

Walk-through of **GST** Law and Commentary with Analysis and Procedures

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Set of 4 Volumes

 **A2Z TAXCORP LLP**
Tax and Law Practitioners

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Detailed discussion on each topic and sub-topics therein for complete understanding and conceptual clarity

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Step by step discussion on each topic for better understanding

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“ Complete guidance on
implementation and way
forward for all the newly
introduced concepts in GST
(Such as Appellate Tribunal) ”

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“ Detailed analysis of all the procedures of GST - registration, payment, refund, returns etc., with practical case studies ”

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Complete updated Bare Act for
easy and quick reference

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► **Judicial outlook on 'quid pro quo':**

While differentiating tax and fee it was observed, "A tax is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment for services rendered. The second characteristic of tax is that it is an imposition made for public purpose without reference to any special benefit to be conferred on the payer of the tax. This is expressed by saying that the levy of tax is for the purposes of general revenue, which when collected forms part of the public revenue of the State. As the object of a tax is not to confer any special benefit upon any particular individual, there is **no element of 'quid pro quo' between the tax payer and the public authority**" - Hon'ble SC in *The Commissioner, Hindu v. Sri Lakshmindra Thirtha Swamiar* [1954 SCR 1005].

CESTAT, Bangalore in *Anheuser Busch Inbev India Ltd. v. Commr. of Central Tax, Bengaluru North West* [2021 (52) G.S.T.L. 429 (Tri. - Bang.)) noted that the commissioner wrongly considered export pass fee and import fee paid by appellant to State Excise Department and various other Government Departments/agencies as having an element of a quid pro quo in it thus, no service tax chargeable.

No quid pro quo exists when donation is made

No quid pro quo when assessee neither undertakes nor proposes to undertake any supply of goods or services or both to the donor in respect of the donation received from the donor. Hence, there is no supply in terms of sec. 7(1) of the CGST Act - AAR, Karnataka in *Re: M/s. Mercara Downs Golf Club* [KAR ADRG 29/2022 dated 12.08.2022].

Reciprocity is mandatory for consideration

In the absence of reciprocal enforceable obligations, it would not be correct to characterise the transaction as a 'supply' for 'consideration', because the compensation liable to be paid does not acquire the character of consideration so as to make the transaction a supply - Bombay HC in *Bai Mamubai Trust v. Suchitra* [2019 (31) G.S.T.L. 193 (Bom.)].

Fee paid to government agency for certain benefits, to be included in the taxable value

Government agency collecting fee from license holders for providing right of passage and continued maintenance of supplies qualifies as supply of services and the fee paid by the license holder qualifies as consideration under the GST law as there is quid pro quo between the license holder and the government agency. Hence, such fee to be included in the taxable value - AAAR, Uttarakhand in *Re: Purewal Stone Crusher* [Order No. UK/AAAR/03/2018-19 dated 21.01.2019].

► **Departmental clarification:**

Circular no. 116/35/2019-GST dated 11.10.2019 (relevant extract):

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 from individual donors

Individual donors provide financial help or any other support in the form of donation or gift to institutions such as religious institutions, charitable organisations, schools, hospitals,



Topic-wise legal jurisprudence
and all Departmental
clarifications for one-point of
complete reference



Circular no. 85/04/2019- GST dated 01.01.2019 (relevant extract):

Clarification on GST rate applicable on supply of food and beverage services by educational institution

- 2.1 Accordingly, it is clarified that **supply of food and beverages by an educational institution to its students, faculty and staff, where such supply is made by the educational institution itself, is exempt** under notification no. 12/2017-central tax (Rate) dated 28.06.2017, vide Sl. No. 66 w.e.f. 01-07-2017 itself. **However, such supply of food and beverages by any person other than the educational institutions based on a contractual arrangement with such institution is leviable to GST@ 5%.**

GST on service supplied by restaurants through e-commerce operators

The GST Council in its 45th meeting recommended to notify 'Restaurant Service' under sec 9(5) of the CGST Act. Accordingly, the tax on supplies of restaurant service supplied through e- commerce operators shall be paid by the e-commerce operator. In this regard notification no. 17/2021- central tax (rate) dated 18.11.2021 has been issued and clarified vide circular no. 167/23/2021-GST dated 17.12.2021.

For detailed discussion refer to chapter 8 in Taxable Person in GST.

Circular no. 177/09/2022- TRU dated 03.08.2022 (relevant extract):

Clarifications regarding applicable GST rates & exemptions on certain services

3. Rate of GST applicable on supply of ice-cream by ice-cream parlors during the period from 01.07.2017 to 05.10.2021

- 3.1 On the recommendation of the GST Council in its 45th meeting, it was clarified vide circular 164/20/2021-GST dated 06.10.2021 that ice cream parlours sell already manufactured ice-cream and they do not have a character of a restaurant and hence, ice cream sold by a parlour or any similar outlet attracts standard rate of GST @ 18% with ITC.
- 3.2 Representations have been received requesting that GST at 18% may be levied on supply of ice-cream by ice-cream parlors with effect from 06.10.2021.

It has been represented that ice cream parlors which paid GST @ 5% without ITC in view of prevailing doubt before the issuance of the Circular dated 6.10.2021 did not avail ITC and paid 5% in cash. Such ice-cream parlors have thus foregone significant ITC benefit.

- 3.4 Considering the overall circumstances of the case, it is clarified that past cases of payment of GST on supply of ice-cream by ice-cream parlors @ 5% without ITC shall be treated as fully GST paid to avoid unnecessary litigation. Since the decision is only to regularize the past practice, no refund of GST shall be allowed, if already paid at 18%. With effect from 6.10.2021, the ice Cream parlors are required to pay GST on supply of ice-cream at the rate of 18% with ITC.**

“

All clarifications summarised
topic-wise

”

No Service Tax on liquidated damages recovered for not adhering to time limits mentioned in contract

No service tax is to be imposed on liquidated damages recovered for not adhering to time limits mentioned in the contract as the same would not be covered in 'Declared Services' mentioned under sec 66E(e) of the Finance Act- CESTAT, Chennai in *Neyveli Lignite Corporation Ltd. v. Commissioner of Customs, Central Excise & Service Tax, Chennai* [Final Order No. 41702-41706 of 2021 in ST Appeal Nos. 41666, 41747 of 2016 & Ors., dated 26.07.2021].

Author's Note:

In our view, the levy of GST on recovery of compensation/penalty/damages depends upon the "test of supply" i.e., one has to satisfy that recovery of compensation/penalty/damages in itself is a supply, then only GST could be levied on it in terms of the insertion of sub-clause (1A) in sec 7 of the CGST Act read with omission of sub-sec (d) of sec 7(1) of the CGST Act (vide CGST Amendment Act, 2018).

The Schedule II of the CGST Act is confined to define as to what constitute supply of goods or supply of services and does not defines supply per se. Schedule II of the CGST Act has to be read along with sec 7 of the CGST Act, which means if an activity does not constitute a "supply" in itself as per sec 7(1) of the CGST Act, mere coverage of the same under the entry Schedule II *ibid* cannot make it liable to GST.

Further, there is no positive act of supply of services between the parties and there is no agreement between the parties to cause loss or damage by breaching terms and conditions of an agreement for a consideration. The expression 'to tolerate an act' relates to situations where a person commissions another person to do or commit a particular act for a consideration. The payment of damages is a condition of contract and not a consideration for any service in the nature of forbearance or tolerating an act.

This view is endorsed by the circular no. 178/10/2022-GST dated 03.08.2022, issued w.r.t. taxability of an activity or transaction as the supply of service of agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act, which clarified the GST applicability on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law.

Taxability of amount received in settlement of dispute/ arbitration award

AAR, Maharashtra in *Re: North American Coal Corporation India Pvt. Ltd.* [2018 (18) G.S.T.L. 525 (A.A.R. - GST)], has held that receipt of consideration by the applicant based on the final award of the International Chamber of Commerce (ICC) would qualify as supply of service as per para 5(e) of schedule II read with sec 7(1) of the CGST Act & the value of supply of services will be actual liquidated damages cum consideration as decided and pronounced in the award administered by ICC.

Note: Here also, the amount received by way of settlement of dispute/ arbitration award may not fall within the definition of supply in view of retrospective amendment in sec 7(1)(d) and (1A) of the CGST Act as discussed *supra*.

► Departmental clarification:

S. No. 1 of para 2.3.2 of the Service Tax Education Guide

Amount received in settlement of dispute – whether consideration of service?

“Topic wise discussion on pre-GST settled legal jurisprudence with Author's Note on its implications and applicability in GST regime”

wherein view taken was that no tax is leviable under the IGST Act, on ocean freight for services provided by a person located in a non-taxable territory by way of transportation of goods on a vessel from a place outside India upto Customs station of clearance in India. Notification impugned in this writ petition has been declared unconstitutional by the judgment. A point of law stands decided by a Division Bench of Gujarat HC and the challenge appears to be covered thereby.

Landmark Judgment of SC to end all such disputes:

No IGST under RCM on ocean freight paid for CIF import

Hon'ble SC, in the case of *Union of India v Mohit Minerals Pvt. Ltd.* [2022 (61) G.S.T.L. 257 (S.C.)], held that:

- The importer of goods will be considered as the recipient as he is the ultimate beneficiary even though shipping service is provided by foreign shipping line to foreign exporter in CIF contract
- The supply of services provided by the foreign shipping line to the foreign exporter in a CIF contract, would necessarily be "made" to the Indian importer, who would then be considered as a "recipient" under the definition of sec 2(93)(c) of the CGST Act.
- The assessee is liable to pay IGST on the 'composite supply', comprising of supply of goods and supply of services of transportation, insurance, etc. in a CIF contract. If there is a separate levy on the assessee for the 'supply of services' by the shipping line would be in violation of sec 8 of the CGST Act. It would amount to double taxation.
- With regard to the validity of the said entry of the impugned *notification no. 10/2017- integrated tax (rate) dated 28.06.2017*, it was held that it clearly specifies a taxable person who is liable to pay a reverse charge that is envisaged in the statute. Thus, the impugned notifications cannot be invalidated for an alleged failure to identify a taxable person.

Hence, there cannot be a levy of IGST separately on the component of ocean freight paid by the foreign seller to the foreign shipping line.

Author's Note:

The above decision of Hon'ble SC is indeed an applaudable judgement, which provides much awaited respite to importers facing double taxation on CIF imports. This judgement is an important and a positive development towards the contentious issues of the levy of IGST on ocean freight services.

It is to be noted that Hon'ble SC has given judgement only in case of import under CIF(Cost, Insurance and Freight) basis wherein foreign exporter paid freight to the foreign shipping company. However, in case of import under FOB (Free on Board) basis, RCM is still applicable as importer will pay freight directly to the foreign shipping company.



Complete coverage of all
landmark judgments of
pre-GST regime with their
corresponding implications
in GST regime



- M/s ABC is a trader engaged in supplying confectionery items in Delhi having a yearly turnover of approx. INR 30-35 lakhs. The firm makes purchases from a supplier based in Haryana. Here, M/s ABC is eligible for composition levy as there is no bar on inter-state procurements.

► **For the period 01.07.2017 to 31.12.2020:**

Prior to the amendment made vide the Finance Act, 2020 made effective vide *notification no. 92/2020- central tax dated 22.12.2020* w.e.f. 01.01.2021, there was no mention of inter-state supply of **services** for rendering a taxable person to be ineligible for opting composition.

Examples:

M/S ABC Ltd. based out in Delhi sells as well as repairs watches. He repairs watch of a client based in Haryana.

► **For the period 01.07.2017 to 31.12.2020:**

M/s ABC is eligible to opt composition scheme as inter-state supply of service is not barred, provided other conditions are fulfilled.

► **W.e.f. 01.01.2021:**

M/s ABC is ineligible to opt composition scheme as inter-state supply of goods as well as services are barred for opting composition scheme, even if other conditions are fulfilled.

10.4.4 Supplies through e-commerce operator

► **w.e.f. date yet to be notified:**

- (d) who is engaged in making any **supply of services through an electronic commerce operator** who is required to collect tax at source under sec 52 of the CGST Act.

► **For the period 01.01.2021 till the date yet to be notified**

- (d) who is engaged in making any **supply of goods or services through an electronic commerce operator** who is required to collect tax at source under sec 52 of the CGST Act.

► **For the period 01.07.2017 to 31.12.2020:**

- (d) who is engaged in making any supply of **goods** through an electronic commerce operator who is required to collect tax at source under sec 52 of the CGST Act.

The GST Council in its 47th meeting, recommended to facilitate e-commerce for micro enterprises, and to allow unregistered suppliers and composition taxpayers to make the intra-state supply of goods through e-commerce operators such as Amazon, Flipkart etc., subject to certain conditions.

“

Period-wise bifurcation of provisions for easy digest

”

11.3.1.4 Multiple examples for utilization of credit: Pre Vs. Post amendment

Example 1:

Pre-amendment: Prior to 01.02.2019

Output liability		Input Tax Credit			To be paid in cash
		CGST	SGST	IGST	
		1,00,000	1,00,000	1,00,000	
IGST	1,20,000	(10,000)	(10,000)	(1,00,000)	NIL
CGST	90,000	(90,000)			NIL
SGST	90,000		(90,000)		NIL
ITC balance		NIL	NIL	NIL	

Notes:

- For payment of tax on account of IGST, CGST and SGST, firstly ITC on account of IGST, CGST and SGST respectively, shall be utilized.
- Remaining payment on account of IGST (INR 20,000) has been made by firstly utilizing leftover of CGST credit and then from leftover of SGST credit.

Post-amendment: W.e.f. 01.02.2019

Output liability		Input Tax Credit			To be paid in cash
		CGST	SGST	IGST	
		1,00,000	1,00,000	1,00,000	
IGST	1,20,000	(10,000)	(10,000)	(1,00,000)	NIL
CGST	90,000	(90,000)			NIL
SGST	90,000		(90,000)		NIL
ITC balance		NIL	NIL	NIL	

Note: There is no change in example 1 before and after amendment.

“ Practical examples on all important topics - Pre Vs. Post amendment to provide clarity while ensuring comparative analyses and its implications ”

Therefore, the facility to avail ITC in respect of invoices or debit notes, the details of which were not furnished by the suppliers in GSTR-1 or **using the invoice furnishing facility**, as the case maybe, were further **restricted to only 5% of the total eligible credit**.

Relaxation for period April, May and June 2021:

Vide notification no. 13/2021-central tax dated 01.05.2021 as amended by notification no. 27/2021-central tax dated 01.06.2021, a second proviso is inserted under rule 36(4) to provide that the said condition of ITC capping of 5% shall apply cumulatively for the period April, May and June 2021 and the return in **Form GSTR-3B** for the tax period June, 2021 or quarter ending June 2021 shall be furnished with the **cumulative adjustment of ITC** for the said months/ quarter in accordance with the condition above.

The above relaxation is provided amidst outbreak of Covid- 19 pandemic across the country.

Examples to understand ITC availment pre and post insertion of capping limit

Example 1: Prior to insertion of capping limit

ABC Pvt. Ltd. has made certain purchases (say 1000 no. of purchase invoices) in the month of September 2021. Let us assume that corresponding GST paid on the purchases is INR 20 lakhs, out of which INR 2 lakh is ineligible credit u/s 17(5).

ABC Ltd. can avail the entire eligible credit of INR 18 lakhs (INR 20 lakhs – INR 2 lakhs) in **Form GSTR-3B** filed for the month of September 2021 in October 2021.

Example 2: After insertion of capping limit (Assume October 2021 - 5%)

ABC Pvt. Ltd. has made certain purchases (say 1000 no. of purchase invoices) in the month of October 2021. Let us assume that corresponding GST paid on the purchases is INR 20 lakhs, out of which INR 2 lakh is ineligible credit u/s 17(5). Further, details w.r.t invoices appearing in GSTR-2A along with calculation of ITC that can be availed in October 2021 is given as under:

October 2021				
Particulars	Invoices (in nos.)	Eligible ITC (in INR)	Ineligible ITC (in INR)	ITC Claimable (in INR)
Invoices appearing in Form GSTR-2A (on 11.11.2021)	800	14,00,000	2,00,000	14,00,000
Invoices not appearing in GSTR-2A (on 11.11.2021)	200	4,00,000	-	70,000 (5% of 14,00,000 or 4,00,000)

“

Numerical examples to explain computations of eligible and ineligible ITC

”

Situations where ITC of goods or services for construction of immovable property is available:

- When supplied for construction of immovable property but not on own account/ own use
- When the value of goods or services used for re-construction, repairs etc. of immovable property, is not capitalised in the books of account of the recipient

Various case studies on ITC of goods or services for construction of immovable property

To better understand implications of clause (d) of sec 17(5) of the CGST Act, let us apply the same in various business scenarios as under:

Business transaction	Availability of ITC	Remarks
M/s Ajay constructions received a big order for construction of mall in Mumbai. They procured various goods like cement, steel etc., on which GST is charged.	✓	M/s Ajay constructions can avail ITC of GST paid on goods as construction of immovable property is not on their own account.
XYZ Ltd. purchased tiles for constructing its registered office in Delhi. The supplier charged GST on invoice raised to XYZ Ltd.	✗	Blocked credit in GST as goods purchased for construction of immovable property on own account.
XYZ Ltd. purchased tiles for getting renovation of its registered office in Delhi. The supplier charged GST on invoice raised to XYZ Ltd. Value of tiles was shown as revenue expense in books of account of XYZ Ltd.	✓	ITC available as not capitalised in the books of accounts and only restriction lies for re-construction, renovation, additions or alterations or repairs to immovable property, to the extent of capitalisation.
M/s ABC purchased cement for constructing foundation of pillars supporting the machinery and paid GST charged thereupon.	✓	ITC available as this case falls under construction of plant & machinery, which includes foundation or structural support.
M/s ABC purchased steel for setting up a telecommunication tower and paid GST charged thereupon.	✗	Blocked credit as definition of plant & machinery excludes telecommunication tower.

“ Pre Vs. Post amendment case studies on each item of the blocked credit list - one of the crucial item while examining eligible GST ITC ”

Subsidies

- Any subsidy, whether given by the Central or State Government(s), will not be included in consideration.
- Therefore, any subsidies from any other persons i.e., private parties, etc. will form part of consideration if it is in relation to supply of goods or services or both.

Nexus with supply

- Consideration can also flow from any other person who is not the recipient of the goods/services. But, the phrase “*in respect of, in response to, or for the inducement of*” means there must be a direct link between the supply and the consideration.

Detailed explanation as to meaning and scope of term ‘consideration’ is discussed in chapter 5 dealing with taxable event – supply.

Types of consideration

Importantly, it is to be noted that definition of ‘consideration’ is not just restricted to the amount paid in money form but extends also to cover in-kind consideration. Accordingly, types of consideration can be summarised as under:

Monetary consideration which includes currency, cheque, promissory note, letter of credit, draft, pay order, traveller’s cheque, money order, postal remittances, vouchers & coupon cards and other similar instruments but does not include currency which is held for its numismatic value.

Non-monetary consideration which includes goods or services supplied as payment, for example in a barter (including part exchange) and in the case of services, this may include giving up a right, refraining from doing something or agreeing to tolerate an act, etc.

12.3 BASIS OF VALUATION IN GST REGIME – TRANSACTION VALUE

Chargeable sec 9 of the CGST Act¹ states that “*there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates.....*”.

15. Value of taxable supply.

- (1) *The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.*
- (2) *The value of supply shall include—*

¹ Similar provisions are also contained under sec 7 of the UTGST Act, sec 5 of the IGST Act and corresponding provisions under the respective states’ GST Act.



Detailed commentary on each sub-topics for complete clarity



However, w.e.f. 01.03.2020, a uniform rate of 28% is made applicable on the supply of lottery supplied by State Government, Union Territory or any local authority to lottery distributor or selling agent and the RCM is applicable on such supply of lottery.

12.7.1.1 Taxability in case of lottery, betting, gambling, horse racing, online gaming etc.

While drawing reference from rate notifications to determine applicable rate of GST on actionable claim in the form of chance to win in betting, gambling or horse racing in a race club, for which valuation principles are contained in rule 31A of the CGST Rules, it can be observed that both 'goods' and 'services' rate notification covers these activities in the following manner:

- **Supply of goods** - Notification no. 01/2017 - central tax (rate) dated 28.06.2017/ notification no. 01/2017-integrated tax (rate) dated 28.06.2017

Schedule - IV (CGST + SGST/UTGST or IGST @ 28%)		
229	Any Chapter	Actionable claim in the form of chance to win in betting, gambling, or horse racing in race club

Note: Entry 229 was inserted vide notification no. 6/2018 - central tax (rate) dated 25.01.2018/ notification no. 7/2018 - integrated tax (rate) dated 25.01.2018.

- **Supply of services** - notification no. 11/2017 - central tax (rate) dated 28.06.2017/ notification no. 8/2017-integrated tax (rate) dated 28.06.2017.

Sl No	Chapter, Section or Heading	Description of Service	Rate*
34	Heading 9996 (Recreational, cultural and sporting services)	(iv) Services provided by a race club by way of totalisator or a license to bookmaker in such club.	28%
		(v) Gambling.	28%
		(vi) Recreational, cultural and sporting services other than (i), (ii), [(iia)]** (iii), [(iia).]*** (iv) and (v) above.	18%

*Rates are total of CGST + SGST/UTGST or IGST

**Inserted vide notification no. 27/2018-central tax (rate) dated 31.12.2018 w.e.f. 01.01.2019

***Inserted vide notification no. 01/2018 - central tax (rate) dated 25.01.2018

With the above anomalies, there can be confusion as to whether actionable claim in the form of chance to win in betting, gambling or horse racing in a race club are supply of 'goods' or 'services' and what should be applicable tax rate thereupon. Thus, clarity in this regard is required.

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Complete coverage on Industry specific topics creating lot of hue and uproar in market

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Author's Note:

The taxability of vouchers has always been in cloudiness in the GST regime as well as in the Service Tax regime. Thus, the above judgment has provided much-needed clarity to the taxpayers and businesses.

Ideally, vouchers have no intrinsic value of their own and are merely an instrument which are accepted as consideration for supply of underlying goods or service. Even rule 32(6) of the CGST Rules, affirms the view that a voucher derives its value from the underlying goods or services redeemable against them.

It would be interesting to see the fate of these ruling and judgment, where the same are challenged before higher judicial forums.

It is for the benefit of entire trade that the CBIC must come out with appropriate clarification in this regard, as per the judgment of the Karnataka HC in Premier Sales (supra), holding that vouchers are in the nature of pre-paid instruments, are neither goods nor services and ruling passed by the AAAR Tamil Nadu in the matter of *Kalyan Jewellers India Ltd. (supra)* holding that, Prepaid Payment Instruments fall under the definition of actionable claims hence it is neither a supply of goods nor supply of services.

In this regard the Hon'ble SC in *Sodexo Svc India Private Limited v. State of Maharashtra & Others* [2016 (331) E.L.T. 23 (SC)] had also held that the vouchers are not goods.

Moreover, Delhi HC in *Union of India v. Delhi Chit Fund Association [W.P. (C) 4512/2012, dated 23.4.2013]* had held that, a mere transaction in money represents the gross value of the transaction. But what is chargeable to service tax is not the transaction in money itself, since it can by no means be considered as a service.

It is pertinent to note that, if the vouchers are considered as an instrument for payment that means, the same are covered under the definition of 'Money' under the CGST Act, which is specifically excluded from the definition of both "Goods" and "Services" and hence not chargeable to GST. Further, in the service tax regime also, the definition of 'Money' was essentially same as under the CGST Act.

Therefore, there should not be any GST implications on the issuance of vouchers in the nature of pre-paid instruments.

For details and practical examples, refer chapter 14 on time of supply

12.7.7 Value of supply in cases where Kerala Flood Cess is applicable**Introduction**

Kerala Flood Cess was levied to raise the fund required for re-construction of state after the devastating flood occurred in the state during August 2018. Kerala Flood Cess was applicable from 01.08.2019 onwards as per notification no. S.R.O. 436/2019 dated 29.06.2019 for a period of two years (i.e., till 29.06.2021). Kerala Flood Cess is imposed @ **1%** on the value of supply of goods or services or both coming under Schedule II, III & IV of SRO. No. 360/2017 dated 30.06.2017. But in the case of goods coming under Fifth Schedule of SRO. No. 360/2017 (gold, diamond etc.), the Kerala Flood Cess was applicable at the rate of 0.25%.

“ Author's Note section discusses legal validity of AAR, AAAR and various judgments in the light of GST law & Rules and suggests way forward ”



Let's analyse and understand the provision for determination of time of supply in this case with the following multiple situations matrix:

Case	Last date to issue invoice	Date of invoice	Date of receipt of payment	Time of supply
Case I	12.06.2021	12.06.2021	50% advance on 29.05.2021;	12.06.2021
			Balance 50% on 01.07.2021	
Case II	12.06.2021	30.05.2021	50% advance on 29.05.2021;	30.05.2021
			Balance 50% on 01.07.2021	
Case III	12.06.2021	02.07.2021	50% advance on 29.05.2021;	12.06.2021
			Balance 50% on 01.07.2021	

Notes:

Case I: Time of supply would be earliest of date of invoice or last date to issue invoice i.e. 12.06.2021 for complete 100% amount, since advance received is not liable to GST for supply of goods w.e.f. 15.11.2017 for **all registered persons** (except composition supplier) vide *notification no. 66/2017- central tax dated 15.11.2017*.

Case II: Time of supply would be earliest of last date to issue invoice or date of invoice i.e. 30.05.2021 for complete 100% amount, since advance received is not liable to GST for supply of goods w.e.f. 15.11.2017.

Case III: Time of supply would be earliest of date of invoice or last date to issue invoice i.e. 12.06.2021 for complete 100% amount, since advance received is not liable to GST for supply of goods w.e.f. 15.11.2017.

It may be noted that scenario of issuing invoice on 02.07.2021, may not be practically feasible as copy of invoice is required for transportation of goods and also for generating e-way bill. Further, there would be penalty for not issuing invoice within stipulated time period which may extend to an amount upto higher of INR 20,000/- (totalling under the CGST & SGST/UTGST Act) or amount equivalent to tax evaded under sec 122(1) of the CGST Act (read with respective state GST Act).



Learn GST while enjoying these pictorial illustrations and multiple dates matrix to test your learning



Example 2:

Suppose in the above example, Moon Pvt. Ltd. received order for supply of goods worth INR 2,00,000/- from Sun Ltd. of Japan, but it is mentioned that goods may directly be supplied to the Sun Ltd.'s client site in Bangalore. Accordingly, Moon Pvt. Ltd. supplied goods in Bangalore on behalf of Sun Ltd. of Japan. In this case, supply of goods by Moon Pvt. Ltd. to Sun Ltd. will not qualify as export of goods since, goods are not taken out of India.

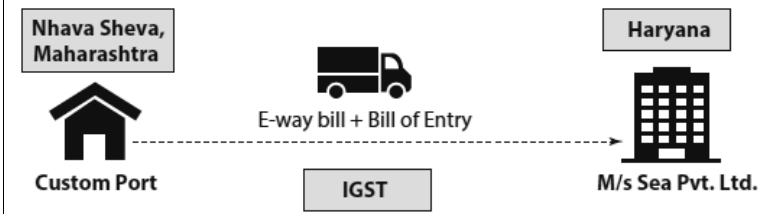
Case studies to understand place of supply in case of import of goods & registration requirement in the state of port

M/s Sea Pvt. Ltd. of Haryana, India imported 100 pcs of goods from M/s Sun Ltd. of Japan. The goods are received at Nhava Sheva, Maharashtra. Let us assume following multiple scenarios to understand place of supply, requirement of registration and e-way bill:

Example 1:**Goods are cleared from customs and brought back to place of business of M/s Sea Pvt. Ltd. i.e. Haryana:**

This is a case of import of goods by M/s Sea Pvt. Ltd. as goods are brought into India from a place outside India. As per sec 11(a) of the IGST Act, in case of import of goods, place of supply shall be the location of importer i.e. Haryana in this case. Accordingly, IGST shall be levied in addition to basic customs duty & social welfare surcharge, and SGST portion of IGST will accrue to Haryana.

M/s Sea Pvt. Ltd. will generate an e-way bill for movement of goods from Nhava Sheva, Maharashtra to its place of business in Haryana. The e-way bill will be supported by bill of entry filed for clearance of imported goods for home consumption.

**Example 2:****Goods are cleared from customs and directly supplied to customer in Maharashtra:**

For the first leg of transaction, here also IGST along with basic customs duty & social welfare surcharge, shall be levied on import of goods by M/s Sea Pvt. Ltd. Here, M/s Sea

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Multiple examples on each topic in layman language for proper understanding of the concept

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TDS credit as per Column 6 of Table 9 of **Form GSTR-2A**. A discrepancy on the aforementioned count may indicate short payment of tax.

Our comments and concerns:

- TCS refers to tax which is collected by the e-commerce operator when a supplier supplies taxable goods or services (Except as specified under sec 9(5) of the CGST Act) through its portal and the payment for that supply is collected by the e-commerce operator.
- Effective from 01.10.2018, e-commerce operators like Flipkart, Amazon etc., have to collect TCS at 1% of the net value of taxable supplies made through their platform. This is done by the e-commerce operator by paying the supplier the price of the product /services, less the TCS, calculated at the rate of 1%. TCS mechanism poses lot of compliance issues on e-commerce operators and the suppliers, in the form of registration requirements in different states, intensive return filings, determining place of supply etc., as discussed in para 17.7 and 17.9 above.
- Further, for the purpose of determination of value of supply under GST, Tax collected at source (TCS) under the provisions of the Income Tax Act, 1961 would not be includible as it is an interim levy not having the character of tax as clarified vide *circular no. 76/50/2018-GST dated 31.12.2018*.
- Any person making supplies of services through e-commerce operator having aggregate turnover not exceeding INR 20L in a FY, would not be liable for registration under GST and can still make a supply through e-commerce operator without getting registered.
- Vide *notification no. 14/2022-central tax dated 05.07.2022*, a new table 3.1.1 has been added in **Form GSTR-3B**, wherein, both the e-commerce operators and the registered persons making supplies through e-commerce operator are required to report the sales made under sec 9(5) of the CGST Act.
- Furthermore, in terms of sec 47(1) of the CGST Act, late fees of INR 200 per day [INR 100 CGST and INR 100 SGST] subject to maximum of INR 10,000 [INR 5000 CGST and INR 5000 SGST] is payable for not filing **Form GSTR-8** by the due date.
- Moreover, now an e-commerce operator cannot file its **Form GSTR-8** beyond three years from the due date of filing such relevant return as per sec 52(15) of the CGST Act vide the Finance Act, 2023.
- The GST Council in its 47th meeting recommended to allow unregistered suppliers and composition taxpayers to make the intra-state supply of goods through e-commerce operators. Further, considering the time required for development of the requisite functionality on the portal as well as for providing sufficient time for preparedness by the e-commerce operators, the GST Council recommended that the scheme may be implemented w.e.f. 01.10.2023.
- The new stringent penalty provisions on e-commerce operators in sec. 122(1B) of the CGST Act vide the Finance Act, 2023, puts more compliance burden on e-commerce operators.

“ Our detailed Comments and Concerns at the end of each chapter with suggestions to make GST - a Good and Simple Tax ”

* Sec 62(2) of the CGST Act has been amended vide the Finance Act, 2023 w.e.f. the date yet to be notified i.e. Assessment of registered persons, so as to provide the time period of 60 days instead of 30 days, for furnishing return in **Form GSTR 3B** or **Form GSTR 10** (Final Return) where the proper officer has assessed tax liability on best judgment assessment basis.

Period of 60 days may further be extended on payment of additional late fee:

A new proviso has been inserted in sec 62(2) of the CGST Act vide the Finance Act, 2023 so as to give additional 60 days to the registered person for furnishing a valid return in response to the best judgment assessment order in **Form GST ASMT-13**.

In terms of the said proviso, if a registered person fails to furnish a valid return within 60 days of the service of the assessment order under sec 62(1) of the CGST Act, he may furnish the same within a further period of 60 days on payment of an additional late fee of INR 200 (CGST + SGST) for each day of delay beyond sixty days of the service of the said assessment order and in case, he furnishes valid return within such extended period, the said assessment order shall be deemed to have been withdrawn, but the liability to pay tax, interest u/s 50(1) or to late fees under sec 47 of the CGST Act will continue.

Example:

M/s XYZ Limited has not filed **Form GSTR-3B** for May 2023. The GST Department issued a notice on 01.07.2023, in **Form GSTR-3A** electronically to M/s XYZ Limited, requiring them to file GSTR-3B up to 16.07.2023. M/s XYZ Limited does not file GSTR-3B even after receiving the notice in **Form GSTR-3A** up to 16.07.2023. Now, the Revenue Department did the best judgement assessment of M/s XYZ Limited based on available relevant records and materials and issued an assessment order in **Form GST ASMT-13** along with summary of order in **Form GST DRC-07** electronically to M/s XYZ Limited on 25.10.2023. In such case, there may be two scenarios: -

Scenario 1: - M/s XYZ Limited files return within 60 days

M/s XYZ Limited files its GSTR-3B on 24.12.2023 (within 60 days). In terms of sec 62(2) of the CGST Act, the said best judgment assessment order shall be deemed to have been withdrawn, but M/s XYZ Limited will have to pay applicable tax, interest under sec 50 (1) and late fee under sec 47 of the CGST Act.

Scenario 2: - M/s XYZ Limited does not file return within 60 days:

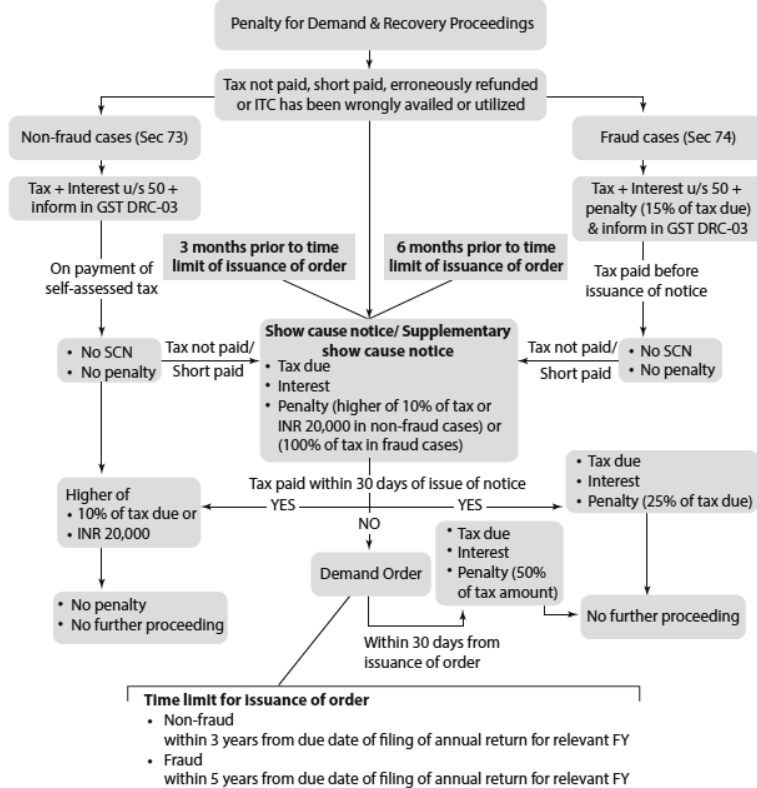
In terms of a new proviso inserted to sec 62(2) of the CGST Act vide the Finance Act, 2023, M/s XYZ Limited may furnish its GSTR-3B within a further period of 60 days on payment of an additional late fee of INR 200 (CGST+SGST) for each day of delay beyond 60 days of the service of the said assessment order.

For example, if M/s XYZ Limited file its GSTR-3B on 31.12.2023 (delay of 7 days beyond 60 days of service of assessment order), then M/s XYZ Limited would be liable to pay the additional late fee of INR 1400(CGST+SGST) and the said assessment order shall be deemed to have been withdrawn, However, M/s XYZ Limited would be liable to pay applicable tax,



Comprehensive case studies
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provisions





Note: The amount of penalty above is total of CGST and SGST/UTGST or IGST, as the case may be.

Let us now discuss these provisions in detail.

21.4 DEMAND AND RECOVERY IN NON-FRAUD CASES

The provisions relating to the determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any wilful-misstatement or suppression of facts are contained in sec 73 of the CGST Act, discussed as under:

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Process Flow Charts for quick understanding of the provisions and procedures

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- for computation of period of limitation under sec 73(10) of the CGST Act for issuance of order under sec 73(9) of the CGST Act, for recovery of erroneous refund;
- for computation of period of limitation for filing refund application under sec 54 or 55 of the CGST Act.

However, CBIC vide *notification no. 09/2023-central tax dated 31.03.2023*, partially modified the *notification no. 13/2022- central tax dated 05.07.2022* and extended the time limit specified under sec 73(10) of the CGST Act for issuance of order under Sec 73(9) of the CGST Act, for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilized for FY 2017-18, 2018-19 and 2019-20 till 31.12.2023, 31.03.2024 and 30.06.2024 respectively.

Example 2:

Particulars	When tax not paid or short paid or input tax credit wrongly availed or utilized relates to				
Financial Year for which adjudication order is to be passed	2017-2018	2018-2019	2019-2020	2020-21	2021-2022
Due date of filing of annual return	05.02.2020/ 07.02.2020*	31.12.2020 **	31.03.2021* **	28.02.2022^	31.12.2022
Limitation period for the issuance of order	3 years from the due date of filing of annual return	3 years from the due date of filing of annual return	3 years from the due date of filing of annual return	3 years from the due date of filing of annual return	3 years from the due date of filing of annual return
Last date upto which order can be issued	31.12.2023 #	31.03.2024 #	30.06.2024 #	28.02.2025	31.12.2025
Last date upto which SCN to be issued (3 months prior to the expiry of time limit of issuance of order)	30.09.2023	31.12.2023	31.03.2024	28.11.2024	30.09.2025

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Evaluation of provisions with dates to bring out clear picture of effective time period involved

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In this regard, rules for prosecution and compounding of offences along with specified forms have also been prescribed vide rule 162 along with 2 forms (**Form GST CPD-01** to **Form GST CPD-02**) under 'chapter XIX: Offences and Penalties' of the CGST Rules.

Chapter XIX of the CGST Act: Offences and Penalties	
Sec	Particulars
Sec 132	Punishment for certain offences
Sec 133	Liability of officers and certain other persons
Sec 134	Cognizance of offences
Sec 135	Presumption of culpable mental state
Sec 136	Relevancy of statements under certain circumstances
Sec 137	Offences by companies
Sec 138	Compounding of offences

Chapter XIX of the CGST Rules: Offences and Penalties	
Rule	Particulars
Rule 162	Procedure for Compounding of Offences

Forms under Chapter XIX of the CGST Rules: Offences and Penalties	
Form No.	Purpose
Form GST CPD-01	Application for Compounding of Offence
Form GST CPD-02	Order for rejection/allowance of compounding of offence

25.3 MEANING OF IMPORTANT TERMS

1. Tax

As per explanation to sec 132 of the CGST Act, for the purposes of this section, the term "tax" shall include the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or refund wrongly taken under the provision of the CGST Act, SGST Act, IGST Act or the UTGST Act and cess levied under the GST (Compensation to States) Act.

2. Prosecution

Prosecution is the commencement of a criminal proceeding, where the government exhibits before a trial, the formal charges against a person accused of an offence and seeks to impose on such person a suitable punishment and penalty. Thus, prosecution sets in motion a legal process by which the government seeks to ensure punishment of the companies and persons concerned with evasion of tax. Pendency of assessment or reassessment or appeal is not a bar for launching prosecution. There is no provision in law which provides that a prosecution for the offences in question cannot be launched until assessment or reassessment proceedings initiated against the assessee are completed. But the presence of *mens rea* or intention for evasion of duty is a pre-condition for initiation of prosecution proceedings.

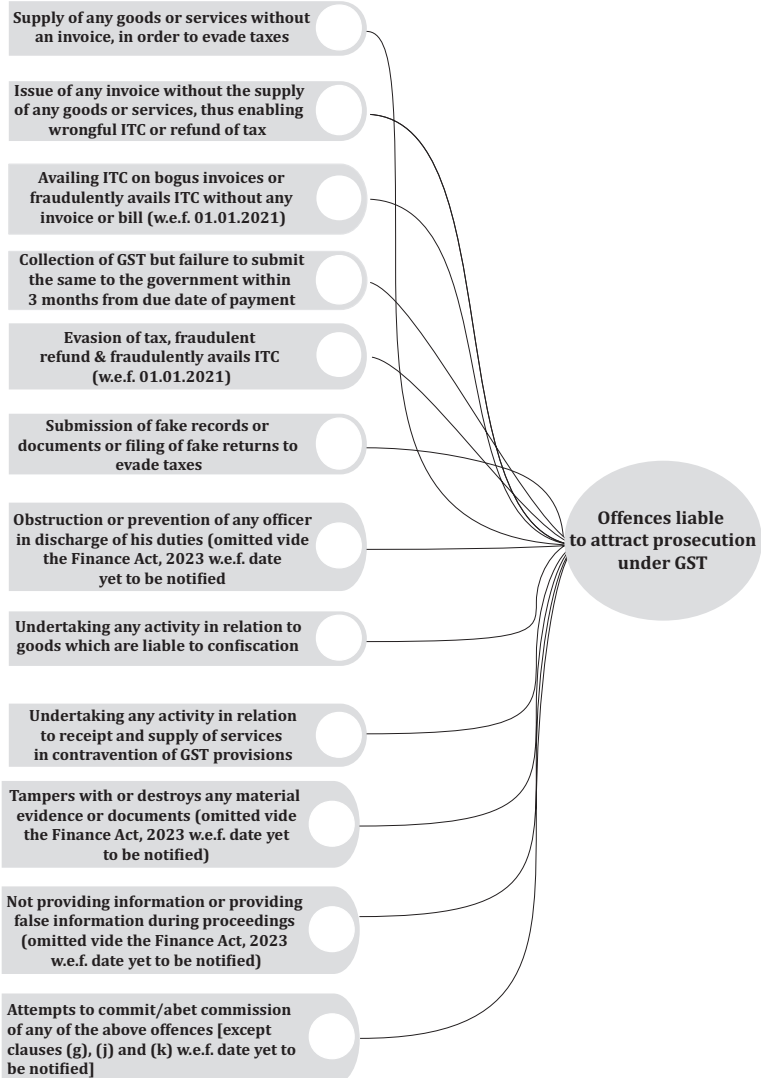
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All the provisions of Act, Rules and Forms summarised at one place at the beginning of each chapter

”

Sec	Offence	Nature of offence as specified under sec 132(1) of the CGST Act:
132(1)(j)	Temper or Destroy evidence	► From 01.07.2017 till the date yet to be notified: Tampers with or destroys any material evidence or documents ► W.e.f. the date yet to be notified: Omitted vide Finance Act, 2023 w.e.f. the date yet to be notified Analysis: ► From 01.07.2017 till the date yet to be notified: The term 'tamper' and 'destroy' has not been defined in GST law or rules made thereunder. The Oxford Online Dictionary defines the said term as: Tamper: "Interfere with (something) in order to cause damage or make unauthorized alterations;" Destroy: "End the existence of (something) by damaging or attacking it" The Merriam Webster Dictionary defines the said term as: Tamper: "to interfere so as to weaken or change for the worse; to carry on underhand or improper negotiations (as by bribery)" Destroy: "to ruin the structure, organic existence, or condition of; to put out of existence" ► W.e.f. the date yet to be notified: It is pertinent to note that, clauses (j) of sec 132(1) of the CGST Act has been omitted vide the Finance Act, 2023 w.e.f. from the date yet to be notified. Meaning there by, any person, who tampers with or destroys any material evidence or documents, would not be liable for any prosecution provisions under sec 132(1)(j) of the CGST Act.
132(1)(k)	Failure to furnish information	► From 01.07.2017 till the date yet to be notified: <i>Fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information;</i>

“ Tabular analysis of each clause while discussing the provisions period-wise and the amendments which are still to be notified ”



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Understanding Offences & Penalties through pictorial charts

”

Decriminalization of certain offences

► W.e.f. the date to be notified:

It is pertinent to note that sec 132(1) of the CGST Act has been amended vide the Finance Act, 2023 w.e.f. the date yet to be notified, so as to decriminalise the offences specified in clauses (g), (j) and (k) of sec 132(1) of the CGST Act. Relevant extract of the provision is reproduced herein below:

"(1) Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences, namely:

.....

(g) obstructs or prevents any officer in the discharge of his duties under this Act;

.....

(j) tampers with or destroys any material evidence or documents;

(k) fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or"

However, such person would be liable to penalty of INR 20000 (CGST+SGST) or an amount equivalent to the tax evaded or the tax not deducted under sec 51 or short deducted or deducted but not paid to the Government or tax not collected under sec 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher, under sec 122 (xiii), (xx) and (xvii) of the CGST Act respectively.

Increase in threshold limit for prosecution in GST:

► W.e.f. the date yet to be notified:

Threshold for launching prosecution under GST			
Sec	Nature of offence	Amount of tax evasion/ ITC wrongly taken/refund wrongly taken	Time period of imprisonment and imposition of fine
Sec 132(1) r.w sec 132(1)(i)	All offences under Sec 132(1) of the CGST Act	> INR 500 lakhs (INR 5 Cr)	imprisonment for a term which may extend to 5 years and with fine
Sec 132(1) r.w sec 132(1)(ii)	All offences under Sec 132(1) of the CGST Act, except for an offence specified in clause (b) of	> INR 200 lakhs (INR 2 Cr) upto INR 500 Lakhs (INR 5 Cr)	imprisonment for a term which may extend to 3 years and with fine

“

Detailed commentary on Decriminalization of certain offences under GST

”

39.12.1 Three Case Studies with respect to Table 10 & 11 of Form GSTR-9

Case Study 1: Outward Supplies of the F.Y 2021-22 but reported & Tax paid in 01.04.2022 to 30.11.2022

Particulars	Amount (INR)	GSTR-9
Total Outward Supplies as per Books of Accounts for F.Y 2021-22 (A)	1,50,000	-
Outward Supplies Reported in F.Y 2022-23 (May 2022) (B)	1,50,000	Table – 10
Taxes Paid in Form GSTR-3B w.r.t. Point B in May 2022 (C)	27,000	Table – 14

Case Study 2: Adjustments (+) in Outward Supplies of the F.Y 2021-22 but made and reported in 01.04.2022 to 30.11.2022

Particulars	Amount (INR)	GSTR-9
Total Outward Supplies as per Books of Accounts for F.Y 2021-22 (A)	1,50,000	-
Outward Supplies shown in Form GSTR-3B during F.Y 2021-22 (B)	1,20,000	Table – 4B
Amendment/ Debit Note raised in the F.Y 2022-23 (May 2022) (C)	30,000	Table – 10
Taxes Paid in Form GSTR-3B w.r.t. Point B in F.Y 2021-22 (D)	21,600	Table – 9
Taxes Paid in Form GSTR-3B w.r.t. Point C in May 2022 (E)	5,400	Table – 14

Case Study 3: Adjustments (-) in Outward Supplies of the F.Y 2021-22 but made and reported in 01.04.2022 to 30.11.2022

Particulars	Amount (INR)	GSTR-9
Total Outward Supplies as per Books of Accounts for F.Y 2021-22 (A)	1,50,000	-
Outward Supplies in Form GSTR-3B during F.Y 2021-22 (B)	1,70,000	Table – 4B
Amendment/ Credit Note issued in the F.Y 2022-23 (May 2022) (C)	20,000	Table – 11
Taxes Paid in Form GSTR-3B w.r.t. Point B in F.Y 2021-22 (D)	30,600	Table – 9
Taxes Adjusted in Form GSTR-3B w.r.t. Point C in May 2022 (E)	3,600	Table – 14

“

Multiple case studies on filing of GSTR-9 and GSTR-9C

”

1.7 LEGAL JURISPRUDENCE EVOLVING FOR VARIOUS ISSUES IN CLASSIFICATION OF SERVICES

1.7.1 Classification of service depends on essential character of service

Harvesting and transportation charges would not be liable for service tax as independent supply when supplied under an agreement. The classification of services should be ascertained only from the terms and conditions of the agreement and neither from nomenclature of the document nor by focusing on a particular activity undertaken by the party to the agreement – CESTAT Ahmedabad in the matter of *M/s. Talala Taluka Sahakari Khand Udyog Mandali Limited v. Commissioner of Central Excise and Service Tax* [Service Tax Appeal No. 10372 of 2012—DB dated 06.12.2022]

Royalty paid by the assessee to Govt. for mines lease classifies under SAC 997337

Where the assessee leases mineral ores mines and pays royalty to the government of India in respect of leasing of mines the same would qualify as licensing services and would be covered under SAC 997337 which covers 'licensing services for the right to use minerals including its exploration and evaluation'. Accordingly, would fall under S.no. 17 of notification no. 11/2017-central tax (rate) dated 28.06.2017 and leviable to GST at the same rate as applicable for the supply of like goods involving transfer of title in goods, under reverse charge basis - AAR Chhattisgarh in *Re: M/s. NMDC Ltd.* [Advance Ruling No. STC/AAR/09/2018 dated 22.02.2019]

Houseboats classifiable under passenger transport service with ITC on food, expenses

Houseboats used for overnight cruises and day trips inclusive of meal services are classifiable under SAC 996415 which includes inland water cruises that include transportation, accommodation, food and other incidental services in an all-inclusive fare. Further the service is liable to 18% of the GST being covered under sub entry (vii) of Sl. No. 8 of notification no. 11/2017- central tax (rate) dated 28.06.2017. Hence, entitled to claim ITC subject to the conditions prescribed in sec 16 of the CGST Act - AAR, Kerala in *Re: M/s. EVM Motors & Vehicles India Pvt. Ltd.* [Advance Ruling No. Ker/103/2021 dated 25.05.2021]

1.8 CHANGES PROPOSED IN THE FINANCE ACT, 2023

Please refer Volume 1 for detailed analysis of the changes made in the GST Law by the Finance Act, 2023.

Our comments and concerns:

- Classification of goods and services is necessary to determine the applicable rate of duty and to determine the eligibility for exemption, if any. Pre-GST era has seen a history of never-ending litigations on the point of classification and thus, the applicable rate of tax.
- Under GST regime also, HSN based classification has been followed for goods along with exhaustive classification list for services as well. Thus, unlike service tax negative list era, it is little cumbersome for supplier of services to identify the exact SAC codes for classification, though broadly 18% GST rate is applicable on residuary services unless specified to be taxable at other specified rates.



Detailed coverage of classification issues going on with comments as to way forward



**ANNEXURE I
VARIOUS CIRCULARS ON
CLASSIFICATION OF GOODS AND SERVICES**

**Clarification regarding GST rate and classification of 'Rab' based on the
recommendation of the GST Council in its 49th meeting held on 18th February,
2023**

Circular No. 191/03/2023-GST (relevant extract):

27th March, 2023

Based on the recommendation of the GST council in its 49th meeting, held on 18th February, 2023, with effect from the 1st March, 2023, 5% GST rate has been notified on Rab, when sold in pre- packaged and labelled, and Nil GST, when sold in other than pre-packaged and labelled.

2. Further, as per the recommendation of the GST Council in the above-said meeting, in view of the prevailing divergent interpretations and genuine doubts regarding the applicability of GST rate on Rab, the issue for past period is hereby regularized on "as is" basis.

**Clarification regarding GST rates and classification of certain goods
based on the recommendations of the GST Council in its
48th meeting held on 17th December, 2022**

Circular No. 189/01/2023-GST (relevant extract):

13th January, 2023

2. Rab -classifiable under Tariff heading 1702:

2.1 Representation has been received seeking clarification regarding the classification of "Rab". It has been stated that under the U.P. Rab (Movement Control Order), 1967, "Rab" means 'massecuite prepared by concentrating sugarcane juice on open pan furnaces, and includes Rab Galawat and Rab Salawat, but does not include khandsari molasses or lauta gur.' Although, a product of sugarcane, Rab exists in semi-solid/liquid form, and is thus not covered under heading 1701. The Hon'ble Supreme Court in its order in *Krishi Utpadan Mandi Samiti vs. M/s Shankar Industries and others* [1993 SCR (1)1037] has distinguished Rab from Molasses. Thus, Rab being distinguishable from molasses is not classifiable under heading 1703.

2.2 Accordingly, it is hereby clarified that Rab is appropriately classifiable under heading 1702 attracting GST rate of 18% (S. No. 11 in Schedule III of notification No. 1/2017-Central Tax (Rate), dated the 28th June, 2017).

3. Applicability of GST on by-products of milling of Dal/ Pulses such as Chilka, Khanda and Churi/Chuni:

3.1 Representations have been received seeking clarification regarding the applicable GST rate on by-products of milling of Dal/ Pulses such as Chilka, Khanda and Churi/Chuni.

3.2 The GST council in its 48th meeting has recommended to fully exempt the supply of subject goods, irrespective of its end use. Hence, with effect from the 1st January, 2023, the said goods shall be exempt under GST vide S. No. 102C of schedule of notification No. 2/2017- Central Tax (Rate), dated 28.06.2017.



Complete circulars and
press releases issued so
far on classification and
exemption issues



ANNEXURE IV
GST RATE NOTIFICATION NO. 11/2017 –
CENTRAL TAX (RATE) DATED 28.06.2017² – FOR SERVICES

28th June, 2017

In exercise of the powers conferred by sub-section (1) ⁷⁶[sub-section (3) and sub-section (4)] of section 9, subsection (1) of section 11, sub-section (5) of section 15⁷⁷[,] sub-section (1) of section 16 ⁷⁸[and section 148] of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, and on being satisfied that it is necessary in the public interest so to do, hereby notifies that the central tax, on the intra-State supply of services of description as specified in column (3) of the Table below, falling under Chapter, Section or Heading of scheme of classification of services as specified in column (2), shall be levied at the rate as specified in the corresponding entry in column (4), subject to the conditions as specified in the corresponding entry in column (5) of the said Table:-

Table

Sl. No.	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
1	Chapter 99	All Services		
2	Section 5	Construction Services		
3	Heading 9954 (Construction services)	⁷⁹ (i) Construction of affordable residential apartments by a promoter in a Residential Real Estate Project (herein after referred to as RREP) which commences on or after 1 st April, 2019 or in an ongoing RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) below, as the case may be, in the manner prescribed therein, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)	0.75	Provided that the central tax at the rate specified in column (4) shall be paid in cash, that is, by debiting the electronic cash ledger only; Provided also that credit of input tax charged on goods and services used in supplying the service has not been taken except to the extent as prescribed in Annexure I in the case of REP other than RREP and in Annexure II in the case of RREP; Provided also that the registered person shall pay, by debit in the electronic credit ledger or electronic cash ledger, an amount

² Updated as on date



Complete Updated Manual for
GST Rates and Exemptions



¹⁸²**[114. Financial and Administrative powers of President.**

The President shall exercise such financial and administrative powers over the Appellate Tribunal as may be prescribed.]

115. Interest on refund of amount paid for admission of appeal.

Where an amount paid by the appellant under sub-section (6) of section 107 or sub-section (8) of section 112 is required to be refunded consequent to any order of the Appellate Authority or of the Appellate Tribunal, interest at the rate specified under section 56 shall be payable in respect of such refund from the date of payment of the amount till the date of refund of such amount.

116. Appearance by authorised representative.

- (1) Any person who is entitled or required to appear before an officer appointed under this Act, or the Appellate Authority or the Appellate Tribunal in connection with any proceedings under this Act, may, otherwise than when required under this Act to appear personally for examination on oath or affirmation, subject to the other provisions of this section, appear by an authorised representative.
- (2) For the purposes of this Act, the expression "authorised representative" shall mean a person authorised by the person referred to in sub-section (1) to appear on his behalf, being-
 - (a) his relative or regular employee; or
 - (b) an advocate who is entitled to practice in any court in India, and who has not been debarred from practicing before any court in India; or
 - (c) any chartered accountant, a cost accountant or a company secretary, who holds a certificate of practice and who has not been debarred from practice; or
 - (d) a retired officer of the Commercial Tax Department of any State Government or Union territory or of the Board who, during his service under the Government, had worked in a post not below the rank than that of a Group-B Gazetted officer for a period of not less than two years:
Provided that such officer shall not be entitled to appear before any proceedings under this Act for a period of one year from the date of his retirement or resignation; or
 - (e) any person who has been authorised to act as a goods and services tax practitioner on behalf of the concerned registered person.
- (3) No person,-
 - (a) who has been dismissed or removed from Government service; or

¹⁸² Substituted vide The Finance Act, 2023 dated 31-03-2023 w.e.f. before it was read as,

"114. Financial and administrative powers of President.

The President shall exercise such financial and administrative powers over the National Bench and Regional Benches of the Appellate Tribunal as may be prescribed:

Provided that the President shall have the authority to delegate such of his financial and administrative powers as he may think fit to any other Member or any officer of the National Bench and Regional Benches, subject to the condition that such Member or officer shall, while exercising such delegated powers, continue to act under the direction, control and supervision of the President."



Updated Bare Act with all
amendments at one place



List of Circulars

CHAPTER

14

CGST

S. No.	Circular No.	Date	Subject
1	01/01/2017-GST	26-06-2017	Proper officer for provisions relating to Registration and Composition levy under the Central Goods and Services Tax Act, 2017 or the rules made thereunder
2	02/02/2017-GST	04-07-2017	Issues related to furnishing of Bond/ Letter of Undertaking for Exports Rescinded by Circular 8/2017
3	03/03/2017-GST	05-07-2017	Proper officer relating to provisions other than Registration and Composition under the Central Goods and Services Tax Act, 2017
4	04/04/2017-GST	07-07-2017	Regrading issues related to Bond/Letter of Undertaking for exports without payment of integrated tax Rescinded by Circular 8/2017
5	05/05/2017-GST	11-08-2017	Circular on Bond/LUT in case of exports without payment of integrated tax Rescinded by Circular 8/2017
6	06/06/2017-GST	27-08-2017	Circular dated 27.08.2017 is issued to clarify classification and GST rate on lottery tickets



Updated Gist of all
Notifications, Circulars,
Orders, Press Releases, etc.
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