

INDIRECT TAX

CA-FINAL

(RELEVANT FOR MAY 2020 EXAMS)

Jain & Jain's

Study

- *Revise* -

Krack

VISHAL JAIN PRAVEEN JAIN

ALL AMENDMENTS FROM 1ST MAY 2019 TO 31ST OCTOBER 2019

APPLICABLE FOR MAY 2020 EXAMS ARE GIVEN IN **BROWN**

COLOR



LEVY OF GST

SUPPLY – SECTION 7 OF CGST ACT, 2017

SUPPLY – ACTUAL SUPPLY

Clarification in respect of Levy of GST on the Service of Display of Name or Placing of Name Plates of the Donor in the premises of Charitable Organisations receiving Donation or Gifts by Individual Donors – CBIC Circular 116/35/2019 – CGST

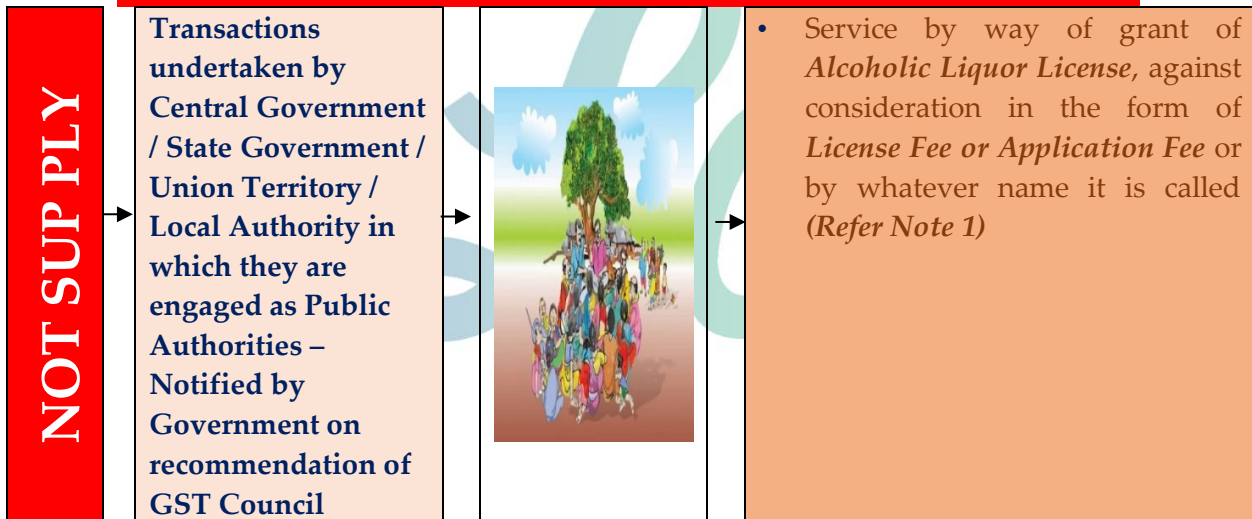
Issue	Whether GST is applicable on Donations or Gifts received from Individual Donors by Charitable Organizations involved in advancement of Religion, Spirituality or Yoga which is acknowledged by them by placing name plates in the name of the individual donor?
Clarification	<ul style="list-style-type: none"> ▪ When the <i>name</i> of the donor is <i>displayed</i> in recipient <i>institution premises</i>, in such a manner, which can be said to be an expression of <i>gratitude and public recognition</i> of donor's act of <i>philanthropy</i> and is NOT aimed at giving <i>publicity</i> to the donor in such manner that it would be an <i>advertising</i> or promotion of his <i>business</i>, it can be said that there is NO supply of service for a <i>consideration</i> (in the form of donation). There is <i>no obligation</i> (quid pro quo) on part of recipient of the donation or gift <i>to do anything</i> (supply a service). Therefore, there is <i>no GST liability</i> on such consideration. ▪ Thus, there will be no GST liability if all the three conditions are satisfied namely: <ul style="list-style-type: none"> (a) The gift or <i>donation</i> is made to a <i>charitable organization</i>, (b) The payment has the <i>character of gift</i> or donation and (c) the purpose is <i>philanthropic</i> (i.e. it leads to no commercial gain) and <i>not advertisement</i>. <p>Examples:</p> <p>(i) "Good wishes from Mr. Rajesh" printed underneath a digital blackboard donated by Mr. Rajesh to a charitable Yoga institution.</p> <p>(ii) "Donated by Smt. Malati Devi in the memory of her father" written on the door or floor of a room or any part of a temple complex which was constructed from such donation.</p> <p>In each of these examples, it may be noticed that there is no reference or mention of any business activity of the donor which otherwise would have got advertised.</p>

Clarification in respect of Goods sent / taken out of India for Exhibition or on Consignment basis for Export Promotion – CBIC Circular 108/27/2019 – CGST

Issue	Whether such activity of goods being sent / taken out of India for Exhibition or on Consignment basis for Export Promotion constitute as supply?
Clarification	<ul style="list-style-type: none"> As per <i>Section 7 of the CGST Act</i>, for any activity or transaction to be considered a <i>supply</i>, it must satisfy twin tests namely <ul style="list-style-type: none"> (i) it should be for a <i>consideration</i> by a person and (ii) it should be in the <i>course or furtherance of business</i>. It is, accordingly, clarified that the activity of sending / <i>taking the goods out of India for exhibition</i> or on consignment basis for export promotion, EXCEPT when such activity satisfy the tests laid down in <i>Schedule I</i> of the CGST Act (hereinafter referred to as the “specified goods”), do NOT constitute <i>supply</i> as the said activity does NOT fall within the scope of Section 7 of the CGST Act as there is <i>no consideration</i> at that point in time.

SUPPLY – NOT SUPPLY

NOTIFIED ACTIVITY OR NOTIFIED TRANSACTION OF GOVERNMENT



Clarification regarding applicability of GST on License Fee charged by States for grant of Liquor License to Vendors – CBIC Circular 121/40/2019 – CGST

Clarification	<p>In exercise of powers conferred under Section 7(2)(b) of CGST Act, 2017, NN 25/2019-CT (Rate) has been issued to notify service by way of <i>grant of alcoholic liquor licence</i>, against consideration in the form of <i>licence fee or application fee</i> or by whatever name it is called, by <i>State Government</i> as neither a supply of goods nor a supply of service.</p> <p>It is clarified that this <i>special dispensation</i> applies ONLY to <i>supply of service</i> by way of <i>grant of liquor licenses</i> by the <i>State Governments</i> as an <i>agreement between the Centre and States</i> and has <i>no applicability</i> or precedence value in relation to <i>grant of other licenses and privileges</i> for a fee in other situations, where GST is payable.</p>
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VALUATION

VALUATION OF SUPPLY – SECTION 15 OF CGST ACT, 2017

CLARIFICATIONS

Clarification on issue of GST on Airport levies – CBIC Circular 115/34/2019 – CGST

<p>Levy of GST</p>	<ul style="list-style-type: none"> ▪ Passenger Service Fee (PSF): It is charged under Rule 88 of Aircraft Rules, 1937 according to which the <i>airport licensee</i> may collect <i>PSF</i> from <i>embarking passengers</i> at such rates as <i>specified</i> by the <i>Central Government</i>. According to the rule the airport license shall utilize the said fee for <i>infrastructure and facilitation of the passengers</i>. ▪ User Development Fee (UDF): It is levied under Rule 89 of the Aircraft Rules 1937 which provides that the <i>licensee</i> may levy and collect, at a major airport, the <i>User Development Fee</i> at rate as prescribed in the <i>Airports Economic Regulatory Authority</i> of India Act, 2008. Though the rule does not prescribe the specific purpose of levy and whether it is to be charged from the airlines or the passengers. However, it is seen from section 2(n) of Airports Economic Regulatory Authority of India Act 2008, that the <i>authority which manages the airport</i> is eligible to levy and charge <i>UDF</i> from the <i>embarking passengers</i> at any airport. The User Development Fees (UDF) shall be collected <i>from the passengers by the airlines</i> at the time of issue of air ticket and the same shall be <i>remitted to the operator</i> i.e. Airports Authority of India [AAI] in the line system / procedure in vogue. For this, <i>collection charges</i> of Rs.5/- shall be receivable <i>by the airlines from AAI</i>. ▪ Supply of Service: The above facts clearly indicate that <i>PSF and UDF are charged by airport operators</i> for providing the services <i>to passengers</i> and is liable to GST. However for convenience, the <i>airlines collect the same</i> from passengers and <i>remit it</i> to the airport operators for which the airlines <i>charge</i> the airport operator a <i>convenience fee</i> of say Rs.5/- (which is also liable for GST).
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<p>Issue 1</p>	<p>PSF & UDF are collected from the passengers by the airlines & the remitted to the operator. Is the airlines also liable to pay GST on PSF & UDF i.e. will it be included in the valuation for supply of services by the airlines to the passengers?</p>
<p>Clarification</p>	<ul style="list-style-type: none"> ▪ <i>PSF and UDF</i> being charges levied <i>by airport operator</i> for services provided <i>to passengers</i> are <i>collected by the airlines</i> as an <i>agent</i> and is NOT a consideration for any service provided by the <i>airlines</i>. Thus, airline is <i>not responsible</i> for payment of <i>GST on UDF or PSF</i> provided the airline satisfies the conditions prescribed for a Pure Agent under Rule 33 of the CGST Rules. It is the licensee that is the <i>airport operator</i> (AAI, DIAL, MIAL etc) which is liable to pay <i>GST on UDF and PSF</i>.

	<ul style="list-style-type: none"> ▪ Accordingly, the airline acting as pure agent of the passenger should <ul style="list-style-type: none"> (a) <i>Separately indicate</i> actual amount of PSF, UDF and GST payable on such PSF and UDF by the airport licensee, in the <i>invoice</i> issued by airlines to its passengers. (b) <i>Not take ITC of GST payable or paid on PSF and UDF.</i> (c) Recover ONLY the actual PSF and UDF and GST payable on such PSF and UDF by the airline operator. <p>The amount so recovered will be <i>excluded</i> from the value of supplies made <i>by the airline to its passengers.</i></p>
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Issue 2	Can ITC of GST charged on PSF and UDF be availed?
Clarification	<ul style="list-style-type: none"> ▪ The airlines CANNOT avail <i>ITC of GST charged</i> on PSF/UDF as it is <i>not the recipient of service</i>, its acting only as an agent i.e. pure agent. ▪ The <i>registered passengers</i>, who are the <i>ultimate recipient</i> of the airport services, may take <i>ITC of GST paid on PSF and UDF</i> on the basis of <i>pure agent's invoice</i> issued by the <i>airline</i> to them.

Issue 3	Is GST payable on collection charges collected by the airlines from the operator?
Clarification	<ul style="list-style-type: none"> ▪ The <i>collection charges</i> paid by airport operator to <i>airlines</i> are a <i>consideration</i> for the services provided by the airlines to the airport operator (AAI, DAIL, MAIL etc.) and <i>airlines shall be liable to pay GST</i> on the same under <i>forward charge</i>. <i>ITC</i> of the same will be available with the <i>airport operator</i>.

Clarification regarding applicability of GST on Additional / Penal Interest – CBIC Circular 102/21/2019 – CGST

Issue	Whether the additional / penal interest on the overdue loan would be: <ul style="list-style-type: none"> ▪ exempt from GST in terms of Sl. No. 27 of NN 12/2017-CT(R) or ▪ such penal interest would be treated as consideration for liquidated damages amounting to a separate taxable supply of services under GST covered under Entry 5(e) of Schedule II of the CGST Act, 2017 i.e. “agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act” 		
Clarification	Example	Valuation OR Exemption	Entry 5(e) of Schedule II
	Example 1: X sells a mobile phone to Y. The cost of mobile phone is Rs.40,000. However, X gives Y an option to pay in instalments, Rs.11,000 every month before 10 th day of the following month, over next four	As per Section 15(2)(d) the amount of penal interest is to be included in the value of supply. The transaction between X and Y is for supply of taxable goods i.e. mobile phone.	Additional / penal interest satisfies the definition of “interest” as contained in EN 12/2017-CT (Rate). Thus, the same does not

	<p>months (Rs.11,000 *4 = Rs.44,000). Further, as per the contract, if there is any delay in payment by Y beyond the scheduled date, Y would be liable to pay additional / penal interest amounting to Rs.500/- per month for the delay.</p> <p>X is charging Y Rs.40,000/- for the mobile and is separately issuing another invoice for providing the services of extending loans to Y, the consideration for which is the interest of 2.5% per month and an additional / penal interest amounting to Rs.500 per month for each delay in payment.</p>	<p>Accordingly, the penal interest would be taxable as it would be included in the value of the mobile, irrespective of the manner of invoicing.</p>	<p>constitutes a separate services as per Entry 5(e) of Schedule II “agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act”.</p>
	<p>Example 2: X sells a mobile phone to Y. The cost of mobile phone is Rs.40,000. Y has the option to avail a loan at interest of 2.5% per month for purchasing the mobile from M/s ABC Ltd. The terms of the loan from M/s ABC Ltd. allows Y a period of four months to repay the loan and an additional / penal interest @ 1.25% per month for any delay in payment.</p>	<p>The additional / penal interest is charged for a transaction between Y and M/s ABC Ltd., and the same is covered EN 12/2017-CT (Rate). Accordingly, in this case the 'penal interest charged thereon on a transaction between Y and M/s ABC Ltd. would not be subject to GST. However, any service fee / charge that are levied by M/s ABC Ltd. in respect of the transaction related to extending deposits, loans or advances does not qualify to be interest and the same will not be exempt. The value of supply of mobile by X to Y would</p>	<p>Additional / penal interest satisfies the definition of “interest” as contained in EN 12/2017-CT (Rate). Thus, the same does not constitute a separate services as per Entry 5(e) of Schedule II “agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act”.</p>

		be Rs.40,000 for the purpose of levy of GST.	
<p>Note: As per EN 12/2017-CT (Rate), “‘interest’ means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) but does not include any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilized.</p>			

CLASSIFICATION (INCLUDING EXEMPTIONS)

EXEMPTION FROM GST – SECTION 11 OF CGST ACT, 2017

CLARIFICATIONS

Clarifications on Effective Date of Insertion of Explanation in Notification – CBIC Circular 120/39/2019 – CGST

Issue	Section 11(3) of CGST Act provides that the Government may insert an explanation in any notification issued under Section 11 for the purpose of clarifying its scope or applicability, at any time within 1 year of issue of notification and every such explanation shall have effect from the date as if it had always been the part of first such notification.
Clarification	<ul style="list-style-type: none"> ▪ It is hereby clarified that the <i>explanation</i> having been inserted under Section 11(3) of CGST Act is <i>effective</i> from the <i>inception of the entry in notification</i> and NOT from the <i>date from which notification</i> (that inserted said explanation) becomes effective. ▪ For example, principal <i>Notification No. 11/2017-CT (Rate)</i> came into force with effect from <i>01-07-2017</i>. Thereafter, <i>a new entry</i> – Entry No. 3(vi) is inserted w.e.f. <i>21-09-2017</i>. Subsequently, an <i>explanation</i> is also inserted with respect to Entry No. 3(vi) on <i>26-07-2018</i>. Although the <i>effective date</i> mentioned in notification which inserted <i>said explanation</i> is <i>27-07-2018</i>, said explanation will be effective from the inception of entry in notification i.e. <i>21-09-2017</i> and not <i>27-07-2018</i>.

Example 1: Exemption – Effective Date of Explanation to Entry in EN

Particulars	Dates
Date of Issue of EN	01-07-2017
Date of adding Entry to EN	01-04-2019
Date of adding Explanation to Entry	01-02-2020
Effective Date of Explanation to Entry	01-04-2019

Example 2: Exemption – Effective Date of Explanation to Entry in EN

Particulars	Dates
Date of Issue of EN	01-07-2017
Date of adding Entry to EN	01-04-2019
Date of adding Explanation to Entry	01-06-2020
Effective Date of Explanation to Entry	01-06-2020

EXEMPTION ON SERVICES – EN 12/2017-CT (RATE) READ WITH EN 9/2017-IT (RATE)

NEW EXEMPTIONS

Insurance Services	→ Services of Life Insurance Business BY the <i>Central Armed Police Forces</i> (under Ministry of Home Affairs) Group Insurance Funds TO their <i>members</i> under the <i>Group Insurance Schemes</i> of CAPF		
Sports Services	→ Services provided BY and TO Fédération Internationale de Football Association (<i>FIFA</i>) and <i>its subsidiaries</i> directly or indirectly related to any of the <i>events under FIFA U-17 Women’s World Cup 2020</i> to be hosted in India. Provided that Director (Sports), <i>Ministry of Youth Affairs and Sports</i> certifies that services are directly or indirectly related to any of the events under <i>FIFA U-17 Women’s World Cup 2020</i> . → Services by way of <i>right to admission</i> to the events organised under <i>FIFA U-17 Women’s World Cup 2020</i> .		
Export Akin Services	→ Services provided by an <i>Intermediary</i> where both Location of Supplier of Goods AND Location of Recipient of Goods are in Non-Taxable Territory <u>Note:</u> Following documents shall be maintained for a minimum duration of 5 years for claiming such exemption: (i) Copy of Bill of Lading (ii) Copy of executed contract between Supplier / Seller and Receiver / Buyer of goods (iii) Copy of Commission Debit Note raised by an Intermediary Service Provider in Taxable Territory from Service Recipient located in Non-Taxable Territory (iv) Copy of Certificate of Origin issued by Service Recipient located in Non-Taxable Territory (v) Declaration Letter from an Intermediary Service Provider in Taxable Territory on company letter head confirming that Commission Debit Note raised relates to contract when both supplier and receiver of goods are outside the taxable territory.		
Hiring Services and Services to Local Authority	→ Services by way of giving on hire of an <i>Electrically Operated Vehicle</i> meant to carry more than 12 passengers TO a <i>Local Authority</i> <p style="text-align: center;">Electrically Operated Vehicle</p> <table border="1" data-bbox="440 1458 1509 1697"> <tr> <td data-bbox="440 1458 560 1697"><i>Means</i></td> <td data-bbox="560 1458 1509 1697"> Vehicle → falling under <i>Chapter 87</i> in the First Schedule to the Customs Tariff Act, 1975 → which is run solely on <i>electrical energy</i> derived <ul style="list-style-type: none"> ▪ from an external source or ▪ from one or more electrical batteries fitted to such road vehicle. </td> </tr> </table>	<i>Means</i>	Vehicle → falling under <i>Chapter 87</i> in the First Schedule to the Customs Tariff Act, 1975 → which is run solely on <i>electrical energy</i> derived <ul style="list-style-type: none"> ▪ from an external source or ▪ from one or more electrical batteries fitted to such road vehicle.
<i>Means</i>	Vehicle → falling under <i>Chapter 87</i> in the First Schedule to the Customs Tariff Act, 1975 → which is run solely on <i>electrical energy</i> derived <ul style="list-style-type: none"> ▪ from an external source or ▪ from one or more electrical batteries fitted to such road vehicle. 		
Agricultural Services	→ Services by way of <i>Storage or Warehousing</i> of Cereals, Pulses, Fruits, Nuts and Vegetables, Spices, Copra, Sugarcane, Jaggery, Raw Vegetable Fibres such as Cotton, Flax, Jute etc., Indigo, Unmanufactured Tobacco, Betel Leaves, Tendu Leaves, Coffee and Tea.		

AMENDMENT TO EXEMPTIONS

Renting Services	<ul style="list-style-type: none"> ➔ Services by <i>Hotel, Inn, Guest House, etc.</i> for <i>residential or lodging purposes</i> with <i>Value below or equal to Rs.1,000 / day</i> or equivalent for a unit of accommodation
Legal Services	<ul style="list-style-type: none"> ➔ Services BY Arbitral Tribunal TO Business Entity in Taxable Territory with an Aggregate Turnover in the <i>Preceding FY</i> upto such amount as makes it eligible for exemption from registration under the CGST Act ➔ Services BY Advocate including Firm of Advocates TO Business Entity in Taxable Territory with an Aggregate Turnover in the <i>Preceding FY</i> upto such amount as makes it eligible for exemption from registration under the CGST Act ➔ Services BY Senior Advocate TO Business Entity in Taxable Territory with an Aggregate Turnover in the <i>Preceding FY</i> upto such amount as makes it eligible for exemption from registration under the CGST Act
Services by Government	<ul style="list-style-type: none"> ➔ Services provided BY Government or a Local Authority TO a Business Entity with an <i>Aggregate Turnover</i> in the <i>Preceding FY</i> upto such amount as makes it eligible for exemption from registration under the CGST Act
Transportation of Goods	<ul style="list-style-type: none"> ➔ Transportation of Goods by Vessel at the time of <i>Export</i> from Customs Station of clearance in India to a place outside India upto <i>30/09/2020</i> ➔ Transportation of Goods by Aircraft at the time of <i>Export</i> from Customs Station of clearance in India to a place outside India upto <i>30/09/2020</i>

CLARIFICATIONS

Clarifications related to GST on Monthly Subscription / Contribution charged by RWA from its Members – CBIC Circular 109/28/2019 – CGST

Issue 1	Are the maintenance charges paid by residents to the Resident Welfare Association (RWA) in a housing society exempt from GST and if yes, is there an upper limit on the amount of such charges for the exemption to be available?
Clarification	<ul style="list-style-type: none"> ▪ Supply of service by RWA (unincorporated body or a non-profit entity registered under any law) to its own members by way of <i>reimbursement of charges</i> or <i>share of contribution</i> upto an amount of <i>Rs.7,500 per month per member</i> for providing services and goods for the common use of its members in a housing society or a residential complex are exempt from GST.
Issue 2	A RWA has aggregate turnover of Rs.20 lakh or less in a financial year. Is it required to take registration and pay GST on maintenance charges if the amount of such charges is more than Rs.7,500 per month per member?

Clarification	<ul style="list-style-type: none"> ▪ If <i>aggregate turnover</i> of an RWA does not exceed Rs.20 lakhs in a financial year, it shall not be required to take <i>registration</i> and pay GST EVEN if the amount of maintenance charges <i>exceeds Rs.7,500 per month per member</i>. <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr> <th style="width: 40%;">Aggregate Turnover of RWA</th> <th style="width: 30%;">Maintenance Charges by RWA</th> <th style="width: 30%;">Exempt</th> </tr> </thead> <tbody> <tr> <td>More than Rs.20 lakhs</td> <td>More than Rs7,500</td> <td>No</td> </tr> <tr> <td>More than Rs.20 lakhs</td> <td>Upto Rs.7,500</td> <td>Yes</td> </tr> <tr> <td>Upto Rs.20 lakhs</td> <td>Upto Rs.7,500</td> <td>Yes</td> </tr> <tr> <td>Upto Rs.20 lakhs</td> <td>More than Rs7,500</td> <td>Yes</td> </tr> </tbody> </table>	Aggregate Turnover of RWA	Maintenance Charges by RWA	Exempt	More than Rs.20 lakhs	More than Rs7,500	No	More than Rs.20 lakhs	Upto Rs.7,500	Yes	Upto Rs.20 lakhs	Upto Rs.7,500	Yes	Upto Rs.20 lakhs	More than Rs7,500	Yes
Aggregate Turnover of RWA	Maintenance Charges by RWA	Exempt														
More than Rs.20 lakhs	More than Rs7,500	No														
More than Rs.20 lakhs	Upto Rs.7,500	Yes														
Upto Rs.20 lakhs	Upto Rs.7,500	Yes														
Upto Rs.20 lakhs	More than Rs7,500	Yes														

Issue 3	Is the RWA entitled to take ITC of GST paid on input and services used by it for making supplies to its members and use such ITC for discharge of GST liability on such supplies where the amount charged for such supplies is more than Rs.7,500 per month per member?
Clarification	<ul style="list-style-type: none"> ▪ RWAs are <i>entitled to take ITC</i> of GST paid by them on <i>Capital Goods</i> (generators, water pumps, lawn furniture etc.), <i>Inputs</i> (taps, pipes, other sanitary / hardware fillings etc.) and <i>Input Services</i> (repair and maintenance services, etc.).

Issue 4	Where a person owns 2 or more flats in the housing society or residential complex, whether the ceiling of Rs.7,500 per month per member on the maintenance for the exemption to be available shall be applied per residential apartment or per person?
Clarification	<ul style="list-style-type: none"> ▪ As per general business sense, a person who owns 2 or more residential apartments in a housing society or a residential complex shall normally be a <i>member</i> of the RWA for <i>each residential apartment owned</i> by him separately. The ceiling of Rs.7,500 per month per member shall be applied separately for <i>each residential apartment owned</i> by him. ▪ For example, if a person owns 2 residential apartments in a residential complex and pays Rs.15,000 per month as maintenance charges towards maintenance of both apartments to the RWA, the exemption from GST (Rs.7,500 per month in respect of each residential apartment) shall be available to each apartment.

Issue 5	How should the RWA calculate GST payable where the maintenance charges exceed Rs.7,500 per month per member? Is the GST payable only on the amount exceeding Rs.7,500 or on the entire amount of maintenance charges?
Clarification	<ul style="list-style-type: none"> ▪ The <i>exemption</i> from GST on maintenance charges charged by a RWA from residents is available ONLY if such charges are <i>upto Rs.7,500</i> per month per member. In case the charges exceed Rs.7,500 per month per member, the entire amount is taxable. ▪ For example, if the maintenance charges are Rs.9,000 per month per member, GST @ 18% shall be payable on the <i>entire amount of Rs.9,000</i> and NOT on Rs.1,500 (Rs.9,000 - Rs.7,500).

Example 1: GST by RWA – Various Scenarios

Aggregate Turnover of RWA	Maintenance Charges by RWA	GST
1. Upto Rs.20 lakhs (Assuming NOT Registered)	Upto Rs.7,500	✗
2. Upto Rs.20 lakhs (Assuming NOT Registered)	More than Rs7,500	✗
3. More than Rs.20 lakhs	Upto Rs.7,500	✗
4. More than Rs.20 lakhs	More than Rs7,500	✓
5. More than Rs.20 lakhs	Upto Rs.7,500 from Few Members & More than Rs7,500 from Few Members	✗ ✓

Example 2: Charges by RWA from Single Member having 2 Flats

Particulars	GST
<u>Case 1:</u> Charges for Flat 1 – Rs.6,000 / Month / Member	✗
<u>Case 2:</u> Charges for Flat 2 – Rs.7,500 / Month / Member	✗

Example 3: Charges by RWA from Single Member having 2 Flats

Particulars	GST
<u>Case 1:</u> Charges for Flat 1 – Rs.7,500 / Month / Member	✗
<u>Case 2:</u> Charges for Flat 2 – Rs.10,000 / Month / Member	✓ *

* **Note:** GST is payable on ENTIRE Rs.10,000 and NOT on Rs.2,500



Clarification on Applicability of GST Exemption to the DG Shipping Approved Maritime Courses conducted by Maritime Training Institutes of India – CBIC Circular 117/36/2019 – CGST

Issue	<p>Section 76 of the Merchant Shipping Act, 1958 provides for the certificates of competency to be held by the officers of ships. It states that every Indian ship, when going to sea from any port or place, shall be provided with officers duly certificated under this Act in accordance with such manning scales as may be prescribed.</p> <p>Further, Section 79 provides that the Central Government or a person duly authorised by it shall appoint persons for the purpose of examining the qualifications of persons desirous of obtaining certificate of competency under section 78 of the Act.</p> <p>The Director General of Shipping under the Merchant Shipping (standards of training, certification and watch-keeping for Seafarers) Rules, 2014 is empowered to designate assessment centres and to approve</p> <ol style="list-style-type: none"> (i) the training course, (ii) training, examination and assessment programme, and (iii) approved training institute etc.
Clarification	<ul style="list-style-type: none"> ▪ From the above discussion, it is seen that the <i>Maritime Training Institutes</i> and their <i>training courses</i> are <i>approved</i> by the <i>Director General of Shipping</i> which are duly recognised under the provisions of the <i>Merchant Shipping Act, 1958</i> read with the Merchant Shipping (standards of training, certification and watch-keeping for Seafarers) Rules, 2014. ▪ Therefore, the <i>Maritime Institutes</i> are <i>educational institutions</i> under GST Law and the courses conducted by them are exempt from levy of GST. The exemption is subject to meeting the conditions specified in EN 12/ 2017-CT (Rate).

REVERSE CHARGE MECHANISM

REVERSE CHARGE MECHANISM FOR NOTIFIED SERVICES SECTION 9(3) OF CGST ACT, 2017 OR SECTION 5(3) OF IGST ACT, 2017

RCM FOR INTRA-STATE SUPPLY [NN 13/2017 – CT(RATE)] AND RCM FOR INTER-STATE SUPPLY [NN 10/2017 – IT(RATE)]

CATEGORY OF SUPPLY OF SERVICE	SUPPLIER OF SERVICE (BY)	RECIPIENT OF SERVICE (TO)
<p>Transfer or permitting the use of enjoyment of copyright covered under Section 13(1)(a) of Copyright Act, 1957 relating to Original Literary, Dramatic, Musical or Artistic Works</p>	<p>Author or Music Composer, Photographer, Artist or the like</p> <div style="text-align: center; border: 1px solid black; padding: 5px; width: fit-content; margin: 10px auto;">  </div>	<ul style="list-style-type: none"> ▪ Publisher, Music Company, Producer or the like located in <i>Taxable Territory</i>
<p>Transfer or permitting the use of enjoyment of copyright covered under Section 13(1)(a) of Copyright Act, 1957 relating to Original Literary Works</p>	<p>Author</p> <div style="text-align: center; border: 1px solid black; padding: 5px; width: fit-content; margin: 10px auto;">  </div>	<ul style="list-style-type: none"> ▪ Publisher located in <i>Taxable Territory</i> <p>Note: RCM shall not apply if</p> <ul style="list-style-type: none"> (i) the author has taken <i>registration</i> under the CGST, 2017 and filed a <i>declaration</i>, in the form at <i>Annexure I</i>, within the time prescribed (before commencement of FY), with the Jurisdictional Officer that he exercises the option to: <ul style="list-style-type: none"> a. pay <i>tax under FCM</i> in accordance with Section 9(1) and b. comply with <i>all the provisions of Act</i> as they apply to a person liable for paying the tax in relation to the supply of any goods or services or both and c. <i>not withdraw</i> the said option <i>within a period of 1 year</i> from

		<p>the date of exercising such option</p> <p>(ii) the author makes a <i>declaration</i>, as prescribed in <i>Annexure II</i> (stating that he is paying taxes under FCM) on the <i>invoice issued by him</i> in Form <i>GST INV-I</i> to the publisher.</p> <p>(i.e. Above cases shall be taxable under FCM)</p>
<p>Renting of Motor Vehicle (Service provided by way of Renting of Motor Vehicle)</p>	<p>Any person <i>other than a Body Corporate</i> paying tax @ 5% on Renting of Motor Vehicle with <i>ITC only on Input Services</i> in the <i>same line of business</i></p>	<ul style="list-style-type: none"> Any <i>Body Corporate</i> located in the <i>Taxable Territory</i>
<p>Securities Lending Services (Services of Lending of Securities under Securities Lending Scheme, 1997 of SEBI) (<i>Refer Note 5</i>)</p>	<p>Lender i.e. a person who deposits the securities registered in his name or in the name of any other person duly authorised on his behalf with an approved intermediary for the purpose of lending under the Scheme of SEBI</p>	<ul style="list-style-type: none"> Borrower i.e. a person who borrows the securities under the Scheme through an approved intermediary of SEBI.

Example 1: Temporary Transfer of Patent, Trademark, etc.

Particulars	GST
Temporary Transfer of Patent, Trademark, etc.	✓ (FCM)

Example 2: Temporary Transfer of Copyright

Particulars	GST
Temporary Transfer of Copyright	✓ (Refer Below)

Example 3: Temporary Transfer of Copyright – Author

Particulars	GST
Temporary Transfer of Copyright by Author to Publisher (opting for FCM and satisfying conditions for the same)	✓ (FCM)

Example 4: Temporary Transfer of Copyright – Author

Particulars	GST
Temporary Transfer of Copyright by Author to Publisher (NOT opting for FCM)	✓ (RCM)

Example 5: Temporary Transfer of Copyright – Others

Particulars	GST
Temporary Transfer of Copyright by AR Rehman to Sony Music	✓ (RCM)

Example 6: Temporary Transfer of Copyright – Others

Particulars	GST
Temporary Transfer of Copyright by Sony Music to Jio Sawan Music	✓ (FCM)

Example 7: Renting of Motor Vehicle BY Super Star & Co. (Proprietorship Concern) NOT opting to pay GST @ 5% with ITC only on Input Services in the same line of business

Particulars	GST
TO Little Super Star Ltd.	✓ (FCM)
TO Little Super Star & Co.	✓ (FCM)

Example 8: Renting of Motor Vehicle BY Super Star & Co. (Firm) opting to pay GST @ 5% with ITC only on Input Services in the same line of business

Particulars	GST
TO Little Super Star Ltd.	✓ (RCM)
TO Little Super Star & Co.	✓ (FCM)

Example 9: Renting of Motor Vehicle BY Super Star Ltd.

Particulars	GST
TO Little Super Star Ltd.	✓ (FCM)
TO Little Super Star & Co.	✓ (FCM)

Clarification regarding Taxability of Supply of Securities under Securities Lending Scheme, 1997 – CBIC Circular 119/38/2019 – CGST

Background	<ul style="list-style-type: none"> ▪ SEBI has prescribed the Securities Lending Scheme, 1997 for the purpose of facilitating lending and borrowing of securities. The lender <i>temporarily lends the securities</i> held by him to a borrower and <i>charges lending fee</i> for the same from the borrower. The <i>borrower</i> of securities can further <i>sell or buy these securities</i> and is required to <i>return the lend securities</i> after <i>stipulated period</i> of time. ▪ The transaction takes place through an <i>electronic screen-based order matching mechanism</i> provided by the <i>recognized stock exchange</i> in India, which charges a fee for the same. There is <i>anonymity</i> between the lender and borrower since there is <i>no direct agreement</i> between them.
Levy of GST	<ul style="list-style-type: none"> ▪ <i>Securities</i> as defined in Section 2(h) of the Securities Contracts (Regulation) Act, 1956 are NOT covered in the definition of <i>goods</i> under Section 2(52) and <i>services</i> under Section 2(102) of the CGST Act. Therefore, a <i>transaction in securities</i> which involves disposal of securities is NOT a <i>supply</i> in GST and hence not taxable. ▪ The activity of <i>lending of securities</i> is NOT a <i>transaction in securities</i> as it does <i>not involve disposal of securities</i>. The <i>lending fee</i> charged from the borrowers of securities has the character of <i>consideration</i> and this activity is taxable in GST. The activities of the <i>intermediaries facilitating lending and borrowing</i> of securities for commission or fee are <i>also taxable</i> separately.
Nature of Supply & Person liable to pay GST	<ul style="list-style-type: none"> ▪ With effect from 1st October, 2019, the <i>borrower</i> of securities shall be liable to <i>discharge GST</i> under Reverse Charge Mechanism (<i>RCM</i>). ▪ The nature of GST to be paid shall be <i>IGST</i> under RCM.

REVERSE CHARGE MECHANISM FOR NOTIFIED GOODS / SERVICES FOR NOTIFIED RECIPIENT
SECTION 9(4) OF CGST ACT, 2017 OR SECTION 5(4) OF IGST ACT, 2017

RCM FOR INTRA-STATE SUPPLY [NN 7/2019 – CT(RATE)] AND RCM FOR INTER-STATE SUPPLY [NN 7/2019 – IT(RATE)]

PROJECT & CATEGORY OF SUPPLY OF GOODS / SERVICES	SUPPLIER (BY) & RECIPIENT (TO)	ITEMS & GST RATE
<p>RREP – Residential Real Estate Project (Inputs & Input Services)</p> <ul style="list-style-type: none"> Supply of goods and services or both <i>other than</i> <ul style="list-style-type: none"> Grant of <i>Development Rights, Long Term Lease</i> of land (against upfront payment in the form of premium, salami, development charges etc.), <i>FSI</i> (including additional FSI) or Electricity, High Speed Diesel, Motor Spirit, Natural Gas, which constitute the <i>shortfall from the minimum value</i> (i.e. 80%) of goods or services or both required to be purchased by a promoter for construction of project, in a Fin. Yr. or part thereof 	<p>BY Unregistered Supplier TO Promoter</p>	<ul style="list-style-type: none"> Cement: Applicable Rate of Cement i.e. 28% Note: 100% of Cement shall be mandatorily purchased from Registered Supplier only. Else, RCM shall be applicable. Criteria of 80% is NOT applicable for Cement. However, the cement purchased from Registered Supplier will be considered while calculating the criteria of 80% purchases from Registered Suppliers. Other Goods & Services: Flat Rate @ 18%
<p>RREP – Residential Real Estate Project (Capital Goods)</p> <ul style="list-style-type: none"> Capital Goods 	<p>BY Unregistered Supplier TO Promoter</p>	<ul style="list-style-type: none"> Capital Goods: Applicable Rate of such Capital Goods Note: 100% of Capital Goods shall be mandatorily purchased from Registered Supplier only. Else, RCM shall be applicable. Criteria of 80% is NOT applicable for Capital Goods.
<p>REP other than RREP – Real Estate Project (Cement ONLY)</p> <ul style="list-style-type: none"> Cement 	<p>BY Unregistered Supplier TO Promoter</p>	<ul style="list-style-type: none"> Cement: Applicable Rate of Cement i.e. 28% Note: Even for REP other than RREP, 100% of Cement shall be mandatorily purchased

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from Registered Supplier only. Else, RCM shall be applicable.

For REP other than RREP, any amount of *other inputs, input services and capital goods* may be purchased from unregistered supplier also and no RCM shall be applicable.

Notes:

→ Meaning of “REP – Real Estate Project”

REP – Real Estate Project

<i>Means</i>	Any Real Estate Project (i.e. Commercial Construction or Residential Construction)
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→ Meaning of “RREP – Residential Real Estate Project”

RREP – Residential Real Estate Project

<i>Means</i>	A REP in which <ul style="list-style-type: none"> ▪ Carpet Area of the <i>Commercial Apartments</i> is <i>not more than 15%</i> of Total Carpet Area
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TIME OF SUPPLY

LIABILITY TO PAY TAX IN SPECIAL CASES

~~Seeks to provide special procedure with respect to payment of tax by registered person supplying service by way of construction against transfer of development right and vice versa – NN 4/2018-CT (Rate)~~

The liability to pay tax on supply of

(a) ~~development rights TO a developer, builder, construction company or any other registered person against consideration, wholly or partly, in the form of construction service of complex, building or civil structure~~

(b) ~~construction service of complex, building or civil structure TO supplier of development rights against consideration, wholly or partly, in the form of transfer of development rights~~

~~shall arise at the time when the said developer, builder, construction company or any other registered person, as the case may be, transfers possession or the right in the constructed complex, building or civil structure, to the person supplying the development rights by entering into a conveyance deed or similar instrument (for example allotment letter).~~

Note: The above notification is no more required because of recent amendments in real estate sector.

SMALL DEALERS (EXEMPTION SCHEME & COMPOSITION SCHEME)

COMPOSITION SCHEME – SECTION 10 OF CGST ACT, 2017 READ WITH NN 2/2019-CT (RATE)

Normal Composition Scheme – Section 10	→ Manufacturers of <i>Aerated Water</i> is NOT eligible for Composition Scheme
Normal Composition Scheme – NN 2/2019-CT (Rate)	→ Manufacturers or Traders of <i>Aerated Water</i> is NOT eligible for Composition Scheme

INPUT TAX CREDIT

CONDITIONS FOR AVAILMENT OF ITC – SECTION 16 OF CGST ACT, 2017 READ WITH RULE 36 OF CGST RULES, 2017

ITC to be Availed as per Rule 36(4) = Eligible ITC in GSTR-2A + 20%

- 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* under Section 37(1) [GSTR-1],
 - shall NOT exceed 20% of the *eligible credit* available in respect of *invoices or debit notes* the details of which have been *uploaded by the suppliers* under Section 37(1) [GSTR-1].

Clarification on restrictions in availment of ITC in terms of Rule 36(4) of CGST Rules, 2017 – CBIC Circular 123/42/2019 – CGST

Restriction on ITC – Self-Assessment	<p>The conditions and eligibility for the ITC that may be availed by the recipient shall continue to be governed as per the provisions of Chapter V of the CGST Act and the rules made thereunder.</p> <p>Rule 36(4) being a new provision, the restriction is <i>not imposed through the common portal</i> and it is the responsibility of the taxpayer that credit is availed in terms of the said rule and therefore, the <i>availment of restricted credit in terms Rule 36(4)</i> of CGST Rules shall be done on <i>self-assessment basis</i> by the tax payers</p>
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Issue 1	What are the invoices / debit notes on which the restriction under Rule 36(4) of the CGST Rules shall apply?
Clarification	<ul style="list-style-type: none"> ▪ The restriction of availment of ITC is imposed ONLY in respect of those <i>invoices / debit notes</i>, details of which are <i>required to be uploaded by the suppliers</i> under Section 37(1) and which have <i>not been uploaded</i>. Therefore, taxpayers may avail <i>full ITC</i> in respect of <ul style="list-style-type: none"> ✓ <i>IGST</i> paid on <i>import of goods</i>, ✓ documents issued under <i>RCM</i>, ✓ credit received from <i>ISD</i> etc. which are outside the ambit Section 37(1), provided that <i>eligibility conditions</i> for availment of ITC are <i>met</i> in respect of the same. ▪ The restriction of Rule 36(4) will be applicable only on the <i>invoices / debit notes</i> on which <i>credit</i> is availed <i>after 09.10.2019</i>.

Issue 2	Whether the said restriction is to be calculated supplier wise or on consolidated basis?
Clarification	<ul style="list-style-type: none"> ▪ The restriction imposed is NOT supplier wise. The credit available Rule 36(4) is linked to <i>Total Eligible ITC</i> from <i>ALL suppliers</i> against all supplies whose details have been uploaded by the suppliers. ▪ Further, the calculation would be based on ONLY those invoices which are <i>otherwise eligible for ITC</i>. Accordingly, those invoices on which <i>ITC is not available</i> under any of the provision [say Section 17(5)] would <i>not be considered</i> for calculating 20% of the eligible credit available.

Issue 3	FORM GSTR-2A being a dynamic document, what would be the amount of <i>ITC</i> that is <i>admissible to the taxpayers</i> for a particular tax period in respect of <i>invoices / debit notes</i> whose details have <i>not been uploaded</i> by the suppliers?
Clarification	<ul style="list-style-type: none"> ▪ The amount of <i>ITC</i> in respect of the <i>invoices / debit notes</i> whose details have <i>not been uploaded</i> by the suppliers shall not exceed 20% of the eligible ITC available to the recipient in respect of <i>invoices or debit notes</i> the details of which have been <i>uploaded</i> by the suppliers under

	<p>Section 37(1) as on the <i>due date of filing of the returns in FORM GSTR-1</i> of the suppliers for the said tax period.</p> <ul style="list-style-type: none"> The taxpayer may have to ascertain the same from his <i>auto populated FORM GSTR 2A</i> as available on the <i>due date of filing</i> of FORM GSTR-1 under Section 37(1).
Issue 4	How much ITC a registered tax payer can avail in his FORM GSTR-3B in a month in case the details of <i>some of the invoices</i> have <i>not been uploaded</i> by the suppliers under Section 37(1)
Clarification	<ul style="list-style-type: none"> Rule 36(4) prescribes that the <i>ITC</i> to be <i>availed</i> by a registered person in respect of <i>invoices or debit notes</i>, the details of which have <i>not been uploaded</i> by the suppliers u/s 37(1), shall not exceed 20% of the <i>eligible ITC available</i> in respect of <i>invoices or debit notes</i> the details of which have been <i>uploaded</i> by the suppliers under Section 37(1). The eligible ITC that can be availed is explained by way of illustrations, in a tabulated form in <i>Table 1</i> below
Issue 5	When can <i>balance ITC</i> be claimed in case <i>availment of ITC</i> is restricted as per the provisions of <i>Rule 36(4)</i> ?
Clarification	<ul style="list-style-type: none"> The <i>balance ITC</i> may be claimed by the taxpayer in any of the <i>succeeding months provided</i> details of requisite invoices are <i>uploaded</i> by the suppliers. He can claim <i>proportionate ITC</i> as and when details of <i>some invoices are uploaded</i> by the suppliers <i>provided</i> that credit on invoices, the details of which are <i>not uploaded</i> under of Section 37(1) remains under 20% of the eligible input tax credit, the details of which are uploaded by the suppliers. Full ITC of balance amount may be availed, in present illustration by “R”, in case <i>total ITC</i> pertaining to <i>invoices</i> the details of which have been <i>uploaded</i> reaches Rs.8.3 lakhs (Rs.10 lakhs / 1.20). In other words, taxpayer may avail full ITC in respect of a tax period, <i>as and when the invoices</i> are uploaded by the suppliers <i>to the extent Eligible ITC / 1.2</i>. The same is explained for Case No. 1 and 2 of the illustrations provided at <i>Sl. No. 4 in Table 1</i> in the last column

Table 1 (ITC in Books – Rs.10,00,000)

Case	Details of suppliers invoices for which recipient is eligible to take ITC	20% of eligible ITC where invoices are uploaded	Eligible ITC to be taken in GSTR-3B to be filed by 20 th of Next Month	Subsequent Eligibility
Case 1	Suppliers have furnished in GSTR-1 - 80 invoices involving ITC of Rs.6 lakhs as on the due date of furnishing of the details of outward supplies by the suppliers	Rs.1,20,000	Rs.6,00,000 + Rs.1,20,000 = Rs.7,20,000	“R” may avail balance ITC of Rs.2.8 lakhs in case suppliers upload details of some of the invoices for the tax period involving ITC of Rs.2.3 lakhs out of invoices involving ITC of Rs.4 lakhs details of which had not been uploaded by the suppliers. [Rs.6 lakhs + Rs.2.3 lakhs = Rs.8.3 lakhs]
Case 2	Suppliers have furnished in FORM GSTR-1 – 60 invoices involving ITC of Rs.7 lakhs as on the due date of furnishing of the details of outward supplies by the suppliers	Rs.1,40,000	Rs.7,00,000 + Rs.1,40,000 = Rs.8,40,000	“R” may avail balance ITC of Rs.1.6 lakhs in case suppliers upload details of some of the invoices involving ITC of Rs.1.3 lakhs out of outstanding invoices involving Rs.3 lakhs. [Rs.7 lakhs + Rs.1.3 lakhs = Rs.8.3 lakhs]
Case 3	Suppliers have furnished in FORM GSTR-1 – 75 invoices involving ITC of Rs.8.50 lakhs as on the due date of furnishing of the details of outward supplies by the suppliers	Rs.1,70,000	Rs.8,50,000 + Rs.1,50,000 = Rs.10,00,000 Additional amount of ITC availed shall be limited to Rs.1,50,000 (NOT Rs.1,70,000) to ensure that the Total ITC availed does not exceed the Total Eligible ITC.	Not Applicable

DOCUMENTS

TAX INVOICE – SECTION 31 OF CGST ACT, 2017

CONSOLIDATED TAX INVOICE – RULE 46 OF CGST RULES, 2017

Consolidated Tax Invoice: Tax Invoice is NOT required to be issued if the following conditions are satisfied:

- (a) Recipient is Unregistered Dealer,
- (b) Value of Goods or Services \leq Rs.200 AND
- (c) Recipient does NOT demand for Tax Invoice

However, a Single Consolidated Tax Invoice shall be issued at the close of each day for all such supplies.

However, supplier engaged in making supply of services by way of *admission to exhibition of cinematograph films in multiplex screens* SHALL necessarily issue a *Separate Tax Invoice* even for value of supply being less than Rs.200, although the recipient may be unregistered person who doesn't demands for Tax Invoice. (i.e. *No option for Consolidated Tax Invoice*)

RELAXATION IN CONTENTS OF TAX INVOICE FOR NOTIFIED PERSONS – RULE 54 OF CGST RULES, 2017

Admission to Exhibition of Cinematograph Films in Multiplex Screens	Admission to Exhibition of Cinematograph Films in Screen other than Multiplex Screens
<p style="text-align: center;">↓</p> <p>Such registered supplier SHALL be required to issue an <i>Electronic Ticket</i> and the said <i>Electronic Ticket</i> shall be deemed to be a <i>Tax Invoice</i></p> <p>Such Electronic Ticket MAY NOT contain:</p> <ul style="list-style-type: none"> ▪ Details of the Recipient (i.e. Name and Address) 	<p style="text-align: center;">↓</p> <p>Such registered supplier MAY at his option do the following:</p> <ul style="list-style-type: none"> ▪ Issue Tax Invoice containing Details of Recipient OR ▪ Issue Electronic Ticket without containing Details of Recipient

CLARIFICATIONS

Clarification in respect of Goods sent / taken out of India for Exhibition or on Consignment basis for Export Promotion – CBIC Circular 108/27/2019 – CGST

Issue 1	Whether such activity of goods being sent / taken out of India for Exhibition or on Consignment basis for Export Promotion constitute as supply and whether the same is zero-rated supply?
Clarification	<ul style="list-style-type: none"> ▪ It is, accordingly, clarified that the activity of sending / <i>taking the goods out of India for exhibition</i> or on consignment basis for export promotion, EXCEPT when such activity satisfy the tests laid down in <i>Schedule I</i> of the CGST Act (hereinafter referred to as the “specified goods”), do NOT constitute <i>supply</i> as the said activity does NOT fall within the scope of Section 7 of the CGST Act as there is <i>no consideration</i> at that point in time. Since such activity is NOT a <i>supply</i>, the same cannot be considered as <i>Zero rated supply</i> as per the provisions contained in section 16 of the IGST Act.

Issue 2	What is the documentation required for sending / taking the specified goods out of India?
Clarification	<ul style="list-style-type: none"> ▪ As clarified above, the activity of <i>sending / taking specified goods</i> out of India is NOT a <i>supply</i>. ▪ The said activity is in the nature of “<i>sale on approval basis</i>” wherein the goods are sent / taken outside India for the approval of the person located abroad and it is ONLY when the said <i>goods are approved</i> that the <i>actual supply</i> from the exporter located in India to the importer located abroad takes place. ▪ The specified goods shall be accompanied with a <i>Delivery Challan</i> issued in accordance with the provisions contained in <i>Rule 55</i> of the CGST Rules. ▪ The activity of sending / taking specified goods out of India is <i>not a zero-rated supply</i>. That being the case, <i>execution of a bond or LUT</i>, as required under Section 16 of the IGST Act, is <i>not required</i>.

Issue 3	When is the supply of specified goods sent / taken out of India said to take place?
Clarification	<ul style="list-style-type: none"> ▪ The specified goods sent / taken out of India are required to be either <i>sold or brought back</i> within the stipulated period of <i>6 months</i> from the <i>date of removal</i> as per Section 31(7) of the CGST Act, 2017 ▪ The supply would be <i>deemed</i> to have taken place, on the expiry of <i>6 months from the date of removal</i>, if the specified goods are <i>neither sold abroad nor brought back</i> within the said period. ▪ If the <i>specified goods are sold abroad</i>, fully or partially, within the specified period of <i>6 months</i>, the <i>supply</i> is effected, in respect of quantity so sold, on the date of such sale.

Issue 4	Whether invoice is required to be issued when the specified goods sent / taken out of India are not brought back, either fully or partially, within the stipulated period?
Clarification	<ul style="list-style-type: none"> ▪ When the <i>specified goods sent / taken out</i> of India have been <i>sold</i> fully or partially, within the stipulated period of <i>6 months</i>, as laid down Section 31(7) of the CGST Act, the <i>sender</i> shall issue a <i>tax invoice</i> in respect of such quantity of specified goods which has been sold abroad, in accordance with the provisions contained in Section 12 and Section 31 of the CGST Act read with Rule 46 of the CGST Rules. ▪ When the <i>specified goods sent / taken out</i> of India have <i>neither been sold nor brought back</i>, either fully or partially, within the stipulated period of <i>6 months</i>, as laid down Section 31(7) of the CGST Act, the sender shall issue a <i>tax invoice</i> on the date of <i>expiry of 6 months</i> from the date of removal, in respect of such quantity of specified goods which have neither been sold nor brought back, in accordance with the provisions contained in Section 12 and Section 31 of the CGST Act read with Rule 46 of the CGST Rules. <p>Illustration: M/s ABC sends 100 units of specified goods out of India. The activity of merely sending / taking such specified goods out of India is not a supply. No tax invoice is required to be issued in this case but the specified goods shall be accompanied with a Delivery Challan issued in accordance with the provisions contained in Rule 55 of the CGST Rules.</p> <ul style="list-style-type: none"> ▪ In case the entire quantity of specified goods is brought back within the stipulated period of 6 months from the date of removal, no tax invoice is required to be issued as no supply has taken place in such a case. ▪ In case, however, the entire quantity of specified goods is neither sold nor brought back within 6 months from the date of removal, a tax invoice would be required to be issued for entire 100 units of specified goods in accordance with the provisions contained in Section 12 and Section 31 of the CGST Act read with Rule 46 of the CGST Rules within the time period stipulated under Section 31(7) of the CGST Act.

REGISTRATION

APPLICATION FOR REGISTRATION – SECTION 25 READ WITH RULE 8 OF CGST RULES, 2017

INFORMATION REQUIRED WHILE FILING GST REGISTRATION

Submission of Bank Account Details – Rule 10A:

<ul style="list-style-type: none"> For Registration other than below mentioned case 	<ul style="list-style-type: none"> Bank Account Details has to be provided within <i>due date of filing returns</i> under Section 39 or 45 days from the date of <i>grant of registration</i>, whichever is <i>earlier</i> **
<ul style="list-style-type: none"> For Registration under Rule 12 (TDS & TCS Registration) and For Registration under Rule 16 (Suo-moto Temporary Registration) 	<ul style="list-style-type: none"> Above provision is NOT applicable (i.e. Bank Account Details has to be provided at the time of applying for TDS / TCS Registration. Bank Account Details is NOT at all required for Suo-Moto Registration)

** **Note:** If Bank Account Details are NOT given within the said time limit, the registration may be cancelled by Department as per Rule 21.

APPLICATION FOR SPECIAL REGISTRATION – SECTION 25 READ WITH RULE 12 OF CGST RULES, 2017

REGISTRATION FOR TDS, TCS

Tax Deducted at Source (TDS) & Tax Collected at Source (TCS)

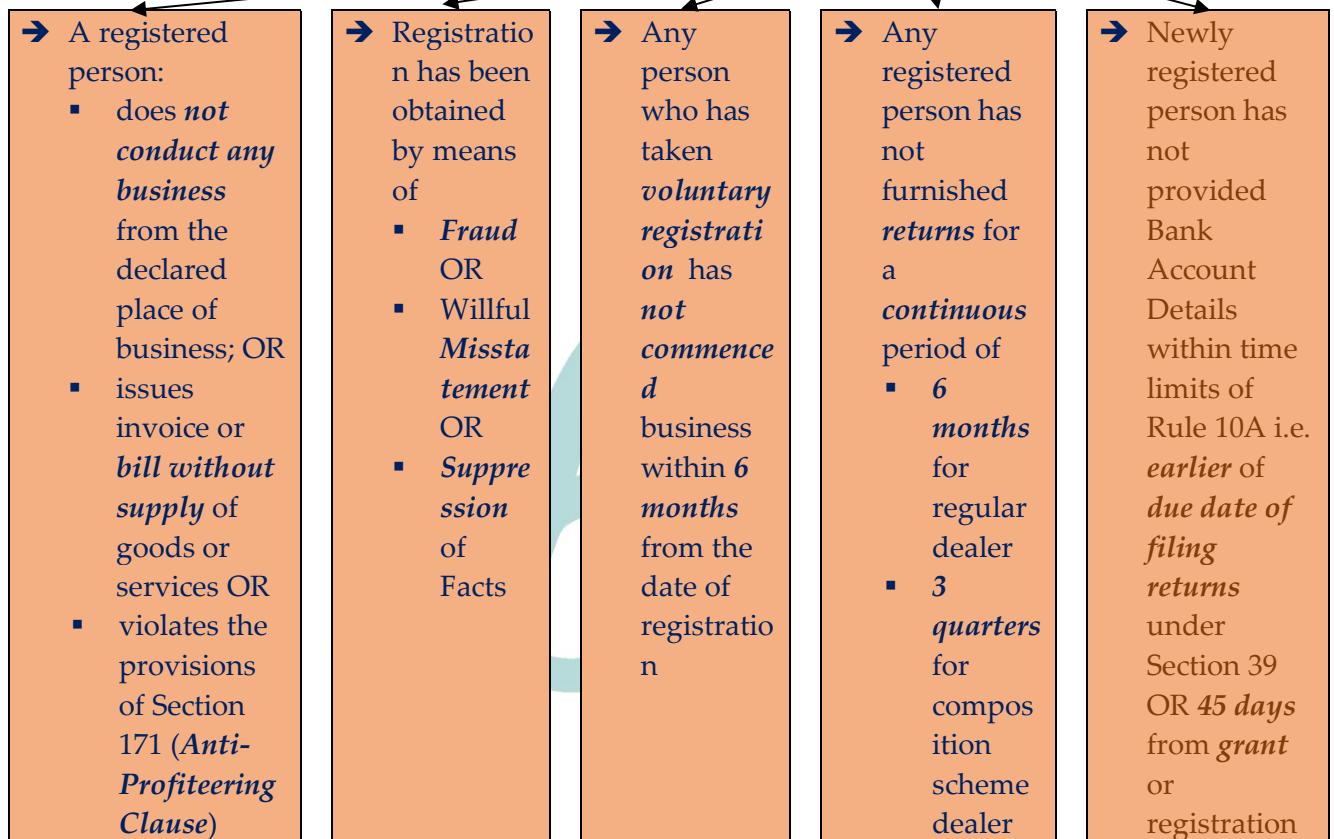
Registration Application in FORM GST REG-07

Registration to be granted in **3 working days** from date of submission of application. Where PO is satisfied that the registered person is **no longer liable** to deduct TDS / collect TCS, he may **cancel** the registration and communicate to the Registered Person in **FORM GST REG-08**

Note: When a person is applying for registration to collect **TDS & TCS** in a **State / UT** where he does **not have a physical presence**, he shall mention name of **said State / UT in Part A** of prescribed application form for registration. Further, the name of the **State / UT** in which his **principal place of business** is located is to be mentioned in **Part B** of the application form. **States/UTs** mentioned in **Part A and Part B** of the application form **may be different**.

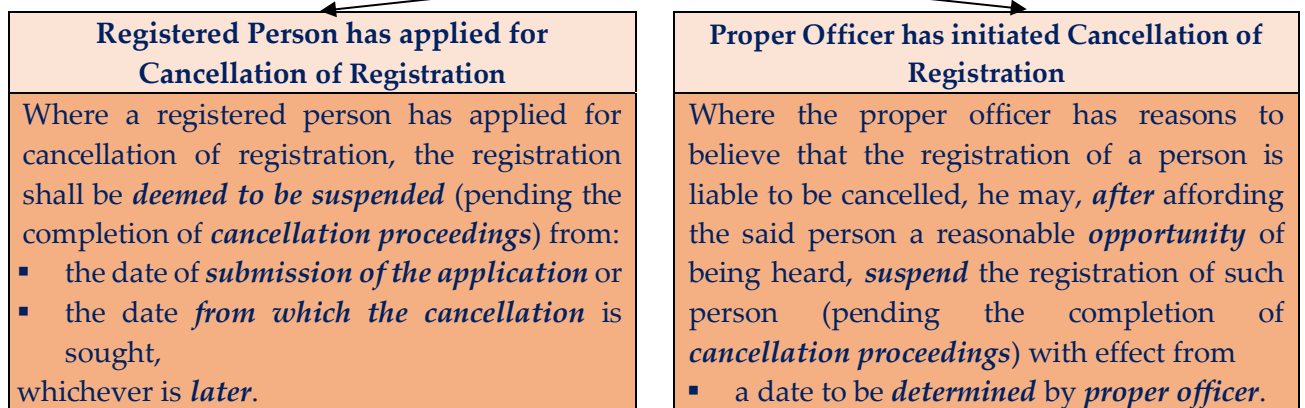
**CANCELLATION OF REGISTRATION – SECTION 29 OF CGST ACT, 2017
READ WITH RULE 21 CGST RULES, 2017**

**SUO-MOTO CANCELLATION BY DEPARTMENT
REASONS FOR CANCELLATION**



SUSPENSION OF REGISTRATION – SECTION 29 OF CGST ACT, 2017 READ WITH RULE 21A OF CGST RULES, 2017

**Suspension of Registratoin
Section 29 of CGST Act, 2017 read with Rule 21A of CGST Rules, 2017**



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Notes: Common Points for Suspension of Registration

- (i) A registered person, whose registration has been suspended as above:
- shall NOT make *any taxable supply* during the period of suspension and
 - shall NOT be required to furnish *any return* under Section 39.

Explanation: For the purposes of this sub-rule, the expression “*shall not make any taxable supply*” shall mean that the registered person shall NOT issue a *tax invoice* and, accordingly, NOT charge *tax on supplies* made by him during the period of *suspension*. In simple, he can make supplies during suspension but without charging tax and without giving tax invoice.

- (ii) Suspension of registration shall be *deemed to be revoked* upon *completion* of the *cancellation proceedings* by the proper officer. Such revocation shall be *effective* from the *date on which the suspension had come* into effect.

Once suspension is revoked and registration becomes effective again, the concept of Revised Tax Invoice (discussed in Chapter “*Documents*”) and First Return (discussed in Chapter “*Return*”) shall be applicable for such registered person.

PAYMENT

ELECTRONIC CASH LEDGER RULE 87 OF CGST RULES, 2017

Supplier of OIDAR providing services from outside India to Non-Taxable Online Recipient can now make payment ONLY through GST Portal; now facility of making payment through EASIEST – Service Tax Portal is withdrawn.

RETURN

SUMMARY RETURN – FORM GSTR-3B

SECTION 39 OF CGST ACT, 2017 READ WITH RULE 61 OF CGST RULES, 2017

GSTR-3B is in addition to GSTR-1 and GSTR-2. Now, officially, *GSTR-3B is replacement of GSTR-3* under Section 39 till filing in GSTR-3B continues. However, officially filing of GSTR-2 has not been done away with by the Government.

ANNUAL RETURN – FORM GSTR-9 / FORM GSTR-9A / FORM GSTR-9B SECTION 44 OF CGST ACT, 2017 READ WITH RULE 80 OF CGST RULES, 2017

Exemption from Annual Return (GSTR-9) and Reconciliation Statement (GSTR-9C)

- (i) Exemption from BOTH GSTR-9 and GSTR-9C

Person providing OIDAR services from a place outside India to Non-Taxable Online Recipient (Unregistered Persons) are NOT required to furnish *Annual Return* (GSTR-9) and furnish *Reconciliation Statement* (GSTR-9C)

(ii) Exemption from ONLY GSTR-9

Filing of *Annual Return* (GSTR-9) for *FY 2017-18 and FY 2018-19* is *optional* for taxpayers whose *Aggregate Turnover* is less than *Rs.2 crores* and who have *not filed* the said return *before the due date*.

However, the *Annual Return* shall be *deemed to be furnished* on the *due date* if it has **NOT** been furnished before the due date.

TDS RETURN & TDS STATEMENT – GSTR-5A, GSTR-7 & GSTR-8 SECTION 39 OF CGST ACT, 2017 READ WITH RULE 66 & RULE 67 OF CGST RULES, 2017

TDS Return (GSTR-7) – Rule 66	TCS Statement (GSTR-8) – Rule 67
Registered person deducting tax at source as per Section 51 shall file GSTR-7	Registered person collecting tax at source as per Section 52 shall file GSTR-8
<p>Note: After the <i>Deductor</i> files GSTR-7 (before or after due-date) and the same is <i>validated</i> by <i>Deductee</i>, TDS deducted to be made available on the common portal in <i>Electronic Cash Ledger</i> of <i>Deductee</i> immediately.</p>	<p>Note: After the <i>ECO</i> files GSTR-8 (before or after due-date) and the same is <i>validated</i> by <i>Supplier supplying through ECO</i>, TCS deducted to be made available on the common portal in <i>Electronic Cash Ledger</i> of <i>Supplier supplying through ECO</i> immediately.</p>

E-WAY BILL

E-WAY BILL – SECTION 68 OF CGST ACT, 2017 READ WITH RULE 138 OF CGST RULES, 2017

Validity of E-Way Bill	Other than Over-Dimensional Cargo & Multimodal Shipment in which at least one leg involves Transport by Ship		Over-Dimensional Cargo OR Multimodal Shipment in which at least one leg involves Transport by Ship	
	Distance	Validity (Period)	Distance	Validity (Period)
	(i) Upto 100 kms	→ One day from 'relevant date'	(i) Upto 20 kms	→ One day from 'relevant date'
(ii) For every 100 kms or part thereof thereafter	→ One additional day	(ii) For every 20 kms or part thereof thereafter	→ One additional day	

IGST ACT (INCLUDING PLACE OF SUPPLY)

POS FOR SERVICES WHERE LOCATION OF SUPPLIER OR RECIPIENT IS OUTSIDE INDIA SECTION 13 OF IGST ACT, 2017

Section 13(13) – Place of Supply in case of Preventive Measures

The following *research and development services* related to *pharmaceutical sector* [as specified in columns (2) and (3) from Sl. No. 1 to 10 of the table given below] when supplied **BY** a person located in *taxable territory* **TO** a person located in the *non-taxable territory*, have been notified as the services for which the place of supply shall be the place of effective use and enjoyment of a service [as specified in column (4) of the table given below]:

S. No. (1)	Nature of Supply (2)	General Description (3)	Place of Supply (4)
1	Integrated discovery and development	This process involves discovery and development of molecules by pharmaceutical sector for medicinal use. The steps include designing of compound, evaluation of drug metabolism, biological activity, manufacture of target compounds, stability study and long-term toxicology impact.	When research and development services related to pharmaceutical sector as specified in columns (2) and (3) from Sl. No. 1 to 10 of this table are supplied by a person located in taxable territory to a person located in the non-taxable territory, the <i>place of supply</i> shall be the <i>location of the recipient of services</i> subject to fulfillment of the following conditions: (i) Supply of services from the taxable
2	Integrated development		
3	Evaluation of the efficacy of new chemical/ biological entities in animal models of disease	This is in vivo research (i.e. within the animal) and involves development of customized animal model diseases and administration of novel chemical in doses to animals to evaluate the gene and protein expression in response to disease. In nutshell, this process tries to discover if a novel chemical entity that can reduce or modify the severity of diseases. The novel chemical is supplied by the service recipient located in non-taxable territory	
4	Evaluation of biological activity	This is in vitro research (i.e. outside the animal). An assay is first	

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	of novel chemical/biological entities in in-vitro assays	developed and then the novel chemical is supplied by the service recipient located in non-taxable territory and is evaluated in the assay under optimized conditions	<p>territory is provided as per a contract between the <i>service provider</i> located in <i>taxable territory</i> and <i>service recipient</i> located in <i>non-taxable territory</i>.</p> <p>(ii) Such supply of services fulfills <i>all other conditions</i> in the definition of <i>export of services</i>, EXCEPT the condition that <i>place of supply is outside India</i>.</p>
5	Drug metabolism and pharmacokinetics of new chemical entities	This process involves investigation whether a new compound synthesized by supplier can be developed as new drug to treat human diseases in respect of solubility, stability in body fluids, stability in liver tissue and its toxic effect on body tissues. Promising compounds are further evaluated in animal experiments using rat and mice.	
6	Safety Assessment/ Toxicology	Safety assessment involves evaluation of new chemical entities in laboratory research animal models to support filing of investigational new drug and new drug application. Toxicology team analyses the potential toxicity of a drug to enable fast and effective drug development	
7	Stability Studies	Stability studies are conducted to support formulation, development, safety and efficacy of a new drug. It is also done to ascertain the quality and shelf life of the drug in their intended packaging configuration	
8	Bio-equivalence and Bioavailability Studies	Bio-equivalence is a term in pharmacokinetics used to assess the expected in vivo biological equivalence of two proprietary preparations of a drug. If two products are said to be bioequivalent it means that they would be expected to be, for all intents and purposes, the same. Bioavailability is a measurement of the rate and extent to which a therapeutically active chemical is absorbed from a drug product into the systemic circulation and becomes available at the site of action	

9	Clinical trials	The drugs that are developed for human consumption would undergo human testing to confirm its utility and safety before being registered for marketing. The clinical trials help in collection of information related to drugs profile in human body such as absorption, distribution, metabolism, excretion and interaction. It allows choice of safe dosage	
10	Bio analytical studies	Bio analysis is a sub-discipline of analytical chemistry covering the quantitative measurement of drugs and their metabolites, and biological molecules in unnatural locations or concentrations and macromolecules, proteins, DNA, large molecule drugs and metabolites in biological systems	

Author's Note: The above change in place of supply from Section 13(3) (i.e. performance based) to Section 13(13) (i.e. preventive measure) is only to ensure that above services qualifies as EXPORT OF SERVICES and thus, zero-rating is applied to above research and development services related to pharmaceutical sector.

CLARIFICATIONS

Clarification regarding Place of Supply in case of Software / Design Services related to Electronics Semi-Conductor and Design Manufacturing (ESDM) Industry – CBIC Circular 118/37/2019 – CGST

Issue	<p>A number of companies that are part of Electronics Semiconductor and Design Manufacturing (ESDM) industry in India are engaged in the process of <i>developing software and designing integrated circuits electronically for customers located overseas</i>.</p> <p>These designs are <i>communicated</i> abroad (in <i>industry standard electronic formats</i>) either to the customer or (on behest of the customer) a manufacturing facility for the manufacture of hardware based on such designs.</p> <p>In addition, the <i>software developed</i> is also integrated upon or <i>customized to this hardware</i>. On some occasions, <i>samples of such prototype hardware</i> are then provided back to the <i>Indian development and design companies to test</i> and validate the software and design that has been developed to ensure that it is error free.</p> <p>Whether provision of <i>hardware prototypes and samples</i> and <i>testing thereon</i> lends these services the character of <i>performance-based</i> services in respect of “goods required to be made physically available by the recipient to the provider”.</p>
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Clarification	<p style="text-align: center;">Determination of Place of Supply in case of Supply of Software / Design Services by a Supplier located in Taxable Territory to Recipient located in Non-Taxable Territory by using the sample hardware kits provided by the Recipient</p> <ul style="list-style-type: none"> ▪ In contracts where service provider is involved in a composite supply of (a) <i>software development and design</i> for integrated circuits <i>electronically</i>, and (b) <i>testing of software</i> on sample <i>prototype hardware</i>, testing is often an <i>ancillary supply</i>, whereas, <i>chip design/software development</i> is the <i>principal supply</i> of the service provider. ▪ The service provider is NOT involved in <i>software testing alone</i> as a separate service. The <i>testing</i> of software/design is aimed at <i>improving the quality of software/design</i> and is an <i>ancillary</i> activity. The entire activity needs to be viewed as <i>one supply</i> and accordingly treated for the purposes of taxation. <i>Artificial vivisection</i> of the contract of a <i>composite supply</i> is NOT provided in law. ▪ Therefore, it is clarified that the <i>place of supply</i> of software/design by supplier located in taxable territory to service recipient located in non-taxable territory by using sample prototype hardware / test kits in a composite supply, where such testing is an ancillary supply, is the <i>location of the service recipient</i> as per <i>Section 13(2)</i> of the IGST Act. Provisions of <i>Section 13(3)(a)</i> of IGST Act do NOT apply separately for <i>determining the place of supply for ancillary supply</i> in such cases.
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Clarification regarding Place of Supply in Certain Cases – CBIC Circular 103/22/2019 – CGST

Issue 1	<p>Various services are being provided by the <i>port authorities to its clients</i> in relation to <i>cargo handling</i>. Some of such services are in respect of</p> <ul style="list-style-type: none"> (i) <i>arrival</i> of wagons at port, (ii) <i>haulage</i> of wagons inside port area up-to place of unloading, (iii) <i>siding</i> of wagons inside the port, (iv) <i>unloading</i> of wagons, (v) <i>movement</i> of unloaded cargo to plot and staking hereof, movement of unloaded cargo to berth, shipment/loading on vessel etc. <p>Whether the POS would be determined in terms of Section 12(2) or Section 13(2) of the IGST Act or shall be determined in terms of Section 12(3) of the IGST Act?</p>
Clarification	<ul style="list-style-type: none"> ▪ Such services are <i>ancillary to or related to cargo handling services</i> and are <i>not related to immovable property</i>. Accordingly, the place of supply of such services will be determined as per <i>Section 12(2) or Section 13(2)</i> of the IGST Act depending upon the terms of the contract between the supplier and recipient of such services.

Issue 2	What shall be the place of supply in case of supply of various <i>services on unpolished diamonds</i> such as <i>cutting and polishing</i> activity which have been <i>temporarily imported into India</i> and are <i>not put to any use in India</i> ?
Clarification	<ul style="list-style-type: none"> ▪ Place of supply in case of <i>performance based services</i> is to be determined as per <i>Section 13(3)(a)</i> of the IGST Act and generally the place of services is where the services are <i>actually performed</i>. ▪ But an <i>exception</i> has been carved out in case of <i>services</i> supplied in respect of <i>goods which are temporarily imported into India</i> for repairs or for any other <i>treatment</i> or process and are <i>exported</i> after such repairs or treatment or process <i>without being put to any use in India</i>, other than that which is required for such repairs or treatment or process. ▪ In case of cutting and polishing activity on unpolished diamonds which are temporarily imported into India are not put to any use in India, the <i>place of supply</i> would be determined as per <i>Section 13(2)</i> of the IGST Act (i.e. location of service recipient).

Clarification in respect of Goods sent / taken out of India for Exhibition or on Consignment basis for Export Promotion – CBIC Circular 108/27/2019 – CGST

Issue	Whether such activity of goods being sent / taken out of India for Exhibition or on Consignment basis for Export Promotion constitute as supply and whether the same is zero-rated supply?
Clarification	<ul style="list-style-type: none"> ▪ Such goods sent / taken out of India crystallise into exports, wholly or partly, only after a gap of certain period from the date they were physically sent / taken out of India ▪ As per <i>Section 7 of the CGST Act</i>, for any activity or transaction to be considered a <i>supply</i>, it must satisfy twin tests namely <ul style="list-style-type: none"> (i) it should be for a <i>consideration</i> by a person and (ii) it should be in the <i>course or furtherance of business</i>. ▪ As per <i>Section 16 of the IGST Act</i>, “<i>Zero rated supply</i>” means any of the following supplies of goods or services or both, namely: <ul style="list-style-type: none"> (i) <i>export</i> of goods or services or both; or (ii) <i>supply</i> of goods or services or both TO a <i>Special Economic Zone</i> developer or a Special Economic Zone unit. ▪ Therefore, it can be concluded that only such supplies which are either “<i>export</i>” or are “<i>supply to SEZ unit / developer</i>” would qualify as zero-rated supply ▪ It is, accordingly, clarified that the activity of sending / <i>taking the goods out of India for exhibition</i> or on consignment basis for export promotion, EXCEPT when such activity satisfy the tests laid down in <i>Schedule I</i> of the CGST Act (hereinafter referred to as the “<i>specified goods</i>”), do NOT constitute <i>supply</i> as the said activity does NOT fall within the scope of Section 7 of the CGST Act as there is <i>no consideration</i> at that point in time. Since such activity is NOT a <i>supply</i>, the same <i>cannot</i> be considered as <i>Zero rated supply</i> as per the provisions contained in section 16 of the IGST Act.

DEMAND & RECOVERY

DEMAND OF TAX, INTEREST & PENALTY – SECTION 73 & SECTION 74 OF CGST ACT, 2017

Intimation by PO before SCN

Proper officer, before service of *notice* under Section 73(1) / Section 74(1), shall communicate the details of any *tax, interest and penalty* as ascertained by the said officer, in **Part A** of FORM GST DRC-01A

Where such person has made *partial payment* of the amount communicated to him or desires to *file any submissions* against proposed liability, he may make such submission in **Part B** of FORM GST DRC-01A



REFUND

REFUND OF INPUT TAX CREDIT – SECTION 54 OF CGST ACT, 2017 READ WITH RULE 89 OF CGST RULES, 2017

CLARIFICATIONS

Clarification in respect of Goods sent / taken out of India for Exhibition or on Consignment basis for Export Promotion – CBIC Circular 108/27/2019 – CGST

Issue 1	Whether such activity of goods being sent / taken out of India for Exhibition or on Consignment basis for Export Promotion constitute as supply and whether the same is zero-rated supply?
Clarification	<ul style="list-style-type: none"> ▪ It is, accordingly, clarified that the activity of sending / <i>taking the goods out of India for exhibition</i> or on consignment basis for export promotion, EXCEPT when such activity satisfy the tests laid down in <i>Schedule I</i> of the CGST Act (hereinafter referred to as the “specified goods”), do NOT constitute <i>supply</i> as the said activity does NOT fall within the scope of Section 7 of the CGST Act as there is <i>no consideration</i> at that point in time. Since such activity is NOT a <i>supply</i>, the same cannot be considered as <i>Zero rated supply</i> as per the provisions contained in section 16 of the IGST Act.

Issue 2	Whether the refund claims can be preferred in respect of specified goods sent / taken out of India but not brought back?
Clarification	<ul style="list-style-type: none"> ▪ The activity of <i>sending / taking specified goods out of India</i> is NOT a <i>zero-rated supply</i>. That being the case, the sender of goods cannot prefer any <i>refund claim</i> when the specified goods are sent / taken out of India. ▪ The supply would be <i>deemed</i> to have taken place: <ol style="list-style-type: none"> (i) on the date of <i>expiry of 6 months</i> from the date of removal, if the specified goods are <i>neither sold nor brought back</i> within the said period; or (ii) on the date of <i>sale</i>, in respect of such quantity of specified goods which have been <i>sold abroad</i> within the specified period of <i>6 months</i>. ▪ It is clarified accordingly that the <i>sender can prefer refund claim</i> EVEN when the <i>specified goods</i> were sent / taken out of India <i>without</i> execution of a <i>bond or LUT</i>, if he is otherwise eligible for refund as per the provisions contained in <i>Section 54(3)</i> of the CGST Act read with <i>Rule 89(4)</i> of the CGST Rules (<i>Refund of Unutilized ITC</i>), in respect of zero rated supply of goods AFTER he has issued the <i>tax invoice</i>. ▪ Refund claim CANNOT be preferred under <i>Rule 96</i> of CGST Rules (<i>Refund of IGST on Payment</i>) as <i>supply</i> is taking place at a time <i>after the goods have already been sent / taken out of India</i> earlier.

	<p>Illustration: M/s ABC sends 100 units of specified goods out of India. The activity of sending / taking such specified goods out of India is not a supply. No tax invoice is required to be issued in this case but the specified goods shall be accompanied with a Delivery Challan issued in accordance with the provisions contained in Rule 55 of the CGST Rules.</p> <ul style="list-style-type: none"> ▪ If 10 units of specified goods are sold abroad say after 1 month of sending / taking out and another 50 units are sold say after 2 months of sending / taking out, a tax invoice would be required to be issued for 10 units and 50 units, as the case may be, at the time of each of such sale in accordance with the provisions contained in Section 12 and Section 31 of the CGST Act read with Rule 46 of the CGST Rules. ▪ If the remaining 40 units are not brought back within the stipulated period of 6 months from the date of removal, a tax invoice would be required to be issued for 40 units in accordance with the provisions contained in Section 12 and Section 31 of the CGST Act read with Rule 46 of the CGST Rules. ▪ Further, M/s ABC may claim refund of Accumulated ITC in accordance with the provisions contained in Section 54(3) of the CGST Act read with Rule 89(4) of the CGST Rules in respect of zero-rated supply of 60 units (NOT 100 Units).
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REFUND UNDER SECTION 55 OF CGST ACT, 2017

ELIGIBILITY OF REFUND – SECTION 55

Refund of Tax Paid on Inward Supplies	
→ Refund of Tax paid on Inward Supplies	<ul style="list-style-type: none"> (a) By Specialized Agency of <i>UNO</i> (b) By any <i>Multilateral Financial Institution and Organisation</i> notified under the United Nations (Privileges and Immunities) Act, 1947; (c) By <i>Consulate</i> or <i>Embassy</i> of Foreign Countries (d) By Other <i>Notified Persons</i> under Section 55 <ul style="list-style-type: none"> (i) <i>Canteen Stores Department</i> under Ministry of Defense is notified to claim a refund of 50% CGST / 50% IGST paid by it on all <i>inward supplies of GOODS</i> received by it for the purposes of <i>subsequent supply</i> of such goods TO Unit Run Canteens of CSD OR TO authorized customers of the CSD (ii) <i>Retail Outlets</i> established in the <i>Departure Area</i> of an <i>International Airport</i>, beyond the immigration counters, is notified to claim a refund of 50% CGST / 50% IGST paid by it on all <i>inward supplies of GOODS</i> received by it for making <i>tax free supply of goods</i> TO an Outgoing International Tourist **

**** Explanation:** For the purposes of this notification, the expression “*Outgoing International Tourist*” shall

Mean	A person <ul style="list-style-type: none"> ▪ <i>NOT</i> normally <i>resident</i> in India, ▪ who enters India for a stay of <i>NOT more than 6 months</i> for legitimate non-immigrant purposes.
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SPECIAL PROCEDURE FOR REFUND – RULE 95 TO RULE 96A OF CGST RULES, 2017

Restrictions and Conditions – Refund of Taxes to Retail Outlets established in Departure Area of an International Airport beyond Immigration Counters making Tax Free Supply to an Outgoing International Tourist

- (a) Refund outlet established in departure area of an international airport, beyond the immigration counters, supplying indigenous goods to an outgoing international tourist who is leaving India shall be eligible to claim refund of tax paid by it on *inward supply of such goods*.
- (b) Refund application to be filed in **GSTR RFD 10B** on a *monthly* or a *quarterly* basis
- (c) The *self-certified* compiled information of *invoices* issued for the *supply made* during the month or the quarter, as the case may be, along with concerned *purchase invoice* shall be submitted along with the refund application.
- (d) The refund of tax paid by the said retail outlet shall be available if
 - (i) the *inward supplies of goods* were received by the said retail outlet from a *registered person against a tax invoice*;
 - (ii) the said goods were *supplied* by the said retail outlet to an *outgoing international tourist* against *foreign exchange without charging any tax*;
 - (iii) *Name and GSTIN* of the retail outlet is mentioned in the *tax invoice* for the inward supply; and
 - (iv) such other restrictions or conditions, as may be specified, are satisfied.

CLARIFICATIONS

Clarification in respect of Refund of Taxes paid on Inward Supply of Indigenous Goods by Retail Outlets established at Departure Area of International Airport beyond Immigration Counters when supplied to Outgoing International Tourist against Foreign Exchange – CBIC Circular 106/25/2019 – CGST

Background	<p>The <i>sale of</i> indigenous goods procured from domestic market <i>by retail outlets</i> established at departure area of the international airport beyond immigration counters <i>to an outgoing international tourists</i> (“eligible passengers”) is a “supply” under GST law and is subject to levy of <i>Integrated tax</i> but the same has been <i>exempted</i>.</p> <p>The Government under <i>Section 55</i> of the CGST Act, has notified that the <i>retail outlets</i> established at departure area of the international airport beyond immigration counters shall be entitled to <i>claim refund of all applicable taxes</i> paid by them on <i>inward supplies</i> of indigenous goods received by them for the purposes of subsequent supply of goods to eligible passengers.</p>
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International Airports	International airports, house retail shops of two types (i) Duty Free Shops (“DFS”) which are point of sale for goods sourced from a warehoused licensed under Section 58A of the Customs Act, 1962 and (ii) Duty paid indigenous goods and Duty Paid Shops (“DPS”) retailing duty paid indigenous goods. Note: The above retail outlets applying for refund shall be <i>registered</i> under the provisions of <i>Section 22</i> of the CGST Act and shall have a <i>valid GSTIN</i>	
Procedure	Procurement and supply of imported / warehoused goods	The procedure for procurement of <i>imported / warehoused goods</i> is governed by the provisions contained in <i>Customs Act</i> . The procedure and applicable rules as specified under the Customs Act are required to be followed for procurement and supply of such goods.
	Procurement of indigenous goods	Under <i>GST</i> regime, there is <i>no special procedure</i> for procurement of <i>indigenous goods</i> for <i>sale by DFS or DPS</i> . Therefore, all indigenous goods would have to be procured by DFS or DPS on payment of applicable tax when procured from the domestic market and the same can be applied as refund.

Specialized Agencies notified under Section 55 of CGST Act entitled to Refund of IGST paid on Import of Goods – CBIC Circular 23/2019 – Customs

Clarification	<ul style="list-style-type: none"> ▪ Section 55 of the CGST Act provides <i>refund of taxes paid</i> on the <i>notified supplies</i> of goods and/or services <i>by notified specialized agencies</i> like <i>United Nations</i> or a specified international organisation. ▪ Section 3(7) of Customs Tariff Act, 1975 provides for a <i>parity</i> between the <i>integrated tax</i> rate attracted on <i>imported goods</i> and the <i>integrated tax</i> applicable on the <i>domestic supplies</i> of goods. Therefore, on this principle of parity, <i>specialised agencies</i> ought to get the <i>refund of the IGST paid on imported goods</i>.
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GENERAL PROCEDURE FOR REFUND – RULE 90 TO RULE 94 OF CGST RULES, 2017

Particulars	Procedure
Grant of Provisional Refund	<p>(a) The proper officer shall issue a <i>Payment Advise Order</i> in FORM GST RFD-05 for the provisional amount and the same shall be <i>electronically credited</i> to any of the bank accounts mentioned in his registration particulars and as specified in the application for refund.</p> <p>(b) Such <i>Payment Order</i> shall be issued based on <i>Consolidated Payment Advise. Central Government</i> shall disburse the <i>refund</i> based on the issued <i>Consolidated Payment Advise</i>.</p> <p>Note: The above provision is to ensure that <i>release of refund</i> by a <i>single department</i> i.e. <i>single window clearance</i> i.e. Jurisdictional Officer of CGST OR Jurisdictional Officer of SGST, as the case may be, will order for refund of CGST, SGST and IGST. And thus, assessee is not required to follow up with both Treasuries (Centre and State) for getting the refund.</p>
Final Refund Order	<p>(a) In case refund is due to the <i>applicant</i> and NOT to <i>Consumer Welfare Fund</i>, <i>refund order</i> made in FORM GST RFD-06 shall be followed by <i>Payment Advise Order</i> in FORM GST RFD-05 specifying the <i>interest</i> if any for delay in sanction of refund, which shall be <i>credited to the bank</i> account of the applicant.</p> <p>(b) In case refund is NOT due to the <i>applicant</i> and due to <i>Consumer Welfare Fund</i>, <i>refund order</i> made in FORM GST RFD-06 shall be followed by <i>Payment Advise Order</i> in FORM GST RFD-05 which shall be <i>credited to CWF</i>.</p> <p>(c) Such <i>Payment Order</i> shall be issued based on <i>Consolidated Payment Advise. Central Government</i> shall disburse the <i>refund</i> based on the issued <i>Consolidated Payment Advise</i>.</p> <p>Note: The above provision is to ensure that <i>release of refund</i> by a <i>single department</i> i.e. <i>single window clearance</i> i.e. Jurisdictional Officer of CGST OR Jurisdictional Officer of SGST, as the case may be, will order for refund of CGST, SGST and IGST. And thus, assessee is not required to follow up with both Treasuries (Centre and State) for getting the refund.</p>

CONSUMER WELFARE FUND
SECTION 57 & SECTION 58 OF CGST ACT, 2017 READ WITH RULE 97 OF
CGST RULES, 2017

Standing Comm.	Particulars
Mandatory Usage of Fund by the Committee	The Committee shall make <i>available</i> up to 50% of the funds credited to the Fund each year, for <i>publicity / consumer awareness</i> on <i>GST</i> , <i>provided</i> the availability of funds for consumer welfare activities of the Department of Consumer Affairs is not less than <i>Rs.25 Crores per annum</i> .
Recommendations to be made by the Committee	<p>The Committee shall make <i>recommendations</i>:</p> <ul style="list-style-type: none"> ➔ for making available <i>grants</i> to any applicant; ➔ for <i>investment</i> of the money available in the Fund; ➔ for making available grants (on <i>selective</i> basis) for <i>reimbursing legal expenses</i> incurred by a complainant, or class of complainants in a consumer dispute, <i>after its final adjudication</i>; ➔ for making available grants for any <i>other purpose</i> recommended by the <i>Central Consumer Protection Council</i> (as may be considered appropriate by the Committee); ➔ for making available up to 50% of the funds credited to the Fund each year, for <i>publicity / consumer awareness</i> on <i>GST</i>, <i>provided</i> the availability of funds for consumer welfare activities of the Department of Consumer Affairs is not less than <i>Rs.25 Crores per annum</i>.

MISCELLANEOUS PROVISIONS

ANIT-PROFITEERING MEASURE – SECTION 171 OF CGST ACT, 2017	
Sections	Particulars
Anti-Profiteering Measure – Section 171	Provision
	<p>→ Section 171 makes it <i>mandatory</i> that any <i>reduction in rate of tax</i> on any supply of goods or services OR the benefit of <i>input tax credit</i> shall be <i>passed to the recipient</i> by way of commensurate <i>reduction in prices</i>.</p>
	National Anti-Profiteering Authority
	<p>→ <i>National Anti-Profiteering Authority</i> is therefore being constituted by the <i>Central Government</i> to examine whether input tax credits availed by any registered person OR the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods and/or services supplied by him.</p> <p>→ The National Anti-Profiteering Authority shall be a <i>5 member committee</i> consisting of</p> <ul style="list-style-type: none"> ▪ a <i>Chairman</i> who holds or has held a post equivalent in rank to a <i>Secretary to the Government</i> of India; and ▪ <i>4 Technical Members</i> who are or have been <i>Commissioners</i> of State tax or central tax for at least <i>1 year</i> or have held an equivalent post under earlier laws. <p>→ The Authority shall cease to exist after the expiry of <i>4 years</i> from the date on which the <i>Chairman</i> enters upon his office unless the GST Council recommends otherwise.</p>
	Duties of the Authority
	<p>It shall be the <i>duty</i> of the authority</p> <p>(a) to <i>determine</i> whether the <i>reduction in tax rate</i> OR the <i>benefit of input tax credit</i> has been passed on by the seller to the buyer (hereinafter collectively referred to as 'benefit') by reducing the prices</p> <p>(b) to <i>identify the taxpayer</i> who has NOT passed on the benefit</p> <p>(c) to <i>order</i></p> <ul style="list-style-type: none"> ▪ <i>reduction</i> in prices ▪ <i>return to the recipient</i>, an amount equivalent to the amount NOT passed on by way of commensurate reduction in prices <i>along with interest @ 18% p.a.</i> from the <i>date of collection of the higher amount</i> till the <i>date of the return</i> of such amount or recovery of the amount not returned, as the case may be. ▪ If the <i>eligible person</i> does <i>not claim return</i> of the amount OR is <i>not identifiable</i>, then the <i>registered person</i> shall deposit 50% in <i>Central</i>

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Praveen Jain

CWF and 50% in *Concerned State CWF* with *interest @ 18% p.a.* from the *date of collection of the higher amount* till the *date of deposit*.

Note: Concerned State means the State *or Union Territory* in respect of which Authority passes the order.

- imposition of *penalty*
 - *cancellation* of registration
- (d) to furnish a *performance report* to the *GST Council* by the *10th of the month succeeding each quarter*

Process followed by the Authority

APPLICATION – SCREENING COMMITTEE & STANDING COMMITTEE

➔ *All applications from interested parties* on issues of local nature shall first be examined by the *State Level Screening Committee*.

Screening Committee will receive applications relating to issues of *local nature* OR as *forwarded by the Standing Committee*. *Screening Committee* shall examine the application and give its recommendations within *2 months* from the date of receipt of a written application, or within such extended period not exceeding a further period of *1 month* for *reasons* to be recorded in writing as may be allowed by the *Authority*

On being satisfied that the supplier has not passed on the benefit, the *Screening Committee* will *forward the application with its recommendations* to the *Standing Committee* on Anti-profiteering.

➔ *Standing Committee* to examine the adequacy and accuracy of evidence of the application made within *2 months* or within such extended period not exceeding a further period of *1 month* for reasons to be recorded in writing as may be allowed by the *Authority*

If the *Standing Committee* is satisfied that there is a *prima facie evidence* to show that the supplier has not passed on the benefit, it shall refer the matter to the *Director General of Anti-Profiteering* for a detailed investigation.

Note: Interested Party includes:

- (a) *Suppliers* of goods or services *under the proceedings*; and
- (b) *Recipients* of goods or services *under the proceedings*;
- (c) *Any other person* alleging that a *registered person has not passed on the benefit* of reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices

INVESTIGATION – DIRECTOR GENERAL OF ANTI-PROFITEERING (DG ANTI-PROFITEERING)

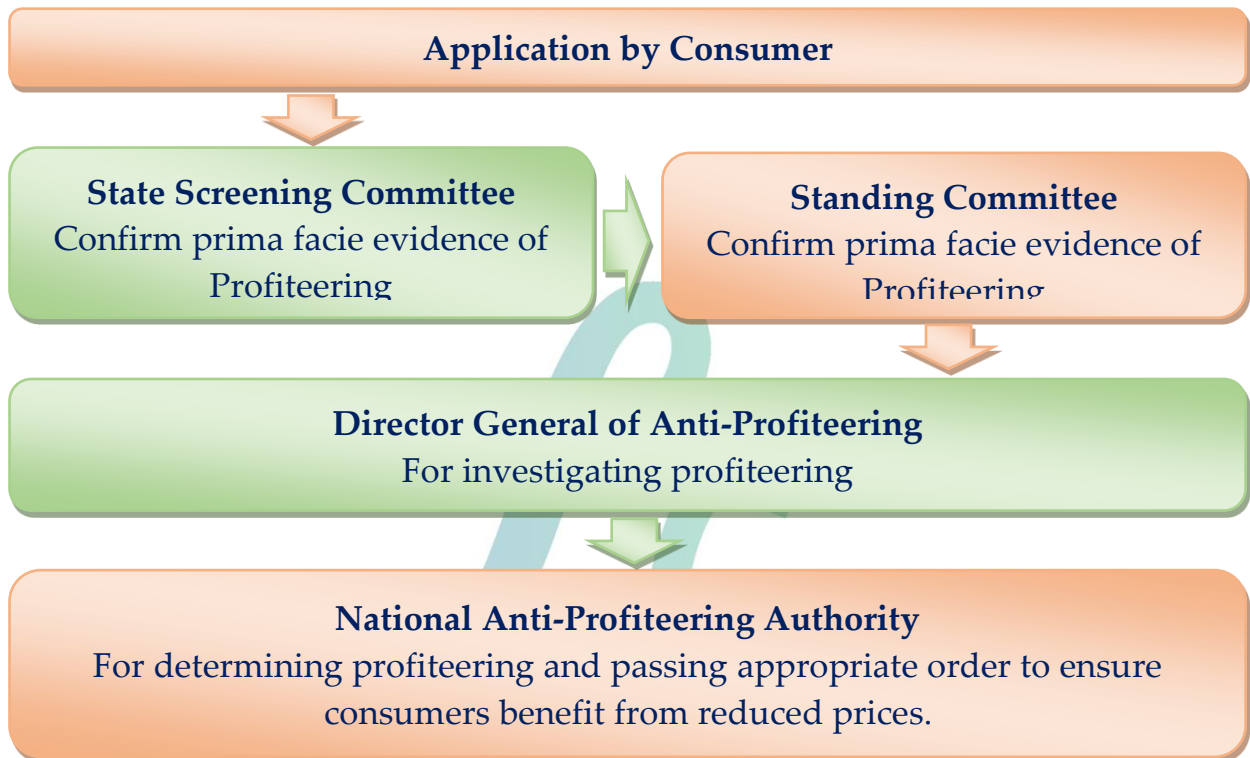
- ➔ DG Anti-Profiteering shall conduct investigation and collect evidence necessary to determine *undue profiteering* and *before initiation* of the investigation, issue a *notice to the interested parties* (and to such other persons as deemed fit for a fair enquiry into the matter).
- ➔ The evidence or information presented to the DG Anti-Profiteering by *one interested party* can be made *available to the other interested parties*, participating in the proceedings. The evidence provided will be kept *confidential* and the provisions of *Section 11 of the Right to Information Act, 2005*, shall apply mutatis mutandis to the disclosure of any information which is provided on a confidential basis.
- ➔ DG Anti-Profiteering can seek *opinion of any other agency or statutory authorities* in the discharge of his duties.
- ➔ DG Anti-Profiteering will complete the investigation within a period of *6 months or within such extended period not exceeding a further period of 3 months* for reasons to be recorded in writing as allowed by the *Authority*.
- ➔ Upon completion of the investigation, the *DG Anti-Profiteering* will furnish to the *Authority*, a report of its findings along with the relevant records.

Note: *Authority* or DG Anti-Profiteering, or an officer authorised by him will have the *power to summon* any person either to give evidence or to produce a document or any other thing. They shall also have same powers as that of a *civil court* and every such inquiry will be *deemed to be a judicial proceeding*.

ORDER – NATIONAL ANTI-PROFITEERING AUTHORITY (AUTHORITY)

- ➔ Authority shall, within a period of *6 months* from the date of the receipt of the report from the *DG Anti-profiteering* determine whether a *registered person* has passed on the *benefit*.
- ➔ An *opportunity of hearing* shall be granted to the *interested parties* by the Authority where any *request* is received in writing from such interested parties.
- ➔ *Authority* may seek the *clarification*, if any, from the *DG Anti-Profiteering* on the report submitted by it.
- ➔ Where the Authority determines that a registered person has not passed on the benefit, the Authority may order-
 - (a) *reduction in prices*;
 - (b) *return to the recipient*, the benefit amount not passed on along with *interest*;
 - (c) *deposit* 50% in Central CWF and 50% in Concerned State CWF, the benefit amount not passed on along with *interest*, where *eligible person* does *not claim return* of the amount OR is *not identifiable*

	<p>(d) imposition of <i>penalty</i> as specified under the Act; and (e) <i>cancellation of registration</i> under the Act.</p> <p>→ If the Authority is of the view that a person has <i>violated</i> the provisions of <i>Section 171 other than those covered by report</i> of DG Anti-Profiteering, the Authority can within <i>6 months</i> direct <i>DG Anti-Profiteering</i> to cause <i>investigation</i> in accordance with the provisions of the Act / Rules. Such investigation shall <i>deemed</i> to be <i>new investigation</i>.</p>
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CUSTOMS

LEVY OF CUSTOMS

SPECIAL CHARGING SECTION – RE-IMPORTATION OF GOODS – SECTION 20 READ WITH NN 45/2017-CUSTOMS

Clarification regarding applicability of Notification No. 45/2017-Customs on Goods which were exported earlier for exhibition purpose / consignment basis – CBIC Circular 21/219 – Customs

Clarification	<ul style="list-style-type: none"> ▪ It has clarified vide Circular No. 108/27/2019-GST that the activity of sending / taking the specified goods (i.e. <i>goods sent / taken</i> out of India for <i>exhibition</i> or on consignment basis for <i>export promotion</i> except the activities satisfying the tests laid down in Schedule I of the CGST Act, 2017) out of India do <i>not constitute supply</i> within the scope of <i>Section 7</i> of the CGST Act as there is <i>no consideration</i> at that point in time. Since such <i>activity is not a supply</i>, the same <i>cannot</i> be considered as '<i>zero rated supply</i>' as per the provisions contained in <i>Section 16</i> of the IGST Act, 2017. Also, there is <i>no requirement</i> of filing any <i>LUT/bond</i> as required under <i>Section 16</i> of IGST Act, 2017 for such activity of taking specified goods out of India. ▪ Therefore, <i>no integrated tax</i> is required to be paid for specified goods at the time of <i>taking these out of India</i>, the activity being not a supply, hence the situation of <i>NN 45/2017-Customs (goods exported under bond without payment of integrated tax)</i> requiring <i>payment of IGST at the time of re-import</i> of specified goods in such cases is <i>not applicable</i>. ▪ It is clarified that such cases will fall more appropriately under <i>residuary entry</i> of the said Notification and thus the <i>exemption</i> is available <i>without any conditions</i>. ▪ Further, this <i>clarification</i> is also applicable to cases where <i>exports</i> have been made to <i>related or distinct persons</i> or to <i>principals or agents</i>, as the case may be, for <i>participation in exhibition</i> or on consignment basis, but, such goods exported are <i>returned after participation</i> in exhibition or the goods are returned by such consignees <i>without approval or acceptance</i>, as the case may be, the basic requirement of 'supply' as defined cannot be said to be met as there has been no acceptance of the goods by the consignees. Hence, <i>re-import of such goods after return from such exhibition</i> or from such consignees will be covered under <i>residual entry</i> of the <i>NN 45/2017-Customs</i>, provided <i>re-import</i> happens before <i>6 months</i> from the date of delivery challan.
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FOREIGN TRADE POLICY

DEEMED EXPORTS

<p>Exemption and Remission Scheme for Deemed Exports</p>	<p>Deemed exports shall be eligible for all / any of the following benefits subject to specified terms and conditions):</p> <p>(i) Advance Authorization / AA for Annual Requirement / DFIA (Duty free procurement of Inputs): Exemption from Customs Duties on inputs used in manufacture and supply of Deemed Exports category on basis of AA / DFIA.</p> <p>(ii) Deemed Export Duty Drawback (Duty paid procurement and subsequent refund): DBK in form of BCD on inputs used in manufacture and supply of Deemed Exports category shall be given on Brand Rate basis upto submission of documents evidencing actual payment of BCD.</p> <p>However, DGFT has amended the said provision and provided that refund of drawback on the inputs used in manufacture and supply under the deemed exports category can be claimed</p> <ul style="list-style-type: none"> ▪ on '<i>All Industry Rate</i>' of Duty Drawback Schedule notified by Department of Revenue from time to time provided <i>no CENVAT credit</i> has been availed by supplier of goods on excisable inputs OR ▪ on '<i>Brand Rate basis</i>' upon submission of documents evidencing actual payment of basic custom duties.
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