

PAPER 4B: INDIRECT TAXES

STATUTORY UPDATE FOR MAY 2023

EXAMINATION

For the sake of brevity, Central Goods and Services Tax, Integrated Goods and Services Tax, Central Goods and Services Tax Act, 2017, Integrated Goods and Services Tax Act, 2017, Central Goods and Services Tax Rules, 2017 and Integrated Goods and Services Tax Rules, 2017 have been referred to as CGST, IGST, CGST Act, IGST Act, CGST Rules and IGST Rules respectively.

Unless otherwise specified, the section numbers and rules referred to in the chapters of Part I: Goods and Services Tax pertain to CGST Act and CGST Rules respectively

The provisions of the CGST Act, 2017 and the IGST Act, 2017 as amended by the Finance Act, 2021, including significant notifications and circulars issued and other legislative amendments made, up to 30th April, 2022, are applicable for November 2022 examination.

The subject matter of August 2021 Edition of the Study Material of Intermediate Paper 4B: Indirect Taxes is based on the provisions of the CGST Act and the IGST Act as amended upto 30.04.2021.

The amendments made by the notifications and circulars issued between 01.05.2021 and 30.04.2022 in GST laws as well as the amendments made by the Finance Act, 2021 and Finance Act, 2022 which became effective between 01.05.2021 and 30.04.2022, are given in the Supplementary Study Paper 2022.

The amendments made by the notifications and circulars issued between 01.05.2022 and 31.10.2022 in GST laws as well as the amendments made by the Finance Act, 2021 and Finance Act, 2022 which became effective between 01.05.2022 and 31.10.2022, are given in this Statutory Update.

For the ease of reference, the amendments have been grouped into Chapters which correspond with the Chapters of the Study Material.

SUPPLY UNDER GST



1. Perquisites provided in terms of contractual agreement to employee – not liable to GST

Circular No. 172/04/2022 GST dated 06.07.2022 clarifies issue as to whether various perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are liable for GST.

Clarification: Schedule III to the CGST Act provides that “services by employee to the employer in the course of or in relation to his employment” will not be considered as supply of goods or services and hence GST is not applicable on services rendered by employee to employer provided they are in the course of or in relation to employment.

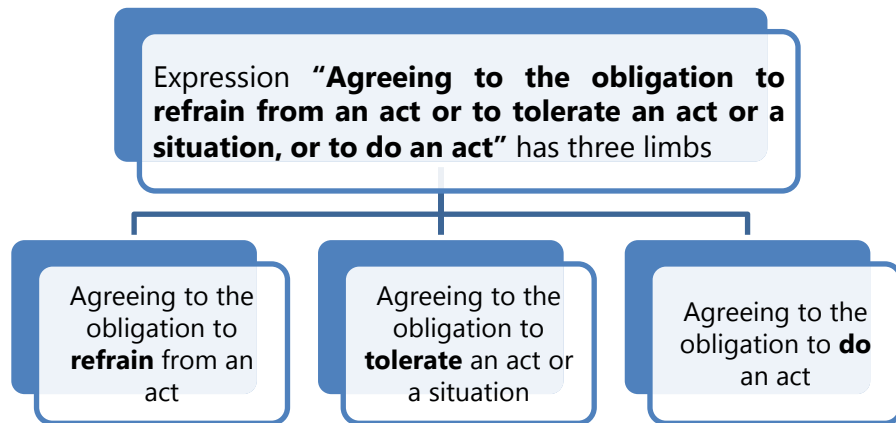
Any perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are in lieu of the services provided by employee to the employer in relation to his employment. It follows therefrom that **perquisites provided by the employer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

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

Circular No. 178/10/2022 GST dated 03.08.2022 clarifies issues with respect to GST applicability on liquidated damages, compensation and

penalty arising out of breach of contract or other provisions of law.

Clarification: “Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act” has been specifically declared to be a supply of service in para 5(e) of Schedule II to the CGST Act, 2017 if the same constitutes a “supply” within the meaning of the CGST Act.



a. Agreeing to the obligation to refrain from an act

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

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

b. Agreeing to the obligation to tolerate an act or a situation

This would include activities such a shopkeeper allowing a hawker to operate from the common pavement in front of his shop against a monthly payment by the hawker, or an RWA tolerating the use of loud speakers for early morning prayers by a school located in the colony subject to the school

paying an agreed sum to the RWA as compensation.

c. Agreeing to the obligation to do an act

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

Above three activities must comply with the following conditions:

(1) There must be an expressed or implied agreement or contract must exist

Above three activities must be under an **“agreement” or a “contract”** (whether express or implied) to fall within the ambit of para 5(e) of Schedule II. In other words, one of the parties to such agreement/contract (the first party) must be under a contractual obligation to either (a) refrain or (b) tolerate or (c) do.

Such contractual arrangement must be an **independent arrangement** in its own right. Such arrangement/agreement can take the form of an **independent stand-alone contract or may form part of another contract**. Thus, a person (the first person) can be said to be making a supply by way of refraining from doing something or tolerating some act or situation to another person (the second person) if the first person was under an obligation to do so and then performed accordingly.

Such a contract cannot be imagined or presumed to exist just because there is a flow of money from one party to another. There must be an expressed or implied promise by the recipient of money to agree to do or abstain from doing something in return for the money paid to him.

(2) Consideration must flow in return to this contract/agreement

Some **“consideration”** must flow in return from the other party to this contract/agreement (the second party) to the first party for such (a) refraining or (b) tolerating or (c) doing.

Taxability of some of the transactions has been discussed in detail as under:

(A) Liquidated Damages

It is common for the parties entering into a contract, to specify in the contract itself, the compensation that would be payable in the event of the breach of the contract. Black's Law Dictionary defines 'Liquidated Damages' as *cash compensation agreed to by a signed, written contract for breach of contract, payable to the aggrieved party.*



The taxability or otherwise of liquidated damages is clarified as under:

It is argued that performance is the essence of a contract. **Liquidated damages** cannot be said to be a consideration received for tolerating the breach or non-performance of contract. They are rather payments for not tolerating the breach of contract. Payment of liquidated damages is stipulated in a contract to ensure performance and to deter non-performance, unsatisfactory performance or delayed performance.

Liquidated damages are a measure of loss and damage that the parties agree would arise due to breach of contract. They do not act as a remedy for the breach of contract. They do not reconstitute the aggrieved person.

A contract is entered into for execution and not for its breach. The liquidated damages or penalty are not the desired outcome of the contract. By accepting the liquidated damages, the party aggrieved by breach of contract cannot be said to have permitted or tolerated the deviation or non-fulfilment of the promise by the other party.

Where the amount paid as 'liquidated damages' is an amount paid only to compensate for injury, loss or damage suffered by the aggrieved party due to breach of the contract and there is no agreement, express or implied, by the aggrieved party receiving the liquidated damages, to refrain from or tolerate an act or to do anything for the party paying the liquidated damages, in such cases liquidated damages are merely a flow of money from the party who causes breach of the contract to the

party who suffers loss or damage due to such breach. Such payments do not constitute consideration for a supply and are not taxable.

Examples of such cases are:

- (1) damages resulting from damage to property, negligence, piracy, unauthorized use of trade name, copyright,
- (2) penalty stipulated in a contract for delayed construction of houses,
- (3) forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer or by Government or local authority in the event of a successful bidder failing to act after winning the bid, for allotment of natural resources.

The key in such cases is to consider whether the impugned payments constitute consideration for another independent contract envisaging tolerating an act or situation or refraining from doing any act or situation or simply doing an act. If the answer is yes, then it constitutes a 'supply' irrespective of by what name it is called, otherwise it is not a "supply".

If the payment is merely an event in the course of the performance of the agreement and it does not represent the 'object', as such, of the contract then it cannot be considered 'consideration'.

On the contrary, consider the following examples:

- (1) A contract may provide that payment by the recipient of goods or services shall be made before a certain date and failure to make payment by the due date shall attract late fee or penalty.
- (2) A contract for transport of passengers may stipulate that the ticket amount shall be partly or wholly forfeited if the passenger does not show up.
- (3) A contract for package tour may stipulate forfeiture of security deposit in the event of cancellation of tour by the customer.
- (4) A contract for lease of movable or immovable property may stipulate that the lessee shall not terminate the lease before a

certain period and if he does so he will have to pay certain amount as early termination fee or penalty.

- (5) Some banks similarly charge pre- payment penalty if the borrower wishes to repay the loan before the maturity of the loan period.

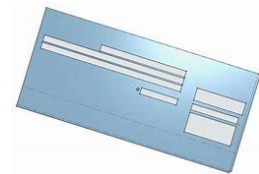
In the above examples, amounts paid for acceptance of late payment, early termination of lease or for pre-payment of loan or the amounts forfeited on cancellation of service by the customer as contemplated by the contract as part of commercial terms agreed to by the parties, constitute consideration for the supply of a facility, namely, of acceptance of late payment, early termination of a lease agreement, of prepayment of loan and of making arrangements for the intended supply by the tour operator respectively.

Therefore, such payments, even though they may be referred to as fine or penalty, are actually payments that amount to consideration for supply, and are subject to GST, in cases where such supply is taxable.

Since these supplies are ancillary to the principal supply for which the contract is signed, they shall be eligible to be assessed as the principal supply. Naturally, such payments will not be taxable if the principal supply is exempt.

(B) Cheque dishonor fine/ penalty

The supplier wants payment to be received on time and does not want cheque to be dishonoured. There is never an implied or express offer or willingness on part of the supplier that he would tolerate deposit of an invalid, fake or unworthy instrument of payment against consideration in the form of cheque dishonour fine or penalty.



The fine or penalty that the supplier or a banker imposes, for dishonour of a cheque, is a penalty imposed not for tolerating the act or situation but a fine, or penalty imposed for not tolerating, penalizing and thereby deterring and discouraging such an act or situation. Therefore, cheque dishonor fine or penalty is not a consideration for any service and not taxable.

(C) Penalty imposed for violation of laws

Penalty imposed for violation of laws such as traffic violations, or for violation of pollution norms or other laws are also not consideration for any supply received and are not taxable.



Same is the case with fines, penalties imposed by the mining Department of a Central or State Government or a local authority on discovering mining of excess mineral beyond the permissible limit or of mining activities in violation of the mining permit.

Laws are not framed for tolerating their violation. They stipulate penalty not for tolerating violation but for not tolerating, penalizing and deterring such violations. There is no agreement between the Government and the violator specifying that violation would be allowed or permitted against payment of fine or penalty. There cannot be such an agreement as violation of law is never a lawful object or consideration.

In short, fines and penalty chargeable by Government or a local authority imposed for violation of a statute, bye-laws, rules or regulations are not leviable to tax.

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

The provisions for forfeiture of salary or recovery of bond amount in the event of the employee leaving the employment before the minimum agreed period are incorporated in the employment contract to discourage non-serious candidates from taking up employment.

The said amounts are recovered by the employer not as a consideration for tolerating the act of such premature quitting of employment but as penalties for dissuading the non-serious employees from taking up employment and to discourage and deter such a situation.

Further, the employee does not get anything in return from the employer against payment of such amounts.

Therefore, such amounts recovered by the employer are not taxable as

consideration for the service of agreeing to tolerate an act or a situation.

(E) Late payment surcharge or fee

The facility of accepting late payments with interest or late payment fee, fine or penalty is a facility granted by supplier naturally bundled with the main supply. It is not uncommon or unnatural for customers to sometimes miss the last date of payment of electricity, water, telecommunication services etc.



Almost all service providers across the world provide the facility of accepting late payments with late fine or penalty.

Even if this service is described as a service of tolerating the act of late payment, it is an ancillary supply naturally bundled and supplied in conjunction with the principal supply, and therefore should be assessed as the principal supply.

Since it is ancillary to and naturally bundled with the principal supply such as of electricity, water, telecommunication, cooking gas, insurance etc. it should be assessed at the same rate as the principal supply.

However, the same cannot be said of cheque dishonor fine or penalty as discussed earlier.

(F) Fixed charges for power

The price charged for electricity by the power generating companies from the State Electricity Boards (SEBs)/DISCOMS or by SEBs/DISCOMs from individual customers has two components, namely, a minimum fixed charge (or capacity charge) and variable per unit charge.

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

Both the components of the price, the minimum fixed charges/capacity charges and the variable/energy charges are charged for sale of electricity and are thus not taxable as electricity is exempt from GST.

(G) Cancellation charges

It is a common business practice for suppliers of services such as hotel accommodation, tour and travel, transportation etc. to provide the facility of cancellation of the intended supplies within a certain time period on payment of cancellation fee.

Cancellation fee can be considered as the charges for the costs involved in making arrangements for the intended supply and the costs involved in cancellation of the supply, such as in cancellation of reserved tickets by the Indian Railways.

Services such as transportation travel and tour constitute a bundle of services. The transportation service, for instance, starts with booking of the ticket for travel and lasts at least till exit of the passenger from the destination terminal.

All services such as making available an online portal or convenient booking counters with basic facilities at the transportation terminal or in the city, to reserve the seats and issue tickets for reserved seats much in advance of the travel, giving preferred seats with or without extra cost, lounge and waiting room facilities at airports, railway stations and bus terminals, provision of basic necessities such as soap and other toiletries in the wash rooms, clean drinking water in the waiting area etc. form part and parcel of the transportation service; they constitute the various elements of passenger transportation service, a composite supply.

The facilitation service of allowing cancellation against payment of cancellation charges is also a natural part of this bundle. It is invariably supplied by all suppliers of passenger transportation service as naturally bundled and in conjunction with the principal supply of transportation in the ordinary course of business.

Therefore, facilitation supply of allowing cancellation of an intended supply against payment of cancellation fee or retention or forfeiture of a part or whole of the consideration or security deposit in such cases

should be assessed as the principal supply.

For example, cancellation charges of railway tickets for a class would attract GST at the same rate as applicable to the class of travel (i.e., 5% GST on first class or air-conditioned coach ticket and nil for other classes such as second sleeper class). Same is the case for air travel.

Accordingly, the **amount forfeited in the case of non-refundable ticket for air travel or security deposit or earnest money forfeited in case of the customer failing to avail the travel, tour operator or hotel accommodation service or such other intended supplies should be assessed at the same rate as applicable to the service contract, say air transport or tour operator service, or other such services.**

However, as discussed earlier, forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer or such forfeiture by Government or local authority in the event of a successful bidder failing to act after winning the bid for allotment of natural resources, is a mere flow of money, as the buyer or the successful bidder does not get anything in return for such forfeiture of earnest money. Forfeiture of earnest money is stipulated in such cases not as a consideration for tolerating the breach of contract but as a compensation for the losses suffered and as a penalty for discouraging the non-serious buyers or bidders. Such payments being merely flow of money are not a consideration for any supply and are not taxable.

CHARGE OF GST



1. **Manufacturers of fly ash bricks/blocks, building bricks, bricks of fossil meals, earthen/roofing tiles, etc. also ineligible to opt for composition levy**

As per section 10(2)(e) read with *Notification No. 14/2019 CT dated 07.03.2019*, manufacturers of following goods cannot opt for composition scheme under section 10(1) and 10(2):

Tariff item, sub-heading, heading or Chapter	Description
2105 00 00	Ice cream and other edible ice, whether or not containing cocoa
2106 90 20	Pan Masala
24	All goods i.e. Tobacco and manufactured tobacco substitutes
2202 1010	Aerated water

Notification No. 14/2019 CT dated 07.03.2019 has been amended to include following items in the above list:

Tariff item, sub-heading, heading or Chapter	Description of goods
6815	Fly ash bricks; Fly ash aggregates¹; Fly ash blocks
6901 00 10	Bricks of fossil meals or similar siliceous earths
6904 10 00	Building bricks
6905 10 00	Earthen or roofing tiles

Thus, manufacturers of the above-mentioned goods have become ineligible to opt for composition levy under section 10(1) and 10(2).

[Notification No. 04/2022 CT dated 31.03.2022 as amended by Notification No. 16/2022 CT dated 13.07.2022]

2. Amendments in the list of notified services tax on which is payable under reverse charge by the recipient

Notification No. 13/2017 CT (R) dated 28.06.2017 as amended has notified specified categories of supply of services wherein whole of the tax shall be paid on reverse charge basis by the recipient of services.

With effect from 18.07.2022, the said list of services tax on which is payable under reverse charge has been amended as follows:-

S. No.	Category of supply of service	Supplier of service	Recipient of Service
1	Supply of services by a Goods Transport Agency (GTA) in respect of transportation of goods by road to- (a) any factory	Goods Transport Agency (GTA) who has not paid CGST @ 6%	(a) Any factory registered under or governed by the Factories Act, 1948; or (b) any society registered under the Societies

¹ Between 01.04.2022 and 18.07.2022, manufacturers of fly ash aggregate were ineligible to opt for composition scheme under section 10(1) and 10(2) **only when the fly ash content of fly ash aggregate was 90% or more.**

	<p>registered under or governed by the Factories Act, 1948; or</p> <p>(b) any society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India; or</p> <p>(c) any co-operative society established by or under any law; or</p> <p>(d) any person registered under the CGST Act or the IGST Act or the SGST Act or the UTGST Act; or</p> <p>(e) any body corporate established, by or under any law; or</p> <p>(f) any partnership firm whether registered or not under any law including association of persons; or</p> <p>(g) any casual taxable person.</p>		<p>Registration Act, 1860 or under any other law for the time being in force in any part of India; or</p> <p>(c) any cooperative society established by or under any law; or</p> <p>(d) any person registered under the CGST Act or the IGST Act or the SGST Act or the UTGST Act; or</p> <p>(e) any body corporate established, by or under any law; or</p> <p>(f) any partnership firm whether registered or not under any law including association of persons; or</p> <p>(g) any casual taxable person; located in the taxable territory.</p> <p>[Hereinafter referred as Specified recipients]</p>
<p>However, reverse charge mechanism (RCM) shall not apply to services provided by a GTA, by way of transport of goods in a goods carriage by</p>			

road to-

- (a) a Department/ establishment of the Central Government/ State Government/ Union territory; or
- (b) local authority; or
- (c) Governmental agencies, which has taken registration under the CGST Act only for the purpose of deducting tax under section 51 and not for making a taxable supply of goods or services.

Further, nothing contained in this entry shall apply where, -

- i. the supplier has taken registration under the CGST Act, 2017 and exercised the option to pay tax on the services of GTA in relation to transport of goods supplied by him under forward charge; and**
- ii. the supplier has issued a tax invoice to the recipient charging CGST at the applicable rates and has made the prescribed declaration on such invoice issued by him.**

5	<p>Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding, -</p> <p>(1) renting of immovable property, and</p> <p>(2) services specified below-</p> <p>(i) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services</p>	<p>Central Government, State Government, Union territory or local authority</p>	<p>Any business entity located in the taxable territory.</p>
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	<p>provided to a person other than Central Government, State Government or Union territory or local authority;</p> <p>(ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;</p> <p>(iii) transport of goods or passengers.</p>		
5AA	<i>Service by way of renting of residential dwelling to a registered person</i>	<i>Any person</i>	<i>Any registered person</i>

Parallel amendments in reverse charge entries in case of inter-State supply of services have been carried out by amending *Notification No. 10/2017 IT(R) dated 28.06.2017*.

[Notification No. 05/2022 CT(R) dated 13.07.2022 and Notification No. 05/2022 IT(R) dated 13.07.2022]

EXEMPTIONS FROM GST



Entry Nos. referred to in this chapter correspond to entries in Notification No. 12/2017 CT (R) dated 28.06.2017 which grants exemption from GST for intra-State supply of specified services. However, these entry numbers have been given only for reference purposes and are not relevant for examination purpose.

1. Amendments in the services exempted from GST

Notification no. 12/2017 CT(R) dated 28.06.2017 provides list of services exempted from CGST. Parallel exemptions from IGST have been granted to inter-State supply of services vide Notification No. 9/2017 IT(R) dated 28.06.2017.

The amendments in the list of exempted services have been highlighted in bold/in strikethrough form, hereunder:

(i) Amendments in the existing exemptions

Following existing exemptions have been amended:


Sl. No.	Description of services	Effective from
6	Services by the Central Government, State Government, Union territory or local authority excluding the following services— (a) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union	18.07.2022


	<p>territory;-</p> <p>(b) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;</p> <p>(c) transport of goods or passengers; or (d) any service, other than services covered under entries (a) to (c) above, provided to business entities.</p>	
7	<p>Services provided by the Central Government, State Government, Union territory or local authority to a business entity with an aggregate turnover of up to such amount in the preceding financial year as makes it eligible for exemption from registration under the CGST Act, 2017.</p> <p>Explanation.- For the purposes of this entry, it is hereby clarified that the provisions of this entry shall not be applicable to-</p> <p>(a) services,-</p> <p>(i) by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory;</p> <p>(ii) in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;</p> <p>(iii) of transport of goods or passengers; and</p> <p>(b) services by way of renting of</p>	18.07.2022

	immovable property.	
8	<p>Services provided by the Central Government, State Government, Union territory or local authority to another Central Government, State Government, Union territory or local authority.</p> <p>However, nothing contained in this entry shall apply to services-</p> <p>(i) by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory;</p> <p>(ii) in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;</p> <p>(iii) of transport of goods or passengers.</p>	18.07.2022
9	<p>Services provided by Central Government, State Government, Union territory or a local authority where the consideration for such services does not exceed ₹ 5,000.</p> <p>However, nothing contained in this entry shall apply to shall apply to –</p> <p>(i) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory;</p> <p>(ii) services in relation to an aircraft or a vessel, inside or outside the precincts of</p>	18.07.2022

	<p>a port or an airport;</p> <p>(iii) transport of goods or passengers.</p> <p>Further, in case where continuous supply of service* is provided by the Central Government, State Government, Union territory or a local authority, the exemption shall apply only where the consideration charged for such service does not exceed ₹ 5,000 in a FY.</p> <p>*as defined in section 2(33)</p>	
12	<p>Services by way of renting of residential dwelling for use as residence except where the residential dwelling is rented to a registered person.</p>	18.07.2022
15	<p>Transport of passengers, with or without accompanied belongings, by –</p> <p>(a) air in economy class, embarking from or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal;</p> <p>(b) non-air conditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; or</p> <p>(c) stage carriage other than air-conditioned stage carriage.</p> <p>However, nothing contained in items (b) and (c) above shall apply to services supplied through an electronic commerce operator (ECO), and notified under section</p>	01.01.2022 and 18.07.2022

	<p>9(5) of the CGST, 2017. <i>Services notified under section 9(5) are the services by way of transportation of passengers by a radio-taxi, motorcab, maxicab, motor cycle, omnibus or any other motor vehicle, supplied through ECO. In such a case, the tax on supplies of such services shall be paid by the ECO.</i></p> <p>In other words, in case where services of transport of passengers, by non-air conditioned contract carriage other than radio taxi excluding tourism, conducted tour, charter or hire or by non-air conditioned stage carriage, are supplied through ECO, such services are not exempt from GST. Further, tax on such services shall be paid by ECO.</p>	
20	<p>Services by way of transportation by rail or a vessel from one place in India to another of the following goods –</p> <p>(a) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap;</p> <p>(b) defence or military equipments;</p> <p>(c) newspaper or magazines registered with the Registrar of Newspapers;</p> <p>(d) railway equipments or materials;</p> <p>(e) agricultural produce;</p> <p>(f) milk, salt and food grain including flours, pulses and rice; and</p> <p>(g) organic manure</p>	18.07.2022
21	<p>Services provided by a goods transport agency, by way of transport in a goods carriage of –</p>	18.07.2022

	<p>(a) agricultural produce;</p> <p>(b) goods, where consideration charged for the transportation of goods on a consignment transported in a single carriage does not exceed ₹1,500;</p> <p>(c) goods, where consideration charged for transportation of all such goods for a single consignee does not exceed ₹ 750;</p> <p>(d) milk, salt and food grain including flour, pulses and rice;</p> <p>(e) organic manure;</p> <p>(f) newspaper or magazines registered with the Registrar of Newspapers;</p> <p>(g) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or</p> <p>(h) defence or military equipments.</p>		
24B	<p>Services by way of storage/ warehousing of cereals, pulses, fruits, nuts and vegetables, spices, copra, sugarcane, jaggery, raw vegetable fibres such as cotton, flax, jute etc., indigo, unmanufactured tobacco, betel leaves, tendu leaves, coffee and tea.</p>	18.07.2022	
54	<p>Services relating to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce by way of—</p> <p>(a) agricultural operations directly related</p>		18.07.2022

	<p>to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing;</p> <p>(b) supply of farm labour;</p> <p>(c) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;</p> <p>(d) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;</p> <p>(e) loading, unloading, packing, storage or warehousing of agricultural produce;</p> <p>(f) agricultural extension services;</p> <p>(g) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce.</p> <p>(h) services by way of fumigation in a warehouse of agricultural produce.</p>	
74	<p>Services by way of-</p> <p>(a) health care services by a clinical establishment, an</p> 	18.07.2022


	<p>authorised medical practitioner or para-medics;</p> <p>However, nothing in this entry shall apply to the services provided by a clinical establishment by way of providing room [other than Intensive Care Unit (ICU)/Critical Care Unit (CCU)/Intensive Cardiac Care Unit (ICCU)/Neo natal Intensive Care Unit (NICU)] having room charges exceeding ₹ 5000 per day to a person receiving health care services.</p> <p>(b) services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above.</p>	
80	<p>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 Income-tax Act.</p> <p>Services by way of training or coaching in-</p> <p>(a) recreational activities relating to arts or culture, by an individual, or</p> <p>(b) sports by charitable entities registered under section 12AA or 12AB of the Income-tax Act.</p>	18.07.2022

(ii) New exemptions introduced

Following new services have been exempted from CGST:

Sl. No.	Description of services	Effective from
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24C	Services by the Department of Posts by way of post card, inland letter, book post and ordinary post (envelopes weighing less than 10 grams).	18.07.2022
52A	<p>Tour operator service, which is performed partly in India and partly outside India, supplied by a tour operator to a foreign tourist, to the extent of the value of the tour operator service which is performed outside India.</p> <p>However, value of the tour operator service performed outside India shall be such proportion of the total consideration charged for the entire tour which is equal to the proportion which the number of days for which the tour is performed outside India has to the total number of days comprising the tour, or 50% of the total consideration charged for the entire tour, whichever is less.</p> <p>Further, in making the above calculations, any duration of time equal to or exceeding 12 hours shall be considered as one full day and any duration of time less than 12 hours shall be taken as half a day.</p> <p>Explanation. - “foreign tourist” means a person not normally resident in India, who enters India for a stay of not more than 6 months for legitimate non-immigrant purposes.</p> <p>Illustrations: A tour operator provides a tour operator service to a foreign tourist as follows: -</p> <p>(a) 3 days in India, 2 days in Nepal; Consideration charged for the entire tour: ₹ 1,00,000/-</p> <p>Exemption: ₹ 40,000/- (= ₹1,00,000/- x 2/5) or, ₹ 50,000/- (= 50% of ₹ 1,00,000/-) whichever is less, i.e., ₹ 40,000/- (i.e.,</p>	18.07.2022

	<p>Taxable value: ₹ 60,000/-);</p> <p>(b) 2 days in India, 3 nights in Nepal; Consideration charged for the entire tour: ₹ 1,00,000/-</p> <p>Exemption: ₹ 60,000 (= ₹ 1,00,000/- x 3/5) or, ₹ 50,000/- (= 50% of ₹ 1,00,000/-) whichever is less, i.e., ₹ 50,000/- (i.e., Taxable value: ₹ 50,000/-);</p> <p>(c) 2.5 days in India, 3 days in Nepal; Consideration charged for the entire tour: ₹ 1,00,000/-</p> <p>Exemption: ₹ 54,545 (= ₹ 1,00,000/- x 3/5.5) or, ₹ 50,000/- (= 50% of ₹ 1,00,000/-) whichever is less, i.e., ₹ 50,000/- (i.e., Taxable value: ₹ 50,000/-).</p>	
61A	<p>Services by way of granting National Permit to a goods carriage to operate through-out India/ contiguous States.</p> 	01.10.2021

(iii) Withdrawal of existing exemptions

Exemption from CGST available to following services has been withdrawn:

Sl. No.	Description of services	Effective from
14	Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having value of supply of a unit of accommodation below or equal to ₹ 1,000 per day or equivalent	18.07.2022
26	Services by the Reserve Bank of India.	18.07.2022
32	Services provided by the IRDAI (Insurance	18.07.2022

	Regulatory and Development Authority of India) to insurers under IRDAI Act, 1999.	
33	Services provided by the SEBI (Securities and Exchange Board of India) set up under the SEBI Act, 1992 by way of protecting the interests of investors in securities and to promote the development of, and to regulate, the securities market.	18.07.2022
43	Services of leasing of assets (rolling stock assets including wagons, coaches, locos) by the Indian Railways Finance Corporation to Indian Railways.	01.10.2021
47A	Services by way of licensing, registration and analysis or testing of food samples supplied by the Food Safety and Standards Authority of India (FSSAI) to Food Business Operators.	18.07.2022
51	Services provided by the GSTN (Goods and Services Tax Network) to the Central Government or State Governments or Union territories for implementation of Goods and Services Tax.	18.07.2022
53A	Services by way of fumigation in a warehouse of agricultural produce.	18.07.2022
56	Services by way of slaughtering of animals.	18.07.2022
73	Services provided by the cord blood banks by way of preservation of stem cells or any other service in relation to such preservation.	18.07.2022
75	Services provided by operators of the common bio-medical waste treatment facility to a clinical establishment by way of treatment or disposal of bio-medical waste or the processes incidental thereto.	18.07.2022

Parallel amendments in exemptions from IGST to inter-State supply of services have been carried out by amending *Notification No. 9/2017 IT(R)*

dated 28.06.2017.

[Notification No. 07/2021 CT(R) dated 30.09.2021, Notification No. 16/2021 CT(R) dated 18.11.2021, Notification No. 04/2022 CT(R) dated 13.07.2022, Notification No. 07/2021 IT(R) dated 30.09.2021, Notification No. 16/2021 IT(R) dated 18.11.2021, and Notification No. 04/2022 IT(R) dated 13.07.2022]

2. Clarification regarding applicability of GST on supply of food in anganwadis and schools

The issue which arose for consideration was as to whether serving of food in schools under Mid-Day Meals Scheme would be exempt if such supplies are funded by government grants and/or corporate donations.

Entry 66(b)(ii) exempts services provided to an educational institution, by way of catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory. This entry applies to pre-school and schools.

Accordingly, as per said entry 66², any catering service provided to an educational institution is exempt from GST and it includes mid-day meal service also. The **scope of this entry is thus wide enough to cover any serving of any food to a school** (including pre-school).

An anganwadi, *inter alia*, provides pre-school non-formal education. Hence, anganwadi is covered by the definition of educational institution (as pre-

² Services provided -

(a)

(aa)

(b) to an educational institution, by way of,-

(i)

(ii) catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory;

(iii)

(iv)

(v)

However, nothing contained in sub-items (i), (ii) and (iii) of item (b) shall apply to an educational institution other than an institution providing services by way of pre-school education and education up to higher secondary school or equivalent.

school). Further, it is clarified that services provided to an educational institution by way of serving of food (catering including mid- day meals) is exempt from levy of GST irrespective of its funding from government grants or corporate donations.

Hence, **servicing of food to anganwadi shall also be covered by said exemption, whether sponsored by government or through donation from corporates.**

[Circular No. 149/05/2021 GST dated 17.06.2021]

3. Clarification regarding applicability of GST on the activity of construction of road where considerations are received in deferred payment (annuity)

Circular No.150/06/2021 GST dated 17.06.2021 clarifies the applicability of GST on annuities paid for construction of road where certain portion of consideration is received upfront while remaining payment is made through deferred payment (annuity) spread over years.

It is important to note that Entry 23A **exempts the access to road or bridge** on payment of annuity, but it does not cover construction of road services³.

Thus, it has been clarified that **Entry 23A does not exempt GST on the annuity (deferred payments) paid for construction of roads.**

4. Clarification regarding GST on supply of various services by Central and State Boards

Circular No. 151/07/2021 GST dated 17.06.2021 clarifies the taxability of various services supplied by Centre and State Boards such as National Board of Examination (NBE). These services include entrance examination (on charging a fee) for admission to educational institution, input services for conducting such entrance examination for students, accreditation of educational institutions or professional so as to authorise them to provide their respective services.

For example, NBE provides services of conducting entrance examinations for admission to courses including Diplomat National Board (DNB) and Fellow of

³ Services by way of construction of road, inter alia, covers general construction services of highways, streets, roads railways, airfield runways, bridges and tunnels.

National Board (FNB), prescribes courses and curricula for PG medical studies, holds examinations and grant degrees, diplomas and other academic distinctions. It carries out all functions as are normally carried out by central or state educational boards and is thus a central educational board. "Central and State Educational Boards" are treated as educational institution for the limited purpose of providing services by way of conduct of examination to the students. Therefore, NBE is an 'educational institution' in so far as it provides services by way of conduct of examination, including any entrance examination, to the students.

It is clarified that:

- (i) GST is exempt on services provided by Central or State Boards (including the boards such as NBE) by way of conduct of examination for the students, including conduct of entrance examination for admission to educational institution under Entry 66(aa)⁴. Therefore, GST shall not apply to any fee or any amount charged by such Boards for conduct of such examinations including entrance examinations.
- (ii) GST is also exempt on input services relating to admission to, or conduct of examination, such as online testing service, result publication, printing of notification for examination, admit card and questions papers etc, when provided to such Boards under Entry 66(b)(iv).
- (iii) GST is applicable to other services provided by such Boards, namely of providing accreditation to an institution or to a professional

⁴ Entry 66 exempts services provided -

(a)

(aa) *by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee;*

(b) *to an educational institution, by way of,-*

(i)

(ii)

(iii)

(iv) *services relating to admission to, or conduct of examination by, such institution;*

(v)

(accreditation fee or registration fee such as fee for FMGE screening test) so as to authorise them to provide their respective services.

5. Clarification regarding applicability of GST on service supplied by State Government to their undertakings or PSUs by way of guaranteeing loans taken by them

The issue which arose for consideration was regarding applicability of GST on supply of service by State Government to their undertakings or PSUs by way of guaranteeing loans.

Entry 34A exempts services supplied by Central Government, State Government, Union territory to their undertakings or Public Sector Undertakings (PSUs) by way of guaranteeing the loans taken by such undertakings or PSUs from the banking companies and financial institutions.

Accordingly, it is reiterated that guaranteeing of loans by Central or State Government for their undertaking or PSU is specifically exempt under said entry 34A.

[Circular No.154/10/2021 GST dated 17.06.2021]

6. Clarification regarding coaching services supplied by coaching institutions and NGOs under the central sector scheme of 'Scholarships for students with Disabilities'

Free coaching services provided by coaching institutions and NGOs under the central scheme of "Scholarships for students with Disabilities" where **total expenditure**⁵ is borne by the Government to coaching institutions by way of grant in aid is covered under entry 72 and hence is exempt from GST.

[Circular No. 164/20/2021 GST dated 06.10.2021]

⁵ This circular was issued prior to amendment in Entry 72 when the exemption was available only when **total expenditure** under the training programme was borne by the Central Government, State Government, Union territory administration.

However, as seen earlier in this chapter, Entry 72 has subsequently been amended and now exemption is available even when **75% or more of the total expenditure** under the training programme is borne by the Central Government, State Government, Union territory administration.

Hence, the words "total expenditure" should be read as "75% or more of the total expenditure".

7. Clarification regarding GST on overloading charges at toll plaza

Entry 23 exempts service by way of access to a road or a bridge on payment of toll charges.

With regard to said entry, following issues have been clarified:

- (i) Ministry of Road Transport and Highways (MORTH) permitted the overloaded vehicles to ply on the national highways after payment of higher toll charges. It has been clarified⁶ that overloading charges at toll plazas would get the same treatment as given to toll charges.
- (ii) MORTH⁷ has directed to collect additional amount from the users of the road to the extent of two times of the fees applicable to that category of vehicle which is not having a valid functional Fastag.

Essentially, the additional amount collected from the users of the road not having a functional Fastag, is in the nature of toll charges and should be treated as additional toll charges. Therefore, it is clarified⁸ that additional fee collected in the form of higher toll charges from vehicles not having Fastag is essentially payment of toll for allowing access to roads or bridges to such vehicles and may be given the same treatment as given to toll charges.

8. Clarification regarding renting of vehicles to State Transport Undertakings and Local Authorities

Entry 22 exempts services by way of **giving on hire** (a) to a state transport undertaking, a motor vehicle meant to carry more than 12 passengers; or (aa) to a local authority, an Electrically Operated vehicle meant to carry more than 12 passengers.

It is clarified that the expression "**giving on hire**" here includes renting of vehicles.

Accordingly, where the said vehicles are rented or given on hire to State Transport Undertakings or Local Authorities, said services are eligible for above exemption irrespective of whether such vehicles are run on routes,

⁶ vide Circular No. 164/20/2021 GST dated 06.10.2021.

⁷ vide circular dated 16.02.2021

⁸ vide Circular No. 177/09/2022 GST dated 03.08.2022

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.

[Circular No. 164/20/2021 GST dated 06.10.2021]

9. Clarification regarding applicability of GST on application fee charged for entrance or the fee charged for issuance of eligibility certificate for admission or for issuance of migration certificate by educational institutions

The issue which arose for consideration was regarding applicability of GST on application fee charged for entrance or the fee charged for issuance of eligibility certificate for admission or for issuance of migration certificate by educational institutions.

In this regard, it is stated that educational services supplied by educational institutions to its students are exempt from GST vide Entry 66, relevant portion of which reads as under-

Services provided –

- (a) by an educational institution to its students, faculty and staff;
- (aa) by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee.

Therefore, it can be seen that all services supplied by an 'educational institution' to its students are exempt from GST. Consideration charged by the educational institutes by way of entrance fee for conduct of entrance examination is also exempt.

The exemption is wide enough to cover the amount or fee charged for admission or entrance, or amount charged for application fee for entrance, or the fee charged from prospective students for issuance of eligibility certificate to them in the process of their entrance/admission to the educational institution.

Services supplied by an educational institution by way of issuance of migration certificate to the leaving or ex-students are also covered by the exemption.

Accordingly, such activities of educational institutions are also exempt.

[Circular No. 177/09/2022 GST dated 03.08.2022]

10. Clarification regarding applicability of GST on transport of minerals from mining pit head to railway siding, beneficiation plant etc., by vehicles deployed with driver for a specific duration of time

The issue which arose for consideration was whether transport of minerals within a mining area, say from mining pit head to railway siding, beneficiation plant etc., by vehicles deployed with driver for a specific duration of time would be covered under Entry 18 which exempts transport of goods by road except by a GTA.

Usually in such cases the vehicles such as tippers, dumpers, loader, trucks etc., are given on hire to the mining lease operator. Expenses for fuel are generally borne by the recipient of service. The vehicles with driver are at the disposal of the mining lease operator for transport of minerals within the mine area (mining pit to railway siding, beneficiation plant etc.) as per his requirement during the period of contract.

Such services are nothing but “rental services of transport vehicles with operator”. The person who takes the vehicle on rent defines how and when the vehicles will be operated, determines schedules, routes and other operational considerations.

The person who gives the vehicles on rent with operator cannot be said to be supplying the service by way of transport of goods.

Accordingly, it is clarified that such renting of trucks and other freight vehicles with driver for a period of time is a service of renting of transport vehicles with operator and not service of transportation of goods by road.

Consequently, it is not eligible for exemption under Entry 18.

[Circular No. 177/09/2022 GST dated 03.08.2022]

11. Clarification regarding GST on payment of honorarium to the Guest Anchors

The circular clarifies the applicability of GST on honorarium paid to Guest Anchors. Sansad TV and other TV channels invite guest anchors to participate

in their shows and pay remuneration to them in the form of honorarium.

It is clarified that supply of all goods & services are taxable unless exempt or declared as 'neither a supply of goods nor a supply of service'. **Services provided by the guest anchors in lieu of honorarium attract GST liability.** However, guest anchors whose aggregate turnover in a financial year does not exceed ₹ 20 lakh (₹ 10 lakh in case of specified Special Category States) shall not be liable to take registration and pay GST.

[Circular No. 177/09/2022 GST dated 03.08.2022]

12. Clarification regarding applicability of GST on services in form of ART/IVF

The issue which arose for consideration was whether GST is applicable on services by way of Assisted Reproductive Technology (ART) procedures such as In vitro fertilization (IVF).

Health care services provided by a clinical establishment, an authorized medical practitioner or para-medics are exempt vide Entry 74.

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

Since, the abnormality/disease/ailment of infertility is treated using ART procedure such as IVF, it is clarified that services by way of IVF are also covered under the definition of health care services.

[Circular No. 177/09/2022 GST dated 03.08.2022]

13. Clarification regarding applicability of GST on sale of land after levelling, laying down of drainage lines etc.

The circular clarifies applicability of GST on sale of land after levelling, laying

down of drainage lines etc.

As per Para 5 of Schedule III of the CGST Act, 2017, **'sale of land' is neither a supply of goods nor a supply of services.** Therefore, the sale of land does not attract GST.

Land may be sold either as it is or after some development such as levelling, laying down of drainage lines, water lines, electricity lines, etc. It is clarified that sale of such developed land is also sale of land and is covered by Para 5 of Schedule III and accordingly, does not attract GST.

However, it may be noted that **any service provided for development of land, like levelling, laying of drainage lines (as may be received by developers) shall attract GST at applicable rate for such services.**

[Circular No. 177/09/2022 GST dated 03.08.2022]

14. Clarification regarding hiring of vehicles by firms for transportation of their employees to and from work

The issue which arose for consideration was as to whether the engagement of non-air conditioned contract carriages by firms for transportation of their employees to and from work is exempt under entry 15(b).

Entry 15(b) exempts transport of passengers, with or without accompanied belongings, by non-air conditioned contract carriage, other than radio taxi, for transport of passengers, excluding tourism, conducted tour, charter or hire.

The said exemption would apply to passenger transportation services by **non-air conditioned contract carriages where transportation takes place over pre-determined route on a pre-determined schedule.** The **exemption shall not be applicable** where contract carriage is hired for a period of time, during which the contract carriage is at the disposal of the service recipient and the recipient is thus free to decide the manner of usage (route and schedule) subject to conditions of agreement entered into with the service provider.

[Circular No. 177/09/2022 GST dated 03.08.2022]

15. Clarification regarding applicability of GST on tickets of private ferry used for passenger transportation

The circular clarifies the applicability of GST on private ferry tickets. For instance, private ferries are used as means of transport from one island to another in Andaman and Nicobar Islands.

As per Entry 17(d), transportation of passengers by public transport, other than predominantly for tourism purpose, in a vessel between places located in India is exempted.

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

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

[Circular No. 177/09/2022 GST dated 03.08.2022]

INPUT TAX CREDIT



1. ITC can be availed by the recipients only if, *inter alia*, (i) the suppliers have uploaded the relevant invoices/debit notes in their Form GSTR-1/ IFF and such details have been communicated to the recipients in Form GSTR-2B and (ii) the details of ITC in respect of the said supply communicated under section 38 has not been restricted [Section 16(2) and rule 36(4) amended]

With effect from 01.01.2022, a new clause (aa) has been added to section 16(2) by the **Finance Act, 2021** to stipulate a new condition for availment of ITC. It provides that input tax credit in respect of any supply of goods or services or both is available to a registered person only if **the details of the invoice/debit note in respect of said supply has been furnished by the supplier in the statement of outward supplies (Form GSTR-1) and such details have been communicated to the recipient of such invoice/debit note in the manner specified under section 37.**

Consequently, **with effect from 01.01.2022**, rule 36(4) has been substituted to give effect to aforesaid amendment. Substituted rule 36(4) reads as follows:

No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under section 37(1) unless,-

- (a) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in Form GSTR-1 or using

the invoice furnishing facility (IFF); and

- (b) the details of **input tax credit in respect of**⁹ such invoices or debit notes have been communicated to the registered person in Form GSTR-2B under rule 60(7).

Thus, ITC can now be taken only for those invoices/debit notes whose details are reflected in Form GSTR-2B i.e only when the respective suppliers (vendors) have filed the details of such invoices in their Form GSTR-1¹⁰.

Subsequently, **with effect from 01.10.2022**, a new clause (ba) has been added to section 16(2) by the **Finance Act, 2022** to stipulate another new condition for availment of ITC. It provides that input tax credit in respect of any supply of goods or services or both is available to a registered person only **if the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted.**

Further, owing to omission of section 43A¹¹, reference to section 43A has also been removed from clause (c) of section 16(2).

[Notification No. 40/2021 CT dated 29.12.2021]

2. Time limit for availment of ITC by a registered person in respect of any invoice/debit note pertaining to a FY extended upto 30th November of the following FY [Section 16(4) amended]

Earlier, section 16(4) provided as follows:

A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the **due date of furnishing of the return under section 39 for the month of**

⁹ These words have been inserted subsequently vide Notification No. 19/2022 CT dated 28.09.2022 and said amendment is effective from 01.10.2022.

¹⁰ Earlier, ITC in respect of invoices/debit notes not uploaded by the suppliers in their Form GSTR-1s/IFF, could be availed by recipient upto 5% of the eligible credit available in respect of invoices/debit notes the details of which had been furnished by the suppliers in their Form GSTR-1s/ using IFF.

¹¹ Discussed in detail in Chapter 13- Returns

September following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.

With effect from 01.10.2022, section 16(4) has been amended by the Finance Act, 2022. Amended section 16(4) reads as follows:

A registered person shall not be entitled to take ITC in respect of any invoice or debit note for supply of goods or services or both after the **30th day of November** following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.

3. Date of issuance of debit note to determine the relevant financial year for the purpose of section 16(4)

Section 16(4) was earlier amended (with effect from 01.01.2021) vide the Finance Act, 2020, so as to delink the date of issuance of debit note from the date of issuance of the underlying invoice for purposes of availing ITC. *Students may refer section 16(4) as given above.*

A doubt arose as to which of the following dates are relevant to determine the 'financial year' for the purpose of section 16(4) in terms of the provision as amended:

- (a) date of issuance of debit note, or
- (b) date of issuance of underlying invoice.

In this regard, **Circular No. 160/16/2021 GST dated 20.09.2021** has clarified that with effect from 01.01.2021, in case of debit notes, the date of issuance of debit note (not the date of underlying invoice) shall determine the relevant financial year for the purpose of section 16(4).



A debit note dated 07.07.2021 is issued in respect of the original invoice dated 16.03.2021. As the invoice pertains to F.Y. 2020-21, the relevant financial year for availment of ITC in respect of the said invoice in terms of section 16(4) shall be FY 2020-21.

However, as the debit note has been issued in FY 2021-22, the relevant financial year for availment of ITC in respect of the said debit note shall be FY 2021-22 in terms of amended provision of section 16(4).

4. **Availment of ITC not blocked in case of leasing, other than leasing of motor vehicles, vessels and aircrafts**

Circular No. 172/04/2022 GST dated 06.07.2022 clarifies the issue as to whether provisions of section 17(5)(b)(i) bar the availment of ITC on input services by way of “leasing of motor vehicles, vessels or aircraft” or whether ITC on input services by way of any type of leasing is barred under the said provisions.

Section 17(5)(b)(i) provides that ITC shall not be available in respect of following supply of goods or services or both—

*“(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, **leasing, renting or hiring of motor vehicles, vessels or aircraft** referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:*

Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply.”

It is clarified that **“leasing” referred herein refers to leasing of motor vehicles, vessels and aircrafts only and not to leasing of any other items.**

Accordingly, availment of ITC is not barred in case of leasing, other than leasing of motor vehicles, vessels and aircrafts.

5. **Proviso after section 17(5)(b)(iii) applies to entire section 17(5)(b)**

Section 17(5)(b) provides that ITC shall not be available in respect of following supply of goods or services or both—

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:

Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable

supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

- (ii) membership of a club, health and fitness centre; and
- (iii) travel benefits extended to employees on vacation such as leave or home travel concession:

Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

Circular No. 172/04/2022 GST dated 06.07.2022 clarifies that the proviso after sub-clause (iii) [highlighted above] is applicable to the whole of section 17(5)(b).

6. Removal of reference to Form GSTR-2 from rules 36(2), 42 and 43

Pursuant to the amendment made in section 38 [discussed subsequently in Chapter 13 – Returns] with regard to removal of Form GSTR-2 and doing away with two-way communication process, **with effect from 01.10.2022**, rule 36(2)¹² has been amended to remove the reference to Form GSTR-2 therefrom. Further, it has been provided that the details of invoices or debit notes for ITC availment shall be communicated in Form GSTR-2B.

Extract of amended rule 36(2) reads as follows:

Input tax credit shall be availed by a registered person only if all the applicable particulars as specified in the provisions of Chapter VI¹³ are contained in the said document, ~~and the relevant information, as contained in the said document, is furnished in FORM GSTR-2 by such person.~~

[Notification No. 19/2022 CT dated 28.09.2022]

7. In case of non-payment of the value of supply plus tax in respect of an inward supply within 180 days, ITC so availed need to be paid alongwith interest under section 50 while filing GSTR-3B [Rule 37 substituted]

Rule 37 provides for reversal of ITC in case of non-payment of consideration.

¹² Rule 36 prescribes the documentary requirements and conditions for claiming ITC.

¹³ Chapter VI relates to tax invoice, credit and debit notes.

Sub-rule (1) and (2) have been substituted and sub-rule (3) has been omitted, **with effect from 01.10.2022**. Consequently, the amended position of law is as follows:

The registered person must pay to the supplier, the value of the goods and/or services along with the tax within 180 days from the date of issue of invoice [Second proviso to section 16(2)].

However, where a registered person, who has availed of ITC on any inward supply fails to pay to the supplier thereof, the amount towards the value of such supply along with the tax payable thereon, within the time limit specified in the second proviso to section 16(2) [*viz. 180 days from the date of issue of invoice*], **shall pay an amount equal to the ITC availed in respect of such supply along with interest payable thereon under section 50, while furnishing the return in Form GSTR-3B for the tax period** immediately following the period of 180 days from the date of the issue of the invoice.

Exceptions

This condition of payment of value of supply plus tax within 180 days does not apply in the following situations:

- (a) Supplies on which tax is payable under reverse charge
- (b) Deemed supplies without consideration
- (c) Additions made to the value of supplies on account of supplier's liability, in relation to such supplies, being incurred by the recipient of the supply

Under situations given in points (b) & (c), the value of supply is deemed to have been paid.

[Notification No. 19/2022 CT dated 28.09.2022]

8. 50% of inadmissible ITC to be reversed in GSTR-3B by a banking company or financial institution [Rule 38 amended]

With effect from 01.10.2022, rule 38 providing for claim of credit by a banking company or a financial institution has been amended to remove the reference to Form GSTR-2 therefrom. Further, clause (d) of rule 38 has also been omitted.

Amended rule 38 reads as follows:

A banking company or a financial institution, including a non-banking financial company, engaged in the supply of services by way of accepting deposits or extending loans or advances that chooses not to comply with the provisions of sub-section (2) of section 17, in accordance with the option permitted under sub-section (4) of that section, shall follow the following procedure, namely,-

- (a) the said company or institution shall not avail the credit of,-
 - (i) the tax paid on inputs and input services that are used for non-business purposes; and
 - (ii) the credit attributable to the supplies specified in sub-section (5) of section 17, ***in GSTR-2***
- (b) the said company or institution shall avail the credit of tax paid on inputs and input services referred to in the second proviso to sub-section (4) of section 17 and not covered under clause (a);
- (c) 50% of the remaining amount of input tax shall be the input tax credit admissible to the company or the institution ***and the balance amount of input tax credit shall be reversed in Form GSTR-3B¹⁴***;
- (d) ~~***the amount referred to in clauses (b) and (c) shall, subject to the provisions of sections 41, 42 and 43, be credited to the electronic credit ledger of the said company or the institution.***~~

[Notification No. 19/2022 CT dated 28.09.2022]

¹⁴ Substituted for the words, "and shall be furnished in Form GSTR-2".

REGISTRATION



- Enhanced threshold limit of ₹ 40 lakh for registration available to persons exclusively engaged in making supplies of goods not applicable to suppliers of fly ash bricks/blocks, building bricks, bricks of fossil meals, earthen/roofing tiles, etc.**

Notification No. 10/2019 CT dated 07.03.2019 exempts any person who is engaged exclusively in intra-State supply of goods and whose aggregate turnover in a financial year does not exceed ₹ 40 lakh, from obtaining the registration.

However, the persons engaged in making following supplies are not eligible for said exemption:

Tariff item, sub-heading, heading or Chapter	Description of goods
2105 00 00	Ice cream and other edible ice, whether or not containing cocoa
2106 90 20	Pan masala
24	All goods, i.e. Tobacco and manufactured tobacco substitutes

With effect from 01.04.2022, persons engaged in making supplies of following goods will also not be eligible to avail benefit of said exemption from registration even if they are engaged exclusively in intra-State supply of

goods and their aggregate turnover in a financial year is upto ₹ 40 lakh:

Tariff item, sub-heading, heading or Chapter	Description of goods
6815	Fly ash bricks; Fly ash aggregates¹⁵; Fly ash blocks
6901 00 10	Bricks of fossil meals or similar siliceous earths
6904 10 00	Building bricks
6905 10 00	Earthen or roofing tiles

[Notification No. 03/2022 CT dated 31.03.2022 as amended by Notification No. 15/2022 CT dated 13.07.2022]

2. **Registration liable to be cancelled, where - (i) a composition tax payer fails to furnish return for a FY beyond 3 months from due date and (ii) a person, other than composition tax payer, fails to furnish returns for such continuous tax period as may be prescribed [Section 29(2) amended]**

With effect from 01.10.2022, following amendments have been made by the Finance Act, 2022 in section 29(2):

Section No.	Existing provisions	Provisions as amended by the Finance Act, 2022
29(2)	The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where,- (a) (b) a person paying tax under section 10 has not furnished returns for 3 consecutive tax	The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where,- (a) (b) a person paying tax under section 10 has not furnished the return for a financial year beyond

¹⁵ Between 01.04.2022 and 18.07.2022, suppliers of fly ash aggregate were ineligible for said exemption from registration **only when the fly ash content in fly ash aggregate was 90% or more.**

	<p>periods; or</p> <p>(c) any registered person, other than a person specified in clause (b), has not furnished returns for a continuous period of six months; or</p> <p>(d)</p> <p>(e)</p>	<p>3 months from the due date of furnishing the said return; or</p> <p>(c) any registered person, other than a person specified in clause (b), has not furnished returns for such continuous tax period as may be prescribed; or</p> <p>(d)</p> <p>(e)</p>
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3. Deemed revocation of suspended GST registration upon furnishing of all the pending returns by the taxpayer [Rule 21A(4) amended]

As seen above, the proper officer may cancel registration in case where (i) a composition taxpayer has not furnished **the return for a financial year beyond 3 months from the due date of furnishing the said return** or (ii) any registered person, other than composition taxpayer, has not furnished returns for **such continuous tax period as may be prescribed** [Clauses (b) & (c) of section 29(2)].

Rule 21A contains provisions relating to suspension of registration and its sub-rule (4) provides for deemed revocation of suspended GST registration by the proper officer upon completion of the proceedings under rule 22¹⁶.

Said rule has been amended to provide that there will be deemed revocation of suspended GST registration upon furnishing of pending GST returns, where GST registration was suspended due to non-filing of GST return for a financial year beyond 3 months from the due date of furnishing the said return by a composition taxpayer or returns for such continuous tax period as may be prescribed by registered persons (other than composition taxpayer) **subject to the condition that the registration has not been cancelled by the proper officer under rule 22.**

¹⁶ Rule 22 contains provisions relating to cancellation of registration.

Amended rule 21A(4) provides as follows:

The suspension of registration under sub-rule (1) or sub-rule (2) or sub-rule (2A) shall be deemed to be revoked upon completion of the proceedings by the proper officer under rule 22 and such revocation shall be effective from the date on which the suspension had come into effect.

However, the suspension of registration under this rule may be revoked by the proper officer, anytime during the pendency of the proceedings for cancellation, if he deems fit.

Further, where the registration has been suspended under rule 21A(2A) for contravention of the provisions contained in clause (b) or clause (c) of section 29(2) and the registration has not already been cancelled by the proper officer under rule 22, the suspension of registration shall be deemed to be revoked upon furnishing of all the pending returns.

[Notification No. 14/2022 CT dated 05.07.2022]

4. Registration liable to be cancelled if monthly return filer fails to file return continuously for 6 months or a person opting for QRMP fails to file return for 2 tax periods [Clauses (h) & (i) inserted to rule 21]

Rule 21 contains prescribed contraventions which make a registered person liable to cancellation of registration.

With effect from 01.10.2022, two more contraventions have also been prescribed by inserting clauses (h) & (i) to rule 21, which provide that the registration granted to a person is liable to be cancelled, if the said person -

- (h)** being a registered person required to file return under section 39(1) for each month or part thereof (i.e. **monthly return filer**), has **not furnished returns** for a **continuous period of 6 months**.
- (i)** being a registered person required to file return under proviso to section 39(1) for each quarter or part thereof (i.e. **quarterly return filer**), has **not furnished returns** for a **continuous period of 2 tax periods**.

[Notification No. 19/2022 CT dated 28.09.2022]

TAX INVOICE, CREDIT AND DEBIT NOTES E-WAY BILL



1. E-invoicing mandatory for all registered businesses with aggregate turnover in any preceding financial year from 2017-18 onwards greater than ₹ 10 crore

With effect from 01.10.2020, e-invoicing was made mandatory for all registered businesses with an aggregate turnover (based on PAN) in any preceding financial year from 2017-18 onwards greater than ₹ 500 crore for issue of all B2B invoices. Since then, the threshold limit of aggregate turnover for issuing the e-invoices is being progressively reduced.



With effect from 01.10.2022, such limit has been reduced to ₹ 10 crore. Thus, e-invoicing has been made mandatory for all registered businesses with an aggregate turnover in any preceding financial year from 2017-18 onwards

from 05.07.2022, provides that tax invoice shall have:

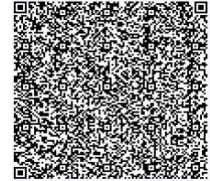
a declaration as below, that invoice is not required to be issued in the manner specified under rule 48(4), in all cases where an invoice is issued, other than in the manner so specified under the said rule 48(4), by the taxpayer having aggregate turnover in any preceding financial year from 2017-18 onwards more than the aggregate turnover as notified under rule 48(4) [presently its ₹ 10 crore]-

"I/We hereby declare that though our aggregate turnover in any preceding financial year from 2017-18 onwards is more than the aggregate turnover notified under sub-rule (4) of rule 48, we are not required to prepare an invoice in terms of the provisions of the said sub-rule."

[Notification No. 23/2021 CT dated 01.06.2021 and Notification No. 14/2022 CT dated 05.07.2022]

3. Clarification in respect of applicability of Dynamic Quick Response (QR)code

With effect from 01.12.2020, all **B2C invoices** issued by a registered person whose **aggregate turnover** in any preceding financial year from 2017-18 onwards **exceeds ₹ 500 crores** are **mandatorily required to have a Dynamic QR code** [Notification No. 14/2020 CT dated 21.03.2020].



In this regard, **Circular No. 156/12/2021 GST dated 21.06.2021** and **Circular No. 165/21/2021 GST dated 17.11.2021** have clarified that:

A. Dynamic QR Code required to be provided on invoice issued to a person having a UIN

Any person who has obtained a Unique Identity Number (UIN), is not a "registered person" as per the definition of 'registered person' provided under section 2(94). Therefore, any invoice, issued to such person having a UIN, shall be considered as **invoice issued for a B2C supply** and shall be required to comply with the requirement of Dynamic QR Code.

B. In some instances of retail sales over the counter, the payment from the

customer is received on the payment counter by displaying dynamic QR code on digital display, whereas the invoice, along with invoice number, is generated on the processing system being used by supplier/ merchant after receiving the payment.

In such cases, it may not be possible for the merchant/ supplier to provide details of invoice number in the dynamic QR code displayed to the customer on payment counter. However, each transaction i.e. receipt of payment from a customer is having a unique Order ID/ sales reference number, which is linked with the invoice for the said transaction.

The question which arose for consideration is whether in such cases, the order ID/ reference number of such transaction can be provided in the dynamic QR code displayed digitally, instead of invoice number.

It has been clarified that in such cases, the unique order ID/ unique sales reference number, which is uniquely linked to the invoice issued for the said transaction, may be provided in the Dynamic QR Code for digital display, as long as the details of such unique order ID/ sales reference number linkage with the invoice are available on the processing system of the merchant/ supplier and the cross reference of such payment along with unique order ID/ sales reference number are also provided on the invoice.

- C. The purpose of dynamic QR Code is to enable the recipient/ customer to scan and pay the amount to be paid to the merchant/ supplier in respect of the said supply.

When the part-payment for any supply has already been received from the customer/ recipient, either in advance or by adjustment (e.g. using a voucher, discount coupon etc), before the dynamic QR Code is generated, then the dynamic QR code may provide only the remaining amount payable by the customer/ recipient against "invoice value".

The details of total invoice value, along with details/ cross reference of the part payment/ advance/ adjustment done, and the remaining amount to be paid, should be provided on the invoice.

4. Time limit for issuance of credit notes in respect of any supply made in a FY extended upto 30th November of the following FY [Section 34(2) amended]

With effect from 01.10.2022, following amendments have been made by the Finance Act, 2022 in section 34(2):

Existing provisions	Provisions as amended by the Finance Act, 2022
<p>Section 34(2) Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than <i>September</i> following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed.</p>	<p>Section 34(2) Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than <i>the 30th day of November</i> following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed.</p>

5. In case of issuance of e-invoice, no requirement to carry the physical copy of tax invoice

The question which arose for consideration was whether carrying physical copy of invoice is compulsory during movement of goods in cases where suppliers have issued e-invoices.

It is clarified that **there is no requirement to carry the physical copy of tax invoice in cases where e-invoice has been generated by the supplier.**

Whenever e-invoice has been generated, production of the Quick Reference (QR) code having an embedded Invoice Reference Number (IRN) electronically, for verification by the proper officer, would suffice.

[Circular No. 160/16/2021 GST dated 20.09.2021]

PAYMENT OF TAX



1. Transfer of amount available in electronic cash ledger under the CGST Act of a registered person to the electronic cash ledger under the CGST Act/IGST Act of a distinct person allowed [Section 49 amended]

Following amendments have been made by the Finance Act, 2022 in section 49, **with effect from 01.10.2022**, unless otherwise specified:

Existing provisions	Provisions as amended by the Finance Act, 2022
<p><u>Section 49</u></p> <p>(1)</p> <p>(2) The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with section 41 <i>or section 43A</i>, to be maintained in such manner as may be prescribed.</p> <p>(3)</p> <p>(4) The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated</p>	<p><u>Section 49</u></p> <p>(1)</p> <p>(2) The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with section 41 or section 43A, to be maintained in such manner as may be prescribed.</p> <p>(3)</p> <p>(4) The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated</p>

<p>Goods and Services Tax Act in such manner and subject to such conditions within such time as may be prescribed.</p> <p>(5)</p> <p>(6)</p> <p>(7)</p> <p>(8)</p> <p>(9)</p> <p>(10)¹⁸ <i>A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under this Act, to the electronic cash ledger for integrated tax, central tax, State tax, Union territory tax or cess, in such form and manner and subject to such conditions and restrictions as may be prescribed and such transfer shall be deemed to be a refund from the electronic cash ledger under this Act.</i></p>	<p>Goods and Services Tax Act in such manner and subject to such conditions and restrictions within such time as may be prescribed.</p> <p>(5)</p> <p>(6)</p> <p>(7)</p> <p>(8)</p> <p>(9)</p> <p>(10) A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under this Act, to the electronic cash ledger for,—</p> <p>(a) integrated tax, central tax, State tax, Union territory tax or cess; or</p> <p>(b) integrated tax or central tax of a distinct person as specified in sub-section (4) or, as the case may be, sub-section (5) of section 25, in such form and manner and subject to such conditions and restrictions as may be prescribed and such transfer shall be deemed to be a refund from the electronic</p>
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¹⁸ Effect from 05.07.2022

<p>(11)</p>	<p><i>cash ledger under this Act:</i> <i>Provided that no such transfer under clause (b) shall be allowed if the said registered person has any unpaid liability in his electronic liability register.</i></p> <p>(11)</p> <p>(12) Notwithstanding anything contained in this Act, the Government may, on the recommendations of the Council, subject to such conditions and restrictions, specify such maximum proportion of output tax liability under this Act or under the IGST Act, 2017 which may be discharged through the electronic credit ledger by a registered person or a class of registered persons, as may be prescribed.</p>
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2. Deposit in Electronic Cash Ledger can be made through UPI and IMPS as well. Facility provided on GST portal to transfer any amount available in the electronic cash ledger under CGST Act to the electronic cash ledger for central tax or integrated tax of a distinct person [Rule 87 amended]

Rule 87(3) lists the modes of making deposit of amount towards tax, interest, penalty, fee or any other amount, in Electronic Cash Ledger. Said rule has been amended to include two additional modes of making the deposits. Now the amount may **also be deposited through Unified payment interface (UPI) or Immediate Payment Services (IMPS) from any bank**, on the GST portal.

Extract of amended rule 87(3) is as follows:

The deposit under sub-rule (2) shall be made through any of the following modes, namely:-

- (i) Internet Banking through authorised banks;
(ia) Unified Payment Interface (UPI) from any bank;
(ib) Immediate Payment Services (IMPS) from any bank;
- (ii) Credit card or Debit card through the authorised bank;
- (iii) National Electronic Fund Transfer or Real Time Gross Settlement from any bank; or
- (iv) Over the Counter payment through authorised banks for deposits up to ten thousand rupees per challan per tax period, by cash, cheque or demand draft.

Consequential amendment has been made in rule 87(5).

Extract of amended rule 87(5) is as follows:

Where the payment is made by way of National Electronic Fund Transfer or Real Time Gross Settlement, **or Immediate Payment Service** mode from any bank, the mandate form shall be generated along with the challan on the common portal and the same shall be submitted to the bank from where the payment is to be made.

Further, as seen earlier, section 49(10) has been amended by the Finance Act, 2022 to permit the transfer of amount available in electronic cash ledger under the CGST Act of a registered person to the electronic cash ledger under the said Act or the IGST Act of a distinct person.

Consequently, **sub-rule (14) has been inserted to rule 87** to provide a facility on the common portal to transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under CGST Act to the electronic cash ledger for central tax or integrated tax of a distinct person through the prescribed form.

Newly inserted sub-rule (14) to rule 87 reads as follows:

A registered person may, on the common portal, transfer any amount of tax,

interest, penalty, fee or any other amount available in the electronic cash ledger under the Act to the electronic cash ledger for central tax or integrated tax of a distinct person as specified in sub-section (4) or, as the case may be, sub-section (5) of section 25, in the prescribed form.

However, no such transfer shall be allowed if the said registered person has any unpaid liability in his electronic liability register.

[Notification No. 14/2022 CT dated 05.07.2022]

3. Levy of interest provided on ITC wrongly availed and utilised [Section 50(3) substituted]

Section 50 provides for interest on delayed payment of tax. Sub-section (3) of the said section has been substituted **retrospectively, with effect from 01.07.2017**, by the Finance Act, 2022.

Existing provisions	Provisions as amended by the Finance Act, 2022
<p>Section 50(3)</p> <p><i>A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding 24%, as may be notified by the Government on the recommendations of the Council.</i></p>	<p>Section 50(3)</p> <p><i>Where the input tax credit has been wrongly availed and utilised, the registered person shall pay interest on such input tax credit wrongly availed and utilised, at such rate not exceeding 24% as may be notified by the Government**, on the recommendations of the Council, and the interest shall be calculated, in such manner as may be prescribed.</i></p>

**Rate of interest under section 50(3) is notified vide *Notification No. 13/2017 CT dated 28.06.2017*. Earlier, the rate of interest notified under said section

was 24% per annum¹⁹. Notification No. 13/2017 CT dated 28.06.2017 has been amended by the Finance Act, 2022 **retrospectively with effect from 01.07.2017**, to reduce the rate of interest under section 50(3) from 24% to 18% per annum.

4. Manner of calculating interest on delayed payment of tax [New rule 88B]

In view of the power given by section 50(3) to prescribe the manner of computing the interest on delayed payment, a new rule 88B has been inserted **retrospectively with effect from 01.07.2017** to provide the manner of calculating interest on delayed payment of tax.

New rule 88B provides as follows:

In case, where the supplies made during a tax period are declared by the registered person in the return for the said period and the said return is furnished after the due date in accordance with provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, the interest on tax payable in respect of such supplies shall be calculated on the portion of tax which is paid by debiting the electronic cash ledger, for the period of delay in filing the said return beyond the due date, at such rate as may be notified under section 50(1).

In all other cases, where interest is payable under section 50(1), the interest shall be calculated on the amount of tax which remains unpaid, for the period starting from the date on which such tax was due to be paid till the date such tax is paid at the rate specified under section 50(1).

Where interest is payable on the amount of ITC wrongly availed and utilised in accordance with section 50(3), the interest shall be calculated on the amount of input tax credit wrongly availed and utilised, for the period starting from the date of utilisation of such wrongly availed input tax credit till the

¹⁹ Prior to amendment made by the Finance Act, 2022, interest under section 50(3) was leviable on a taxable person who makes an undue or excess claim of ITC under section 42(10) or undue or excess reduction in output tax liability under section 43(10). Since the provisions of section 42(10) and 43(10) never came into effect, the provisions relating to interest payment under section 50(3) also didn't become effective. Thus, rate of interest of 24% per annum notified earlier for the purposes of section 50(3) had never been effective.

date of reversal of such credit or payment of tax in respect of such amount at the rate specified under section 50(3).

The explanation to the rule lays down that-

- (i) input tax credit wrongly availed shall be construed to have been utilised, when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, and the extent of such utilisation of input tax credit shall be the amount by which the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed.
- (ii) the date of utilisation of such input tax credit shall be taken to be-
 - (a) the date, on which the return is due to be furnished under section 39 or the actual date of filing of the said return, whichever is earlier, if the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, on account of payment of tax through the said return; or
 - (b) the date of debit in the electronic credit ledger when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, in all other cases.

[Notification No. 14/2022 CT dated 05.07.2022]

5. Clarifications regarding utilization of the amounts available in the electronic credit ledger and the electronic cash ledger for payment of tax and other liabilities

Issue 1: Whether the amount available in the electronic credit ledger can be used for making payment of any tax under the GST Laws?

Clarification: In terms of section 49(4), the amount available in the electronic credit ledger may be used for making any payment towards output tax under the CGST Act or the IGST Act, subject to the provisions relating to the order of utilisation of ITC as laid down in section 49B read with rule 88A.

Rule 86(2) provides for debiting of the electronic credit ledger to the extent of discharge of any liability in accordance with the provisions of section

49/49A/49B.

Further, output tax in relation to a taxable person (i.e. a person who is registered or liable to be registered under section 22 or section 24) is defined in section 2(82) as the **tax chargeable on taxable supply of goods or services or both but excludes tax payable on reverse charge mechanism.**

Accordingly, it is clarified that any payment towards output tax, whether self-assessed in the return or payable as a consequence of any proceeding instituted under the provisions of GST laws, can be made by utilization of the amount available in the electronic credit ledger of a registered person.

It is further reiterated that as output tax does not include tax payable under reverse charge mechanism, implying thereby that the electronic credit ledger cannot be used for making payment of any tax which is payable under reverse charge mechanism.

Issue 2: Whether the amount available in the electronic credit ledger can be used for making payment of any liability other than tax under the GST laws?

Clarification: As per section 49(4), the electronic credit ledger can be used for making payment of output tax only under the CGST Act or the IGST Act. It cannot be used for making payment of any interest, penalty, fees or any other amount payable under the said Acts. Similarly, electronic credit ledger cannot be used for payment of erroneous refund sanctioned to the taxpayer, where such refund was sanctioned in cash.

Issue 3: Whether the amount available in the electronic cash ledger can be used for making payment of any liability under the GST laws?

Clarification: As per section 49(3), the amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of the GST laws.

[Circular No. 172/04/2022 GST dated 06.07.2022]

6. Rule 85 amended owing to omission of sections 42 & 43

Rule 85 contains provisions relating to the Electronic Liability Register. Since, sections 42, 43 and 43A have been omitted so as to do away with two-way communication process in return filing²⁰, consequential amendments have been made in rule 85(2).

Accordingly, **with effect from 01.10.2022**, clause (c) of rule 85(2) has been omitted as the said clause referred to the amount of tax and interest payable as a result of mismatch under sections 42 or 43 or 50.

Amended rule 85(2) reads as follows:

The electronic liability register of the person shall be debited by-

- (a) the amount payable towards tax, interest, late fee or any other amount payable as per the return furnished by the said person;
- (b) the amount of tax, interest, penalty or any other amount payable as determined by a proper officer in pursuance of any proceedings under the Act or as ascertained by the said person; or
- ~~(c) the amount of tax and interest payable as a result of mismatch under section 42 or section 43 or section 50; or~~
- (d) any amount of interest that may accrue from time to time.

[Notification No. 19/2022 CT dated 28.09.2022]

²⁰ These amendments have been discussed subsequently in Chapter 13 – Returns.

RETURNS



1. Registered person debarred from furnishing details of outward supplies in Form GSTR-1/IFF [Rule 59(6) amended]

Rule 59(6) stipulating the cases where a registered person is debarred from furnishing details of outward supplies in Form GSTR-1/IFF, has been amended, **with effect from 01.01.2022**, as follows:

- (i) A registered person shall not be allowed to furnish the details of outward supplies in Form GSTR-1, if he has not furnished the return in Form GSTR-3B for ***the preceding month***.
- (ii) A registered person, opting for QRMP scheme shall not be allowed to furnish the details of outward supplies in Form GSTR-1 or using IFF, if he has not furnished the return in Form GSTR-3B for preceding tax period.

~~***(iii) A registered person, who is restricted from using the amount available in electronic credit ledger to discharge his liability towards tax in excess of 99% of such tax liability under rule 86B of the CGST Rules, shall not be allowed to furnish the details of outward supplies in Form GSTR-1 or using IFF, if he has not furnished the return in Form GSTR-3B for preceding tax period.***~~

[Notification No. 35/2021 CT dated 24.09.2021]

2. GSTR-2B is an “auto-generated” statement [Rule 60 amended]

Rule 60, *inter alia*, provides the form and manner of ascertaining details of

inward supplies in Form GSTR-2A and Form GSTR-2B. Erstwhile rule 60(7) provided that Form GSTR-2B is an **auto-drafted statement** containing the details of ITC. **With effect from 01.10.2022**, rule 60(7) has been amended to consider Form GSTR-2B as an **auto-generated statement**.

[Notification No. 19/2022 CT dated 28.09.2022]

3. Omission of rules 69, 70, 71, 72, 73, 74, 75, 76 and 77

As a result of doing away with the two-way communication process for return filing, **with effect from 01.10.2022**, following CGST rules have been omitted:-

- ✓ Rule 69 – Matching of claim of input tax credit;
- ✓ Rule 70 – Final acceptance of input tax credit and communication thereof;
- ✓ Rule 71 – Communication and rectification of discrepancy in claim of input tax credit and reversal of claim of input tax credit;
- ✓ Rule 72 – Claim of input tax credit on the same invoice more than once;
- ✓ Rule 73 – Matching of claim of reduction in output tax liability;
- ✓ Rule 74 – Final acceptance of reduction in output tax liability and communication thereof;
- ✓ Rule 75 – Communication and rectification of discrepancy in reduction in output tax liability and reversal of claim of reduction;
- ✓ Rule 76 – Claim of reduction in output tax liability more than once;
- ✓ Rule 77 – Refund of interest paid on reclaim of the reversals;

[Notification No. 19/2022 CT dated 28.09.2022]

4. GST practitioner permitted only to furnish the details of outward supplies on behalf of a registered person [Rule 83(8) amended]

Section 48 relating to Goods and Services Tax Practitioners has been amended²¹ to remove reference to section 38 [*Communication of details of inward supplies and input tax credit*] therefrom.

²¹ Discussed subsequently in this chapter

Rule 83(8) enlists activities that can be undertaken by a GST Practitioner on behalf of a registered person if so authorised by him.

Earlier, as per rule 83(8)(a), GST practitioners were allowed to furnish the details of both outward and inward supplies on behalf of a registered person if so authorised.

However, **with effect from 01.10.2022**, rule 83(8)(a) has been amended. Now, a GST practitioner is only allowed to **furnish the details of only outward supplies and not inward supplies** on behalf of a registered person if so authorised by him.

[Notification No. 19/2022 CT dated 28.09.2022]

5. Omission of Forms GSTR-1A, GSTR-2 & GSTR-3

With effect from 01.10.2022, Forms GSTR-1A, GSTR-2 & GSTR-3, which never came into effect and whose applicability was persistently being deferred, have now been omitted.

[Notification No. 19/2022 CT dated 28.09.2022]

8. Amendments carried out by the Finance Act, 2022 in sections 37, 38, 39, 41, 42, 43, 43A, 47, 48 & 52

With effect from 01.10.2022, sections 37, 38, 39, 41, 42, 43, 43A, 47, 48 and 52 have been amended by the Finance Act, 2022:

Existing provisions	Provisions as amended by the Finance Act, 2022	Remarks
<p><u>Section 37</u> (1) Every registered person, other than an Input Service Distributor, a non-resident taxable person and a person paying tax under the provisions of section 10 or section 51 or section 52, shall</p>	<p><u>Section 37</u> (1) Every registered person, other than an Input Service Distributor, a non-resident taxable person and a person paying tax under the provisions of section 10 or section 51 or</p>	<p>Section 37 is to be amended so as to: (i) provide for prescribing conditions and restrictions for furnishing the details of outward supply and for communication</p>

<p>furnish, electronically in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before 10th day of the month succeeding the said tax period and such details <i>shall be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed.</i></p> <p><i>Provided that the registered person shall not be allowed to furnish the details of outward supplies during the period from 11th day to 15th day of the month</i></p>	<p>section 52²², shall furnish, electronically <i>subject to such conditions and restrictions and</i> in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before 10th day of the month succeeding the said tax period and such details <i>shall, subject to such conditions and restrictions, within such time and in such manner as may be prescribed, be communicated to the recipient of the said supplies.</i> <i>Provided that the registered person shall not be allowed to furnish the details of outward supplies during the period</i></p>	<p>of the details of such outward supplies to concerned recipients;</p> <p>(ii) do away with two-way communication process in return filing;</p> <p>(iii) provide for an extended time upto 13th day of November of the following financial year for rectification of errors in respect of details of outward supplies furnished under sub-section (1);</p> <p>(iv) provide for tax period-wise sequential filing of details of outward supplies under sub-section (1).</p>
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²² The concept of input service distributor and provisions of sections 51 and 52 have been discussed in detail at final level.

<p>succeeding the tax period.</p> <p>Provided further that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing such details for such class of taxable persons as may be specified therein:</p> <p>Provided also that any extension of time limit notified by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.</p> <p>(2) Every registered person who has been communicated the details under sub-section (3) of section 38 or the details pertaining to inward supplies of Input Service Distributor under sub-section (4) of section 38, shall either accept or reject</p>	<p>from 11th day to 15th day of the month succeeding the tax period.</p> <p>Provided further that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing such details for such class of taxable persons as may be specified therein:</p> <p>Provided further that any extension of time limit notified by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.</p> <p>(2) Every registered person who has been communicated the details under sub-section (3) of section 38 or the details pertaining to inward supplies of Input Service Distributor under</p>	
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<p>the details so communicated, on or before 17th day, but not before 15th day, of the month succeeding the tax period and the details furnished by him under sub-section (1) shall stand amended accordingly.</p> <p>(3) Any registered person, who has furnished the details under sub-section (1) for any tax period <i>and which have remained unmatched under section 42 or section 43</i>, shall, upon discovery of any error or omission therein, rectify such error or omission in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period:</p>	<p>sub-section (4) of section 38, shall either accept or reject the details so communicated, on or before 17th day, but not before 15th day, of the month succeeding the tax period and details furnished by him under sub-section (1) shall stand amended accordingly.</p> <p>(3) Any registered person, who has furnished the details under sub-section (1) for any tax period and which have remained unmatched under section 42 or section 43, shall, upon discovery of any error or omission therein, rectify such error or omission in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on</p>	
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<p>Provided that no rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after <i>furnishing of the return under section 39 for the month of September</i> following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier.</p> <p>Provided further that</p>	<p>account of such error or omission, in the return to be furnished for such tax period:</p> <p>Provided that no rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after 30th day of November following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier.</p> <p>Provided further that</p> <p>(4) A registered person shall not be allowed to furnish the details of outward supplies under sub-section (1) for a tax period, if the details of outward supplies for any of the previous tax periods has not been furnished by</p>	
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	<p>him: Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the details of outward supplies under sub-section (1), even if he has not furnished the details of outward supplies for one or more previous tax periods.</p>	
<p><u>Section 38</u> is to be substituted as follows: (1) <i>The details of outward supplies furnished by the registered persons under sub-section (1) of section 37 and of such other supplies as may be prescribed, and an auto-generated statement containing the details of input tax credit shall be made available electronically to the recipients of such supplies in such form and manner, within such time, and subject to such conditions and restrictions as may be prescribed.</i></p>		<p>Section 38 is to be substituted for prescribing the manner as well as conditions and restrictions for communication of details of inward supplies and input tax credit to the recipient by means of</p>

<p>(2) <i>The auto-generated statement under sub-section (1) shall consist of—</i></p> <p>(a) <i>details of inward supplies in respect of which credit of input tax may be available to the recipient; and</i></p> <p>(b) <i>details of supplies in respect of which such credit cannot be availed, whether wholly or partly, by the recipient, on account of the details of the said supplies being furnished under sub-section (1) of section 37,—</i></p> <p>(i) <i>by any registered person within such period of taking registration as may be prescribed; or</i></p> <p>(ii) <i>by any registered person, who has defaulted in payment of tax and where such default has continued for such period as may be prescribed; or</i></p> <p>(iii) <i>by any registered person, the output tax payable by whom in accordance with the statement of outward supplies furnished by him under the said sub-section during such period, as may be prescribed, exceeds the output tax paid by him during the said period by such limit as may be prescribed; or</i></p> <p>(iv) <i>by any registered person who, during such period as may be prescribed, has availed credit of input tax of an amount that exceeds the credit that can be availed by him in accordance with clause (a), by such limit as may be</i></p>	<p>an auto-generated statement and to do away with two-way communication process in return filing.</p>
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	<p><i>prescribed; or</i></p> <p>(v) <i>by any registered person, who has defaulted in discharging his tax liability in accordance with the provisions of sub-section (12) of section 49 subject to such conditions and restrictions as may be prescribed; or</i></p> <p>(vi) <i>by such other class of persons as may be prescribed.</i></p>	
<p>Section 39</p> <p>(1)</p> <p>(2)</p> <p>(3)</p> <p>(4)</p> <p>(5)</p> <p>(6)</p> <p>(7)</p> <p><i>Provided that every registered person furnishing return under the proviso to sub-section (1) shall pay to the Government, the tax due taking into account inward and outward supplies of goods or services or both, input tax credit availed, tax payable and such other</i></p>	<p>Section 39</p> <p>(1)</p> <p>(2)</p> <p>(3)</p> <p>(4)</p> <p>(5)</p> <p>(6)</p> <p>(7)</p> <p><i>Provided that every registered person furnishing return under the proviso to sub-section (1) shall pay to the Government, in such form and manner, and within such time, as may be prescribed,--</i></p> <p><i>(a) an amount equal to the tax due taking into</i></p>	<p>Section 39 is to be amended so as to:</p> <p>(i) provide an option to the persons furnishing return under proviso to sub-section (1), to pay either the self-assessed tax or an amount that may be prescribed;</p> <p>(ii) provide for an extended time upto 30th day of November of the following financial year, for rectification of errors in the</p>

<p><i>particulars during a month, in such form and manner, and within such time, as may be prescribed.</i></p>	<p>account inward and outward supplies of goods or services or both, input tax credit availed, tax payable and such other particulars during a month; or</p> <p>(b) in lieu of the amount referred to in clause (a), an amount determined in such manner and subject to such conditions and restrictions as may be prescribed.</p>	<p>return furnished under section 39;</p> <p>(iii) provide for furnishing of details of outward supplies of a tax period under sub-section (1) of section 37 as a condition for furnishing the return under section 39 for the said tax period.</p>
<p>(8)</p> <p>(9) <i>Subject to the provisions of sections 37 and 38, if any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity</i></p>	<p>(8)</p> <p>(9) Where any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity</p>	

<p>by the tax authorities, he shall rectify such omission or incorrect particulars in the return to be furnished for the month or quarter during which such omission or incorrect particulars in such form and manner as may be prescribed, subject to payment of interest under this Act:</p> <p>Provided that no such rectification of any omission or incorrect particulars shall be allowed after <i>the due date for furnishing of return for the month of September or second quarter</i> following the end of the financial year to which such details pertain, or the actual date of furnishing of relevant annual return, whichever is earlier.</p> <p>(10) A registered person shall not be allowed</p>	<p>by the tax authorities, he shall rectify such omission or incorrect particulars in the return to be furnished for the month or quarter during which such omission or incorrect particulars in such form and manner as may be prescribed, subject to payment of interest under this Act:</p> <p>Provided that no such rectification of any omission or incorrect particulars shall be allowed after 30th day of November following the end of the financial year to which such details pertain, or the actual date of furnishing of relevant annual return, whichever is earlier.</p>	
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<p>to furnish a return for a tax period if the return for any of the previous tax periods <i>has not been furnished by him.</i></p>	<p>(10) A registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous tax periods <i>or the details of outward supplies under sub-section (1) of section 37 for the said tax period has not been furnished by him:</i></p> <p><i>Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the return, even if he has not furnished the returns for one or more previous tax periods or has not furnished the details of outward</i></p>	
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	supplies under sub-section (1) of section 37 for the said tax period.	
<p><u>Section 41</u> is to be substituted as follows:</p> <p>(1) <i>Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to avail the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger.</i></p> <p>(2) <i>The credit of input tax availed by a registered person under sub-section (1) in respect of such supplies of goods or services or both, the tax payable whereon has not been paid by the supplier, shall be reversed along with applicable interest, by the said person in such manner as may be prescribed:</i></p> <p><i>Provided that where the said supplier makes payment of the tax payable in respect of the aforesaid supplies, the said registered person may re-avail the amount of credit reversed by him in such manner as may be prescribed.</i></p>		<p>Section 41 is to be substituted so as to do away with the concept of "claim" of eligible ITC on a "provisional" basis and to provide for availment of self-assessed ITC subject to such conditions and restrictions as may be prescribed.</p>
<p>Sections 42, 43 and 43A are to be omitted so as to do away with two-way communication process in return filing.</p>		
<p><u>Section 47</u></p> <p>(1) Any registered person who fails to furnish the details of outward <i>or inward</i> supplies required under section 37 <i>or section 38</i> or returns required under section 39 or section 45</p>	<p><u>Section 47</u></p> <p>(1) Any registered person who fails to furnish the details of outward <i>or inward</i> supplies required under section 37 <i>or section 38</i> or returns required under section 39 or section</p>	<p>Section 47 is to be amended so as to provide for levy of late fee for delayed filing of return under section 52. Further, reference to section 38 to be removed consequent to the amendment in</p>

<p>by the due date shall pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum amount of ₹ 5,000.</p> <p>(2)</p>	<p>45 or section 52²³ by the due date shall pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum amount of ₹ 5,000.</p> <p>(2)</p>	<p>section 38.</p>
<p>Section 48</p> <p>(1)</p> <p>(2) A registered person may authorise an approved goods and services tax practitioner to furnish the details of outward supplies under section 37, <i>the details of inward supplies under section 38</i> and the return under section 39 or section 44 or section 45 and to perform such other functions in such manner as may be prescribed.</p> <p>(3)</p>	<p>Section 48</p> <p>(1)</p> <p>(2) A registered person may authorise an approved goods and services tax practitioner to furnish the details of outward supplies under section 37, the details of inward supplies under section 38 and the return under section 39 or section 44 or section 45 and to perform such other functions in such manner as may be prescribed.</p> <p>(3)</p>	<p>Consequent to the amendment in section 38, sub-section (2) of section 48 is to be amended so as to remove reference to section 38 therefrom.</p>

²³ Provisions of section 52 have been discussed in detail at final level.