets.

As per the Explanatory Notes to the HSN, heading 2303 includes residues of starch manufacture and similar residues (from maize (corn), rice, potatoes, etc.); beet-pulp; bagasse; other waste products of sugar manufacture; brewing or distilling dregs and waste, which comprises in particular - dregs of cereals obtained in the manufacture of beer and consisting of exhausted grains remaining after the wort has been drawn off; malts sprouts separated from the malted grain during the kilning process; spent hops; Dregs resulting from the distillation of spirits from grain, seeds, potatoes, etc; beet pulp wash (residues from the distillation of beet

molasses). All these products remain classified in the heading whether presented in wet or dry.

Thus, Brewers' spent grain (BSG), Dried distillers' grains with soluble [DDGS] and other such residues are classifiable under heading 2303, attracting GST at the rate of 5% (S. No. 104 of schedule I of notification No. 1/2017-Central Tax (Rate) dated 28.06.2017).

### **7. All laboratory reagents and other goods falling under heading 3822:**

Entry at S. No. 80 of Schedule II of notification No.1/2017- Integrated Tax (Rate) dated 28.6.2017 prescribes GST rate of 12% for "All diagnostic kits and reagents". Representations have been received whether the benefit of concessional rate of 12% would be available to laboratory agents and other goods falling under heading 3822.

Heading 3822 covers "Diagnostic or Laboratory Reagents, Certified Reference Materials etc."

The issue was placed before the GST Council and on its recommendations, it is clarified that the intention of this entry was to prescribe GST rate of 12% to all goods, whether diagnostic or laboratory reagents, falling under heading 3822.

It is accordingly clarified that concessional GST rate of 12% is applicable on all goods falling under heading 3822, vide Entry at S. No. 80 of Schedule II of notification No.1/2017-Integrated Tax (Rate) dated 28.6.2017.

### **8. Requirement of Original/ import Essentiality certificate, issued by the Directorate General of Hydrocarbons (DGH) on each inter-State stock transfer of goods imported at concessional GST rate for petroleum operations**

Representations have been received seeking clarification whether the original/ import Essentiality certificate can be used for such inter-state stock transfers or a fresh Essentiality certificate would be required for each inter-state stock transfer as it is being treated as supply subject to IGST.

GST Council deliberated upon this issue and a decision was taken that the original/ import Essentiality certificate, issued by the Directorate General of Hydrocarbons (DGH) is sufficient and there is no need for taking a certificate every time on inter-state movement of goods within the same company / stock transfer so long as the goods are the same as those imported by the company at concessional rate.

The importer is required to maintain records and should be able to establish nexus between the stock transfer of goods and the description in the essentiality certificate.

### **9. GST rates applicable on External batteries sold along with UPS Systems/ Inverter**

References have been received seeking clarification about whether, 'UPS Systems/ inverter sold along with batteries as integral part' are classified under heading 8507 at 28% GST or under heading 8504 at 18% GST.

The matter has been examined and it is observed that even if the UPS/inverter and external battery are sold on the same invoice, their price are separately known, and they are two separately identifiable items. Thus, this constitutes supply of two distinctly identifiable items on one invoice. Therefore, it is clarified that in such supplies, UPS/ inverter would attract GST rate of 18% under heading 8504, while external batteries would attract the GST rate as applicable to it under heading 8507 (28% for all batteries except lithium-ion battery). {Circular No. 163/19/2021-GST}

Compiled by CA Sourabh Chippa

# Updates





# Procedural Changes

The CBIC vide Notification No. 35/2021–Central Tax dated September 24, 2021 has further amended Central Goods and Services Tax Rules, 2017 (“CGST Rules”) to adhere to the recommendations of 45th GST Council meeting held on September 17, 2021.

## Aadhaar Authentication

Recommendations by GST Council

- Aadhaar authentication of registration to be made mandatory for being eligible for filing refund claim and application for revocation of cancellation of registration
  - Refund to be disbursed in the bank account, which is linked with same PAN on which registration has been obtained under GST
1. Giving effect to the recommendation of GST Council meeting, the CBIC vide this Notification has amended Rule Rule 10A which now reads as under:

Rule 10A - Furnishing of Bank Account Details. -

*After a certificate of registration in FORM GST REG-06 has been made available on the common portal and a Goods and Services Tax Identification Number has been assigned, the registered person, except those who have been granted registration under rule 12 or, as the case may be rule 16, shall as soon as may be, but not later than forty five days from the date of grant of registration or the date on which the return required under section 39 is due to be furnished, whichever is earlier, furnish information with respect to details of bank account which is in name of the registered person and obtained on Permanent Account Number of the registered person, or any other information, as may be required on the common portal in order to comply with any other provision.*

*Provided that in case of a proprietorship concern, the Permanent Account Number of the proprietor shall also be linked with the Aadhaar number of the proprietor.”*

1. Giving effect to the recommendation of GST Council meeting, the CBIC vide this Notification has amended Rule Rule 10A which now reads as under:

**Rule 10A - Furnishing of Bank Account Details. -**

*After a certificate of registration in FORM GST REG-06 has been made available on the common portal and a Goods and Services Tax Identification Number has been assigned, the registered person, except those who have been granted registration under rule 12 or, as the case may be rule 16, shall as soon as may be, but not later than forty five days from the date of grant of registration or the date on which the return required under section 39 is due to be furnished, whichever is earlier, furnish information with respect to details of bank account which is in name of the registered person and obtained on Permanent Account Number of the registered person, or any other information, as may be required on the common portal in order to comply with any other provision.*

*Provided that in case of a proprietorship concern, the Permanent Account Number of the proprietor shall also be linked with the Aadhaar number of the proprietor."*

2. In effect Rule 96C has been inserted in CGST Rules which reads as under:

*"96C. Bank Account for credit of refund.- For the purposes of sub-rule (3) of rule 91, sub-rule (4) of rule 92 and rule 94, "bank account" shall mean such bank account of the applicant which is in the name of applicant and obtained on his Permanent Account Number:*

*Provided that in case of a proprietorship concern, the Permanent Account Number of the proprietor shall also be linked with the Aadhaar number of the proprietor."*

3. After Rule 10A of the CGST Rules, Rule 10B [i.e., Aadhaar authentication for registered person] has been inserted to provide that, for the purpose of

*i. filing of application for revocation or cancellation of registration in Form GST REG-21 under Rule 23*

*ii. filing of refund application in Form RFD-01 under rule 89*

*ii. refund under Rule 96 of the integrated tax paid on goods exported out of India authentication of Aadhar is must for every registered person. Authentication shall be of Aadhaar number of authorized signatory and*

- *the proprietor, in the case of proprietorship firm, or*
- *any partner, in the case of a partnership firm, or*
- *the karta, in the case of a Hindu undivided family, or*
- *he Managing Director or any whole time Director, in the case of a company, or*
- *any of the Members of the Managing Committee of an Association of persons or body of individuals or a Society, or*
- *he Trustee in the Board of Trustees, in the case of a Trust*

*Provided that, if Aadhaar number has not been assigned to the person required to undergo authentication of the Aadhaar number, such person shall furnish the following identification documents, namely: –*

*a) her/his Aadhaar Enrolment ID slip; and*

*b) Bank passbook with photograph or voter identity card or passport or driving license issued under the Motor Vehicles Act, 1988*

*Provided further that such person shall undergo the authentication of Aadhaar number within a period of thirty days of the allotment of the Aadhaar number.*

4. After Rule 10A of the CGST Rules, Rule 10B [i.e., Aadhaar authentication for registered person] has been inserted to provide that, for the purpose of  
*“(1) A registered person, whose registration is cancelled by the proper officer on his own motion, may, subject to the provisions of rule 10B, submit an application for revocation of cancellation of registration, in FORM GST REG-21.....”*
5. Similarly, Rule 89(1) of the CGST Rules, [i.e., Application for refund of tax, interest, penalty, fees or any other amount] has been amended and it reads as under:  
*“(1) Any person, except the persons covered under notification issued under section 55, claiming refund of any tax, interest, penalty, fees or any other amount paid by him, other than refund of integrated tax paid on goods exported out of India, may file, subject to the provisions of rule 10B, an application electronically in FORM GST RFD-01.....”*
6. Similarly, clause (c) has been inserted in Rule 96(1) of the CGST Rules, [i.e., Refund of integrated tax paid on goods or services exported out of India] and it reads as under:  
*“(1) The shipping bill filed by an exporter of goods shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India and such application shall be deemed to have been filed only when:-*
  - a) the person in charge of the conveyance carrying the export goods duly files departure manifest or an export manifest or an export report covering the number and the date of shipping bills or bills of export; and*
  - b) the applicant has furnished a valid return in FORM GSTR-3 or FORM GSTR-3B, as the case may be;*
  - c) the applicant has undergone Aadhaar authentication in the manner provided in rule 10B;”*

#### **Conclusion:**

- For the purpose of refund claim, Bank Account must be in name of the registered person and it must be obtained on Permanent Account Number of the registered person.
- Further, Aadhaar authentication is must for filing of refund application and application for revocation of cancellation of registration.
- Currently registered persons are allowed to furnish Form GSTR-1, if he has not furnished the return in Form GSTR-3B **for the preceding two months.**

Further, CBIC vide **Notification No. 36/2021–Central Tax dated September 24, 2021** has amended Notification No. 03/2021–Central Tax dated February 23, 2021 (**“Principal Notification”**) so as to exempt certain registered persons from the requirement of authentication or furnishing proof of possession of Aadhaar number as required under Rule 25(6A).

Vide the Principal Notification, following persons were exempted from the requirement of authentication or furnishing proof of possession of Aadhaar number for becoming eligible for grant of registration under Rule 25(6B) and 25(6C):

- (a) not a citizen of India; or
- (b) a Department or establishment of the Central Government or State Government;
- or
- (c) a local authority; or
- (d) a statutory body; or
- (e) a Public Sector Undertaking; or
- (f) a person applying for registration under the provisions of sub-section (9) of section 25 of the said Act.

Now vide this Notification, the above persons, if already registered, are being exempted from compliance with the requirement of authentication or furnishing proof of possession of the Aadhaar number as required under Rule 25(6A).

### **Non-Compliance of GSTR 3B**

Giving effect to the recommendation of GST Council meeting, the CBIC vide this notification has amended CBIC Rules as under, **Rule 59(6)** now read as under:

“(6) Notwithstanding anything contained in this rule: -

- a) A registered person shall not be allowed to furnish the details of outward supplies of goods or services or both under Section 37 in FORM GSTR-1, if he has not furnished the return in FORM GSTR-3B for the preceding month;
- b) A registered person, required to furnish return for every quarter under the proviso to sub-section (1) of Section 39, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1 or using the invoices furnishing facility, if he has not furnished the return in FORM GSTR-3B for preceding tax period.”

Further **clause (c) of Rule 59(6)** of the CGST Rules, 2017 is to be omitted. The clause (c) states that “a registered person who is restricted from using the amount available in electronic credit ledger to discharge his liability towards tax in excess of ninety-nine per cent. of such tax liability under rule 86B, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1 or using the invoice furnishing facility, if he has not furnished the return in FORM GSTR-3B for preceding tax period.”

### **Conclusion:**

- A registered person shall not be allowed to furnish Form GSTR-1, if he has not furnished the return in Form GSTR-3B for the preceding month. Currently, this restriction applies after non-filing of GSTR-3B for preceding two months.

## Relaxation in filing of form ITC -04

The CBIC vide **Notification No. 35/2021 – Central Tax dated September 24, 2021** has further amended Central Goods and Services Tax Rules, 2017 (“**CGST Rules**”) to adhere to the recommendations of 45th GST Council meeting held on September 17, 2021.

### Background

The GST Council in its 45th meeting made inter-alia a recommendation that, a registered person being ‘principal’ in a job-work transaction

- a) whose annual aggregate turnover in preceding financial year is above Rs. 5 crores shall furnish ITC-04 once in six months;
- b) whose annual aggregate turnover in preceding financial year is upto Rs. 5 crores shall furnish ITC-04 annually

Currently, a registered person being ‘principal’ is required to File Form GST ITC-04 on quarterly basis.

### Notification:

Giving effect to the recommendation of GST Council meeting, the CBIC vide this Notification has amended CBIC Rules as under:

In Rule 45(3) of the CGST Rules, in sub-rule (3), with effect from the October 01, 2021,-

*(i) for the words “during a quarter”, the words “during a specified period” shall be substituted;*

*(ii) for the words “the said quarter”, the words “the said period” shall be substituted;*

*(iii) after the proviso, the following explanation shall be inserted, namely: -*

*“Explanation. - For the purposes of this sub-rule, the expression “specified period” shall mean.-*

*(a) the period of six consecutive months commencing on the 1st day of April and the 1st day of October in respect of a principal whose aggregate turnover during the immediately preceding financial year exceeds five crore rupees; and*

*(b) a financial year in any other case.”*

Rule 45(3) ibid now reads as under:

*“(3) The details of challans in respect of goods dispatched to a job worker or received from a job worker **during a specified period** shall be included in FORM GST ITC-04 furnished for that period on or before the twenty-fifth day of the month succeeding **the said period** or within such further period as may be extended by the Commissioner by a notification in this behalf:*

*Provided that any extension of the 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.*

*Explanation. - For the purposes of this sub-rule, the expression "specified period" shall mean.-*

- (a) the period of six consecutive months commencing on the 1st day of April and the 1st day of October in respect of a principal whose aggregate turnover during the immediately preceding financial year exceeds five crore rupees; and*
- (b) a financial year in any other case."*

### **Refund application can be filed within 2 years from the date of correct payment of taxes in case where tax has been paid under wrong head**

The CBIC vide **Notification No. 35/2021–Central Tax dated September 24, 2021** read with **Circular No. 162/18/2021-GST dated September 25, 2021** has further amended Central Goods and Services Tax Rules, 2017 ("**CGST Rules**") to adhere to the recommendations of 45th GST Council meeting held on September 17, 2021.

### **Background**

The GST Council in its 45th meeting made inter-alia a recommendation that, a provision is to be incorporated in the CGST Rules, 2017 for removing ambiguity regarding procedure and time limit for filing refund application w.r.t. taxes wrongfully paid due to incorrect determination of nature of supply being intra state **subsequently held** as inter-state or vice-versa as specified in Section 77(1) of the Central Goods and Services Tax Act, 2017 ("**CGST Act**")/ State Goods and Services Tax Act, 2017 ("**SGST Act**") and Section 19(1) of the Integrated Goods and Services Tax Act, 2017 ("**IGST Act**").

Clarification was sought on the following issues in respect of refund of tax wrongfully paid as specified above:

1. Whether refund claim under the said sections is available only if supply made by a taxpayer as inter-State or intra-State, is subsequently held by tax officers as intra-State and inter-State respectively, either on scrutiny/ assessment/ audit/ investigation, or as a result of any adjudication, appellate or any other proceeding or whether the refund under the said sections is also available when the inter-State or intra-State supply made by a taxpayer, is subsequently found by taxpayer himself as intra-State and inter-State respectively.
2. Whether time limit of two years to be computed from the date of tax wrongfully paid or from the date of correct payment of tax at later date.

### **Notification & Circular**

Giving effect to the recommendation of GST Council meeting, the CBIC vide this Notification has amended CBIC Rules as under:

In Rule 89 of the CGST Rules, after sub-rule (1), the following sub-rule shall be inserted, namely:-

*"(1A) Any person, claiming refund under section 77 of the Act of any tax paid by him, in respect of a transaction considered by him to be an intra-State supply, which is subsequently held to be an inter-State supply, may, before the expiry of a period of two years from the date of payment of the tax on the inter-State supply, file an*

application electronically in FORM GST RFD-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

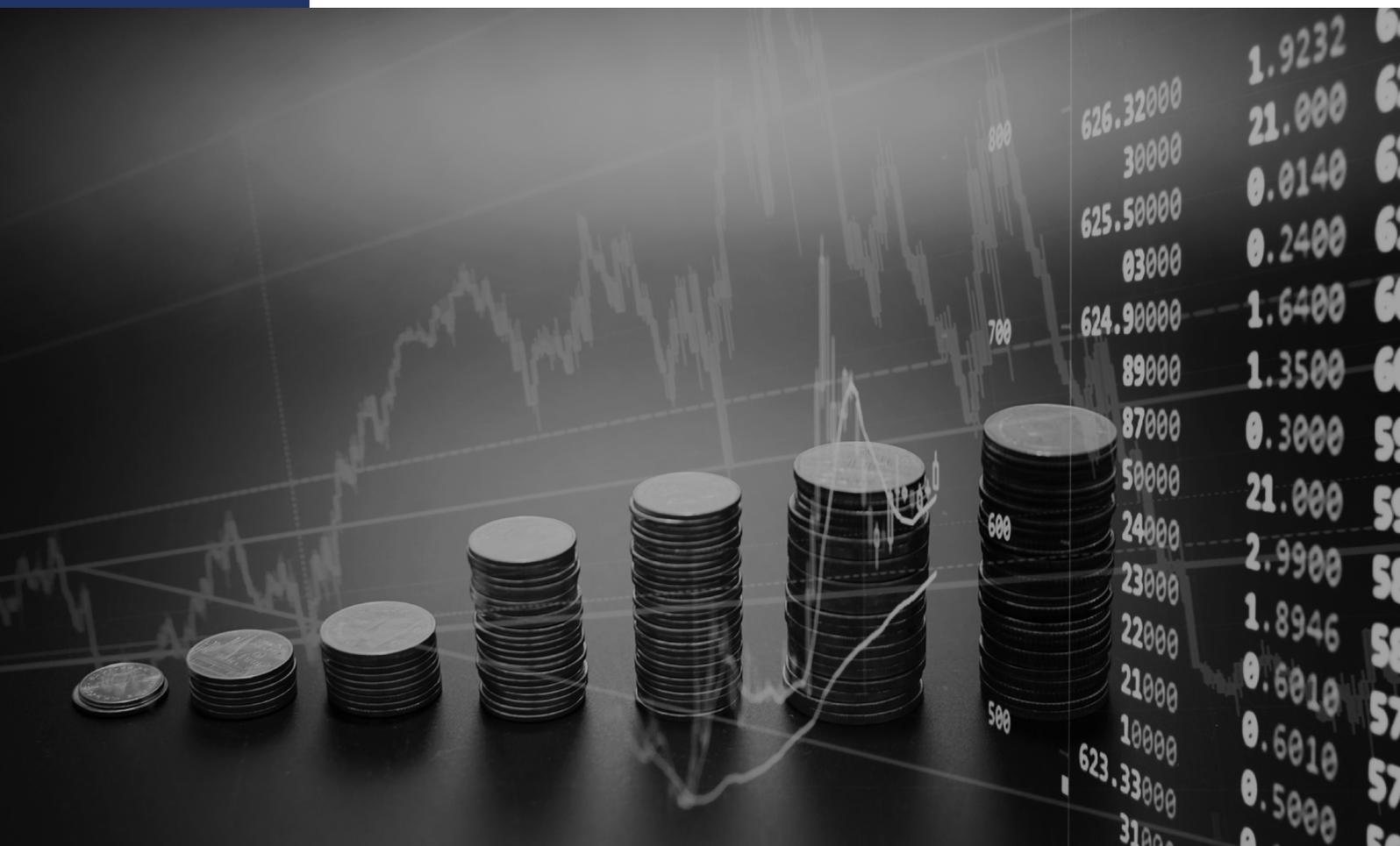
Provided that the said application may, as regard to any payment of tax on *inter-State supply before coming into force of this sub-rule, be filed before the expiry of a period of two years from the date on which this sub-rule comes into force.*

Meaning thereby, **refund can be claimed before the expiry of two years from the date of payment of tax under the correct head**, However, in cases, where the taxpayer has made the payment in the correct head before the date of issuance of this Notification, the refund application under Section 77 of the CGST Act/ Section 19 of the IGST Act can be filed before the expiry of two years from the date of issuance of the said notification. i.e. from September 24, 2021.

Further, vide Circular CBIC has clarified that, the term “subsequently held” in Section 77 of CGST Act, 2017 or under section 19 of IGST Act, 2017 covers both the cases where the inter-State or intra-State supply made by a taxpayer, is either subsequently found by taxpayer himself as intra-State or inter-State respectively or where the inter-State or intra-State supply made by a taxpayer is subsequently found/ held as intra-State or inter-State respectively by the tax officer in any proceeding. Accordingly, refund claim under the said sections can be claimed by the taxpayer in both the above mentioned situations, provided the taxpayer pays the required amount of tax in the correct head.

Compiled by Pallavi Shekhawat

# Updates



# Judicial Pronouncements

## M/s BMG INFORMATICS PVT. LTD. v. UNION OF INDIA [2021] 130 taxmann.com 182 (Guwahati)

### Issue:

Refund under Inverted Duty Structure when input and output supplies made by the registered person are same although rate of tax on inputs is higher than rate of tax on output supplies.

### Facts of the Case:

Petitioner is a company dealing with IT system integrator and is a service provider primarily engaged in sales and service of information and technology products to Government Departments, PSU and to other Research and Educational Institutes.

The input and output supplies made by the petitioner were of the same material and goods, although the rate of tax on the input supply is higher than the rate of tax in the output supply.

### Contentions of respondent:

Section 54(3)(ii) of CGST Act allows refund of accumulated ITC where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies.

However, the input and output being the same in the petitioner case though attracting different tax rates depending upon the class of buyer, does not get covered under S. 54(3)(ii) of the Act.

Paragraph 3.2 of the circular No.135/05/2020-GST dated 31.03.2020, clarifies that even though different tax rate may be attracted at different point of time, but the refund of the accumulated unutilized tax credit will not be available under Section 54(3)(ii) of the CGST Act of 2017 in cases where the input and output supplies are same.

Therefore, the refund claim of petitioner is liable to be rejected on this score alone, as the amount of ITC claimed for refund was accumulated out of the trading activity where the input and output were the same.

### Analysis:

Section 54(3) (ii) providing that a refund of the unutilized input tax credit would be available in the event the rate of tax on the input supplies is higher than the rate of tax on output supplies.

It is noted that the circular No.135/05/2020-GST dated 31.03.2020 was issued in exercise of the powers under Section 168(1) of the CGST Act 2017. Section 168(1) of the CGST Act 2017 can be invoked where the Central Board of Indirect Tax and Customs considers it necessary and expedient to bring uniformity in implementing the CGST Act of 2017.

The Court observed that 'when we read the clarification in the Circular conjointly with the provisions of Section 54(3)(ii) of the Act, we notice that on one hand Section 54(3)(ii) of the CGST Act of 2017 provides that no refund of unutilized input tax credit shall be allowed in cases other than where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies and on the other hand, the Circular provides that such refunds will not be available in the event the input supplies and the output supplies are the same, even though there may be a difference in the tax rates on the input supplies and the output supplies.

The provisions of Circular vis a vis the provisions of Section 54(3)(ii) of the Act indicates that there is a conflict between the provisions. Whenever there is a conflict between the provisions of a statutory Act and that of a notification or circular issued by an administrative authority, the provisions of the statutory Act would prevail over such conflicting provisions of a notification or a circular of an administrative authority.

In the instant case, when the provisions of Section 54(3)(ii) of the CGST Act of 2017 are unambiguous and explicitly clear in nature, there is no requirement of bringing in any uniformity in the implementation of the Act and the provisions of Section 54(3)(ii) would have to be applied in the manner it is provided in the Act itself.

### **DCO Excerpts**

-The refund of accumulated ITC due to inverted tax structure is allowed where ITC was accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies even if input and output supplies are of the same goods or services.

There is no explicit restriction in the Act for refund under Inverted Duty Structure on trading activity and it cannot be brought by a Circular.

Compiled by CA Divya Gupta



## UNION OF INDIA AND ORS Vs VKC FOOTSTEPS INDIA PVT LTD [2021-TIOL-237-SC-GST]

### Issue:

Whether the unutilised ITC on “input services” accumulated against inverted duty structure is eligible for refund?

### Facts:

The assessee was engaged in the business of manufacturing & supply of footwears attracting GST rate on output supply @ 5%. The assessee procures input goods such as synthetic leather, PU Polyol & input services such as job-work, goods transport services attracting GST Rate @ 18% & 12%. The GST rate paid on procurement of input goods & input services is higher than the GST rate of tax payable on their Outward Supplies.

In this regard, VKC Footsteps India Pvt Ltd filed a petition in Gujarat High Court where the HC held that “Explanation (a) to Rule 89(5) which denies the refund of “unutilised input tax” paid on “input services” as part of “input tax credit” accumulated on account of inverted duty structure is ultra vires the provision of Section 54(3) of the CGST Act.

On the same matter, a writ was filed before Madras High Court also in case of **TRANSTONNELSTROY AFCONS JOINT VENTURE - 2020-TIOL-1599-HC-MAD-GST** upheld the validity of the said rule and held that “Refund is a statutory right and the extension of the benefit of refund only to the unutilised credit that accumulates on account of the rate of tax on input goods being higher than the rate of tax on output supplies by excluding unutilised input tax credit that accumulated on account of input services is a valid classification and a valid exercise of legislative power.”

### Analysis:

Sub-section (3) of Section 54 provides for a claim of refund of unutilised ITC. As per amended Explanation to Rule 89(5) “Net ITC” shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules 4(A) or 4(B) or both. The

revised formula excludes “input services” from the scope of ‘Net ITC’ for the computation of the refund amount under the said rule. Thus, the refund of accumulated unutilised ITC paid on input services is being denied & refund already granted has been recovered from the assessee.

The petitioner urged that the rule 89(5) is not in the line with Section 54(3) on the basis of following grounds: -

1. Validity of Rule 89(5) of CGST Rules in exercise of the rule-making power under Section 164 of the CGST Act.
2. Vires of Rule 89(5) vis-a-vis Section 54(3) of the CGST Act: Under Section 54(1), the CGST Rules can provide only the form and manner in which an application for refund can be made and the substantive provisions of the CGST Act cannot be curtailed by making a contrary rule. Section 54(3) allows for a refund of unutilized ITC as a result of an inverted duty structure due to input goods as well as input services.
3. Rule 89(5) which seeks to grant refund of the ITC accumulated on account of input goods, is inherently flawed and will lead to anomalous results.

However, the Court held that an anomaly per se cannot result in the invalidation of a fiscal rule which has been framed in exercise of the power of delegated legislation. Hence the validity of the rule was upheld by the Hon’ble Supreme Court.

However, one important observation of the Court was as under:

The aberrations which have been pointed certainly indicate that the formula is not perfect. The formula makes a presumption that the output tax payable on supplies has been entirely discharged from the ITC accumulated on account of input goods and there has been no utilisation of the ITC on input services. This in our view is at odds with reality, where the ITC on both input goods and input services is accumulated in the electronic ledger and is then

utilised for the payment of output tax. In making such an assumption, the formula tilts the balance in favour of the Revenue by reducing the refund granted.

The Court further acknowledged that prescribing an order of utilisation of the ITC accumulated on input services and input goods, may tilt the balance entirely in favour of the assessee as that would make a contrary assumption that the output tax is discharged by the ITC accumulated on input services entirely. Another possible solution could be that the Rule itself provides for a statutory assumption or a deeming fiction of utilisation of a certain percentage of ITC on input services towards the payment of output tax for the purpose of calculation of refund.

### **DCO Excerpts:**

- Rule for restriction of refund of ITC on input services under IDS has been upheld as valid.
- Court has directed for prescribing an order of utilisation of ITC on inputs and inputs services or a statutory assumption regarding utilisation of a certain percentage of ITC on input services towards the payment of output tax for the purpose of calculation of refund.

Compiled by Pallavi Shekhawat – Reviewed by CA Shuchi Sethi



# Expert's Insight



## Leasing of Goods with Operator- Is there a parity in GST Rate ?

The applicable rate of tax on supply of services is governed by the provisions of Notification No 11/2017-CT (Rate) dated 28.06.2017, amended from time to time. The said notification has been amended 14 times ever since it has been notified. The given notification has been issued under the provisions of Section 9 (1), (3) and (4) [Levy of Tax], 11(1) [Exemption from Tax], 15(5) [Valuation of Supply], 16 (1) [Input Tax Credit] and 148 [Special procedure]. Hence the said notification encompasses within itself facades of classification, valuation and ITC of services along with notifying the rate of tax as applicable on the supply.

In this background, it is known that leasing and/or renting of goods under GST is treated as supply of services by virtue of the provisions of Schedule-II under Section 7(1A) of the CGST Act 2017. The relevant provisions of Schedule-II applicable in this regard are as under

**Schedule II: Activities [Or Transactions] To Be Treated As Supply Of Goods Or Supply Of Services**

### 1. Transfer

b. any transfer of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services

### 5. Supply of services

The following shall be treated as supply of services, namely :—

f. transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.

On the reading of above, it comes out clearly that if transfer of right in goods or transfer of right to use goods is transferred without transfer of title in goods then it is treated as supply of services under GST. Further when right to use is not transferred but still possession of goods is parted by the supplier to the receiver then such supply is anyway classified as supply of service.

Hence for levy of GST, the confusion as supply of goods or supply of services has been done away with in respect of any goods which are given under a contract of lease or rental which may or may not involve transfer of right to use goods. It will always be treated as supply of service.

In reality, the renting or leasing of goods (generally machinery) can be with or without operator of such goods. Depending upon the requirement of the receiver of service and the technicality of the machine (goods), the supply of operator with machine is agreed between the parties.

Under the rate notification, the leasing or renting of certain types of machines and equipment has been classified under Heading 9973 with Service Codes as under

239		997316	Leasing or rental services concerning telecommunications equipment [without] operator
240		997319	Leasing or rental services concerning other machinery and equipments [without] operator

However the manner of identifying rate of tax on supply of services in the notification no 11/2017-CT Rate has been given in the initial paragraph of the notification only. It is read as under

*In exercise of the powers conferred by sub-section (1) 1[, sub-section (3) and sub-section (4)] of section 9, sub-section (1) of section 11, sub-section (5) of section 15 1[,] sub-section (1) of section 16 2[and section 148] of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, and on being satisfied that it is necessary in the public interest so to do, hereby **notifies that the central tax, on the intra-State supply of services of description as specified in column (3) of the Table below, falling under Chapter, Section or Heading of scheme of classification of services as specified in column (2), shall be levied at the rate as specified in the corresponding entry in column (4), subject to the conditions as specified in the corresponding entry in column (5) of the said Table:—***

Also, in Explanation No 4(ii) to the notification it has been specified that

(ii) Reference to “Chapter”, “Section” or “Heading”, wherever they occur, unless the context otherwise requires, shall mean respectively as “Chapter”, “Section” and “Heading” in the annexed scheme of classification of services annexed to notification No. 11/2017-Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (i), dated 28-6-2017, vide number G.S.R. 690(E), dated 28th June, 2017 (Annexure).

On reading of above, it appears that steps to tag a rate of tax with a service is as under

S. No.	Chapter, Section, Heading or Group	Service Code (Tariff)	Service Description
(1)	(2)	(3)	(4)
233	Group 99731	3A	Leasing or rental services concerning machinery and equipment [without operator]
234		997311	Leasing or rental services concerning transport equipments including containers, [without] operator
235		997312	Leasing or rental services concerning agricultural machinery and [without] operator
236		997313	Leasing or rental services concerning construction machinery and equipment [without] operator
237		997314	Leasing or rental services concerning office machinery and equipment (except computers) [without] operator
238		997315	Leasing or rental services concerning computers [without] operators

i) **Identification:** Identify the service from the description as given under Column (3) of the Table in the notification.

ii) **Classification:** If a service falls under description as given in Column (3) then classify it to the Chapter, Section and Heading as given under column (2) corresponding to column (3). The exact classification to the Chapter, Section and Heading can be done on the basis of "Scheme of Classification of Services" given as an annexure to the notification.

iii) **Rate of Tax and condition:** Once the classification is also done as per column (2) and annexure, then the corresponding rate of as mentioned in column (4) of the Table shall be applicable only when the condition if any in column (5) is fulfilled.

Now on basis of above approach, when the rate schedule is perused, the rate of tax in respect of leasing of goods or renting of goods is specified at S.No 17. The relevant entries at such serial number in column no (3) of the Table are as under

S. No.	Chapter, Section or Heading	Description of Service	Rate (%)	Condition
(1)	(2)	(3)	(4)	(5)
17	Heading 9973 (Leasing or rental services without operator)	(iii) Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.	Same rate of central tax as on supply of Like goods Involving transfer of title in goods	
		(iv) Any transfer of right in goods or of undivided share in goods without the transfer of title thereof.	Same rate of central tax as on supply of Like goods Involving transfer of title in goods	
		{(viiia) Leasing or renting of goods	Same rate of central tax as on supply of Like goods Involving transfer of title in goods	

Hence it means that when rate of tax on renting or leasing of goods is required to be determined, the first step is to identify the most appropriate description from column no (3) of the Table. On that basis, the description given at S No. 17(iii), (iv) and (viiia) covers the leasing or renting of goods of various types. But the classification of service covered by the description in column (3) is to be determined as per column (2) of the said notification. On perusal of the said column (2) corresponding to S No. 17(iii), (iv) and (viiia), it only covers the leasing or renting of goods without operator. Hence the renting or leasing of goods with operator are not covered by the given entry.

It means that renting and leasing of various types of machines or equipment such as, to be used for construction, office, agriculture etc without operator is only covered by Heading 9973. On perusal of the rate of tax as applicable for Heading 9973 it is clear that rate of tax as applicable on supply of such goods under a contract for supply them as supply of goods (because transfer of title in goods is a supply of goods) would be applicable.

The rate of tax as applicable on machinery to be used for agriculture is covered by Chapter 84 and as per notification no 1/2017-CT (Rate) dated 28.06.2017, the rate of tax as applicable on same is 12%. Also rate of tax applicable on supply of solar based power generating system or devices or bio-gas based plant is covered by rate of tax of 5%. Some machines to be used on other sectors are covered by either rate of 5% or 12%.

Hence if given machines are either given on rent or lease (without operator) or supplied as such, the rate of tax would be either 5% or 12% as the case maybe. Hence the nature of supply would not make any difference to the rate of tax if such machines are supplied without operator.

But if such machines are supplied with operator on rental or lease basis (with or without transfer of right to use such machines) then such supplies are not covered by the Heading 9973 since such heading only covers (renting or leasing of goods without operator). Thus renting or leasing of machines with

operator is not covered within the heading 9973. In such a situation the issue arises then what should be appropriate classification for renting of goods without operator?

On closer reading of the rate notification one fails to point out any other specific description in column (3) under which the renting of goods with operator can be covered. It is very important to note that under S.No. 10 with Heading 9966 a separate category has been carved out for classification of transport vehicle with operators. Thus it means that transport vehicles given on rent with operator are covered under Heading 9966 and transport vehicles given on rent without operator is covered by Heading 9973.

But due to some strange reason the renting of machines and equipment (other than transport vehicles) with operator has not been specifically classified elsewhere in the rate notification. In such a situation the question arises that is there no rate which has been notified for renting of machines and equipment (other than transport vehicles) with operator and in such a case whether the levy of tax fails?

It is interesting to note that the amendment was brought in S.No. 17 with heading 997, It was initially read as **(Leasing or rental services with or without operator)**. However the words “with or” were omitted vide notification No. 20/2019 – Central Tax (Rate) dt 30.09.2019. Hence initially when the notification was first brought in renting of goods with out with or operator, with or without transfer of right to use goods were duly covered by entry 17 under HSN 9973 with rate of tax applicable as specified in notification no 1/2017-CT dated 28.06.2017 i.e. equal to rate as applicable on supply of such goods. However post amendment, at least in respect of goods which are not transport vehicles and require operator, the classification of such supplies as service is not clear.

It may however it can be argued that in spite of such disparity brought in by such amendment, the Entry 35 of the Table can be considered whose description in column (3) is written as under

*Other services (washing, cleaning and dyeing services; beauty and physical wellbeing services; and other miscellaneous services including services nowhere else classified).*

The rate of tax notified for such entry is 18% and Heading is 9997. A view can be taken that rate of tax on supply of services by way of renting or leasing of goods along with operator can be covered by given residuary entry where rate of tax is 18%. Obviously renting of transport vehicles with operator is specifically covered by entry number 9966 and hence they would need not be covered by given category. But this seems to be a clear disparity and an amendment where the logical reasoning seems to be missing.

To justify the given amendment an argument may arise that legislature in its wisdom may have comprehended that except for renting of transport vehicle with operator there exists no goods or machinery where the requirement of operator is mandatory along with renting or leasing of same. However such understanding appears to be illusory as large machines which are technical in nature are of no use if an experienced operator is not given. But with supply of operator which is essential and integral for certain goods, the rate of tax may change dramatically and due to this parity the agreements needs to undergo a change to ensure additional hit of tax due to presence of operator with machine is planned and eliminated.

The government may going forward review the amendment and may make an endeavour to restore the parity.

Written By CA Shuchi Sethi and CA Yash Dhadda



## On Demand Fetching Of Bill Of Entry Details From ICEGATE Portal

1. To help importers of goods, and recipients of supplies from SEZ, search Bill of Entry details, which did not auto-populate in GSTR-2A, a self-service functionality has been made available on the GST Portal that can be used to search such records in GST System, and fetch the missing records from ICEGATE.

It is to be noted that it usually takes 2 days (after reference date) for BE details to get updated on GST Portal from ICEGATE. This functionality should, therefore, be used if data is not available after this period.

**Note:** The reference date would be either Out of charge date, Duty payment date, or amendment date - whichever is later.

3. Taxpayers can follow the below steps to fetch the requisite details:

- Login to GST Portal
- Navigate to Services > User Services > Search BoE
- Enter the Port Code, Bill of Entry Number, Bill of Entry Date and Reference Date and click the **SEARCH** button.
- Note: The reference date would be either Out of charge date, Duty payment date, or amendment date - whichever is later.
- If the BoE details do not appear in the Search results, click on the **QUERY ICEGATE** button, at the bottom of the screen, to trigger a query to ICEGATE.
- History of fetched BoE details from ICEGATE along with status of query are displayed after 30 minutes from the time of triggering the query.

4. For records of type **IMPG** (Import of Goods), details of:

- Period for Form GSTR-2A (system generated Statement of Inward Supplies);
- Reference Date;
- Bill of Entry Details like Port Code, BoE Number, BoE Date & Taxable Value; and
- Amount of Tax would be displayed.

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For records of type **IMPGEZ** (Import of Goods from SEZ), details of:

- Period for Form GSTR-2A;
- Reference Date;
- GSTIN of Supplier;
- Trade Name of Supplier;
- Bill of Entry Details like Port Code, BoE Number, BoE Date & Taxable Value; and
- Amount of Tax would be displayed.

5. Taxpayers are advised to confirm correct details either from BE documents, or using ICEGATE portal

6. In case of any problem, please create a ticket at the GST Helpdesk or GST Self-service portal by including following details:

- complete details of BE records
  - i. GSTIN
  - ii. BE Number
  - iii. BE Date
  - iv. Port Code
  - v. Reference Date
- Screenshot of ICEGATE portal with BE record
- Any error that they may have encountered while using the “Search BoE” functionality on GST Portal

**Advisory for taxpayers regarding generation of E-way Bill where the principal supply is supply of services.**

1. Representations have been received from various trade bodies stating that they are not able to generate EWB bill for movement of those goods where their principle supply is classifiable as a service, since there is no provision for generating E-way Bill by entering SAC (Service Accounting Code-Chapter 99) alone on the E- way bill portal.

2. To overcome this issue, the taxpayers are advised as below:

a) Rule 138 of CGST Rules, 2017, inter alia, states “Information to be furnished prior to commencement of movement of goods and generation of e-way bill. -(1) Every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees....” Thus, E way bill is required to be generated for the movement of Goods.

b) Therefore, in cases where the principal supply is purely a supply of service and involving no movement of goods, the e-way bill is not required to be generated.

c) However, in cases where along with the principal supply of service, movement of some goods is also involved, e-way bill may be generated. Such situations may arise in cases of supply of services like printing services, works contract services, catering services, pandal or shamiana services, etc. In such cases, e-way bill may be generated by entering the details of HSN code of the goods, along with SAC (Service Accounting Code) of services involved.

3. Manner to Issue Duty Credit For Goods Exported Under The RODTEP Scheme

The CBIC vide **Notification No. 76/2021-Customs (N.T.) dated September 23, 2021** has notified the manner to issue duty credit for goods exported under the Scheme for Remission of Duties and Taxes on Exported Products (“the Scheme”).

**Inter-alia following are the conditions for issuance of duty credit:**

1. that the duty credit is issued
  - 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, where such duty or tax or levy is not exempted, remitted or credited under any other Scheme;
  - b. in accordance with any rules or regulations issued in relation to duty credit, e-scrip or electronic duty credit ledger
  - c. against the shipping bill or bill of export, presented on or after the January 01, 2021, and where the order permitting clearance and loading of goods for exportation has been made

2. that such duty credit shall be used for payment of the duty of customs leviable under the First Schedule to the Customs Tariff Act, 1975 on goods when imported into India

3. that the duty credit allowed under the Scheme against export of goods shall be subject to realization of sale proceeds in respect of such goods in India within the period allowed under the Foreign Exchange Management Act, 1999 (“FEMA”)

4. that the exporter has realised the sale proceeds against export of goods made earlier by the said exporter where the period allowed for realization, including any extension of the said period by the Reserve Bank of India, has expired:

Provided that duty credit shall be issued by Customs in excess of the ineligible amount of duty credit pertaining to the unrealised portion of sale proceeds against export of goods made earlier

5. that duty credit under the Scheme for exports made to Nepal, Bhutan and Myanmar shall be allowed only upon realization of sale proceeds against irrevocable letters of credit in freely convertible currency established by importers in Nepal, Bhutan and Myanmar in favour of Indian exporters for the value of such goods.

**Cancellation of duty credit.** - Where a person contravenes any of the provisions of the Act or any other law for the time being in force or the rules or regulations made thereunder in relation to exports to which the duty credit relates, or in relation to the e-scrip, the Principal Commissioner of Customs or Commissioner of Customs having jurisdiction over the customs station of registration of the e-scrip may, after enquiry, pass an order to cancel the said duty credit or e-scrip.

**Recovery of amount of duty credit.** - Where an amount of duty credit has, for any reason, been allowed in excess of what the exporter is entitled to, the exporter shall repay the amount so allowed in excess, himself or on demand by the proper officer, along with interest, on that portion of duty credit allowed in excess, which has been used or transferred.

### **Recovery of amount of duty credit where export proceeds are not realised.**

- Where an amount of duty credit has been allowed to an exporter but the sale proceeds in respect of such export goods have not been realized by the exporter in India within the period allowed under the Foreign Exchange Management Act, 1999, the exporter shall, himself or on demand by the proper officer, repay the amount of duty credit, along with interest, at the rate as fixed under section 28AA of the said act for the purposes of that section, within fifteen days of expiry of the said period

If a part of the sale proceeds has been realized, the amount of duty credit to be recovered shall be the amount equal to that portion of the amount of duty credit allowed which bears the same proportion as the portion of the sale proceeds not realized bears to the total amount of sale proceeds.

### **Electronic Duty Credit Ledger Regulations, 2021 Specifying the manner of issuance of Duty Credit**

The CBIC vide **Notification No. 75/2021-Customs (N.T.) dated September 23, 2021** has notified Electronic Duty Credit Ledger Regulations, 2021 (**"the Regulation"**) specifying the manner in which it shall issue duty credit for the Scheme for Remission of Duties and Taxes on Exported Products or the Scheme for Rebate of State and Central Taxes and Levies (**"RoDTEP/RoSCTL"** or **"the Schemes"**)

(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.

Few major highlights of the Regulation are as under:

**Regulation 3: Issuance of duty credit in the scroll.** - (1) A shipping bill or a bill of export, presented on or after the January 01, 2021 and having a claim of duty credit under RoDTEP or RoSCTL, shall be processed in the customs automated system.

Once the claim is allowed, a scroll for duty credit will be generated by the proper officer in the customs automated system. Separate scrolls will be generated for each Scheme.

The scroll details, including the details of shipping bill or bill of export, duty credit allowed and date of generation of scroll, shall be visible in the customs automated system to the exporter who is the recipient of such duty credit.

**Regulation 4: Creation of e-scrip in the ledger.** - The exporter shall have the option to combine the duty credits under a particular Scheme, allowed to him in one or more shipping bills or bills of export, and to carry forward the said duty credits to create an e-scrip for that Scheme in the ledger, customs station-wise according to the customs station of export, within a period of one year from the date of generation of the scroll in the customs automated system.

Provided that if the exporter does not exercise the said option of creating the e-scrip within the said period of one year, duty credit in each scroll will be combined customs station-wise for each Scheme and will be automatically created by the customs automated system as a single e-scrip for duty credit for that Scheme, for each customs station, in the ledger of the said exporter.

Regulation 6: Use and validity of e-scrip. - The duty credit available in the e-scrip in the ledger shall be used for payment of duties of Customs specified in the First Schedule to the Customs Tariff Act, 1975.

The e-scrip shall be valid for a period of one year from the date of its creation in the ledger and any duty credit in the said e-scrip remaining unutilized at the end of this period shall lapse.

### **Electronic Credit Ledger and Electronic Cash Ledger**

Taxpayers have now been provided the facility to view/download Electronic cash or Credit ledgers for a period of 12 months. Earlier, the ledgers were allowed to be downloaded for a period of 6 months only. The ledgers can be downloaded in both Excel and Pdf formats.

Compiled by Priyanshi Gupta



# New On Portal



# Dhadda & Co.

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