

# Nangia Andersen LLP



## Indirect Tax Newsletter

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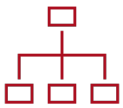
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# 01

## Key Jurisprudence and Advance Rulings



**The Maharashtra Authority for Advance Ruling has held that the India liaison office of the World Economic Forum is not liable to Goods and Services Tax on services received from the Head Office.**

The World Economic Forum, Switzerland ('WEF') is a public interest, not-for-profit organisation set in 1971, operates as an independent international organisation. The WEF is primarily engaged in promoting global well-being and finding solutions to problems which are a global agenda and focuses on key areas viz. mastering the fourth industrial revolution, solving the problems of the global commons, etc.

The Applicant is the Indian office of the WEF, established as a liaison office ('LO') to assist the WEF to undertake the fourth industrial revolution activities in India to encourage, develop and facilitate co-operation activities in the fields of common interest associated with readiness for the said revolution, pursue research, and develop and deploy policy principles and regulatory framework. The LO is the same legal entity as WEF, Switzerland.

In this regard, the WEF has been granted permission from the Reserve Bank of India ('RBI') as per the Foreign Exchange Management (Establishment in India or a branch office or a representative office or a project office or any other place of business) Regulations, 2016 ('FEMA Regulations'), and thus, the LO is set up at Navi Mumbai. The Applicant proposes to undertake liaising activities and act as a communication link between the head office ('HO') and the companies in India to undertake the afore-mentioned activities in India.

In this backdrop, the Applicant intends to understand: i) whether the activities carried by the Applicant's Head Office ('HO') located outside India and rendered to the Applicant will amount to supply as envisaged under Section 7 of the Central Goods and services Tax Act, 2017 ('CGST Act') considering that the Applicant is not engaged in any business?; ii) whether the activities carried by the Applicant's HO located outside India and rendered to the Applicant would be liable to GST in the hands of the Applicant considering that the Applicant is not engaged in any business?; iii) whether the Applicant would be required to

obtain registration in India under Section 24 of the CGST Act with respect to activities carried out by the Applicant's HO located outside India and rendered to the Applicant considering that the Applicant is not engaged in any business?

The Maharashtra Authority for Advance Ruling ('AAR') holds that the services rendered by the HO of the WEF (located outside India) to the Applicant (LO in India) cannot be said to be in the course of furtherance of its business and accordingly, cannot be considered as a supply in terms of Section 7 of the CGST Act, not being liable to GST.

Further, on perusal of the Schedule II of Notification no. 22/2000-RB dated 3 May, 2000 ('Notification 22'), which specifies the permitted activities for a LO in India of a person resident outside India, which are, representing the parent company in India, promoting export/ import from/ to India, promoting technical/ financial collaborations between parent companies and acting as a communication channel between the parent company and the Indian companies, the AAR opines that the Applicant can only perform the specified activities.

The AAR agrees to the Applicant's submission pertaining to it not undertaking any business as defined under Section 2(17) of the CGST Act. Further, the AAR highlights that since the Applicant is not engaged in any business, and so long as the services imported by the Applicant from its HO are not used in the course of furtherance of business, the Applicant is not liable to pay GST on such transaction.


Also, the said transaction not being considered as a supply liable to GST, the Applicant wouldn't be required to obtain registration in India under Section 24 of the CGST Act.



### **Nangia Andersen LLP's Take**

*In the past, the Karnataka Appellate Authority for Advance Ruling ('AAAR') in Re Fraunhofer-Gesellschaft ZurForderung der angewandten Forschung (Order no. KAR/AAAR/04/2021 dated 22 February 2021) took a contrary stand that the activities of a liaison office located in Bengaluru, to carry out activities permitted by the RBI, does not amount to 'supply of service' and set aside the AAR ruling (KAR ADRG No. 50/2020 dated 8 October 2020) which held that the liaison activities being undertaken by the Appellant amounts to supply under Section 7 of the CGST Act and the LO is required to pay GST and undertake registration.*

***[The World Economic Forum, India Liaison Office (Advance Ruling no. GST-ARA-11/2019-20/B-50 dated 20 August 2021)]***



The Gujarat Authority for Advance Ruling holds that the transfer of business from the Airport Authority of India to Special Purpose Vehicle is a ‘transfer of going concern’, and thus, the reimbursement cost is exempt from Goods and Services Tax.

M/s. Airport Authority of India (‘the Applicant’ or ‘AAI’) is an authority created under the Airport Authority of India Act, 1994 (‘the AAI Act’). The AAI has been created for the purpose of establishing or assisting in the establishment of airport and for the matters connected thereto.

The AAI may undertake various activities in terms of Section 12(3) of the AAI Act viz. plan, develop, construct, and maintain runways, etc.; establish airports or assist in the establishment of private airports by rendering technical, financial, or other assistance which the Central Government may consider necessary for such purpose; plan, procure, install, and maintain navigation aids, communication equipments, etc. at the airports; establish training institutes and workshops; etc.

In 2019, the AAI conducted Public Private Partnership (‘PPP’) bidding process in which M/s. Adani Enterprises Limited (‘the Concessionaire’) had won the bid of the airport. The Concessionaire has been awarded a Letter of Approval (‘LOA’) for operation, management, and development of the airport, pursuant to which the Concessionaire will be forming a Special Purpose Vehicle Company (‘SPV’). The AAI and the SPV will be entering into a concessionaire agreement for operation, management and development of the airport which will include civil, mechanical, electrical works, terminal buildings, cargo facilities, runway and all other project assets.

The Applicant has sought advance ruling in respect of multiple questions, to which the Authority for Advance Ruling (‘AAR’) has analysed and held as below.

The AAR holds that the transfer of business from the AAI to SPV formed *via* an

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<sup>2</sup>W.P.No.15708 of 2021 and W.M.P.Nos.16604 & 16605 of 2021  
in the High Court of Madras

agreement entered by the AAI and the Concessionaire is a 'transfer of going concern' as an independent part with respect to the said airport/ business carried out by AAI with respect to the operations, development and maintenance of the same. Thus, the same constitutes a supply of service in terms of Section 7(1) of the Central Goods and Services Tax Act, 2017 ('CGST Act').

The AAR holds that for a transfer to be effected, sale is not the only criteria. In this context, the AAR relied on the Hon'ble Bombay High Court ('HC') ruling in case of Sunderdas Harjiwan wherein, it was held that it is not essential to transfer all assets and liabilities for a transaction to qualify for a transfer of business. Further, it's prudent to clarify our thought process in pronouncing the subject business arrangement as a transfer of going concern, though there is no sale, as transfer of going concern is not limited to sale (slump sale/ item wise sale) but such transfer may be witnessed in circumstances such as sale/ gift/ lease/ leave or license/ hire/ in any other manner.

The AAR referred to the meaning of the term 'transfer of a going concern' in terms of the Accounting Standard-I issued by the Institute of Chartered Accountants of India ('ICAI') and analysed that the present business arrangement between the AAI and the Concessionaire satisfies the concept for a foreseeable future. Further, the AAR considers the Applicant's submission that the present arrangement implies the business will continue in the new hands with regularity and a nature of permanency. All liabilities arising as a result thereof through this contract shall be deemed to be the liabilities of the SPV.

Furthermore, the AAR evaluated the definitions of 'supply' and 'business' as defined in the CGST Act and holds that the

transfer of business is more of an event in pursuance to a business arrangement. In this context, it refers to the expression at Sr. No. 2 of Notification No. 12/2017 - Central Tax Rate dated 28 June 2017 as amended which deals with applicable exemption and AAR ruled that arrangement *vide* aforementioned contract is exempt from GST and so the consideration/ reimbursement of cos




### **Nangia Andersen LLP's Take**

*The present ruling appears to rightly hold the activity of transfer of business on going concern basis as a service and not goods and, the similar view has been adopted in various other rulings pronounced but important element of reversal of input tax credit ('ITC') on applicable exemption as may be required has neither been questioned by the Applicant and nor deliberated anywhere in the ruling.*

*It is important to note that Section 17(2) of the CGST Act specifies for reversal of ITC when involved in taxable as well as exempt supply, however, in the present case reversal of ITC by the business on account of exempt activity would give rise to additional cost burden.*

***[M/s. Airport Authority of India (Advance Ruling No. GUJ/GAAR/R/46/2021 dated 27 August 2021)]***





The Maharashtra Authority for Advance Ruling holds that the managerial and leadership services by the corporate office to site offices/ group companies are taxable.

M/s. B.G. Shirke Construction Technology Private Limited ('the Applicant') is engaged mainly in the business of civil construction, structural engineering, fabrication & erection of transmission tower materials and aviation chartering having construction sites in different States and holds separate Goods and Services Tax ('GST') registrations for each of them. Additionally, the Applicant has GST registered Group Companies engaged in various activities.

In the above backdrop, the Applicant has sought advance ruling in respect of multiple questions, a few of them are: i) Whether the managerial and leadership services provided by the registered/ corporate office ('RO') to its Group Companies can be considered as 'supply of service' in terms of Section 7 of the Central Goods and Services Tax Act, 2017 ('CGST Act'); ii) Whether lump sum amount charged by the RO on its Group Companies would be liable to GST under Section 8 of the CGST Act?; etc.

On perusal of the submissions made by the Applicant, the Authority for Advance Ruling ('AAR') observed that the only reason the Applicant feels such services are not taxable in its hands, because they are treating their group companies as well as their site offices as employees, and in the subject case the site offices/ group companies cannot be treated as persons who are employed by the Applicant as such offices and group companies are independent entities separately registered under GST. Thus, such site offices as well as the group companies cannot be treated as employees and therefore, the Applicant cannot get the benefit of Entry no. 1 of Schedule III to the CGST Act. Further, the AAR observed that such supply of services by the Applicant will be covered under Entry no. 2 of Schedule I of the CGST Act, and accordingly, is taxable.



## **Nangia Andersen LLP's Take**

*This ruling has introduced a new set of discussion with respect to GST on inter-Company services in the form of managerial and leadership services, as the same would be taxable at 18% GST as per the present AAR. Also, the above adopted principle can be seen in a couple of earlier AARs in the case of GKB Lens Private Limited (Appeal Case No. 05/WBAAAR/Appeal/2018 dated 27 September 2018) and Specsmaakers Optician Private Limited (A.R. Appeal No. 7/2019/AAAR dated 13 November 2019) passed by the West Bengal and Tamil Nadu AAR respectively, wherein it was held that the Applicant can follow the method of valuation provided under second proviso to Rule 28 of the CGST Rules.*

The AAR while discussing the question raised by the Applicant pertaining to whether they can continue to charge certain lump sum amount in terms of the second proviso to Rule 28 of the CGST Rules, held that the valuation in the subject case cannot be done in terms of Rules 27, 29, 31A to 35 of the CGST Rules and accepted the contention of the Applicant that they may resort to valuation under Rule 28 of the CGST Rules, in respect of transactions with related/ distinct persons who are eligible for full ITC in terms of the second proviso to Rule 28 of the CGST Rules.

Further, while discussing the question wherein the Applicant approached the AAR for an alternate workable method of valuation considering the nature of industry the Applicant is engaged in as well as admissibility of ITC to each of the distinct and related person, the AAR observed that the question does not fall under the purview of Section 97 of the CGST Act and therefore, the authority is not allowed to answer such a question.

***[M/s. B.G. Shirke Construction Technology Private Limited (Advance Ruling no. GST-ARA-42/2019-20/21-22/B-56 dated 9 September 2021)]***



**The West Bengal Authority for Advance Ruling holds that the input tax credit availed in excess of entitlement prescribed under Rule 36(4) of the Central Goods and Services Tax Rules, 2017 is liable to be reversed**

Eastern Coalfields Limited ('the Applicant') being a producer and supplier of coal has received certain services from M/s. Gayatri Projects Limited ('the vendor') and has availed input tax credit ('ITC') during the aforementioned period against three invoices for which the Applicant made timely payment to the said vendor.

However, the supplier furnished Form GSTR-1 and Form GSTR-3B for the respective period i.e., January to March 2020 in the month of November 2020 which restricted the entitlement of ITC in respect of the said three invoices in the auto drafted Form GSTR-2B of the Applicant for November 2020 with the remark 'return filed post annual cut-off'.

In the above backdrop, the Applicant seeks ruling on: i) Whether the Applicant is entitled for the ITC already claimed by it in respect of the invoices raised by the vendor for January to March 2020 for which the supplier has actually paid the tax charged in respect of such supply to the Government, either in cash or through ITC utilization admissible in respect of such supply; and ii) Whether the Applicant has to reverse the said ITC already availed by it where the vendor has actually paid the tax, though belatedly, and fulfilled the responsibility cast upon them by Section 16(2)(c) of the Central Goods and Services Tax Act, 2017 ('CGST Act') and all other conditions as mentioned in Section 16(2)(a), 16(2)(b), and 16(2)(d) of the CGST Act are fulfilled by the Applicant?

On perusal of the submissions made by the Applicant, the Authority for Advance Ruling ('AAR') observed that there can be no denying that Section 16 of the CGST Act specifies conditions and restrictions towards entitlement of ITC, but documentary requirements and conditions for claiming ITC have been prescribed in Rule 36 of the Central Goods and Services Tax Rules, 2017 ('CGST Rules').

Further, the AAR also admitted the fact that though Form GSTR-2B has been made effective from 1 January 2021 but at the same time, the Applicant cannot deny that Rule 36(4) of the CGST Rules was already in force during the period when the Applicant had availed the impugned ITC.

The AAR relied on the Central Board of Indirect Taxes and Customs ('CBIC') Circular no. 142/12/2020-GST dated 9 October 2020 ('Circular 142') which clarifies applicability of Rule 36(4) of the CGST Rules which states that it is the taxpayer who is required to ascertain details of invoices uploaded by their suppliers under Section 37(1) of the CGST Act till the due date of furnishing of the statement in Form GSTR-1 for the month of September 2020 as reflected in GSTR-2A, and the excess ITC availed, if any, shall be required to be reversed. The failure to reverse such excess availed ITC on account of application of Rule 36(4) of the CGST Rules would be treated as availment of ineligible ITC during the month of September 2020.

Basis the above, the AAR held that the Applicant has availed ITC in excess of its entitlement prescribed under Rule 36(4) of the CGST Rules and directed the Applicant to reverse the impugned ITC.



### **Nangia Andersen LLP's Take**

*The issue of reversal of ITC availed in excess of entitlement prescribed under Rule 36(4) of the CGST Rules has been provided vide Notification 42/2019-Central Tax dated 9 October 2019 as amended by Notification 75/2019-Central Tax dated 26 December 2019, by which a new sub-rule 4 to Rule 36 has been brought into force pursuant to which Circular no. 123/42/2019-GST dated 11 November 2019 and Circular 142/12/2020-GST dated 9 October 2020 have been issued by the CBIC for further clarification/ understanding on this issue. In terms of the said circulars, it is the responsibility of the taxpayer w.r.t. availment of restricted ITC in terms of Rule 36(4) of the CGST Rules and shall be complied on self-assessment basis. This principle has been adopted and followed in the present ruling.*

**[Eastern Coalfields Limited (Order No. 07/WBAAR/2021-22 dated 9 August 2021)]**

**The Gujarat Authority for Advance Ruling holds that the Applicant is not liable to charge Goods and Services Tax on the amount collected from the employees towards canteen charges which is paid to the canteen service provider.**

M/s. Dishman Carbogen Amcis Limited ('the Applicant'), has two manufacturing facilities at Bavla and Naroda in Ahmedabad and has more than 250 employees at both the manufacturing location.

The Applicant approached the Authority for Advance Ruling ('AAR'), seeking a ruling on whether it is required by it to charge the Goods and Services Tax ('GST') on the amount collected from the employees towards canteen charges which is paid to the canteen service provider?

The Applicant contends that the canteen facility provided to its employees is mandatory in terms of Section 46 of the Factories Act, 1948. This facility provided to the employees is without making any profit and purely working as a mediator between the employee and the contractor of canteen service provider.

The AAR observed that the Applicant is not liable to charge GST on the amount collected from the employees towards canteen charges which is paid to the canteen service provider. The Applicant has arranged a canteen for its employees, which is run by a third-party service provider and as per the arrangement, a part of the canteen charges is borne by the Applicant whereas, the remaining part is borne by its employees.

Further, the AAR holds that the Applicant collects a portion of employee canteen charges and pays it to the service provider. Also, the Applicant does not retain with itself any profit margin while collecting the employee's portion of canteen charges and such activity is carried out by the Applicant without consideration. Thus, GST in the hands of the Applicant is not leviable on the amount representing the employee's portion of canteen charges.



### **Nangia Andersen LLP's Take**

*The provision of canteen services for employees and GST payment thereon has been a matter of discussion across the industry and various rulings have been pronounced in favour of and against the Applicant in the said matter.*

*Recently, in the matter of Tata Motors Limited (GUJ/GAAR/R/39/2021 dated 30 July 2021), the Gujarat Appellate Authority for Advance Ruling held that the GST is not leviable on the amount representing the employee's portion of canteen charges which is collected by the Applicant and paid to the canteen service provider whereas, in the matter of Amneal Pharmaceuticals Private Limited (GUJ/GAAR/R/50/2020 dated 30 July 2020), the Gujarat Authority for Advance Ruling has pronounced a differing view on the identical matter. In the backdrop of differing opinions from various authorities, appropriate clarification from the Central Board of Indirect Taxes and Customs may put to rest this issue and enable the industry to adopt a correct clear view.*

**[M/s Dishman Carbogen Amcis Limited (Advance Ruling No. GUJ/GAAR/R/22/2021 dated 9 July 2021)]**

## **M/s VKC Footsteps<sup>1</sup> – Supreme Court – The Hon’ble Supreme Court upholds constitutional validity of Rule 89(5) of the CGST Rules and held that refund of input tax credit on input services accumulated in case of inverted duty structure is not admissible**

### **Brief Background**

Section 54 (3) of the Central Goods and Services Tax Act, 2017 (‘CGST Act’) allows registered person to claim refund of unutilised input tax credit (‘ITC’) in following cases only:

- zero rated supplies made without payment of tax
- where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except notified supplies

Rule 89(5) of the Central Goods and Services Tax Rules, 2017 (‘CGST Rules’) prescribes the method of calculation of refund amount in case of inverted duty structure and excludes credit in respect of input services. This has been one of the major issues for persons who are claiming refund under inverted duty structure and not allowed refund of ITC pertaining to input services.

While Gujarat High Court in VKC Footsteps Private Limited<sup>2</sup> held that rules which are subordinate to main act cannot prescribe a new levy or restrict any existing right and thus Rule 89(5) is ultra vires the provision of Section 54(3) of the CGST Act, Madras High Court in TVL Transtonnelstroy Afcons Joint Venture<sup>3</sup> held that the benefit of refund can be availed only to the extent of unutilized ITC that accumulates on ‘goods’, thereby exclusion of unutilized ITC accumulated on ‘services’ in case of inverted rate structure is valid.

The matter reached before the Hon’ble Supreme Court. The Supreme Court held that while the formula suffers from anomalies, it cannot be a ground to strike down a fiscal rule which has been framed in exercise of the power of delegated legislation.

Therefore, upheld the Rule and overturned VKC Footsteps India Pvt. Ltd. of the Gujarat High Court. The Court did observe that there are certain anomalies in the formula for applying refund, which has been referred to the GST Council.

The main issue was disallowance of refund of accumulated ITC in respect of input services in case of inverted duty structure. While Section 54(3) appears to make no distinction between 'inputs' and 'input services', Rule 89 (5) allows refund of ITC only on input goods and not input services.

### **Supreme Court’s Ruling**

The Supreme court stated that while Section 54(3) provides for refund of ITC where the credit has accumulated on account of the rate of tax on inputs being higher than the rate of tax on output supplies; it does not preclude the rulemaking authority from ironing out the finer aspects while giving effect to the provisions of the section.

The Court also stated that the expression ‘input’ has been defined under section 2(59) to bracket it with goods other than capital goods. While it is true that the plural expression ‘inputs’ has not been specifically defined, there is no reason why the ordinary principle of construing the plural in the same plane as the singular should not be applied. To construe ‘inputs’ so as to include both input goods and input services would be in violence to the provisions of Section 54(3) and would run contrary to the terms of Explanation-I. Consequently, it is not open to the Court to accept the argument of the assessee that in the process of construing Section 54(3) contextually, the Court should broaden the expression ‘inputs’ to cover both goods and services. The Court further held that Section 164(1), confers an express power on the Central Government to make rules for carrying out the provisions of the CGST Act on the recommendations of the GST Council. By its very nature, a statutory provision may not

<sup>1</sup>Civil Appeal No. 4810 of 2021

<sup>2</sup>2020-VIL-340-GUJ

<sup>3</sup>2020-VIL-459-MAD

visualize every eventuality which may arise in implementing the provisions of the Act. Hence it is open to the rulemaking authority to frame rules, so long as they are consistent with the provisions of the parent enactment. The rules may interstitially fill up gaps that are unattended in the main legislation or introduce provisions for implementing the legislation.

The Appellant had proposed to the Court that for Rule 89(5), an assumption must be made that ITC accumulated on account of input services, which is not refundable under Section 54(3), is used for discharging the output tax payable on inverted rate supply of goods and services. The remaining balance of output tax must be then presumed to have been discharged from the ITC accumulated on account of input goods and it is only this remaining balance that should be deducted from the formula to calculate the refund. In response to which the Hon'ble Court held that prescribing an order of utilization would imply that the Court is recrafting the formula and in effect is walking into the shoes of the executive or the legislature, which is not permissible.

The Hon'ble Supreme Court observed that the formula prescribed in rule 89(5) seeks to deduct the total output tax only from credit of input goods, which is at odds with reality as the tax credit once availed is pooled into a common electronic ledger beyond which it would be impossible to identify the nature of input availed. The Hon'ble Court exercised judicial restraint to suggest any changes to the formula and has directed the GST council to make suitable changes to the formula and take a policy decision in this regard.



## Nangia Andersen LLP's Take

*The ruling is a landmark ruling and will have adverse impact on taxpayers who are facing inverted duty structure and have accumulated ITC. The unintended consequences of this ruling, however, are many and significant for sectors such as Textile, Pharma, construction.*

*This ruling to some extent will also impact the position for refund of unutilised ITC, in case of zero rated supply, under Rule 89(4) where refund is restricted to unutilised ITC in case of inputs and input services and does not include capital goods.*

**TVH Lumbini Square vs Union of India<sup>4</sup> – High Court – Notice issued to department in writ challenging order of Tamil Nadu Authority for Advance Ruling (AAR)<sup>5</sup> which denied exemption on contribution received by a Resident Welfare Association (RWA) where such contribution exceeded Rs. 7500 per month**



### **Brief of the matter**

The company who was aggrieved by the ruling of the AAR submitted its contentions that said order had wrongly interpreted SI. No. 77(c) of Notification No.12/2017-C.T.(Rate) as amended vide Notification No. 2/2018-C.T. (Rate) w.e.f. January 25, 2018, more particularly, when it is contemplated therein that such exemption is available 'upto' an amount of INR 7500 per month. The company submitted that only the amount in excess of INR 7500 per month is liable to tax.

The High Court has listed the matter on October 11, 2021, while permitting the company to pay GST on contribution amount over and above Rs. 7500 per month in the interim period.

On related note, the division bench of the Madras High Court has stayed the operation of the single member bench ruling of the same court in the case of Greenwood Apartment Owners Association<sup>6</sup> wherein it was held that only the amount in excess of INR 7500 per month is liable to tax.



### **Nangia Andersen LLP's Take**

*The issue of taxing contributions to RWAs where the contribution is more than INR 7500 has become more complex with contradicting opinions of the various courts. While the issue is merely on the interpretation of the language used in the exemption notification to determine whether or not exemption is available for contributions upto the amount of INR 7500 per month where the contribution exceeds INR 7500 per month, the ratio of the ruling may also be analysed for any value-based exemption such as exemption to rent payments for hostel services which is currently capped at INR 1000 per day.*

<sup>4</sup>[TS-717-HC-2019(MAD)-NT]

<sup>5</sup>[TS-624-AAR-2019-NT]

<sup>6</sup>[TS-321-HC(MAD)-2021-GST]





# 02

## GST Clarifications and Updates

## Clarification regarding extension of time limit to apply for revocation of cancellation of registration in view of Notification No. 34/2021-Central Tax dated 29 August 2021

- Vide Notification no. 34/2021- Central tax dated 29 August 2021 ('Notification 34'), the time limit for filing of application for revocation of cancellation of registration under section 30 of Central Goods and Services Tax Act, 2017 ('CGST Act') which falls during the period 1 March 2020 to 31 August 2021 is extended up to 30 September 2021. This extension is applicable for those cases where registration has been cancelled under section 29(2)(b) or 29(2)(c) of the CGST Act on account of non-filing of returns.
- Vide Circular No. 158/14/2021- GST dated 6 September 2021 ('Circular 158'), it has been clarified that the due date for filing application for revocation of cancellation of registration in all cases, where registration has been cancelled under 29(2)(b) or 29(2)(c) of the CGST Act and where the due date of filing of application for revocation of cancellation of registration falls between 1 March 2020 to 31 August 2021, is extended to 30 September 2021, **irrespective of the status of such applications.**
- The issues relating to the extension of timelines for application for revocation of cancellation of registration has been clarified as under:

**a. application for revocation of cancellation of registration has not been filed by the taxpayer-**

In such cases, the applications for revocation can be filed upto the extended timelines as provided vide notification 34. Such cases

also cover those instances where an appeal was filed against order of cancellation of registration and the appeal had been rejected.

**b. application for revocation of cancellation of registration has already been filed and which are pending with the proper officer-**

In such cases, the officer shall process the application for revocation considering the extended timelines as provided vide notification 34.

**c. application for revocation of cancellation of registration was filed, but was rejected by the proper officer and taxpayer has not filed any appeal against the rejection-**

In such cases, taxpayer may file a fresh application for revocation and the officer shall process the application for revocation considering the extended timelines as provided vide notification 34.

**d. application for revocation of cancellation of registration was filed, the proper officer rejected the application and appeal against the rejection order is pending before appellate authority-**

In such cases, appellate authorities shall take the cognizance of notification 34 for extension of timelines while deciding the appeal.

**e. application for revocation of cancellation of registration was filed, the proper officer rejected the application and the appeal has been decided against the taxpayer-**

In such cases, taxpayer may file a fresh application for revocation and the officer shall process the application for revocation considering the extended timelines as provided vide notification 34.

- As per section 30(1) of CGST Act, any registered person whose registration is cancelled by proper officer on his own motion may apply for revocation of cancellation of registration within 30 days from the date of service of the cancellation order. Effective from 1 January 2021, proviso to section 30(1) of CGST Act has been inserted which provides that this period of 30 days may be further extended by,
  - 30 days by Additional /Joint Commissioner; and
  - Another 30 days by Commissioner.
- Doubts were raised as to whether the notification 34 has extended the due date of initial period of 30 days for filing of application OR whether the date of filing of applications for revocation of cancellation of registration can be further extended as per proviso to Section 30(1) for further period of 60 days (30 + 30) beyond extended date of 30 September 2021.
- The above doubts are clarified through this circular as under –

**I. Time limit of 30 days falls between 1 March 2020 to 31 December 2020**

There is no provision to extend the time period of 30 days under section 30 of the CGST Act during this period. Thus, the time limit to apply for revocation of cancellation of registration stands extended up to 30 September 2021 only.

**II. Time limit of 30 days not lapsed as on 1 January 2021/ Registration has been cancelled on or after 01 January 2021**

Time limit to apply for revocation of cancellation of registration shall be as follows –

S.N.	Time Period of 90/60/30 days	Time limit to apply for revocation of cancellation of registration
A.	90 days (initial 30 days and extension of 30 + 30 days) has lapsed as on 31.08.2021 since cancellation of registration	Extended up to 30 September 2021 without any further extension of time by Joint/Additional Commissioner or Commissioner
B.	60 days (initial 30 days and extension of 30 days) has lapsed as on 31.08.2021 since cancellation of registration	Extended up to 30 September 2021 with further extension of another 30 days by Commissioner on being satisfied as per proviso to Section 30(1) of CGST Act
C.	30 days (initial 30 days) has lapsed as on 31.08.2021 since cancellation of registration	Extended up to 30 September 2021 with further extension of 30 days by the Joint/Additional Commissioner and another 30 days by the Commissioner on being satisfied as per proviso to Section 30(1) of CGST Act.

***(Circular No. 158/14/2021 - GST dated 6 September 2021)***

## Clarification on doubts related to scope of 'Intermediary services' in GST law

- Earlier Circular No. 107/26/2019-GST dated 18 July 2019 ('earlier circular') was issued to clarify doubts related to supply of Information Technology enabled services to qualify as intermediary services or otherwise. However, later in December 2019 this circular was withdrawn vide Circular No. 127/46/2019-GST dated 4 December 2019 on the grounds that the earlier circular caused apprehension to many stakeholders, and it was contemplated that a detailed circular will be issued.

- One of the issues that was taken up for discussion in 45<sup>th</sup> GST council meeting held on 17 September 2021 was the issue of scope of 'intermediary services'. In response to the representations citing ambiguity caused in interpretation of the scope of 'intermediary services' in GST law, the Ministry of Finance has now issued a clarification on the scope of intermediary services vide Circular No. 159/15/2021 - GST dated 20 September 2021 ('Circular 159').

- Circular 159 acknowledges that broadly there is no change in the scope of intermediary services under the service tax regime vis-à-vis the GST regime, except addition of supply of securities in the definition of intermediary in the GST Law.

- Circular 159 has provided much needed clarification with regard to the prerequisites for service to qualify as an intermediary service, as summarised below:

- Involvement of minimum of three parties** - To qualify as an 'intermediary', the arrangement should involve minimum of three parties, two of them transacting in the supply of goods or services or securities (the main supply) and one arranging or facilitating (the

ancillary supply) the said main supply. An activity between only two parties can, therefore, NOT be considered as an intermediary service. An intermediary essentially 'arranges or facilitates' the main supply and, does not himself provide the main supply.

### ii. **Two distinct supplies – Main supply and Ancillary services**

In case of provision of 'intermediary services', there are two distinct supplies:

- a. Main Supply between two principals; and
- b. Ancillary Supply, which is service of facilitating or arranging the main supply, between the two principals. This ancillary supply is intermediary service and is clearly identifiable and distinguished from main supply.

A person engaged in providing the main supply on principal to principal basis to another person cannot be considered as an 'intermediary'.

### iii. **Role of intermediary should partake the character of agent, broker or any other similar person** – The Intermediary'

definition is not an inclusive definition and does not expand by any known expression of expansion. The use of the expression "arranges or facilitates" in the definition of "intermediary" suggests a subsidiary role for the intermediary. It must arrange or facilitate some other supply, which is the main supply, and does not himself provides the main supply. Thus, the role of intermediary is only supportive.

- iv. It does not include a person who supply the goods/services on his own account.

- v. **Sub-contracting is not intermediary** - Sub-contracting of services either fully or partially do not qualify as an intermediary service as the supply is made on principal-to-principal basis.
- vi. The specific provision of place of supply of 'intermediary services' under Section 13 of the Integrated Goods and Services Tax Act, 2017 ('IGST Act') shall be invoked only when either the location of supplier of intermediary services or location of the recipient of intermediary services is outside India.
- vii. Circular 159 also states certain illustrations (which are only indicative and not exhaustive) to bring more clarity to the issue. The Circular clarified that the above illustrations are only indicative and not exhaustive. They should not be interpreted to mean that the service categories mentioned therein are inherently either intermediary services or otherwise. Whether or not, a specific service would fall under intermediary services, would depend upon the facts of the specific case.

**Circular No. 159/15/2021 - GST dated 20 September 2021)**

### Clarification in respect of certain GST related issues

#### Eligibility to claim input tax credit in respect of debit notes

- Effective 1 January 2021, in case of debit notes, the date of issuance of debit note (and not the date of underlying invoice) shall determine the relevant financial year for the purpose of availing input tax credit ('ITC') in terms of amended section 16(4)<sup>1</sup> of the CGST Act.

- Availment of ITC on or after 1 January 2021 in respect of debit notes issued prior to or after 1 January 2021, the eligibility for availment of ITC shall be governed by amended provisions of Section 16(4) of CGST Act. Whereas ITC availed prior to 1 January 2021, in respect of debit notes, shall be governed by provisions of section 16(4) of CGST Act that existed before 1 January 2021.

No requirement to carry physical copy of tax invoice during transportation of goods where e-invoice has been generated by the supplier

- Where e-invoice has been generated by the supplier as per Rule 48(4) of the Central Goods and Services Tax Rules, 2017 ('CGST Rules'), there is no need to carry physical copy of tax invoice and the Transporter/ supplier can produce electronically the Quick Response (QR) Code having an embedded Invoice Reference number (IRN) for verification by proper officer in lieu of physical copy of tax invoice.

Refund of accumulated ITC allowed for goods attracting NIL rate of export duty or fully exempt from export duty

- Only those goods which are actually subjected to export duty i.e., goods on which export duty is leviable at the time of export, will be covered under the restriction imposed under second proviso to Section 54(3) of the CGST Act from refund of accumulated ITC.
- Goods which attract NIL rate of export duty or which are fully exempted from payment of export duty would not be covered by the restriction imposed under the second proviso to section 54(3) of the CGST Act for the purpose of availment of refund of accumulated ITC.

**(Circular No. 160/16/2021 - GST dated 20 September 2021)**

<sup>1</sup>Section 16(4) of CGST Act provides that "A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier."

## Clarification relating to export of services – Condition (v) of section 2(6) of the IGST Act

- Clause (v) of sub-section (6) of section 2 of IGST Act, which defines “export of services”, places a restriction that any supply of services by an establishment of a foreign company in India to any other establishment of the said foreign company outside India will not be covered under definition of export of services. Further, Explanation 2 to section 8 of the IGST Act suggests that if a foreign company is conducting business in India through a branch or an agency or a representational office, then the said branch or agency or representational office of the foreign company, located in India, shall be treated as establishment of the said foreign company in India. Similarly, if any company incorporated in India, is operating through a branch or an agency or a representational office in any country outside India, then that branch or agency or representational office shall be treated as the establishment of the said company in the said country.
- Circular No. 161/17/2021- GST dated 20 September 2021 (‘Circular 161’) states that supply of services by a branch or an agency or representation office of a foreign company, not incorporated in India, to any establishment of the said foreign company will be treated as supply between establishments of distinct persons and would not qualify as export of services. Similarly, services by company incorporated in India to any of its branch/ agency or representational office outside India would not qualify as export.
- Vide Circular 161, it is clarified that supply of services by a subsidiary/sister concern/group concern etc., of foreign company, incorporated in India under the Companies Act, 2013 (‘Companies Act’) to the other

establishments of said foreign company incorporated outside India would not be treated as supply between merely establishments of distinct persons and would qualify as ‘export of services’ subject to fulfillment of other conditions.

- Similarly, the supply from an Indian company to its related establishments incorporated outside India would not be treated as supply to merely establishments of distinct persons and would qualify for ‘export of services’ subject to fulfillment of other conditions.



***(Circular No. 161/17/2021 - GST dated 20 September 2021)***

## Aadhar Authentication not applicable to notified persons

- Notification No. 03/2021- Central tax dated 23 February 2021 was issued to notify the list of persons to whom provisions of sub section (6B) or sub section (6C) of section 25 of the CGST Act shall not apply.
- Necessary amendment is now made in the above notification to state that the provisions of sub-section (6A) of Section 25 of the CGST Act which deals with the requirement of authentication of Aadhaar number by every registered person shall not be applicable to the notified persons.

***(Notification No. 36/2021 – Central Tax dated 24 September 2021)***

## Clarifications in respect of refund of tax specified in section 77(1) of the CGST Act and Section 19(1) of the IGST Act

- Section 77(1) of the CGST Act and Section 19(1) of the IGST Act deals with the tax wrongfully collected and paid to Central Government or State Government.
- Section 77(1) of the CGST Act deals with the cases where registered person has paid CGST + SGST/ CGST + UTGST on a transaction considering it as an intra-state supply but which is **subsequently held** to be an inter-state supply (IGST) shall be refunded the amount so wrong paid in a prescribed manner.
- A similar provision is available in section 19(1) of the IGST Act wherein refund is available to a registered person for the tax paid on the transaction considering it as an inter-state supply (IGST) but which is **subsequently held** to be an intra state supply (CGST + SGST).
- A clarification was needed regarding the term “subsequently held” in the aforementioned sections and whether the refund is available only if the situation of “subsequently held” is on account of

scrutiny/assessment/audit/investigation/any result of adjudication/appellate/any other proceedings OR refund under these sections is also available on account of self-assessment of such cases by the registered person himself.

- Vide Circular no. 162/18/2021-GST dated 25 September 2021, it has been clarified that the term “subsequently held” in section 77 of CGST Act and Section 19 of the IGST Act covers both the above cases and refund can be claimed by the taxpayer in both the above-mentioned situations provided the taxpayer pays the required amount of tax in the correct head.
- Further, the relevant date for claiming the refund under section 77 of the CGST Act/ section 19 of the IGST Act is explained in the new sub rule (1A) of Rule 89 of CGST Rules which is inserted vide notification no. 35/2021 – Central Tax dated 24 September 2021 (‘Notification 35’). As per Rule 89(1A) of CGST Rules, any person may claim refund before expiry of 2 years from date of payment of tax under correct head i.e. IGST in respect of subsequently held “inter-state supply” or CGST & SGST in respect of subsequently held “intra-state supply”.
- However, for the cases of payment of tax under correct head before the date of issue of Notification 35, the refund application can be filed before expiry of 2 years from the date of said notification i.e. from 24 September 2021.
- It is also clarified that refund under section 77 of CGST Act/Section 19 of IGST Act shall not be available if taxpayer has made tax adjustment and issued a credit note under section 34 of the CGST Act in respect of said transactions.

***(Circular No. 162/18/2021 - GST dated 25 September 2021)***

## Changes in GST rates on services effective from 1 October 2021

The CBIC vide Notification No. 06/2021 – Central Tax (Rate) dated 30 September 2021 has amended Notification No. 11/2017 – Central Tax (Rate) dated 28 June 2017 as amended from time to time ('Rate Notification of services'), to adhere to the recommendations of 45<sup>th</sup> GST Council meeting held on 17 September 2021 as under:

- Where Section 12AA of Income Tax Act, 1961 ('IT Act') is mentioned, now Section 12AB is also inserted. This is in view of the amendments made under the IT Act in terms of insertion of section 12AB requiring the charitable entities to henceforth obtain registration under the said new provision.

Accordingly, necessary changes have been carried out in clause (g) of item (iv) of serial no. 3 of the rate notification of services to include Section 12AB of the IT Act in the corresponding entry. The amended entry is as under:

S. No.	Description of Services	GST rate
3	(iv) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, {other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above} supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of- (g) a building owned by an entity registered under section 12AA <u>or 12AB</u> of the Income Tax Act, 1961 (43 of 1961), which is used for carrying out the activities of providing, centralised cooking or distribution, for mid-day meals under the mid-day meal scheme sponsored by the Central Government, State Government, Union territory or local authorities.	12%

- Temporary or permanent transfer or permitting the use or enjoyment of Intellectual Property right ('IP right'), shall now be charged at GST rate of 18%. Earlier, IP right in respect of Information Technology software was charged at 18% and IP right in respect of other goods were chargeable at 12%. The amended entry is as under:

S. No.	Description of Services	GST rate
17	(ii) Temporary or permanent transfer or permitting the use or enjoyment of Intellectual Property (IP) right	18%



- Services by way of job work in relation to manufacture of alcoholic liquor for human consumption shall be taxable at 18%. Earlier, the alcoholic liquor for human consumption was equated with food products and GST rate was 5%. The new entry is as under:

S. No.	Description of Services	GST rate
26	(ica) Services by way of job work in relation to manufacture of alcoholic liquor for human consumption	18%

- Services by way of printing of all goods falling under Chapter 48 or 49 [including newspapers, books (including Braille books), journals and periodicals], shall now be charged at rationalised rate of 18% instead of 12%. Earlier, the printing services of goods where only content is supplied by the publisher and the physical inputs including paper used for printing belong to the printer was taxable at 12%. The amended entry is as under:

S. No.	Description of Services	GST rate
27	(ii) Other manufacturing services; publishing, printing and reproduction services; material recovery services	18%

- In serial no. 34, Items (iii) and (iiia) of rate notification of services shall be substituted as under:

Service Code	Description of Services	GST rate
9996	(iii) Services by way of admission to; (a) theme parks, water parks and any other place having joy rides, merry-go rounds, go carting, or (b) ballet, - other than any place covered by (iiia) below	18%
9996	(iiia) Services by way of admission to (a) casinos or race clubs or any place having casinos or race clubs or (b) sporting events like Indian Premier League.	28%

Thus, admission to amusement parks having rides etc. attracts GST rate of 18%. Admission to places that have casinos or race clubs or admission to sporting events like Indian Premier League attracts GST rate of 28%.

- In 'Annexure: Scheme of Classification of Services', after serial number 118 and the entries relating thereto, the following shall be inserted, namely:

S. No.	Chapter, Section, Heading or Group	Service Code (Tariff)	Service Description
118a	Group 99654		Multimodal Transport of goods from a place in India to another place in India
118b		996541	Multimodal Transport of goods from a place in India to another place in India

**(Notification No. 06/2021 – Central Tax (Rate) dated 30 September 2021)**

**Certain services exempted effective from 1 October 2021**

The CBIC vide Notification No. 07/2021 – Central Tax (Rate) dated 30 September 2021 has amended Notification No. 12/2017 – Central Tax (Rate) dated 28 June 2017 ('services exemption notification'), to adhere to the recommendations of 45<sup>th</sup> GST Council meeting held on 17 September 2021 as under:

- Wherever Section 12AA of IT Act is mentioned, now Section 12AB is also inserted. This is in view of the amendments made under the IT Act in terms of insertion of section 12AB requiring the charitable entities to henceforth obtain registration under the said new provision. Therefore, the exemptions/concessions under GST that were linked with section 12AA of IT Act are now linked with section 12AB of IT Act..

Accordingly, necessary changes have been carried out in serial no. 1, 9D, 13, 74A and 80 of the services exemption notification to include "Section 12AB" of the IT Act in the corresponding entries

- Serial No. 9AA has been amended to insert the words "whenever rescheduled" in it. The amended entry reads as under:

S. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
9AA	Chapter 99	Services provided by and to Fédération Internationale de Football Association (FIFA) and its subsidiaries directly or indirectly related to any of the events under FIFA U-17 Women's World Cup 2020 to be hosted in India <b>whenever rescheduled.</b>	Nil	Provided that Director (Sports), Ministry of Youth Affairs and Sports certifies that the services are directly or indirectly related to any of the events under FIFA U-17 Women's World Cup 2020.

- Following entries has been inserted to exempt the following services as under:

S. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
9AB	Chapter 99	Services provided by and to Asian Football Confederation (AFC) and its subsidiaries directly or indirectly related to any of the events under AFC Women's Asia Cup 2022 to be hosted in India.	Nil	Provided that Director (Sports), Ministry of Youth Affairs and Sports certifies that the services are directly or indirectly related to any of the events under AFC Women's Asia Cup 2022.
61A	Heading 9991	Services by way of granting National Permit to a goods carriage to operate through-out India / contiguous States	Nil	Nil
82A	Heading 9996	Services by way of right to admission to the events organized under AFC Women's Asia Cup 2022	Nil	Nil

- Serial No. 19A and 19B has been amended to extend the validity of GST exemption on transport of goods by vessel and air from customs station of clearance in India to a place outside India up to 30 September 2022. Earlier, these services were exempted till 30 September 2021.
- Exemption in respect of the services of leasing of assets (rolling stock assets including wagons, coaches, locos) by the Indian Railways Finance Corporation (IRFC) to Indian Railways (serial no. 43) has been withdrawn. Thus, services provided by IRFC to Indian Railways shall now be taxable under GST.
- Exemption is provided for any training programme for which Government bears 75% or more of the expenditure. Earlier, exemption applied only if Government funds 100%. Serial no. 72 of the services exemption notification is amended as under:

- Exemption is provided for any training programme for which Government bears 75% or more of the expenditure. Earlier, exemption applied only if Government funds 100%. Serial no. 72 of the services exemption notification is amended as under:

S. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
72	Heading 9992	Services provided to the Central Government, State Government, Union territory administration under any training programme for which <b>75% or more of the</b> total expenditure is borne by the Central Government, State Government, Union territory administration	Nil	Nil

(Notification No. 07/2021 – Central Tax (Rate) dated 30 September 2021)

### Changes in GST rates on goods effective from 1 October 2021

The CBIC vide Notification No. 08/2021 – Central Tax (Rate) dated 30 September 2021 has amended Notification No. 1/2017 – Central Tax (Rate) dated 28 June 2017 as amended from time to time ('Rate Notification of goods'), to adhere to the recommendations of 45<sup>th</sup> GST Council meeting held on 17 September 2021 as under:

S. No.	Description of Goods	Existing GST Rate	New GST Rate
1.	Retro fitment kits for vehicles used by the disabled	Appl. Rate	5%
2.	Tamarind seeds meant for any use other than sowing	NIL	5%
3.	Medicine Keytruda for treatment of cancer	12%	5%
4.	Biodiesel supplied to Oil Marketing Companies for blending with High-Speed Diesel	12%	5%
5.	Iron ores and concentrates, including roasted iron pyrites	5%	18%

S. No.	Description of Goods	Existing GST Rate	New GST Rate
6.	Manganese ores and concentrates, including ferruginous manganese ores and concentrates with a manganese content of 20% or more, calculated on the dry weight	5%	18%
7.	Copper ores and concentrates	5%	18%
8.	Nickel ores and concentrates	5%	18%
9.	Cobalt ores and concentrates	5%	18%
10.	Aluminium ores and concentrates	5%	18%
11.	Lead ores and concentrates	5%	18%
12.	Zinc ores and concentrates	5%	18%
13.	Tin ores and concentrates	5%	18%
14.	Chromium ores and concentrates	5%	18%
15.	<p>Following renewable energy devices and parts for their manufacture:-</p> <p>(a) Bio-gas plant;</p> <p>(b) Solar power based devices;</p> <p>(c) Solar power generator;</p> <p>(d) Wind mills, Wind Operated Electricity Generator (WOEG);</p> <p>(e) Waste to energy plants / devices;</p> <p>(f) Solar lantern / solar lamp;</p> <p>(g) Ocean waves/tidal waves energy devices/plants;</p> <p>(h) Photo voltaic cells, whether or not assembled in modules or made up into panels.</p> <p>Explanation:- If the goods specified in this entry are supplied, by a supplier, along with supplies of other goods and services, one of which being a taxable service specified in the entry at S. No. 38 of the Table mentioned in the notification No. 11/2017-Central Tax (Rate), dated 28<sup>th</sup> June, 2017 [G.S.R. 690(E)], the value of supply of goods for the purposes of this entry shall be deemed as seventy per cent. Of the gross consideration charged for all such supplies, and the remaining thirty per cent. of the gross consideration charged shall be deemed as value of the said taxable service</p>	5%	12%

S. No.	Description of Goods	Existing GST Rate	New GST Rate
16.	Rail locomotives powered from an external source of electricity or by electric accumulators	12%	18%
17.	Other rail locomotives; locomotive tenders; such as Diesel electric locomotives, Steam locomotives and tenders thereof	12%	18%
18.	Self-propelled railway or tramway coaches, vans and trucks, other than those of heading 8604	12%	18%
19.	Railway or tramway maintenance or service vehicles, whether or not self-propelled (for example, workshops, cranes, ballast tampers, track liners, testing coaches and track inspection vehicles).	12%	18%
20.	Railway or tramway passenger coaches, not self-propelled; luggage vans, post office coaches and other special purpose railway or tramway coaches, not self-propelled (excluding those of heading 8604).	12%	18%
21.	Railway or tramway goods vans and wagons, not self-propelled	12%	18%
22.	Parts of railway or tramway locomotives or rolling-stock; such as Bogies, bissel-bogies, axles and wheels, and parts thereof	12%	18%
23.	Railway or tramway track fixtures and fittings; mechanical (including electro-mechanical) signalling, safety or traffic control equipment for railways, tramways, roads, inland waterways, parking facilities, port installations or airfields; parts of the foregoing	12%	18%
24.	Plans and drawings for architectural, engineering, industrial, commercial, topographical or similar purposes, being originals drawn by hand; hand-written texts; photographic reproductions on sensitised paper and carbon copies of the foregoing	12%	18%
25.	Unused postage, revenue or similar stamps of current or new issue in the country in which they have, or will have, a recognised face value; stamp-impressed paper; banknotes; cheque forms; stock, share or bond certificates and similar documents of title (other than Duty Credit Scrips)	12%	18%

S. No.	Description of Goods	Existing GST Rate	New GST Rate
26.	Transfers (decalcomanias)	12%	18%
27.	Printed or illustrated postcards; printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings	12%	18%
28.	Calendars of any kind, printed, including calendar blocks	12%	18%
29.	Other printed matter, including printed pictures and photographs; such as Trade advertising material, Commercial catalogues and the like, printed Posters, Commercial catalogues, Printed inlay cards, Pictures, designs and photographs, Plan and drawings for architectural engineering, industrial, commercial, topographical or similar purposes reproduced with the aid of computer or any other devices	12%	18%
30.	Waste, Parings and Scrap, of Plastics	5%	18%
31.	Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibres; box files, letter trays, and similar articles, of paper or paperboard of a kind used in offices, shops or the like	12%/18%	18%
32.	Ball point pens; felt tipped and other porous-tipped pens and markers; fountain pens; stylograph pens and other pens; duplicating stylos; pen holders, pencil holders and similar holders; parts (including caps and clips) of the foregoing articles, other than those of heading 9609	12%/18%	18%
33.	Carbonated Beverages of Fruit Drink or Carbonated Beverages with Fruit Juice	18%	28%

**(Notification No. 08/2021 – Central Tax (Rate) dated 30 September 2021)**

## Exemption/Reduced rate benefit on specified drugs used in Covid-19 treatment (Effective from 1 October 2021)

- Existing concessional rates on certain specified drugs used for the treatment of COVID-19 are extended till 31 December 2021 along with reduction of GST rates on additional drugs which are tabulated below:

S. No.	Description of Goods	GST Rate
1.	Tocilizumab	Nil
2.	Amphotericin B	Nil
3.	Remdesivir	5%
4.	Heparin (anti-coagulant)	5%
5.	Itolizumab	5%
6.	Posaconazole	5%
7.	Infliximab	5%
8.	Bamlanivimab & Etesevimab	5%
9.	Casirivimab & Imdevimab	5%
10.	2-Deoxy-D-Glucose	5%
11.	Favipiravir	5%

*(Notification No. 12/2021 – Central Tax (Rate) dated 30 September 2021)*





# 03

## Customs Updates



## Electronic Duty Credit Ledger Regulations, 2021:

- Central Board of Indirect Taxes and Customs ('CBIC') notifies the Electronic Duty Credit Ledger Regulations, 2021 for providing credit under Remission of Duties and Taxes on Exported Products ('RoDTEP') and Rebate of States and Central Taxes and Levies ('RoSCTL') scheme.
- Any shipping bill or bill of export, presented on or after the 1 January 2021 and having a claim of duty credit under these schemes will be processed in the customs automated system, on the basis of risk evaluation through appropriate selection criteria.
- The claim will be allowed by Customs as per the conditions and restrictions notified for the Scheme, after the filing of export manifest or export report. Once the claim is allowed, a scroll for duty credit will be generated by the proper officer in the customs automated system. Separate scrolls will be generated for each Scheme.
- The scroll details, including the details of shipping bill or bill of export, duty credit allowed and date of generation of scroll, will be visible in the customs automated system to the exporter who is the recipient of such duty credit.
- **Regulation 4 provides for creation of E-scrip in the ledger:**
  - ❖ The exporter will have an option to combine the duty credits under a particular Scheme, allowed to him in one or more shipping bills or bills of export, and to carry forward the said duty credits to create an e-scrip for that Scheme in the ledger, customs station-wise according to the customs station of export, within a period of one year from the date of generation of the scroll in the customs automated system.
  - ❖ Each e-scrip will have a unique identification number and date of its creation and all transactions in the ledger will be carried out using the said number and date.

- **Regulation 5 provides for registration of E-scrip:**

- ❖ The customs station of export will be the customs station of registration for an e-scrip.
- ❖ The registration of e-scrip will be automatic and separate application for the same will not be required to be filed.

- **Regulation 6 provides for use and validity of E-scrip:**

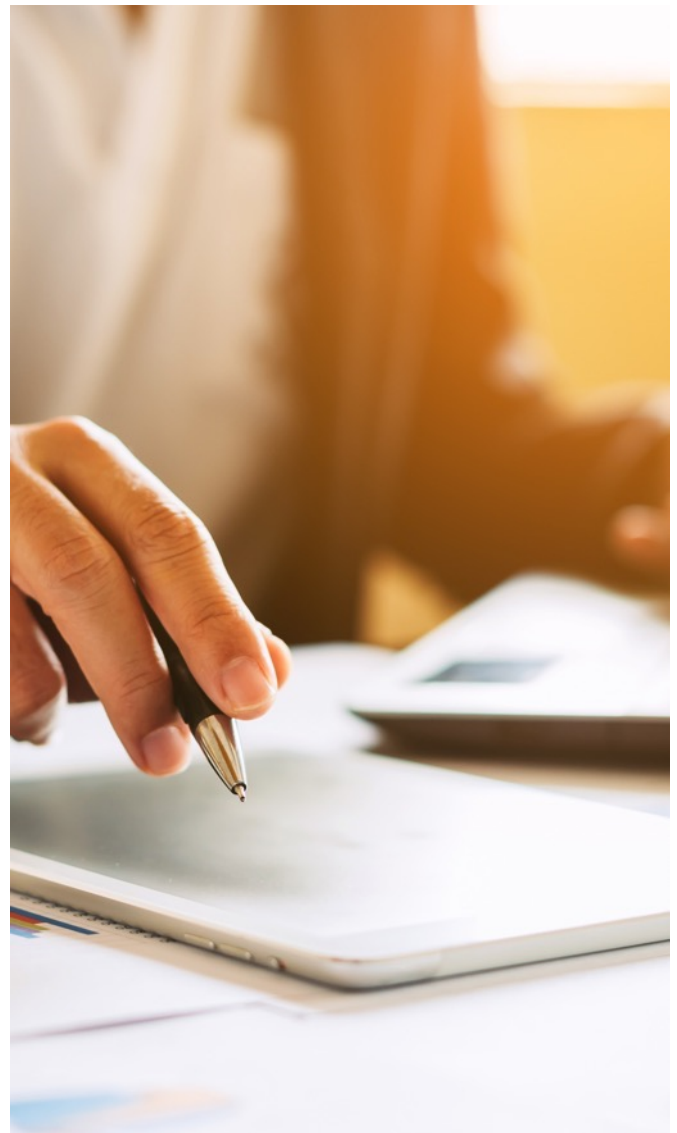
- ❖ The duty credit available in the e-scrip in the ledger will be used for payment of duties of Customs specified in the First Schedule to the Customs Tariff Act, 1975.
- ❖ The e-scrip will be valid for a period of one year from the date of its creation in the ledger and any duty credit in the said e-scrip remaining unutilized at the end of this period will lapse.
- ❖ Such duty credit in the e-scrip that has lapsed will not be re-generated.

- **Regulation 7 provides for transfer of duty credit in the E-scrip:**

- ❖ Transfer of duty credit in e-scrip will be allowed within the customs automated system from the ledger of a person to the ledger of another person who is a holder of an Importer-exporter Code Number issued in terms of the Foreign Trade (Development and Regulation) Act, 1992.
- ❖ The duty credit available in an e-scrip will be transferred at a time for the entire amount in the said e-scrip to another person and transfer of the duty credit in part will not be permitted. The validity of e-scrip will not change on account of transfer of the e-scrip.

- **Regulation 8 provides for suspension or cancellation of duty credit:**

- ❖ Where a person contravenes any of the provisions of the Act or any other law for the time being in force or the rules or regulations made thereunder in relation to the exports to which the duty credit relates, or in relation to the e-scrip, the said duty credit or e-scrip may be suspended or cancelled in the ledger in the manner as notified.



***(Notification No. 75/2021 Customs (N.T.) dated 23 September 2021)***

## Manner to issue duty credit for goods exported under the Scheme for Remission of Duties and Taxes on Exported Products (RoDTEP):

- CBIC has notified the manner to issue duty credit scrips to the exporters who are intended to avail benefit under RoDTEP scheme, duty credits will be subject to conditions and restrictions as summarized below:
  - ❖ Duty credit is issued in lieu of remission of any duty or tax or levy, chargeable on any material used in the manufacture/processing of goods in India that are exported, wherein such duty or tax or levy is not exempted, remitted or credited under any other Scheme.
  - ❖ Credit will be granted at the rate as notified by Directorate General of Foreign Trade ('DGFT') in Appendix 4R.
  - ❖ Value of the said goods for calculation of duty credit to be allowed on the declared export Free on Board ('FOB') value of the said goods or up to 1.5 times the market price of the said goods, whichever is less.
  - ❖ Exporter to make appropriate declaration in Shipping Bill at the item level in customs automated system, allowed for the shipments presented on or after the 01 January 2021.
  - ❖ Exporters can use the duty credit scrips for payment of duties of Customs specified in the First Schedule to the Customs Tariff Act, 1975 on subsequent imports.
  - ❖ Export categories or sectors ineligible for duty credit are as specified in Table - 1 of the notification.
  - ❖ Duty credit will be subject to realization of sale proceeds by the exporter within the specified period under Foreign Exchange Management Act, 1999, failing which such duty credit will be deemed to be ineligible.
  - ❖ Export Shipment entry/Shipping bill is required to be presented and processed electronically on the customs automated system.
  - ❖ Exports made to Nepal, Bhutan and Myanmar will be allowed only upon realization of sale proceeds against irrevocable letters of credit in freely convertible currency established by importers in Nepal, Bhutan and Myanmar in favour of Indian exporters for the value of such goods.
- In case any contravention of the provisions in this regard, will result in cancellation of duty credit or e-scrip and subjected to recovery of the amount by customs if the scrip is used/transferred.
- If duty credit was allowed in excess of what the exporter is entitled to, the exporter will repay the amount so allowed in excess along with interest within the specified period,
- If duty credit was allowed for exports which have not been realized by the exporter within the specified period under Foreign Exchange Management Act, 1999, the exporter will repay the amount of duty credit, along with interest within the specified period.
- During the pendency of any recovery, no further duty credit, on any subsequent exports, will be allowed to such exporter till the time such recovery is made and any unutilised duty credit with the exporter or the transferee will be suspended pending such recovery.

## Manner to issue duty credit for goods exported under the continuation of Scheme for Rebate of States and Central Taxes and Levies (RoSCTL):

- CBIC has notified the manner to issue duty credit scrips to the exporters who are intended to avail benefit under RoSCTL scheme, duty credits will be subject to conditions and restrictions as summarized below:
  - ❖ The duty credit will be issued for exports of garments and made-ups and their respective rate and cap as listed under the Notification issued by Government of India, Ministry of Textiles' during March 2019. Value of the said goods for calculation of duty credit to be allowed on the declared export Free On Board ('FOB') value of the said goods or up to 1.5 times the market price of the said goods, whichever is less.
  - ❖ Exporter to make appropriate declaration in Shipping Bill at the item level in customs automated system, allowed for the shipments presented on or after the 01 January 2021.
  - ❖ Exporters can use the duty credit scrips for payment of duties of Customs specified in the First Schedule to the Customs Tariff Act, 1975 on subsequent imports.
  - ❖ Export categories or sectors ineligible for duty credit are as specified in Table - 1 of the notification.
  - ❖ Duty credit will be subject to realization of sale proceeds by the exporter within the specified period under Foreign Exchange Management Act, 1999, failing which such duty credit will be deemed to be ineligible.
- Export Shipment entry/Shipping bill is required to be presented and processed electronically on the customs automated system.
- In case the exporter has realised the sale proceeds against export of goods made earlier after the expiry of specified timelines, such duty credit will be issued by Customs in excess of the ineligible amount of duty credit pertaining to the unrealised portion of sale proceeds against export of goods made earlier.
- Exports made to Nepal, Bhutan and Myanmar will be allowed only upon realization of sale proceeds against irrevocable letters of credit in freely convertible currency established by importers in Nepal, Bhutan and Myanmar in favour of Indian exporters for the value of such goods.
- In case any contravention of the provisions in this regard, will result in cancellation of duty credit or e-scrip and subjected to recovery of the amount by customs if the scrip is used/transferred.
- If Duty credit was allowed in excess of what the exporter is entitled to, the exporter will repay the amount so allowed in excess along with interest within the specified period,
- If duty credit was allowed for exports which have not been realized by the exporter within the specified period under Foreign Exchange Management Act, 1999, the exporter will repay the amount of duty credit, along with interest within the specified period.

**(Notification No. 77/2021 Customs (N.T.) dated 23 September 2021)**

# 04

## FTP Updates



## Relief in Average Export Obligation in terms of the Para 5.19 of the Handbook Procedure ('HBP') of Foreign Trade Policy ('FTP') 2015-20:

- As per Para 5.19 of the HBP of FTP, exports in a sector / product group having declined by more than 5% as compared to previous year, will get proportionate reduction in Average Export Obligation ('AEO') for the year.
- A list of such sectors/product groups showing the percentage decline in exports during 2019-20 and 2020-21 as compared to 2018-19 and 2019-20 respectively would be entitled for such relief.
  - Annexure I of the Circular - Provide list of groups showing % of decline in exports during 2019-20 (as compared to 2018-19) covers over 515 Product Groups.
  - Annexure II of the Circular - Provide list of groups showing % of decline in exports during 2020-21 (as compared to 2019-20) covers over 544 Product Groups.
- Exporter may approach Regional offices for re-fixing of the Average Export Obligation.

***(Policy Circular No. 37/2015-20 dated 10 September 2021)***

## Last date of submitting application for Scrip based FTP schemes and validity period of Duty Credit Scrips:

- Para 3.13A is added after Para 3.13 of FTP 2015-20 stating:
  - The last date of submitting the online applications under Merchandise Exports from India Scheme ("MEIS"), Service Exports from India Scheme ("SEIS"), Remission of State and Central Taxes and Levies ("ROSTL"), Rebate of State Levies ("ROSL") and 2% additional ad hoc incentive (under para 3.25 of FTP) has been notified to be 31 December, 2021, in suppression of any such provision in the HBP 2015-20 going forward.
  - Beyond 31 December, 2021, no further application would be allowed to be submitted and they would become time barred. Also, late cut provision will not be available for submitting claims at a later date.
  - New late cut provisions for application submitted upto 31 December, 2021 has been issued and provision related to late cut in Para 9.02 of HBP has been suppressed.

Sl. No.	Scheme	Period of Export (Let Export Date in the Period) / Services rendered in the period	Late Cut (as % age of entitlement under the scheme)
1	MEIS	FY 2018-19 (01/07/2018 to 31/03/2019)	10%
2	MEIS	FY 2019-20 and FY 2020-21 (upto 31/12/2020)	NIL
3	SEIS	FY 2018-19	5%
4	SEIS	FY 2019-20	NIL
5	ROSTL	07/03/2020 to 31/12/2020	NIL
6	ROSL	Upto 06/03/2019	NIL

- Para 3.13B is added after Para 3.13 of FTP 2015-20 stating:
  - The validity of any scrip issued under FTP from the date of this Notification have been notified to be 12 months from the date of issue, in suppression of validity provisions in the HBP 2015-20.

**(Notification No. 26/2015-2020 dated 16 September 2021)**

### **De-Activation of Import Export Code ('IEC') not updated on the Directorate General of Foreign Trade ('DGFT'):**

- Vide Notification No. 58/2015-2020 dated 12 February 2021, it is mandated by DGFT to all the IEC holder to ensure that details in their IEC is updated electronically every year during April-June (Period).
- IECs that are not updated will now be de-activated. All IECs which have not been updated after 01 January 2005 will be de-activated with effect from 06 October 2021.
- These IEC Holders are provided one final chance to update their IEC till the period 05 October 2021 failing which the given IECs will be de-activated from 06 October 2021.
- The de-activation activity will be initiated in a phased manner. However, it is provided in trade notice that any IEC which will be de-activated would have the opportunity for automatic re-activation without any manual intervention or a physical visit to the DGFT. Upon successful updating of IEC, the given IEC will be reactivated again.

**(Trade Notice 18/2021-22 dated 18 September 2021)**

### **Extension in the Export Obligation ('EO') period of specified Advance Authorisation and Export Promotion of Capital Goods ('EPCG') Authorisation till 31 December 2021:**

- Under Advance Authorisation and EPCG Authorisation, the EO period will be extended till 31 December 2021 which was expiring during the period between 01 August 2020 and 31 July 2021.
- However, the above EO extension is subject to 5% additional EO in value terms (in foreign exchange) on the balance export obligation on the date of expiry of the original/extended EO period.
- In cases where EO extension is already availed upon payment of composition fees, the refund of the composition fees will not be permitted.
- The above benefit is in addition to the EO extension facility upon payment of the composition fees already provided in FTP/HBP.

**(Notification No. 28/2015-20 dated 23 September 2021)**



## Government notifies list of eligible services and rates under Service Export from India Scheme ('SEIS') for services rendered in FY 2019-20:

- The total entitlement under the SEIS scheme against export of notified services is capped at Rs.5 crores per Import Export Code ('IEC').
- Notification also restricts the facility to claim benefits under SEIS on payments in Indian Rupees for notified services rendered in FY 2019-20.
- The application for claiming SEIS benefits FY 2019-20 can be filed by 31 December 2021. In case of non-submission of application by 31 December, there are no late cut provisions for and hence, such applications will become time barred after 31 December 2021.
- Under the revised list of eligible services, certain service categories which were earlier eligible for the SEIS benefits, henceforth ineligible. Such service categories include management consulting services, services relating to management consulting, technical testing and analysis services and cargo handling services.
- Professional services, such as legal and taxation, certain engineering services, veterinary, urban planning, research and development, certain audio visual services, among others, fall under the 5 per cent rate. Advertising, investigation and security, packaging, and printing & publishing services fall under the 3 per cent rate.
- List of notified services and rates under SEIS scheme is provided in Appendix 3X.

***(Notification No. 29/2015-20 dated 23 September 2021)***



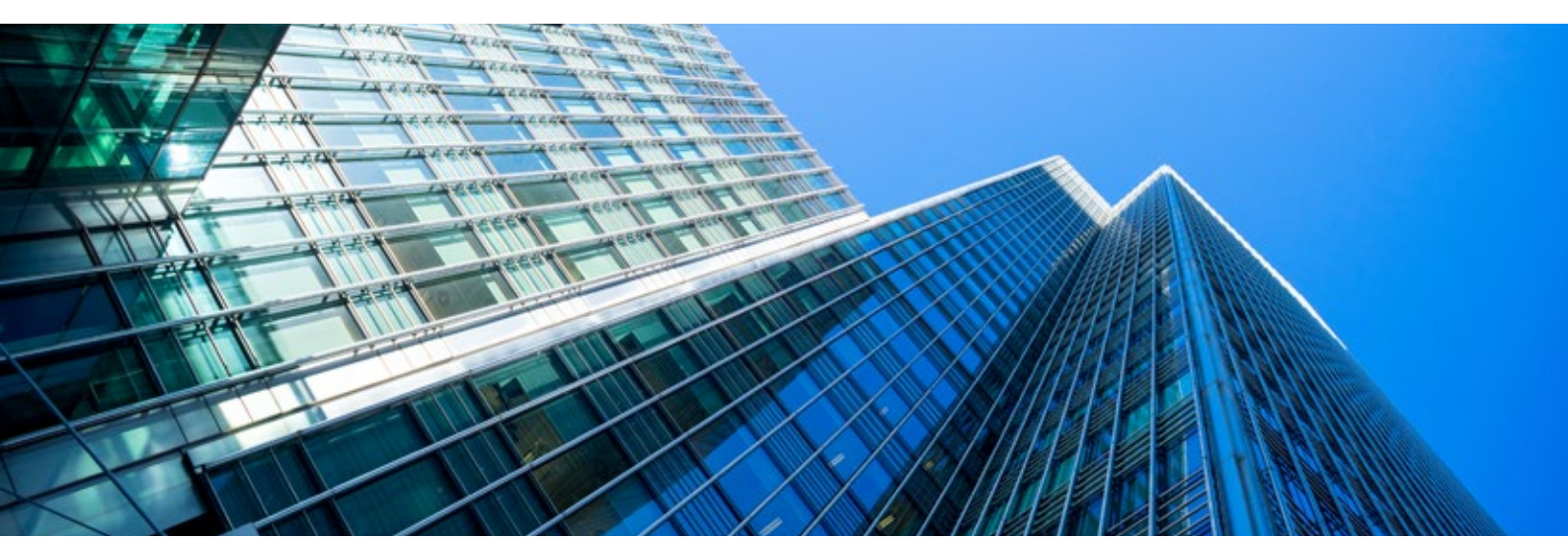


# 04

# Compliance Calendar

## Indirect Tax

Compliance Category	Compliance Description	Frequency	Due dates falling in the month of September 2021
Form GSTR-1	Details of outward supplies filed by registered person	Monthly	11 October 2021
Form GSTR-1	Details of outward supplies filed by registered person under QRMP Scheme	Quarterly	13 October 2021
Form GSTR- 3B (Monthly Return)	Registered person having turnover more than INR 5 crores in the previous FY and registered person having turnover less than INR 5 crores and who have not opted for QRMP Scheme	Monthly	20 October 2021
Form GST-3B (Quarterly Return)	Registered person having turnover less than INR 5 crores in the previous FY and registered in prescribed 14 States/ UT*	Quarterly	22 October 2021
Form GST-3B (Quarterly Return)	Registered person having turnover less than INR 5 crores in the previous FY and registered in prescribed 22 States/ UT**	Quarterly	24 October 2021
Form GSTR-6 (Return for Input Service Distributor)	Details of input tax credit received and distributed by input services distributor	Monthly	13 October 2021
Form GSTR – 7 (Return for TDS Deductor)	For persons who are required to deduct TDS under GST	Monthly	10 October 2021
Form GSTR – 8 (Return for TCS Collector)	For persons who are required to deduct TDS under GST	Monthly	10 October 2021



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