

**AMENDMENTS FOR CA
FINAL NOV 2020 EXAMS
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LEVY & COLLECTION

Notified supply of Services under RCM [N/N 13/2017 of CT]

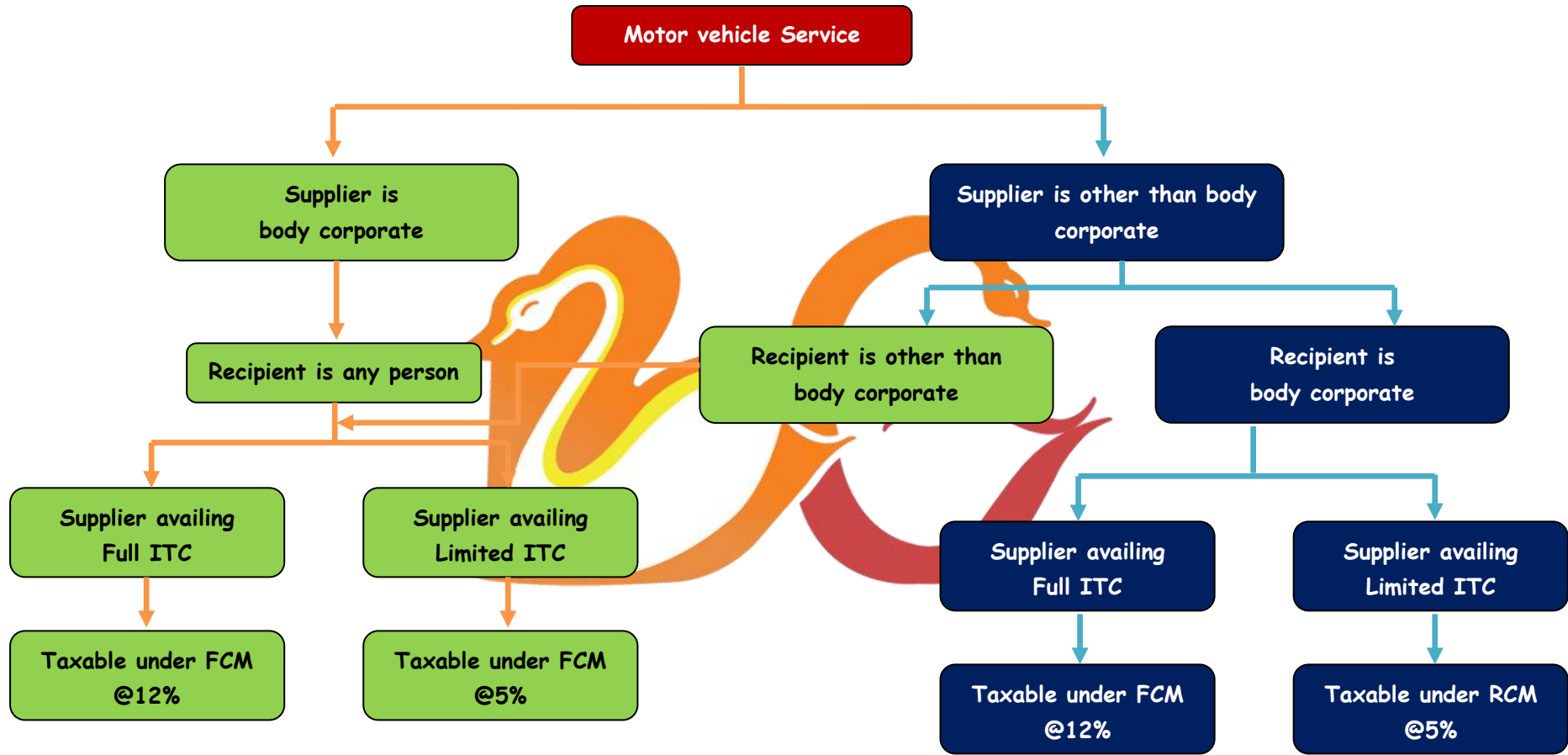
Sl. No	Nature of Service	Supplier of service	Recipient of Service (located in TT)
(15)	Services provided by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient, provided to a body corporate.	Any person,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

Clarification regarding Reverse Charge Mechanism (RCM) on renting of motor vehicles service

Service 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 are taxable at the following 2 rates:

- (a) **Taxable @ 5%** (2.5% CGST+2.5% SGST/UTGST or 5% IGST) provided supplier of services has taken **only the limited ITC (of input services in the same line of business)** or
- (b) **Taxable @ 12%** (6% CGST+6% SGST/UTGST or 12% IGST) where supplier of services opts to pay GST at said rate. In this case, **there is no restriction on availing ITC** on goods and services used in supplying renting of motor vehicles service by the supplier of service.

It is important to note here that when any service is placed under RCM, the supplier shall not charge any tax from the service recipient as this is the settled procedure in law under RCM. Thus, in this case, the supplier does not issue an invoice charging GST @12% (6% CGST+6% SGST/UTGST or 12% IGST) from the service recipient.



Sec 10: Composition Scheme
Ineligibility

- (1) *The registered person shall be eligible to opt under sub- section (1), if—*
- (a) *Save as otherwise provided in sub sec (1), he is not engaged in the supply of services other than supplies referred to in clause (b) of paragraph 6 of Schedule II*
 - (b) *he is not engaged in making any supply of goods which are not leviable to tax under this Act*
 - (c) *he is not engaged in making any inter-State outward supplies of goods*
 - (d) *he is not engaged in making any supply of goods through an electronic commerce operator who is required to collect tax at source u/s 52;*
 - (e) *he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council and*
 - (f) he is neither a casual taxable person nor a non-resident taxable person**

Provided that

where more than one registered persons are having the same Permanent Account Number, the registered person shall not be eligible to opt for the scheme under sub-section (1) unless all such registered persons opt to pay tax under that sub-section.

New Composition Scheme for mixed supplier or supplier of service

- (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 under sub-section (1) and sub-section (2), whose aggregate turnover in the preceding financial year did not exceed ₹ 50L, may opt to pay,** in lieu of the tax payable by him under section 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 UT, if he is not--**
- (a) engaged in making any **supply** of goods or services which are **not leviable to tax** under this Act;
 - (b) engaged in **making any inter-State outward supplies** of goods or services;
 - (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;
 - (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
 - (e) a **casual taxable person or a non-resident taxable person:**

Provided that where more than one registered person are having the same PAN 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.”

Aggregate turnover for determining eligibility

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.

Turnover in a state or UT for calculating tax payable

Explanation 2.—For the purposes of **determining the tax payable** by a person under this section, the expression “turnover in State or UT” shall not include the value of following supplies, namely:—

- (i) supplies from the 1st day of April of a financial year up to the date when such person becomes liable for registration under this Act; and
- (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.’



EXEMPTION

Services Exempt from GST N/N 12/2017 CT

S.N	DESCRIPTION OF SERVICE
(41)	<p><u>LONG TERM LEASE BY GOVT. TO INDUSTRIAL UNITS</u></p> <p>Upfront amount payable in respect of service by way of granting of long term lease of 30 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 CG, SG, UT to the industrial units or the developers in any industrial or financial business area</p> <p>Provided that the leased plots shall be used for the purpose for which they are allotted, that is, for industrial or financial activity in an industrial or financial business area:</p> <p>Provided further that the State Government concerned shall monitor and enforce the above condition as per the order issued by the State Government in this regard:</p> <p>Provided also that in case of any violation or subsequent change of 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 such amount of central tax, as would have been payable on the upfront amount charged for the long term lease of the plots but for the exemption contained herein, along with applicable interest & penalty</p> <p>Provided also that the lease agreement entered into by the original lessor with the original lessee or subsequent lessee, or sub-lessee, as well as any subsequent lease or sale agreements, for lease or sale of such plots to subsequent lessees or buyers or owners shall incorporate in the terms and conditions, the fact that the central tax was exempted on the long term lease of the plots by the original lessor to the original lessee subject to above</p>

INPUT TAX CREDIT

Sec 16 read with Rule 36 of CGST Rules, 2017

Rule 36: Documentary requirements and conditions for claiming input tax credit

Unmatched ITC = Max 10% of Matched ITC

(4) Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers u/s 37(1),

→ shall not exceed ~~20%~~ 10% of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers u/s 37(1)

Issue: How much ITC a registered tax payer can avail in his FORM GSTR-3B in a month in case the details of some of the invoices have not been uploaded by the suppliers u/s 37(1).

Clarifications: Rule 36(1) prescribes that the ITC to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers u/s 37(1), shall not exceed 10 % of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers u/s 37(1). The eligible ITC that can be availed is explained by way of illustrations, in a tabulated form, below. In the illustrations, say a taxpayer "R" receives 100 invoices (for inward supply of goods or services) involving ITC of Rs. 10 lakhs, from various suppliers during the month of May, 2020 and has to claim ITC in his FORM GSTR-3B of May, to be filed by 20th June, 2020.

Case	Details of suppliers invoice for which recipient is eligible to take ITC	10% of eligible credit where invoices are uploaded	Eligible ITC to be taken in GSTR - 3B to be filed by Nov 20 th
1	Suppliers have furnished in FORM GSTR – 1, 80 invoices involving ITC of ₹ 6 lakhs as on the due date of furnishing of the details of outward supplies by the suppliers	₹ 60,000	₹ 6,00,000 (i.e amt of eligible ITC available as per details uploaded by suppliers) + ₹ 60,000 (i.e, 10% of the amount of eligible ITC available, as per details uploaded by suppliers) = ₹ 6,60,000
2	Suppliers have furnished in FORM GSTR – 1, 80 invoices involving ITC of ₹ 7 lakhs as on the due date of furnishing of the details of outward supplies by the suppliers	₹ 70,000	₹ 7,00,000 + ₹ 70,000 = ₹ 7,70,000

3	Suppliers have furnished in FORM GSTR – 1, 75 invoices involving ITC of ₹ 9.5 lakhs as on the due date of furnishing of the details of outward supplies by the suppliers	₹ 95,000	₹ 9,50,000 + ₹ 50,000* = ₹ 10,00,000 * The additional amount of ITC availed shall be limited to ensure that the total ITC availed does not exceed total eligible ITC.
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Summary:

Case	Credit as per books	Credit reflected in GSTR 2A	Credit not reflected in GSTR 2A	Provisional credit - 10%	Amt eligible as per Rule 36(4)	Total Eligible credit claimed	Unavailed eligible credit
1	100	80	20	8	8	88	12
2	100	95	5	9.5	5	100	-



Rule 43: Methodology for apportionment of ITC on capital goods and reversal of ineligible credit as follows

Step 1 - Compute common credit (T_c) on Capital Goods

(a)	Input tax on capital goods used/ intended to be used exclusively for non-business purposes or making exempt supplies and declare the same in GSTR 2/3B	Not Eligible	-
(b)	Input tax on capital goods used/ intended to be used exclusively for making taxable supplies including zero rated supplies and declare the same in GSTR 2/3B	Credited to ECrL	-
(c)	<u>Input tax on capital goods not covered under (a) and (b) above</u> (i.e., the capital goods which are used/intended to be used commonly for making taxable as well as exempt supplies & business & non business purposes) Validity of the useful life of such goods shall extend upto 5 years from the date of the invoice for such goods	Credited to ECrL	A
	<u>Change from exclusive use for non-business purpose/exempt supplies to common use:</u> Provided that where capital goods which were initially covered under (a) above get subsequently covered under clause (c), ITC in respect of such capital goods denoted as "A" shall be credited to the ECrL subject to the condition that the ineligible credit attributable to the period during which such capital goods were covered by clause (a), denoted as "T _{ie} ", shall be calculated at the rate of 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:		
	Explanation: An item of capital goods declared under clause (a) on its receipt shall not attract the provisions of Sec 18(4), if it is subsequently covered under this clause."		
(d)	The aggregate of the amounts of "A" credited to the ECrL 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	Aggregate Amt of "A"	T _c
	<u>Change from exclusive use for taxable including zero rated supplies to common use</u> Provided that where capital goods which were initially covered under (b) above get subsequently covered under clause (c), → the input tax credit claimed in respect of such capital good(s) shall be added to arrive at the aggregate value "T _c "		

Step 2 - Determine common credit during the useful life of capital goods for a tax period as under and denote the same as 'Tm': [Clause (e)]

- $T_m = T_c \div 60$

“Explanation.-For the removal of doubt, it is clarified that useful life of any capital goods shall be considered as five years from the date of invoice and the said formula shall be applicable during the useful life of the said capital goods.”;

Step 3 - Apportion common credit attributable to exempt supplies as under:

- $T_e = (E \div F) \times T_r$

Where

E = Aggregate value of exempt supplies made during the tax period

F = Total turnover during the tax period

Step 5: Restrict ineligible credit

Add T_e to the output tax liability along with applicable interest during every tax period of the useful life of the capital goods concerned.



Rule 41: Transfer of credit on sale, merger, amalgamation, lease or transfer of a business

(1) A registered person shall, in the event of sale, merger, de-merger, amalgamation, lease or transfer or change in the ownership of business for any reason, furnish the details of sale, merger, de-merger, amalgamation, lease or transfer of business, in **FORM GST ITC-02**, electronically on the common portal along with a request for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee:

Provided that in the case of demerger, the input tax credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme.

“Explanation: - For the purpose of this sub-rule, it is hereby clarified that the “value of assets” means the value of the entire assets of the business, whether or not input tax credit has been availed thereon.”.

Clarification in respect of apportionment of ITC in cases of business reorganization u/s 18 (3) of CGST Act read with rule 41(1) of CGST Rules

Issue 01: In case of demerger, proviso to rule 41 (1) of the CGST Rules provides that the input tax credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme. However, it is not clear as to whether the value of assets of the new units is to be considered at State level or at all-India level.

Clarifications: Under GST, a person/ company (having same PAN) is required to obtain separate registration in different States and each such registration is considered a distinct person for the purpose of the Act. Accordingly, for apportionment of ITC, the **value of assets of the new units is to be taken at the State level (at the level of distinct person) and not at the all-India level.**

Illustration: A company XYZ is registered in two States of M.P. and U.P. Its total value of assets is worth Rs. 100 crore, while its assets in State of M.P. and U.P are Rs 60 crore and Rs 40 crore respectively. It demerges a part of its business to company ABC. As a part of such demerger, assets of XYZ amounting to Rs 30 Crore are transferred to company ABC in State of M.P, while assets amounting to Rs 10 crore only are transferred to ABC in State of U.P. (Total assets amounting to Rs 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. $10/40 = 0.25$.

Issue 02: Is the transferor required to file FORM GST ITC -02 in all States where it is registered ?

Clarifications: No. The transferor is required to file FORM GST ITC-02 **only in those States where both transferor and transferee are registered.**

Issue 03: Proviso to rule 41 (1) explicitly mentions 'demerger' and other forms of business reorganization where part of business is hived off or business is transferred as a going

concern etc. have not been covered in the said rule. Whether the proviso to rule 41(1) shall be applicable to calculate the amount of transferable ITC in other cases also ?

Clarifications: **Yes**, the formula for apportionment of ITC shall be **applicable for all forms of business re-organization** that results in partial transfer of business assets along with liabilities.

Issue 04: Whether the ratio of value of assets, as prescribed under proviso to rule 41 (1), shall be applied in respect of each heads of ITC viz. CGST/ SGST/ IGST/ Cess?

Clarifications: **No, the ratio of value of assets**, as prescribed under proviso to Rule 41(1), **shall be applied to the total amount of unutilized 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). Further, the said formula shall also be applicable for apportionment of Cess between the transferor and transferee.

Illustration: 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

Issue 05: How to determine the amount of ITC that is to be transferred to the transferee under each tax head (IGST/CGST/SGST) while filing of FORM GST ITC-02 by the transferor?

Clarifications: **The total amount of ITC to be transferred** to the transferee (i.e. sum of CGST, SGST/UTGST and IGST credit) **should not exceed the amount of ITC to be transferred**, as determined u/r 41(1) [refer case 04 above].

However, the transferor 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. This is shown in the illustration below

(1)	(2)	(3)	(4)	(5)	(6)
State	Asset Ration of transferee	Tax Heads	ITC balance of transferor (pre-apportionate) as on the date of filling Form GST ITC-02)	Total amt of ITC transferred to the transferee Under Form GST ITC-02)	ITC balance of transferor (post-apportionate) after filling of Form GST ITC-02) [(4) -(5)]
Delhi	70%	CGST	10,00,000	10,00,000	0
		SGST	10,00,000	10,00,000	0
		IGST	30,00,000	15,00,000	15,00,000
		Total	50,00,000	35,00,000	15,00,000
Haryana	40%	CGST	25,00,000	3,00,000	22,00,000
		SGST	25,00,000	5,00,000	20,00,000
		IGST	20,00,000	20,00,000	0
		Total	70,00,000	28,00,000	42,00,000

Issue 06: In order to calculate the amount of transferable ITC, the apportionment formula under proviso to rule 41(1) has to be applied to the unutilized ITC balance of the transferor. However, it is not clear as to which date shall be relevant to calculate the amount of unutilized ITC balance of transferor

Clarifications: According to Sec 18(3) “Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, the said registered person shall be allowed to **transfer the input tax credit which remains unutilized in his electronic credit ledger** to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed.” Further, Rule 41(1) prescribes that the registered person shall file the details in **FORM GST ITC-02** for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee.

- ➔ A conjoint reading of Sec 18(3) along with Rule 41(1) would imply that the **apportionment formula shall be applied on the ITC balance of the transferor as available in electronic credit ledger on the date of filing of FORM GST ITC -02 by the transferor.**

Issue 07: Which date shall be relevant to calculate the ratio of value of assets, as prescribed in the proviso to rule 41(1) ?

Clarifications: According to section 232 (6) of the Companies Act, 2013, “The scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date”.

- ➔ for the purpose of apportionment of ITC u/r 41(1), while the ratio of the value of assets should be taken as on the **“appointed date of demerger”**, the said ratio is to be applied on the ITC balance of the transferor on the date of filing FORM GST ITC -02 to calculate the amount to transferable ITC.

REGISTRATION

Sec 25: Procedure for registration

AADHAR Authentication

(6A) EVERY REGISTERED person shall undergo authentication, or furnish proof of possession of Aadhaar number, in such form and manner and within such time as may be prescribed:

Provided that if an Aadhaar number is not assigned to the registered person, such person shall be offered alternate and viable means of identification in such manner as Government may, on the recommendations of the Council, prescribe:

Provided further that **in case of failure to undergo authentication or furnish proof of possession of Aadhaar number or furnish alternate and viable means of identification, registration allotted to such person shall be deemed to be invalid and the other provisions of this Act shall apply as if such person does not have a registration.**

(6B) On and from the date of notification, EVERY INDIVIDUAL shall, in order to be eligible for grant of registration, undergo authentication, or furnish proof of possession of Aadhaar number, in such manner as the Government may, on the recommendations of the Council, specify in the said notification:

Provided that if an Aadhaar number is not assigned to an individual, such individual shall be offered alternate and viable means of identification in such manner (Rule 9) as the Government may, on the recommendations of the Council, specify in the said notification.

(6C) On and from the date of notification, 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 Karta, Managing Director, whole time Director, such number of partners, Members of Managing Committee of Association, Board of Trustees, authorised representative, authorised signatory and such other class of persons, in such manner, as the Government may, on the recommendations of the Council, specify in the said notification:

Provided that where such person or class of persons have not been assigned the Aadhaar Number, such person or class of persons shall be offered alternate and viable means of identification in such manner (Rule 9) as the Government may, on the recommendations of the Council, specify in the said notification.

(6D) The provisions of sub-section (6A) or sub-section (6B) or sub-section (6C) shall not apply to such person or class of persons or any State or Union territory or part thereof, as the Government may, on the recommendations of the Council, specify by notification.

Specified Persons:

Provisions of sub-section (6B) or (6C) of the said Act shall not apply to a person who is not a citizen of India or to a class of persons other than the following class of persons, namely:-

- (a) Individual;
- (b) authorised signatory of all types;
- (c) Managing and Authorised partner; and
- (d) Karta of an Hindu undivided family.

Rule 8: Application for Registration

The applicant shall, while submitting an application, w.e.f 01.04.2020, undergo authentication of Aadhaar number for grant of registration.

Rule 9: Verification of the application and approval. -

- (1) The application shall be forwarded to the PO who shall examine the application and the accompanying documents and if the same are found to be in order, approve the grant of registration to the applicant within a period of 3 working days from the date of submission of the application.

Provided that where a person, other than those notified u/s 25(6D) fails to undergo authentication of Aadhaar number, 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, in the manner provided under rule 25 and the provisions of sub-rule (5) shall not be applicable in such cases.”

Rule 25: Physical verification of business premises in certain cases after grant of registration

Where the PO 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 working days following the date of such verification.”.

INVOICING

Rule 48: Manner of Issuing Invoice

- (1) The invoice shall be prepared in triplicate, in the case of **supply of goods**, namely,-
 - (a) the original copy being marked as **ORIGINAL FOR RECIPIENT**;
 - (b) the duplicate copy being marked as **DUPLICATE FOR TRANSPORTER**; and
 - (c) the triplicate copy being marked as **TRIPLICATE FOR SUPPLIER**.
- (2) The invoice shall be prepared in duplicate, in the case of the **supply of services**, namely,-
 - (a) the original copy being marked as **ORIGINAL FOR RECIPIENT**; and
 - (b) the duplicate copy being marked as **DUPLICATE FOR SUPPLIER**.
- (3) The serial number of invoices issued during a tax period shall be furnished electronically through the common portal in FORM GSTR-1

E-Invoicing

- (4) The invoice shall be prepared by
 - such class of registered persons as may be notified by the Government, on the recommendations of the Council, by including such particulars contained in FORM GST INV-01
 - after obtaining an Invoice Reference Number by uploading information contained therein on the Common GST Electronic Portal in such manner and subject to such conditions and restrictions as may be specified in the notification.

Notified common GST Electronic Portals managed by GSTN:

www.einvoice1.gst.gov.in; www.einvoice2.gst.gov.in; www.einvoice3.gst.gov.in;
www.einvoice4.gst.gov.in; www.einvoice5.gst.gov.in; www.einvoice6.gst.gov.in;
www.einvoice7.gst.gov.in; www.einvoice8.gst.gov.in; www.einvoice9.gst.gov.in;

- (5) Every invoice issued by a person to whom sub-rule (4) applies in any manner other than the manner specified in the said sub-rule shall not be treated as an invoice.
- (6) The provisions of sub-rules (1) and (2) shall not apply to an invoice prepared in the manner specified in sub-rule (4)."

Rule 46: Information Required in a GST Invoice

Provided also that the Government may, by notification, on the recommendations of the Council, and subject to such conditions and restrictions as mentioned therein, **specify that the tax invoice shall have Quick Response (QR) code.**

PAYMENT OF TAX

Rule 86: Electronic Credit Ledger

Refund of ITC when rejected shall be re-credited to E-CrL

- (4A) Where a registered person has claimed refund of any amount paid as tax wrongly paid or paid in excess for which debit has been made from the electronic credit ledger, the said amount, if found admissible, shall be re-credited to the electronic credit ledger by the proper officer by an order made in FORM GST PMT-03

Rule 86A: Conditions of use of amount available in electronic credit ledger

- (1) The **Commissioner** or an officer **authorised** by him in this behalf, not below the rank of an **Assistant Commissioner**, having **reasons to believe that credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible** in as much as-
- (a) the credit of input tax has been availed on the strength of **tax invoices or debit notes or any other document** prescribed under rule 36-
 - (i) issued by a registered person who **has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or**
 - (ii) **without receipt of goods or services or both; or**
 - (b) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36 in respect of any supply, **the tax charged in respect of which has not been paid to the Government; or**
 - (c) the **registered person availing the credit of input tax has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or**
 - (d) **the registered person availing any credit of input tax is not in possession of a tax invoice** or debit note or any other document prescribed under rule 36,

may, for reasons to be recorded in writing, **not allow debit of an amount equivalent to such credit in electronic credit ledger for discharge of any liability under section 49 or for claim of any refund of any unutilised amount.**

- (2) The Commissioner, or the officer authorised by him under sub-rule (1) may, upon being satisfied that conditions for disallowing debit of electronic credit ledger as above, no longer exist, allow such debit.
- (3) **Such restriction shall cease to have effect after the expiry of a period of one year from the date of imposing such restriction."**

E-WAY BILL

Rule 138E: Restriction on furnishing of information in PART A of FORM GST EWB-01

Notwithstanding anything contained in sub-rule (1) of rule 138, **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 person paying tax u/s 10 or availing the benefit of notification No. 02/2019 (R)** has not furnished the statement in FORM GST CMP-08 **for two consecutive quarters.**
- (b) being a **person other than a person specified in clause (a), has not furnished the returns for a consecutive period of two months.**
- (c) **being a person other than a person specified in clause (a), has not furnished the statement of outward supplies for any two months or quarters, as the case may be.”.**

Provided that the Commissioner may, on sufficient cause being shown and for reasons to be recorded in writing, by order, allow furnishing of the said information in PART A of FORM GST EWB 01, subject to such conditions and restrictions as may be specified by him:

Provided further that no order rejecting the request of such person to furnish the information in PART A of FORM GST EWB 01 under the first proviso shall be passed without affording the said person a reasonable opportunity of being heard:

Provided also that the permission granted or rejected by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be granted or, as the case may be, rejected by the Commissioner.

REFUND

Rule 89(4): Refund in case of Zero Rated Supplies without payment of tax

$$\text{Refund Amount} = \frac{\text{Turnover of Zero Rated Supplies (Goods + Services)} \times \text{Net ITC}}{(\text{Adjusted Total Turnover})}$$

where,-

- (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;**

Rule 92: Order Sanctioning Refund
Refund to be granted both cash and credit, based on original mode of payment

(1A) 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 PO is satisfied that a refund u/s 54(5) is due and payable to the applicant, 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
- ➔ **for the remaining amount which has been debited from the electronic credit ledger for making payment of such tax**, the PO shall issue FORM GST PMT-03 **re-crediting the said amount as Input Tax Credit in electronic credit ledger**

Rule 96: Refund of IGST Paid on export
Explanation to rule 96(10)(b) inserted

Rule 96(10)(b) lays down an embargo on the refund claim by a person seeking refund of IGST paid on export of goods/ services. The restriction is that such person should not have availed the benefit of exemption from IGST and Compensation Cess, for goods imported by EOU *under Notification No. 78/2017 Cus dated 13.10.2017* or for goods imported under Advance Authorisation (AA)/ EPCG *under Notification No. 79/2017 Cus dated 13.10.2017*.

An explanation has been inserted to this clause which clarifies 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.

Rule 96B: Recovery of refund of unutilised ITC or IGST paid on export of goods where export proceeds not realised (Newly Inserted)

- (1) Where any **refund of unutilised ITC on account of export of goods or of IGST 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 FEMA, 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 sec 73 or 74 of the Act, as the case may be, as is applicable for recovery of erroneous refund, along with interest u/s 50:
 - ➔ **However if RBI 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 PO**, 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 RBI.

Clarification: Determination of refundable amount in case of refund of unutilised ITC on account of:

- (i) exports without payment of tax,
- (ii) supplies made to SEZ Unit/SEZ Developer without payment of tax or
- (iii) accumulation due to inverted tax structure,

In case of refund of unutilized input tax credit (ITC) in above 3 cases, 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, 2017 [formula is applied on the consolidated amount of ITC, i.e. CGST + SGST/UTGST + IGST];
- 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 above 3 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) **CGST and SGST/UTGST, 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, CGST), the differential amount is to be debited from the other electronic credit ledger (i.e., SGST/UTGST, in this case).**

Bunching of refund claims across financial years permitted

[Circular No.135/05/2020 GST dated 31.03.2020]

It has been clarified that while filing the refund claim, an applicant may, at his option, file a refund claim for a tax period or by clubbing successive tax periods. Earlier, there was a restriction on bunching of refund claims across financial years; now the said restriction has also been relaxed.

For instance, a registered person opting to file Form GSTR-1 on quarterly basis can apply for refund on a quarterly basis or clubbing successive quarters and these quarters may spread across different financial years. Thus, he can file refund claim for quarters: Jan-Mar, Apr-Jun and July-Sep, while filing the refund claim.

**Refund of accumulated ITC on account of reduction in GST rate on goods, not available
[Circular No.135/05/2020 GST dated 31.03.2020]**

The issue which arose for consideration is whether an applicant can seek refund of unutilized ITC on account of inverted duty structure, under section 54(3)(ii) of the CGST Act, 2017, in a case where the inversion is due to change in the GST rate on the same goods. 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%.

- **It is clarified that, in such cases, the input and output being the same, though attracting different tax rates at different points in time, do not get covered under section 54(3)(ii) of the CGST Act, 2017. Thus, refund of accumulated ITC under said clause would not be applicable in cases where the input and the output supplies are the same.**

**Refund of ITC u/s 54(3) restricted to the extent of credit reflected in Form GSTR-2A
[Circular No.135/05/2020 GST dated 31.03.2020]**

In wake of insertion of Rule 36(4) of the CGST Rules, 2017, it has been decided that the refund of accumulated ITC 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.



Clarification in respect of certain challenges faced by the registered persons in implementation of provisions of GST Laws

[Circular No. 137/07/2020 GST dated 13.04.2020]

S.N	Issue	Clarification
(1)	<p>An advance is received by a supplier for a service contract which subsequently got cancelled. The supplier has issued the invoice before supply of service and paid the GST thereon.</p> <p>Whether he can claim refund of tax paid or is he required to adjust his tax liability in his returns?</p>	<p>In case GST is paid by the supplier on advances received for a future event which got cancelled subsequently and for which invoice is issued before supply of service, the supplier is required to issue a “credit note” in terms of Sec 34. He shall declare the details of such credit notes in the return for the month during which such credit note has been issued. The tax liability shall be adjusted in the return subject to conditions of Sec 34. There is no need to file a separate refund claim.</p> <p>However, in cases where there is no output liability against which a credit note can be adjusted, registered persons may proceed to file a claim under “Excess payment of tax, if any” through Form GST RFD-01.</p>
(2)	<p>An advance is received by a supplier for a Service contract which got cancelled subsequently. The supplier has issued receipt voucher and paid the GST on such advance received.</p> <p>Whether he can claim refund of tax paid on advance or he is required to adjust his tax liability in his returns?</p>	<p>In case GST is paid by the supplier on advances received for an event which got cancelled subsequently and for which no invoice has been issued in terms of Sec 31(2), he is required to issue a “refund voucher” in terms of Sec 31(3)(e) read with rule 51 of the CGST Rules.</p> <p>The taxpayer can apply for refund of GST paid on such advances by filing Form GST RFD-01 under the category “Refund of excess payment of tax”.</p>
(3)	<p>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?</p>	<p>In such a case where the goods supplied by a supplier are returned by the recipient and where tax invoice had been issued, the supplier is required to issue a “credit note” in terms of Sec 34. He shall declare the details of such credit notes in the return for the month during which such credit note has been issued. The tax liability shall be adjusted in the return subject to conditions of Sec 34. There is no need to file a separate refund claim in such a case.</p> <p>However, in cases where there is no output liability against which a credit note can be adjusted, registered persons may proceed to file a claim under “Excess payment of tax, if any” through Form GST RFD-01.</p>

ASSESSMENT

Standard Operating Procedure to be followed in case of non-filers of returns Circular 129/48/2019 – GST dated 24th Dec, 2019

- (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 u/s 39 is over, a system generated mail/message would be sent to all the defaulters including concerned person.**
- (iii) **5 days after the due date of furnishing the return, a notice in FORM GSTR-3A (u/S 46) shall be issued requiring him to furnish such return within 15 days;**
- (iv) **In case return is not filled within 15 days the PO may proceed to assess the tax liability/s 62, to the best of his judgement**
- (v) PO may take into account the details of outward supplies available in the statement furnished u/s 37 (FORM 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 u/s 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 order, then PO may initiate proceedings u/s 78 and recovery u/s 79.**
- (vii) In deserving cases Commissioner may resort to provisional attachment u/s 83.
- (viii) PO would initiate action u/s 29(2) for cancellation of registration where return has not been furnished for the period specified in Sec 29.

APPEALS & REVISION

Sec 108: Power of Revisionary Authority

Appointment of Revisional Authority: [Rule 109A]

Order appealed against	Appeal shall lie to
Additional or Joint Commissioner	Commissioner / Principal Commissioner
Deputy or Assistant Commissioner or Superintendent	Additional or Joint Commissioner



MISCELLANEOUS

Special procedure for corporate debtors undergoing the corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016
 [Notification No. 11/2020 CT dated 21.03.2020]

As per Insolvency Bankruptcy Code (IBC), 2016 once an entity defaults certain threshold amount, Corporate Insolvency Resolution Process (CIRP) gets triggered and the management of such entity (Corporate Debtor) and its assets vest with an interim resolution professional (IRP) or resolution professional (RP). The IRP/RP continues to run the business and operations of the said entity as a going concern and is responsible for compliance with all the laws till the insolvency proceeding is over and an order is passed by the National Company Law Tribunal (NCLT).

Sec 148: Special procedure for certain processes

The Government may, on the recommendations of the Council, and subject to such conditions and safeguards as may be prescribed, notify certain classes of registered persons, and the special procedures to be followed by such persons including those with regard to registration, furnishing of return, payment of tax and administration of such persons.

The Government has prescribed special procedure under section 148 of the CGST Act for the corporate debtors who are undergoing CIRP under the provisions of IBC and the management of whose affairs are being undertaken by IRP/RP.

The corporate debtor who is undergoing CIRP is to be treated as a distinct person of the corporate debtor and shall be liable to take a new registration in each State or Union territory where the corporate debtor was registered earlier, within 30 days of the appointment of the IRP/RP. The IRP/RP will be liable to furnish returns, make payment of tax and comply with all the provisions of the GST law during CIRP period.

N/N 09/2020:

Foreign airlines are exempt from furnishing reconciliation Statement in FORM GSTR-9C. However they are required to submit statement of receipts and payments for the financial year in respect of its Indian Business operations, duly authenticated by a practicing CA in India for each GSTIN by the 30th September of the year succeeding the financial year.

**Sec 168A: Power of Government to extend time limit in special circumstances
(newly inserted)**

- (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.

Sec 171: Anti profiteering Measure

Penalty when registered person has profiteered

- (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.’

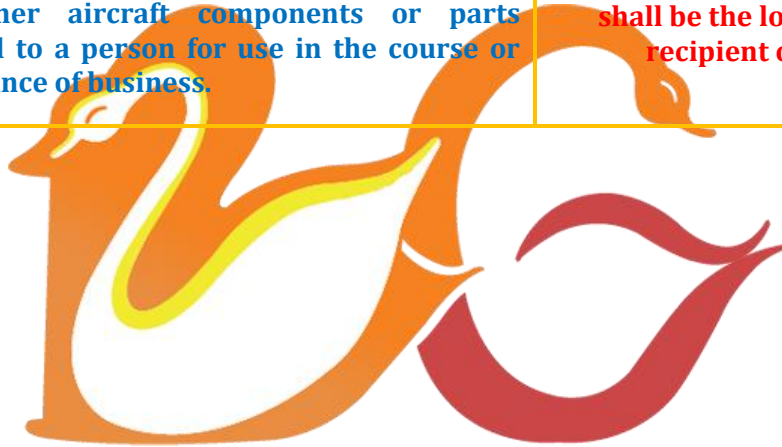
PLACE OF SUPPLY

Sec 13(13)

In order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, the Government shall have the power to notify any description of services or circumstances in which the place of supply shall be the place of effective use and enjoyment of a service.

Notified Services u/s 13(13)

S.N	Description of services or circumstances	Place of Supply
1	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



FOREIGN TRADE POLICY

**Import of goods as gifts prohibited except for life saving drugs/medicines and rakhi (but not gifts related to rakhi)
[Notification No. 35/2015-2020 dated 12.12.2019]**

Earlier, import of gifts were free where such goods were otherwise freely importable under ITC (HS). In other cases, such imports were permitted against an Authorization issued by DGFT.

However, DGFT has amended the said provision and provided that import of goods, including those purchased from e-commerce portals, through post or courier, where customs clearance is sought as gifts, is prohibited except for life saving drugs/medicines and rakhi (but not gifts related to rakhi). Rakhi will be exempted as u/s 25(6) of the Customs Act, 1962 that reads “...no duty shall be collected if the amount of duty leviable is equal to, or less than, Rs. 100” . Further, import of goods as gifts with payment of full applicable duty is permissible.

**Duration of applicability of FTP 2015-2020 extended till 31.03.2021
[Notification No. 57/2015-2020 dated 31.03.2020]**

- The existing Foreign Trade Policy 2015-2020 which was valid till 31.03.2020 has been extended upto 31.03.2021.

**Exemption from IGST and GST compensation cess extended upto 31.03.2021 in case of imports under Advance Authorization, EPCG, EOU/EHTP/STP/BTP units
[Notification No. 57/2015-2020 dated 31.03.2020]**

- Imports against Advance Authorizations for physical exports were exempted from Integrated Tax and Compensation Cess upto 31.03.2020. Such exemption has now been extended upto 31.03.2021.
- Capital goods imported under EPCG Authorization for physical exports were exempted from IGST and Compensation Cess upto 31.03.2020. Such exemption has now been extended upto 31.03.2021.
- Goods imported by EOU/EHTP/STP/BTP units from DTA, IGST and GST compensation cess were exempt upto 31.03.2020. Such exemption from has also been extended upto 31.03.2021.

MAPPING SHEET

Amendment in chapter	Relevant Page Number		
	Amendment Sheet	Nirvana (May 2020 Edition)	Main Book (May 2020 Edition)
Reverse Charge	01-02	111	57 (M-1)
Composition Scheme	03-04	115	67/68 (M-1)
Exemption	05	134	95 (M-1)
Input Tax Credit	06-12	175/181/184	194-196/208/216 (M-1)
Registration	13-14	193	240/243 (M-1)
Invoicing	15	202	252 (M-1)
Payment	16	-	18 (M-2)
E-Way Bill	17	275	154 (M-2)
Refund	18-22	223/226	35/42/46 (M-2)
Assessment	23	232	60 (M-2)
Appeals & Review	24	251	102 (M-2)
Miscellaneous	25-26	265/267/268	131/137/138 (M-2)
Place of Supply	27	150/151	144 (M-1)
Foreign Trade Policy	28	60/66/67	136/148/151

(#M-1 : Module 01, M-2: Module 2)