

FURTHER AMENDMENTS FOR GST

[It is very important to refer last term amendments of May 2020/June 2020 exams as well. PLEASE NOTE THAT THE AMENDMENTS BY THE FINANCE ACT, 2019 IS ALREADY COVERED IN THE EARLIER AMENDMENT NOTES/STUDY MATERIAL]

NOTIFICATION AND CIRCULARS ISSUED BETWEEN 1.11.2019 TO 30.04.2020

A. Changes made by the Finance Act (No.2), 2019 [Applicable w.e.f 1.1.2020]

Sl. No	Amendments made by the Finance Act (No.2), 2019	Comparison with existing provisions
1. Composition Scheme [Section 10]		
(i)	<p><u>Second Proviso to Section 10:</u> Provided further that a person who opts to pay tax u/s. 10(1) may supply services (other than restaurant services), of value not exceeding 10% of turnover in a State or Union territory in the preceding financial year or ₹5,00,000, whichever is higher.</p> <p>Explanation: For the purposes of second proviso, the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount shall not be taken into account for determining the value of turnover in a State or Union territory [newly inserted]</p>	This explanation is already there in existing law by virtue of clarification given in Order No. 01/2019, now the same has been incorporated in the Act.
(ii)	<p><u>New condition inserted in section 10(2) - the registered person shall be eligible to opt this scheme, if:</u></p> <p>(f) he is neither a casual taxable person nor a non-resident taxable person (newly inserted)</p> <p>[no change in clause (a) to (e)]</p>	This condition is already there by virtue of Rule 5, now the same has been incorporated in the Act.
(iii)	<p><u>Alternative composition scheme under Notification NO. 2/2019 has now been enacted in the provisions of the Act:</u></p> <p>Section 10(2A) : Notwithstanding anything to the contrary contained in this Act, but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, not eligible to opt to pay tax u/s. 10(1) and 10(2), whose aggregate turnover in the preceding financial year did not exceed ₹ 50 lakh, may opt to pay, in lieu of the tax payable by him u/s. 9(1), an amount of tax calculated at such rate as may be prescribed, but not exceeding 3% of the turnover in State or turnover in Union territory, if he is not—</p> <p>[Notified rate is 3% CGST and 3% SGST – Rule 7]</p> <p>(a) engaged in making any supply of goods or services which are not leviable to tax under this Act;</p> <p>(b) engaged in making any inter-State outward supplies of goods or services;</p>	<p>The provisions are same (except one change given below) that we have learned under Notification NO. 2/2019 -</p> <p>(i) In Notification No. 2/2019, notified supplier (manufacturer/trader) of goods is not allowed to opt the scheme. However, in section 10(2A), notified manufacture of goods or notified supplier of services, are not allowed to opt the scheme. [Ref. Point d]</p>

<p>(c) engaged in making any supply of goods or services through an electronic commerce operator who is required to collect tax at source under section 52;</p> <p>(d) a manufacturer of such goods or supplier of such services as may be notified by the Government on the recommendations of the Council; and</p> <p>(e) a casual taxable person or a non-resident taxable person: Provided that where more than one registered person are having the same Permanent Account Number issued under the Income-tax Act, 1961, the registered person shall not be eligible to opt for the scheme under this sub-section unless all such registered persons opt to pay tax under this sub-section. <i>→ Other provisions of section 10(3),10(4) and 10(5) is applicable to section 10(1) is also applies to section 10(2A)</i></p>	
<p>(iv) Explanation to section 10 (newly inserted)</p> <p>Explanation 1.—For the purposes of computing aggregate turnover of a person for determining his eligibility to pay tax under this section, the expression “aggregate turnover” shall include the value of supplies made by such person from the 1st day of April of a financial year up to the date when he becomes liable for registration under this Act, but shall not include the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.</p> <p>Explanation 2.—For the purposes of determining the tax payable by a person under this section, the expression “turnover in State or turnover in Union territory” shall not include the value of following supplies, namely:—</p> <p>(i) supplies from the first day of April of a financial year up to the date when such person becomes liable for registration under this Act; and</p> <p>(ii) exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.’</p>	<p>Same as that given in the order No. 01/2019 and notification No. 2/2019.</p>
<p>2. REGISTRATION</p>	
<p>(i) <u>Third Proviso to section 22(1)</u> Provided also that the Government may, at the request of a State and on the recommendations of the Council, enhance the aggregate turnover from ₹ 20 lakh to such amount not exceeding ₹ 40 lakh in case of supplier who is engaged exclusively in the supply of goods, subject to such conditions and limitations, as may be notified.</p> <p>Explanation.—<i>For the purposes of this sub-section, a person shall be considered to be engaged exclusively in the supply of goods even if he is engaged in exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.”.</i></p>	<p>Presently this enhancement for some states has been done by virtue of Notification NO. 10/2019, now, such power is given through section 22.</p> <p>Note - This explanation give relaxation that person shall be considered as exclusively supply of goods even if he earns interest income/discount. [This relaxation is not there in Notification 10/2019.</p>

(ii)	AADHAAR AUTHENTICATION MANDATORY FOR SPECIFIED CLASS OF PERSON [Section 25(6A),25(6B),25(6C),25(6D)] W.e.f 1.4.2020	<p>(i) Newly inserted to make Aadhaar Authentication mandatory for specified class of new taxpayer, and</p> <p>(ii) <i>also to prescribe manner in which certain class of registered person are required to undergo Aadhaar Authentication(not yet prescribed).</i></p>
<p>1. Every Individual shall, in order to be eligible for grant of registration, undergo authentication, or furnish proof of possession of Aadhaar number.</p> <p>2. Every person other than an individual, shall, in order to be eligible for grant of registration, undergo authentication, or furnish proof of possession of Aadhaar number of the –</p> <p>(a) authorised signatory of all types (Managing Director, whole time Director, Members of Managing Committee of Association, Board of Trustees, authorised representative etc.);</p> <p>(b) Managing and Authorised partners of a partnership firm; and</p> <p>(c) Karta of an Hindu undivided family,</p> <p>3. Where Aadhaar number is not assigned, then the registration shall be granted only after physical verification of the principle place of business in the presence of the said person, not later than 60 days from the date of application and the provisions of deemed registration is not applicable.</p> <p>4. Notified Exempted category –</p> <p>(i) A person who is not a citizen of India</p> <p>(ii) Person other than (a) individual, (b) authorised signatory of all types; (c) Managing and Authorised partners of a partnership firm; and (d) Karta of HUF</p> <p>5. Rule 25 has been substituted to carry out physical verification where Aadhaar authentication is failed</p> <p>Physical verification of business premises in certain cases.-Where the proper officer is satisfied that the physical verification of the place of business of a person is required due to failure of Aadhaar authentication before the grant of registration, or due to any other reason after the grant of registration, he may get such verification of the place of business, in the presence of the said person, done and the verification report along with the other documents, including photographs, shall be uploaded in FORM GST REG-30 on the common portal within a period of 15 days following the date of such verification.</p>		
3. INVOICING UNDER GST		
(i)	FACILITY OF DIGITAL PAYMENT TO RECIPIENT [SECTION 31A] The Government may, on the recommendations of the Council, prescribe a class of registered persons who shall provide prescribed modes of electronic payment to the recipient of supply of goods or services or both made by him and give option to such recipient to make payment accordingly, in such manner and subject to such conditions and restrictions, as may be prescribed.	Newly introduced so as to make mandatory option for e-payment in case of specified class of regd. Person.
4. PAYMENT OF TAX		
<p><u>Transfer of amount from one major/minor head in e-cash ledger to another [Newly introduced]</u></p> <p>Section 49(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</p>		

cash ledger for integrated tax, central tax, State tax, Union territory tax or cess, in form GST PMT-09 and such transfer shall be deemed to be a refund from the electronic cash ledger under this Act.

Section 49(11) Where any amount has been transferred to the electronic cash ledger under this Act, the same shall be deemed to be deposited in the said ledger as provided in sub-section (1)

Section 53A: Where any amount has been transferred from the e-cash ledger under CGST Act to the e- cash ledger under the State GST Act or the UTGST Act, the Government shall, transfer to the State tax account or the Union territory tax account, an amount equal to the amount transferred from the electronic cash ledger, in such manner and within such time as may be prescribed.”. [same provisions inserted u/s. 17A of the IGST Act, 2017]

Example 1-

Balance in e-cash ledger –

Major Head	Minor Head				
	Tax	Interest	Fee	Penalty	Others
CGST	10000	0	0	0	0
SGST	10000	0	0	0	0
IGST	12000	0	0	0	0
Cess	0	0	0	0	0

Suppose Tax liability payable for a month is CGST ₹15,000 and SGST is ₹15,000 and Late fee payable ₹1000 CGST and ₹1000 SGST.

Now, there is short-fall of ₹6,000 in CGST Head and SGST Head in the e-cash ledger but there is balance in IGST head, so the taxpayer can transfer balance from IGST as under and set –off his liability –

Transfer from	Transfer to	Minor Head				
		TAX	Interest	Fee	Penalty	Others
IGST	CGST	5000	0	1000	0	0
ISGT	SGST	5000	0	1000	0	0

5. RETURN

(i) Proviso to section 44

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

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

Now, the commissioner is empowered to extend the due date of furnishing annual return.

B. NOTIFICATION AND CIRCULARS ISSUED BETWEEN 1.11.2019 TO 30.04.2020**REVERSE CHARGE****(1) RCM payable on renting of Motor Vehicles – Substituted**

Sl No.	Category of supply of service	Supplier of service	Recipient of service
	Services provided by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient, provided to a body corporate.	Any person, other than a body corporate who supplies the service to a body corporate and does not issue an invoice charging central tax at the rate of 6 % to the service recipient	Any body corporate located in the taxable territory.

Notification no. 29/2019, CT (Rate), dated 31.12.2019

Class Notes :

1. In RCM, the rate of GST shall always be 5% on above services.
2. Where forward charge is applicable then supplier can opt for 12% GST with no restriction on claiming ITC [subject to provisions of ITC] or 5% GST with limited ITC [i.e. ITC of only same line of business being allowed]

INPUT TAX CREDIT**(2) Rule 36(4) the CGST Rules, 2017: Availment of ITC for which invoices has not been uploaded by suppliers in their GSTR-1 is reduced from 20% to 10% w.e.f 1.1.2020**

Where the supplier has not uploaded the details of invoices/debit notes within the due date (i.e 11th of the following month), the ITC for the month shall be restricted to 10% of the eligible credit in respect of invoices or debit notes the details of which have been uploaded by the suppliers. [Notification no. 75/2019-CT, 26.12.2019]

→ *If invoice is uploaded by supplier in his GSTR 1:- Full ITC is allowed (if other conditions are allowed).*

→ *If invoice is not uploaded by supplier in his GSTR 1:- 10% of the eligible ITC allowed in respect of the uploaded Invoices/ Debit Note. However, ITC claimed should not exceed ITC available on Invoices not uploaded.*

Circular NO. 123/2019, dated 11.11.2019

- The above restriction is not available w.r.t ITC claimed on RCM, ITC received through Input service distributor, IGST paid on imports etc.
- The taxpayer shall claim ITC in his GSTR-3B by applying the above restriction
- The calculation of 10% of eligible ITC is on total invoices uploaded and not on supplier basis
- 10% is calculated on invoices on which ITC is available,, therefore invoices for which ITC not available [such as section 17(5) Cases] would not be considered.

- **(3) MANNER OF DETERMINATION OF INPUT TAX CREDIT IN RESPECT OF CAPITAL GOODS AND REVERSAL THEREOF [SECTION 17(2) READ WITH RULE 43]**
- **Amended w.e.f 1.4.2020 videi notification No. 16/2020**

(a)	Credit related to capital goods used or intended to be used exclusively for non business/exempted purpose should be indicated in GSTR-2 and GSTR-3B and shall not be credited to e-credit ledger	-
(b)	Credit related to capital goods used or intended to be used exclusively taxable supplies and zero-rated supplies, shall be credited to the e-credit ledger.	xxx
(c)	the amount of input tax in respect of capital goods not covered under clauses (a) and (b), (common capital goods) denoted as 'A' being the amount of tax as reflected on the invoice, shall credit directly to the e- credit ledger and the validity of the useful life of such goods shall extend upto 5 years from the date of the invoice for such goods.	
(d)	The aggregate of the amounts of 'A' credited to the e- credit ledger under clause (c) in respect of common capital goods whose useful life remains during the tax period, to be denoted as 'T _c ', shall be the common credit in respect of such capital goods	xxx
(e)	the amount of input tax credit attributable to a tax period on common capital goods during their useful life, be denoted as 'T _m ' and calculated as $T_m = T_c \div 60$ Explanation - useful life of any capital goods shall be considered as 5 years from the date of invoice and the said formula shall be applicable during the useful life of the said capital goods.	xxx
(f)	(T_r) Opening ITC on all common capital goods whose useful life remains during the tax period & shall be the aggregate of 'T_m' for all such capital goods. [omitted from 1.4.2020]	xxx
(g)	the amount of common credit attributable towards exempted supplies, be denoted as 'T _e ', and calculated as- $T_e = (E \div F) \times T_r$ E' is the aggregate value of exempt supplies, made, during the tax period, 'F' is the total turnover in the State of the registered person during the tax period: The amount of 'T _e ' along with the applicable interest shall, during every tax period of the useful life of the concerned capital goods, be added to the output tax liability of the person making such claim of credit. It shall be calculated separately for central tax, State tax, Union territory tax and integrated tax and declared in GSTR 3B.	xxx

- ~~Note 1: Where capital goods were used for exclusively for non business/ exempted supplies/ taxable supplies are used for common purpose the value of 'T_e' shall be arrived at by reducing the input tax @ 5% points for every quarter or part thereof.~~
 - (i) **Where any capital goods earlier used exclusively for non business/exempted purpose but subsequently used for common purpose, input tax in respect of such capital goods shall be credited to the e-credit ledger and included in 'T_c'.**
However, the ineligible credit attributable to the period during which such capital goods were used exclusively for non business/exempted purpose, denoted as 'T_{ie}', shall be calculated @ 5% points for every quarter or part thereof and added to the output tax liability of the tax period in which such credit is claimed and shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in FORM GSTR-3B. [In this case provisions of section 18(4) shall not apply]
 - (ii) **where any capital goods earlier used for exclusively taxable supplies and zero-rated supplies, but subsequently used for common purpose, the input tax credit claimed in respect of such capital good(s) shall be added to arrive at the aggregate value "T_c";**
- **Note 2:** where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of 'E/F' shall be calculated by taking values of 'E'

and 'F' of the last tax period for which the details of such turnover are available, previous to the month during which the said value of 'E/F' is to be calculated;

- **Note 3:** the aggregate value of exempt supplies and the total turnover shall exclude the amount of Excise duty, CST and VAT [For Rule 42 and 43]

E-credit Ledger

(4) Where tax is paid wrongly or paid in excess by utilising ITC, then refund shall be granted by way of credit to e-credit ledger [Rule 86(4A)]-Notification No. 16/2020, dated 23.03.2020

(5) Conditions of use of amount available in e- credit ledger [Blocking of e-credit Ledger] Rule 86A

The Commissioner or any officer authorized by him not below the rank of an Assistant commissioner may not allow use of ITC for discharge of liability or claim of refund where it has reasons to believe that:

- (a) ITC has been availed on the strength of tax invoices or debit notes or other valid documents -
- issued by a non-existent registered person or person not conducting any business from the registered place of business; or
 - without receipt of goods or services or both; or
 - the tax charged in respect of which has not been paid to the Government; or
- (b) the registered person availing ITC has been found non-existent or not to be conducting any business from the registered place of business; or
- (c) the registered person availing ITC is not in possession of a tax invoice or debit note or other valid document,
- (3) The restriction can be imposed for a period of upto 1 year from the date of imposing such restriction. However, if the Commissioner or the officer authorised by him may, upon being satisfied that conditions for restriction no longer exist, can withdraw such restriction. [Notification No.75/2019-CT, dated 26.12.2019]

INVOICING AND E-WAY BILL

(6) Rule 138E [Blocking of E-way Bill]:

No person (including a consignor, consignee, transporter, an e-commerce operator or a courier agency) shall be allowed to furnish the information in PART A of FORM GST EWB-01 in respect of a registered person, whether as a supplier or a recipient, who, -

- (a) Being a composite dealer u/s 10 or paying tax under Notification No. 2/2019 has not furnished the statement of GST CMP-08 for two consecutive quarters.
- (b) Being a regular dealer has not furnished has not furnished the return (GSTR-3B) for a consecutive period of 2 months

- (c) **Being a regular dealer has not furnished has not furnished the statement of outward supplies (GSTR-1) for any two months or quarter as the case may be. [Notification no. 75/2019-CT, dated 26.12.2019]**

However, the commissioner may on receipt of an application from the registered person on sufficient cause being shown and for reasons to be recorded in writing, by order allow furnishing such information subject to such conditions and restrictions as may be specified by him.

(7) E-Invoicing

(1) TAX Invoice with QR Code for B2C invoices: (Rule 46)

An invoice issued by a registered person, whose aggregate turnover in a financial year exceeds ₹ 500 crore, to an unregistered person (hereinafter referred to as B2C invoice), shall have Quick Response (QR) code.

Provided that where such registered person makes a Dynamic Quick Response (QR) code available to the recipient through a digital display, such B2C invoice issued by such registered person containing cross-reference of the payment using a Dynamic Quick Response (QR) code, shall be deemed to be having Quick Response (QR) code. [Notification No. 72/2019, w.e.f 1.4.2020]

(2) Tax invoice with Invoice Reference Number (IRN) obtained from portal for B2B invoices:

Rule 48 (4) and (5) [Notification No. 68,69,70 &71/2019, – CT, dated 13.12.2019]

1. What is e-invoicing?

E-invoicing' or 'electronic invoicing' is a system where in the tax payer will upload his invoice details and register his supply transaction on the Government Invoice Registration Portal (IRP) and get the Invoice Reference Number (IRN) generated by the IRP system. That is, the tax payer will first prepare and generate his invoice using his ERP/accounting system or manual system and then upload these invoice details to IRP and get the unique reference number, known as IRN. It is clarified again that the e-invoice means NOT preparation or generation of tax payer's invoice on government portal. It is only intimating the government portal that invoice has been issued to the buyer, by registering that invoice on the government portal.

2. What is the main purpose of e-invoicing system?

- (i) ability to pre-populate the return and to reduce the reconciliation problems
- (ii) Generation of invoice in a standard format so that invoice generated on one system can be read by another system.
- (iii) Help the purchaser to get the Input tax credit easily.
- (iv) Curb tax evasion by claiming of ITC on fake invoices.

3. What types of supply are covered and who is responsible to issue e-invoices?

- (1) In case of B2B invoices in respect of supply of goods or services or both
- (2) It shall be issued mandatorily from 1.4.2020 by a registered supplier whose aggregate turnover in a financial year exceeds ₹ 100 crore.

4. How e-invoices are generated?

(i) It generated by uploading information in FORM GST INV-01 on the Common Goods and Services Tax Electronic Portal.

5. What is the common portal for e-invoicing?

Following are the common portals -

(i) www.einvoice1.gst.gov.in; (ii) www.einvoice2.gst.gov.in; (iii) www.einvoice3.gst.gov.in; (iv) www.einvoice4.gst.gov.in; (v) www.einvoice5.gst.gov.in; (vi) www.einvoice6.gst.gov.in; (vii) www.einvoice7.gst.gov.in; (viii) www.einvoice8.gst.gov.in; (ix) www.einvoice9.gst.gov.in; (x) www.einvoice10.gst.gov.in.

Note-If invoice issued other than manner specified rule 48(4), then such invoice shall not be treated as an Invoice. Further, requirement of preparing invoice in duplicate/ in triplicate, is not applicable to e-invoices.

EXEMPTED SERVICES

(8) Change in condition on exemption on upfront amount payable for long term lease of industrial plots:

Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease of thirty years, or more) of industrial plots or plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having ~~50%~~ 20% or more ownership of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area, shall be exempted.

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

Condition: (i) the leased plots shall be used for the purpose for which they are allotted and the State Government concerned shall monitor and enforce it.

(ii) In case of any violation or subsequent change in land use, due to any reason whatsoever, the original lessor, original lessee as well as any subsequent lessee or buyer or owner shall be jointly and severally liable to pay amount of tax exempted along with applicable interest and penalty:

(iii) The lease agreement shall incorporate in the terms and conditions, the facts that the central tax was exempted on the long term lease of the plots by the original lessor to the original lessee subject to the above condition and that the parties to the said agreements undertake to comply with the same." [w.e.f 1.1.2020]

(Notification No. 28/2019, dated 31.12.2019]

Circular dated 30/4/2019: Exemption is available on upfront payment , irrespective of whether such upfront amount is payable or paid in one or more instalments , provided the amount is determined upfront.

RETURN

(9) Foreign airlines are exempted to furnish GSTR-9C. However, a statement of receipts and payments for the financial year in respect of its Indian Business operations, duly authenticated by a practicing Chartered Accountant in India or a firm or a Limited Liability Partnership of practicing Chartered Accountants in India is submitted for each GSTIN by the 30th September of the year succeeding the financial year. [Notification No.09/2020– Central Tax New Delhi, the 16th March, 2020]

- **Example** – Mr. Ganesh a supplier of both taxable and exempted goods request you to determine his allowable input tax credit on the following capital goods for the month April, 20XX–

Capital Goods	Used for	Date of Invoice	Input tax credit
A	Exclusively for taxable supply	01.04.20XX	20,000
B	Exclusively for exempted supply	05.04.20XX	10,000
C	Both taxable and exempted supply	10.04.20XX	60,000
D	Both taxable and exempted supply	10.04.20XX	60,000

- Value of exempted supply for the month = ₹ 5,00,000
- Value of taxable supply for the month = ₹ 5,00,000 (excluding GST)
-
- **Answer - ITC allowed for the month of April 20XX**

Capital Goods	Used for		Input tax credit allowed (₹)
A	Exclusively for taxable supply	Fully allowed	20,000
B	Exclusively for exempted supply	Not allowed	-
C and D	Both taxable and exempted supply	Common ITC	1,20,000
Gross ITC			1,40,000
Less – ITC reversed as per Rule 43 (Note 1)			(1000)
Net ITC for the month			1,39,000
<p>Note – The amount of common credit attributable towards exempted supplies</p> <p>E = 5,00,000</p> <p>F = 10,00,000</p> <p>Tm = $Tc \div 60 = 1,20,000 \div 60 = 2,000$</p> <p>T_e = $\frac{5,00,000}{10,00,000} \times 2,000 = 1,000$</p>			
<p>Although the rules required that the amount of T_e (₹ 1000) shall be added to output tax liability but in GSTR 3B it is shown under reversal of ITC and reduced from gross ITC to find out Net ITC and this net ITC is credited to e-credit ledger.</p>			

(10) TCS return

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

Further that any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner. *[w.e.f 1.1.2020]*

11. Refund

Section 54(8A) The Government may disburse the refund of the State tax in such manner as may be prescribed *[w.e.f 1.9.2019]*

12. Anti-profiteering

Penalty @ 10% of the profiteered amount, if not paid in 30 days

Section 171(3A) Where the Authority referred to in sub-section (2), after holding examination as required under the said sub-section comes to the conclusion that any registered person has profiteered under sub-section (1), such person shall be liable to pay penalty equivalent to 10% of the amount so profiteered:

Provided that no penalty shall be leviable if the profiteered amount is deposited within 30 days of the date of passing of the order by the Authority.

Explanation.—For the purposes of this section, the expression “profiteered” shall mean the amount determined on account of not passing the benefit of reduction in rate of tax on supply of goods or services or both or the benefit of input tax credit to the recipient by way of commensurate reduction in the price of the goods or services or both *[Already given in our study mat] w.e.f 1.1.2020*

13. Circular no. 137/07/2020, dated 13.4.2020: Treatment of Cancellation of Goods and Services contract under GST

Issue 1: An advance is received by a supplier for a Service contract which subsequently got cancelled. Whether he can claim refund of tax paid or is he required to adjust his tax liability in his returns?

Case	Treatment
(i) The supplier has issued the invoice before supply of service and paid the GST thereon.	a) Credit note to be issued u/s 34 for reduction of tax liability b) Where output tax not available, refund claim allowable under 'Excess payment of tax' through Form GST RFD-01
(ii) The supplier has issued receipt voucher and paid the GST on such advance received.	Issue refund voucher under GST. Thereafter refund claim to be filed under 'Excess payment of tax through Form GST RFD-01

Issue 2: Goods supplied by a supplier under cover of a tax invoice are returned by the recipient. Whether he can claim refund of tax paid or is he required to adjust his tax liability in his returns?

Treatment: a) Credit note to be issued u/s 34 for reduction of tax liability

b) Where output tax not available, refund claim allowable under 'Excess payment of tax' through Form GST RFD-01

14. Circular No. 127/46/2019 – GST, 4.12.2019: Circular No. 107/26/2019-GST dt. 18.07.2019 related supply of Information Technology enabled Services (ITeS services) under GST has been withdrawn *ab-initio*.

(15) Rule 31A(2) The value of supply of lottery w.e.f 1.3.2020 shall be **higher of** –
 100/128 of the face value of ticket
 Or
 100/128 of the price as notified in the Official Gazette by the Organising State

[Notification No.8/2020, dated 02.03.2020] – earlier separate valuation is provided for lottery run by State Govt. and the lottery authorised by the State Govt.. Now such distinction is removed. .

(16) Apportionment of ITC in case of business re-organisation u/s. 18(3) read with rule 41(1)
Circular No. 133/dated 23.3.2020

1. In case of demerger the unutilised ITC of transferor shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme.
2. For this purpose, the value of assets (whether or not ITC availed) of the new units is to be considered at State level and not at all-India level.
3. Further, the ratio of the value of assets should be taken as on the “**appointed date of demerger**”
4. The transferor is required to file **FORM GST ITC-02** only in those States where both transferor and transferee are registered and not in all States where transferor is registered.

Note:

1. The above provisions shall be applicable for all forms of business re-organization that results in partial transfer of business assets along with liabilities and not only for demerger.
2. The ratio of value of assets, shall be applied to the total amount of unutilized input tax credit (ITC) of the transferor i.e. sum of CGST, SGST/UTGST and IGST credit. The said formula need not be applied separately in respect of each heads of ITC (CGST/SGST/IGST).

Illustration 1: A company XYZ is registered in two States of M.P. and U.P. Its total value of assets is worth ` 100 crore, while its assets in State of M.P. and U.P are ` 60 crore and ` 40 crore respectively.

It demerges a part of its business to company ABC. As a part of such demerger, assets of XYZ amounting to ` 30 Crore are transferred to company ABC in State of MP, while assets amounting to ` 10 crore only are transferred to ABC in State of U.P. (Total assets amounting to ` 40 crore at all-India level are transferred from XYZ to ABC).

The unutilized ITC of XYZ in State of M.P. shall be transferred to ABC on the basis of ratio of value of assets in State of M.P., i.e. $30/60 = 0.5$ and **not** on the basis of all-India ratio of value of assets, i.e. $40/100=0.4$.

Similarly, unutilized ITC of XYZ in State of U.P. will be transferred to ABC in ratio of value of assets in State of U.P., i.e. $10/40 = 0.25$.

Illustration 2: The ITC balances of transferor X in the State of Maharashtra under CGST, SGST and IGST heads are 5 lakh, 5 lakh and 10 lakh respectively. Pursuant to a scheme of demerger, X transfers 60% of its assets to transferee B.

Accordingly, the amount of ITC to be transferred from A to B shall be 60% of 20 lakh (total sum of CGST, SGST and IGST credit) i.e. **12 lakh**.

Further, the transferor while filing ITC-02 shall be at liberty to determine the amount to be transferred under each tax head (IGST, CGST, SGST/UTGST) within this total amount, subject to the ITC balance available with the transferor under the concerned tax head.

For example – In the Illustration 2, ITC can be transferred in following manner-

(1) Case 1

CGST	5 lakhs
SGST	5 lakhs
IGST	<u>2 lakhs</u>
Total	12 lakhs

(2) Case 2

SSGT	10 lakhs
CGST	2 lakhs
SGST	<u>Nil</u>
Total	12 lakhs

Place of Supply

(17) Section 13(13) – In order to prevent double taxation or non-taxation of supply of any service, the place of supply for B2B maintenance, repair or overhaul service (MRO) is notified as location of the recipient.

Description of services	Place of supply
Supply of maintenance, repair or overhaul service in respect of aircrafts, aircraft engines and other aircraft components or parts supplied to a person for use in the course or furtherance of business.	The place of supply of services shall be the location of the recipient of service.”

[Notification No. 2/2020, w.e.f 1.4.2020]

(18) REFUND

Refund in the case of zero-rated supply of goods or services or both without payment of tax under bond or letter of undertaking [Rule 89(4)]

The definition of turnover of zero rated supply of goods has been amended to restrict the same to 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier [Notification No. 16/2020, dated 23.03.2020]

(1) Refund Amount =

$$\frac{(\text{Turnover of zero-rated supply of goods} + \text{Turnover of zero-rated supply of services}) \times \text{Net ITC}}{\text{Adjusted Total Turnover}}$$

Where, - (A) "Refund amount" means the maximum refund that is admissible;

(B) "Net ITC" means input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed u/r 89(4A)/(4B);

(C) "Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or LUT, other than the turnover of supplies in respect of which refund is claimed u/r 89(4A)/(4B);

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

(D) "Turnover of zero-rated supply of services" - no CHANGE

(E) "Adjusted total turnover" = No change

(F) "Relevant period – no change

(19) Rule 92(1A) – Refund to be granted both in cash and credit, based on original mode of payment

Where, upon examination of the application of refund of any amount paid as tax other than the refund of tax paid on zero-rated supplies or deemed export, the proper officer is satisfied that a refund u/s. 54(5) of the Act is due and payable to the applicant,

(i) he shall make an order in FORM RFD-06 sanctioning the amount of refund to be paid, in cash, proportionate to the amount debited in cash against the total amount paid for discharging tax liability for the relevant period, mentioning therein the amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable and

(ii) for the remaining amount which has been debited from the e- credit ledger for making payment of such tax, the proper officer shall issue FORM GST PMT-03 re-crediting the said amount as Input Tax Credit in electronic credit ledger.

Note - The consequential amendments have been made in rule 92(4) and 92(5). [Notification No. 16/2020, dated 23.03.2020]

(20) Rule 96- REFUND IN CASE OF EXPORT OF GOODS OR SERVICES WITH PAYMENT OF IGST

One of the condition to claim refund is that- The persons claiming refund of IGST paid on exports of goods or services should not have received supplies on which the supplier has availed the benefit of *Notification No. 78/2017 Cus dated 13.10.2017/ Notification No. 79/2017 Cus dated 13.10.2017* [imports of goods by EOUs/ Advance Authorisation / EPCG schemes].

An explanation inserted which clarify that the benefit of the notifications mentioned therein shall not be considered to have been availed only where the registered person has paid IGST and Compensation Cess on

inputs and has availed exemption of only Basic Customs Duty (BCD) under the said notifications. [Notification No. 16/2020, dated 23.03.2020]

(21) Recovery of refund of unutilised input tax credit or integrated tax paid on export of goods where export proceeds not realised [Rule 96B newly inserted]

(1) Where any refund of unutilised input tax credit on account of export of goods or of integrated tax paid on export of goods has been paid to an applicant but the sale proceeds in respect of such export goods have not been realised, in full or in part, in India within the period allowed under the Foreign Exchange Management Act, 1999, including any extension of such period, the person to whom the refund has been made shall deposit the amount so refunded, to the extent of non realisation of sale proceeds, along with applicable interest within 30 days of the expiry of the said period or, as the case may be, the extended period, failing which the amount refunded shall be recovered in accordance with the provisions of section 73 or 74 of the Act, as the case may be, as is applicable for recovery of erroneous refund, along with interest under section 50:

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

(2) Where the sale proceeds are realised by the applicant, in full or part, after the amount of refund has been recovered from him under sub-rule (1) and the applicant produces evidence about such realisation within a period of 3 months from the date of realisation of sale proceeds, the amount so recovered shall be refunded by the proper officer, to the applicant to the extent of realisation of sale proceeds, provided the sale proceeds have been realised within such extended period as permitted by the Reserve Bank of India.” [Notification No. 16/2020, dated 23.03.2020]

Appeal & Revisions

(22) Notification No.5/2020, dated 13.01.2020 – Revisional authority u/s 108

the Central Board of Indirect Taxes and Customs hereby authorises –

(a) the Principal Commissioner or Commissioner of Central Tax for decisions or orders passed by the Additional or Joint Commissioner of Central Tax; and

(b) the Additional or Joint Commissioner of Central Tax for decisions or orders passed by the Deputy Commissioner or Assistant Commissioner or Superintendent of Central Tax,

as the Revisional Authority under section 108 of the said Act.

SELF STUDY

(23) Master Circular on refund –Circular NO. 125/2019, dated 18.11.2019

Guidelines for refund in case of –

(i) unutilized input tax credit (ITC) on account of exports without payment of tax

- (ii) unutilized ITC on account of supplies made to SEZ Unit/SEZ Developer without payment of tax;
- (iii) unutilized ITC on account of accumulation due to inverted tax structure;

In case of refunds pertaining to items listed above, the common portal calculates the refundable amount as the least of the following amounts:

- a) The maximum refund amount as per the formula in rule 89(4) or rule 89(5) of the CGST Rules [formula is applied on the consolidated amount of ITC, i.e. Central tax + State tax/Union Territory tax +Integrated tax];
- b) The balance in the electronic credit ledger of the applicant at the end of the tax period for which the refund claim is being filed after the return in FORM GSTR-3B for the said period has been filed; and
- c) The balance in the electronic credit ledger of the applicant at the time of filing the refund application.

After calculating the least of the three amounts, as detailed above, the equivalent amount is to be debited from the electronic credit ledger of the applicant in the following order:

- a) Integrated tax, to the extent of balance available;
- b) Central tax and State tax/Union Territory tax, equally to the extent of balance available and in the event of a shortfall in the balance available in a particular electronic credit ledger (say, Central tax), the differential amount is to be debited from the other electronic credit ledger (i.e., State tax/Union Territory tax, in this case).

(24) Clubbing of refund claims across Financial Years permitted

The applicant, at his option, may file a refund claim for a tax period or by clubbing successive tax periods. These quarters may spread across different financial years.

For example, a taxpayer filing quarterly GSTR-1 may apply for refund for the quarter Jan-March 2020 and April-June 2020. [Circular No. 135/2020, dated 31.3.2020]

(25) Refund of accumulated input tax credit (ITC) on account of reduction in GST Rate not allowed where inputs and outputs are same. [Circular No. 135/2020, dated 31.3.2020]

For Example - An applicant trading in goods has purchased, say goods “X” attracting 18% GST. However, subsequently, the rate of GST on “X” has been reduced to, say 12%. Whether refund allowed considering it is a case of inverted duty structure?

Refund of accumulated ITC on account of inverted duty structure in terms section 54(3)(ii) is available where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. However, in the given case, the input and output being the same, though attracting different tax rates at different points in time, do not get covered under the provisions of section 54(3)(ii) of the CGST Act. Therefore, refund not allowed.

(26) Refunds of Input Tax Credit under Section 54(3) shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant. [Circular No.135/2020, dated 31.3.2020]

Assessment

(27) Standard Operating Procedure to be followed in case of non-filers of returns [Circular No.129/2020, dated 24.12.2019]

Section 46 of the CGST Act read with rule 68 of the Central Goods and Services Tax Rules, 2017 requires issuance of a notice to a registered person who fails to furnish return under section 39 or section 44 or section 45 requiring him to furnish such return within 15 days. Further section 62 provides for assessment of non-filers of return of registered persons who fails to furnish return under section 39 or section 45 even after service of notice under section 46. No separate notice is required to be issued for best judgment assessment us. 62 if the return is not filed within 15 days of issuance of notice.

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

(i) a system generated message would be sent to all the registered persons 3 days before the due date to nudge them about filing of the return for the tax period by the due date.

(ii) Once the due date for furnishing the return under section 39 is over, a system generated mail / message would be sent to all the defaulters immediately after the due date to the effect that the said registered person has not furnished his return for the said tax period; the said mail/message is to be sent to the authorized signatory as well as the proprietor/partner/director/karta, etc.

(iii) Five days after the due date of furnishing the return, a notice under section 46 of the CGST Act read with rule 68 of the CGST Rules shall be issued electronically to such registered person who fails to furnish return under section 39, requiring him to furnish such return within 15 days;

(iv) In case the said return is still not filed by the defaulter within 15 days of the said notice, the proper officer may proceed to assess the tax liability of the said person under section 62 of the CGST Act, to the best of his judgement taking into account all the relevant material which is available or which he has gathered and issue assessment order and upload summary of order.

(v) For the purpose of assessment of tax liability under section 62 of the CGST Act, the proper officer may take into account the details of outward supply available in GSTR-1 , details of supplies auto populated in FORM GSTR-2A, information available from e-way bills, or any other information available from any other source, including from inspection under section 71;

(vi) In case the defaulter furnishes a valid return within 30 days of the service of assessment order, the said assessment order shall be deemed to have been withdrawn. However, if the said return remains unfurnished within the statutory period of 30 days from issuance of assessment order, then proper officer may initiate proceedings under section 78 and recovery under section 79 of the CGST Act

(vii) In deserving cases, based on the facts of the case, the Commissioner may resort to provisional attachment to protect revenue under section 83 of the CGST Act before issuance of assessment order. Further, the proper officer would initiate action under sub-section (2) of section 29 of the CGST Act for cancellation of registration in cases where the return has not been furnished for the period specified in section 29.

(28) Section 168A of the CGST Act, 2017 - Power of Government to extend time limit in special circumstances [Section 168A] w.e.f 31.3.2020 [Inserted by the TAXATION AND OTHER LAWS (RELAXATION OF CERTAIN PROVISIONS) ORDINANCE, 2020]

(1) Notwithstanding anything contained in this Act, the Government may, on the recommendations of the Council, by notification, extend the time limit specified in, or prescribed or notified under, this Act in respect of actions which cannot be completed or complied with due to *force majeure*.

(2) The power to issue notification under sub-section (1) shall include the power to give retrospective effect to such notification from a date not earlier than the date of commencement of this Act.

Explanation.- For the purposes of this section, the expression "*force majeure*" means a case of war, epidemic, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature or otherwise affecting the implementation of any of the provisions of this Act.'

(29) Notification No. 11/2020, dated 21.03.2020- Special procedures for interim resolution professionals (IRP) or resolution professionals (RP) under IBC

Under the provisions of the Insolvency and Bankruptcy Code, 2016, when an entity undergoes the corporate insolvency resolution process, its management are being undertaken by interim resolution professionals (IRP) or resolution professionals (RP). Such IRP or RP shall continue the business of such entity as going concern and is responsible for compliance of all the laws till the insolvency proceedings is over and an order is passed by NCLT.

Special procedures under section 148 is prescribed for corporate debtor who is undergoing corporate insolvency resolution process under the provisions of the Insolvency and Bankruptcy Code, 2016 and the management of whose affairs are being undertaken by interim resolution professionals (IRP) or resolution professionals (RP).

The said class of persons shall, with effect from the date of appointment of IRP / RP, be treated as a distinct person of the corporate debtor, and shall be liable to take a new registration in each of the States or Union territories where the corporate debtor was registered earlier, within 30 days of the appointment of the IRP/RP. Such persons are also liable to pay tax and file return and comply with other provisions during the period of corporate insolvency resolution process.

Customs & FTP

1. Duration of applicability of [FTP 2015-2020](#) has been extended from 31.3.2020 to 31.3.2021.
2. Exemption from IGST and GST compensation Cess in case of imports under Advance Authorisation, EPCG, EOU/EHTP/STP/BTO Units has been extended from 31.3.2020 to 31.3.2021
3. Import of goods as Gift – Earlier it was free if not prohibited. However, w.e.f 12.12.2019 import of goods including purchase from e-commerce portals, through post or courier as gifts is prohibited except for life saving drugs/medicines and rakhi (but not gift related to rakhi). Imports duty on rakhi will be exempted if the duty leviable is equal to or less than `100. Further, imports of goods as gift are permissible on payment full applicable duty. [Notification No. 35/2015-20, dt.12.12.2019]

THE QUESTION BANK

Question 1: Determine the tax liability of Mr. X, a registered dealer of West Bengal in the following case -

Case 1- if he is a trader

Case 2- if he is a manufacturer

Other information - His aggregate turnover in the preceding year is 110 lakhs. He opted to pay tax under composition scheme. All intra state supply made by him in the current financial year are as under -

- | | |
|---|-------------|
| (1) Supply of goods liable for GST @ 12% | ₹ 40,00,000 |
| (2) Supply of services liable for GST @ 18% | ₹ 8,00,000 |
| (3) Supply of services exempted u/s. 11 | ₹ 2,00,000 |
| (3) Interest on Bank deposits -exempt service | ₹ 5,00,000 |
| (4) Inward supplies liable under RCM @18% | ₹ 2,00,000 |

Answer 1: Since his aggregate turnover in the preceding year does not exceeds 1.5 cr he can opt for the composition scheme and can also made supply of services of up to 10% of 110 lakhs i.e 11 lakhs. In the given case, the value of supply of services excluding interest on fixed deposit is ₹ 10,00,000, which is within the above limit, hence he is eligible for composition scheme.

Particulars	Trader	Manufacturer
Supply of goods	40,00,000	40,00,000
Supply of taxable services	8,00,000	8,00,000
Supply of exempted services	-	2,00,000
Interest on bank deposits	-	-
Inward supply liable for RCM- normal rate applicable. Composite rate not applicable	-	-
Aggregate Turnover	48,00,000	50,00,000
Rate of tax	1%	1%
Tax payable under composition scheme	48,000	50,000
Add: Tax payable under RCM [2,00,000 x 18%]	36,000	36,000
Total Tax liability	84,000	86,000

Question 2 :

- (1) NET ITC = ` 5,00,000
- (2) Zero rated supply of goods under Bond or LUT = ` 20,00,000 [for 1,00,000 units].
- (3) Domestic supply of same goods of 1 lakh unit for ` 10 per unit.
- (4) Zero rated supply of services under Bond or LUT = ` 10,00,000

Determine the maximum allowable refund under rule 89(4).

Answer –

Refund Amount =

$\frac{(\text{Turnover of zero-rated supply of goods} + \text{Turnover of zero-rated supply of services})}{\text{Adjusted Total Turnover}} \times \text{Net ITC}$

Adjusted Total Turnover

Where,

(i) Turnover of zero-rated supply of goods = (a) ` 20 lakhs or (b) 1.5 times of ` 10 lakhs, whichever is lower = ` 15 lakhs

(ii) Turnover of zero-rated supply of services = ` 10 lakhs

(iii) Net ITC = ` 5 Lakhs

(iv) Adjusted Turnover = ` 20 lakhs + ` 10 lakhs + ` 10 lakhs = ` 40 lakhs

Refund Amount = $\frac{15 \text{ lakhs} + 10 \text{ lakhs}}{40 \text{ lakhs}} \times 5 \text{ lakhs}$

= 3,12,500

note - The restriction will hit those exporters who intentionally inflated the export price under bond or LUT to get a higher refund. May be transactions amongst related entities.

However, in case of genuine transactions where domestic price is higher, then actual zero rated supply of goods will be lower than 1.5 times such value and therefore actual zero rated price is considered in the formula.

