GUIDANCE NOTE ON ANTI PROFITEERING

THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(Statutory body under an Act of Parliament)

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"The Institute of Cost Accountants of India would be the preferred source of resources and professionals for the financial leadership of enterprises globally."

Mission Statement

"The Cost and Management Accountant professionals would ethically drive enterprises globally by creating value to stakeholders in the socio-economic context through competencies drawn from the integration of strategy, management and accounting"

Objectives of Taxation Committee:

1. Preparation of Suggestions and Analysis of various Tax matters for best Management Practices and for the professional development of the members of the Institute in the field of Taxation.
2. Conducting webinars, seminars and conferences etc. on various taxation related matters as per relevance to the profession and use by various stakeholders.
3. Submit representations to the Ministry from time to time for the betterment and financial inclusion of the Economy.
4. Evaluating opportunities for CMAs to make way for further development and sustenance of the opportunities.
5. Conducting and monitoring of Certificate Courses on Direct and Indirect Tax for members, practitioners, stakeholders and also Crash Courses on GST for Colleges and Universities.

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- Fortnightly Tax Bulletin
- **Indirect Tax** - Certificate Course on GST & Advance GST Course
- **Direct Tax** – Certificate Course on TDS & Filing of Return
- Crash Course on GST for Colleges & Universities
- Various Publications in Direct Tax & Indirect Tax

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CMA Balwinder Singh
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President's Message

Good and Services Tax was introduced with the objective to simplify the taxation process, reduce the burden of taxes (which would happen eventually and automatically), remove cascading effect of tax and to ensure higher compliance.

The GST law contains a unique provision relating to anti-profiteering measure vide Section 171 of CGST Act. The intend is that the taxable person should pass on the benefit of reduction in rate of tax on any supply of goods or the benefit of input tax credit to customers as reduction in prices.

Anti-profiteering rules are necessary as lessons learnt from other countries show that there has been inflation and prices have increased after GST implementation. It makes it important for Indian administrators to keep tab on prices after implementation of GST. India is doing what many countries did: initiate anti-profiteering measures at the retail level to protect consumers from price swindling.

I firmly believe that the Cost Accountants will play a pivotal role under Section 66(1) of the CGST Act. The organizations can also undertake voluntary audit by Cost Accountants with respect to benefits received and passed on to consumers due to implementation of GST.

I compliment the efforts of the contributors to this publication.

With warm regards,

CMA Balwinder Singh
President
April 12, 2020

CMA Biswarup Basu
Vice President

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Vice President's Message

I am pleased to share that the Tax Research Department of the Institute has come out with the "Revised Edition on Guidance Note on Anti-Profiteering" to provide necessary information and guidance to the professionals working in this field. This comprehensive guidance note deals with the provisions under GST Act and covers topics on various taxes subsumed under GST and cesses abolished, pre and post GST factors to be considered while comparing, prepackaged commodities and GST, Anti-Profiteering Rules, Input Tax Credit, role of Cost Accountants in an easy and comprehensible fashion.

I am very sure that that this Guidance note will not only benefit our practicing members and professionals but also other stakeholders such as Government Departments, Regulators, Industrial Houses, Banks and Financial Institutions, etc.

I would like to acknowledge the hard work of resource persons and dedicated efforts of Tax Research Department in releasing this revised guidance note.

My best wishes to the endeavors of the Tax Research Department.

With best regards,

Biswarup Basu

CMA Biswarup Basu
Vice-President
April 12, 2020

Chairman's Message

It gives me immense pleasure to present *2nd revised edition* of **"Guidance note on Anti Profiteering"**. I am sure that this handbook is the outcome of the sincerity and dedication of the Team – Tax Research. I appreciate this publication as it would be a ready resource forprofessionals, industry and other stakeholders in delivering their professional commitments.

With the introduction of GST, the structure of Indirect Tax has been changed and the main aim behind the roll out of GST was to reduce the burden of Tax on end consumers. The Government expects reduction in GST rates to result in a commensurate lowering of sales price to the customer.

But in few cases the benefit of removing cascading effect of Tax is not being passed to the end consumers, rather is being pocketed by traders/suppliers. This is the main reason to introduce Anti Profiteering rules in GST by Central Board of Indirect Taxes and Customs.

With states also simultaneously constituting Screening Committees combined with a deadline of 2 years that has been set for the NAA, the expectation is that industries will have to face a fresh onslaught of investigations where their pricing policies will be reviewed to ensure the benefit of reduced rates and input tax credit have been passed on to the recipients.

I express my sincerely thank the eminent Resource Contributors and the Team – TRD for their solemn effort and support to publish this guidance note on time. I wish them all the luck.

Thanks You.

CMA Niranjan Mishra
Chairman – Indirect Taxation Committee

April 15 ,2020

Chairman's Message

I am very happy that the Tax Research Department has come up with this new publication and would like to share with you the **"Revised Guidance Note on Anti - Profiteering"**. I hope that this ready knowledge resource would be beneficial for the professionals, industry and stakeholders in dealing with provisions under GST Act in their day to day professional deliverables.

The Anti-Profiteering Committee decides on some rules and guidelines to make sure that the GST benefits in the form of low tax rates and input tax credits is being passed on to the end consumers.

As per the anti-profiteering form released by the government, the complainant will have to file the application form before the standing committee on anti-profiteering for Pan-India complaints or before the state screening committees if the profiteering is of a local nature, if that consumer is not getting the benefit of price reduction.

Consumers will have to furnish details of the price of the product and the applicable tax rates both in the pre and post GST era in Application Form (APAF - 1) before the anti-profiteering committee. Addressing the various issues in anti-profiteering this book is being published again including the revisions which have taken place in the recent past.

I am delighted to note that the revised booklet is comprehensive and will serve the stakeholders with very good knowledge and information. I am optimistic that such commitment of the department would surely bring support to the members and stakeholders.

Jai Hind

CMA Rakesh Bhalla
Chairman, Direct Taxation Committee

April 15 ,2020

P R E F A C E

We are delighted to introduce the *2nd Revised Edition* of **"Guidance Note on Anti Profiteering".** We are hopeful that the inclusions and revisions made in this new book would be endearing to all our readers. After carrying on in-depth research on the subject of Anti Profiteering, we have come up with this revised edition of this booklet and not to forget the guidance and efforts of our eminent experts who has been there for us all throughout.

The booklet contains Introduction of GST in India and Background of Anti Profiteering Provisions, Input & Input Services, Pre Packaged Commodities and GST. It also stresses on the Role of Cost Accountants in successful execution of Anti Profiteering Rules, Format for filing complaint etc.

Anti-Profiteering rules are set of rules which prevent entities from making excessive profits due to the GST. Since the introduction of GST, along with the input tax credit, is eventually expected to bring down prices, a National Anti-profiteering Authority (NAA) has been set upto ensure that the benefits that accrue to entities due to reduction in costs is passed on to the consumers. Also, entities that hike rates inordinately, citing GST as the reason, will be checked by this body.

Now, there is a question "What Factors need to be kept in mind for deciding whether there is actual reduction in costs or not?" The answer of the above question can be effectively given by a Cost and Management Accountant through analytical approach by virtue of their professional skill and practical exposure.

We hope that this book will support to achieve the true objective of laws and provisions framed under the Act and will be referred by stakeholders for various professional activities. We have put in our heart and soul in nurturing and bringing up this booklet.

Further, we would like to acknowledge the sincere efforts put by **CMA Utpal Saha** for reviewing this book, without his sincere efforts this accomplishment would not have been possible.

Thank You.

Team – Tax Research Department
The Institute of Cost Accountants of India
April 15, 2020

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CONTENT

CHAPTER - 1

Background

The structure of indirect taxes in India, till 30th June 2017 was based on the three lists in Seventh Schedule to Constitution of India i.e Union List, State List and Concurrent List wherein powers of the Central Government, State Governments and Local Bodies were unambiguously defined. These lists were mostly based on Government of India Act,1935 and therefore were based on the situation prevailing in 1935. The structure became outdated due to changes in situations, technology etc.

Major defects in earlier structure of indirect taxes

Following can be summarized as major defects in structure of indirect taxes, as existing upto 30.06.2017.

- Central Sales Tax (CST) was payable @ 2% for every movement of goods from one State to other. Even in case of stock transfers or branch transfers, there will be a proportionate reversal on input tax credit as per the respective State VAT Laws.
- Cascading effect of taxes could not be avoided due to CST and Entry Tax. State Vat was payable on Central Excise element also.
- Movement of goods in European Union (EU) is free across all countries without any incidence of tax. However, in India, movement of goods from one State to other was not tax free due to entry tax.
- India did not have a national market due to invisible barriers of Central Sales Tax, Entry Tax and State Vat and visible barriers of check posts.
- Millions of man-hours and truck hours were lost at check posts. Besides, huge corruption is involved.
- Central Government could not impose tax on goods beyond manufacturing level. State Government could not impose Service Tax. However, Central Sales Tax (CST) is levied by Central Government and collected by respective State Government.
- Over the years, distinction between goods and services had become hazy, due to which there is overlapping of State Vat and Central Service Tax on transactions like works contract, food related services (restaurants, outdoor catering, mandap services), Software, IPR Related services, lottery, SIM cards, operating lease / renting of goods etc.
- Same transaction was taxed both by Central and State Government which created confusion, litigation and double taxation in many cases.
- Each State had its own State Vat Laws with different provisions, different Vat rates different forms and different procedures. Thus, taxable person having business in more than one States found it extremely difficult to keep pace with tax laws of each State.

- Change in Taxable Event. Earlier in Central Excise the taxable event was manufacturing of goods, in VAT law the taxable event was sale of goods and in service tax it was provision of services. Now under GST the taxable event is supply of goods or services or both.

To overcome the above mentioned defects and following the worldwide trend of Goods and Service Tax (GST), the Government of India also, as a part of Tax Reform process , moved to GST on 1st July 2017. As per Statement of Objects and Reasons appended to One Hundred and First Constitution Amendment Bill, the object of GST is

(a) to have common market, and

(b) avoid cascading effect of taxes.

The major defects in the earlier tax system are expected to be removed in the GST system. Following are the major features of the GST:

- One Nation, One Tax-Uniformity in tax rates and structures
- No Different Valuation basis
- No Different Adjudications
- Reduction in Cascading of Taxes. – Seamless flow of input tax credit.
- Common Economic Market – Hassel free movement of goods – No entry tax.
- GST being a consumption based tax – equity embedded.
- No ambiguity under GST as against prevailing Service Tax & VAT in case of Restaurant Services, Works Contract, Right to use of Movable goods, Software and IPR
- No ambiguity under GST as against prevailing Excise & Service tax for Drawings and Designs, Software, Commissioning & Installation
- *Change in Taxable Event.* Earlier in Central Excise the taxable event was manufacturing of goods, in VAT law the taxable event was sale of goods and in service tax it was provision of services. Now under GST the taxable event is supply of goods or services or both
- Pruning of exemptions under earlier tax laws.

After implementation of GST, the taxpayers are able to avail Input Tax Credit in a much simpler form as compared to earlier Indirect Tax regime. The input tax credit under GST has widened after implementation of GST as compared to other pre GST regime. As a business is expected to have increased credits as compared to other pre GST regime due to widening of the input tax credit provisions which, in turn, would lead to lowering of cost of products and services, it is expected from the businesses to pass on the benefits of cost savings to the consumers by reducing their prices of goods sold or services provided. Further, GST has also resulted in lowering the incidence of indirect taxes due subsuming of various indirect taxes applicable earlier and also on account of rationalization of rates.

Introduction of a new indirect tax regime across the world has witnessed an inflationary economy in certain cases. At the same time, introduction of an efficient and uniform structure brings benefits to the business houses in the form of additional tax credits, eliminating tax cascading and leading to reduction of tax indirect costs for doing business.

It is with these objectives that Governments across the world have implemented anti profiteering provisions to deter the tendency of businesses enriching by way of retention of benefits or additional profits arising from an efficient indirect tax regime.

Introduction of Anti Profiteering in GST

The Indian GST law contains a provision on anti-profiteering to curb the practice of enjoying unjust enrichment in terms of profit arising out of implementation of GST in India. The Government wants that GST should not lead to general inflation , as feared by the common man and for this it was necessary to set up a mechanism to ensure that benefits arising out of GST implementation are passed on to the customer.

Section 171 of the Central Goods and Services Tax Act, 2017 provides for Anti Profiteering measure. As per Sub Section 1 of Sec 171 of CGST ACT, 2017 ,*"Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices."*

Thus it makes mandatory for every taxpayer to pass on the benefits arising out of following to the recipient of the goods or services or goods and services.

- Reduction of rate of tax on any supply of goods or services.
- Benefit of input tax credit

In addition to the above, a business is also mandated to reduce prices in case of tax credits claimed on transition stock. Thus, the GST law envisages that in case of additional credits claimed by a business, the benefit of such credit needs to be passed on to consumers by commensurate reduction in prices both at a holistic level and also in specific cases (deemed credits on transition stock). The increase or decrease in cost on account of reason other than tax rate and input tax credit is not to be considered for the purpose of anti profiteering.

PRACTICAL EXAMPLES

Example: 1

Company A sells a product to consumers. For this, the company A pays GST say 18% or Rs 18. Now, Company A procures material from Company B. On this transaction, Company B pays a GST too, of say 12%. This means the government earns double the amount of tax for producing one good. But it doesn't happen this way.

Sl. No	Pre GST	Post GST	Profit Constant & Price adjustment
Purchase price of Goods	10000	10000	10000
Excise duty @12.5%/CGST@9%	1250	900 (ITC)	900 (ITC)
VAT @5.5%/SGST@9%	619 (Credit)	900 (ITC)	900 (ITC)
Total Purchases	11,869	11,800	11,800
Operational Expenses (OE)	100	100	100

Tax on OE (Service Tax @ 15%) / (GST @18%)	15	18 (ITC)	18 (ITC)
Total Cost	**11,984**	**11,918**	**11,918**
Sale Price	12,500	12,500	11,235 (12,500-1,265)
Tax on Sale @ 5.5%/18%	688	2,250	2,022.30
Amount received from Customer	13,188	14,750	13,257.30
Profit	1,135	2400	1,135
Profiteering/Benefit passed to customers		1,265	1,265

Formula:

Cost to company (CTC) = Tax on sale -VAT/GST

Profit = Amount received from customers-Total cost-CTC

Sale price = Sale price of Post GST regime-Profiteering.

In pre GST regime, VAT credit is available, than (CTC) will be ₹ 69 (₹ 688 - ₹ 619), Profit will be ₹ 13,188 - ₹ 11,984- ₹ 69 = ₹ 1,135.

As CGST & SGST credit is available, than CTC will be ₹ 432 (₹ 2,250 - ₹ 900 - ₹ 900- ₹ 18), Profit will be ₹ 14,750 - ₹ 11,918 - ₹ 432 = ₹ 2400.

As per above example Company is making extra profit of ₹ 1,265 (₹ 2,400 - ₹ 1,135). In terms of Sec 171(1) Extra profit(Benefit) should be passed on to the final customers. These can be achieved by making price adjustment and profit constant. Sale price should be adjusted to ₹ 11,235 (₹ 12,500 - ₹ 1,265).

In case company is not able to pass on the benefit to customers, it has to deposit the amount in consumer welfare fund run by department of consumer affairs.

Example: 2

The tax rate on meals in restaurants has approximately reduced to 18% from the initial 20.5%. This means the food supplier should technically sell a Rs.100 worth food item for Rs.118 now and not Rs.120.5. As per the Anti-Profiteering rules, this benefit of reduced tax rate should be passed on to the consumer in the form of reduced price. Not to forget the impact of reduced input costs, which must also be passed on.

CHAPTER - 2

Taxes Subsumed in GST and Cesses Abolished

Following Central and State Taxes levied in old system are subsumed in GST Central Taxes

- Central Excise Duty,
- Additional Excise Duties on Goods of special importance, Textile
- Countervailing Duty and Special Additional Duty levied under Customs Act.
- Excise Duty levied under the Medicinal and Toilet preparations (Excise Duties) Act, 1955.
- Service Tax,
- Central Surcharges and Cesses on Excise/Service tax

States Taxes

- State VAT/Sales Tax, Purchase Tax
- Entertainment tax (unless it is levied by the local bodies), Central Sales tax (levied by Centre and collected by States)
- Octroi and Entry Tax, Luxury Tax, Taxes on lottery, betting and gambling.
- State Surcharges and Cesses

Cesses Abolished Since 2015.

No.	S. No. Name of the Cess	Date of Abolition
1.	Education Cess on taxable services	01.06.2015
2.	Secondary & Higher Education Cess	01.06.2015
3.	Education Cess on excisable goods	Exempted with effect from 01.03.2015. Abolished with effect from 01.07.2017 by the Taxation Laws (Amendment) Act, 2017.
4.	Secondary & Higher Education Cess on excisable goods	Exempted with effect from 01.03.2015. Abolished with effect from 01.07.2017 by the Taxation Laws (Amendment) Act, 2017.
5.	The Mica Mines Labour Welfare Fund Act,2016.	21.05.2016
6.	The Salt Cess Act, 1953	21.05.2016
7.	The Merchant Shipping Act, 1958	21.05.2016
8.	The Textile Committee Act, 1963	21.05.2016
9.	The Limestone and Dolomite Mines Labour Welfare Funds Act, 1972 [2 Cesses]	21.05.2016
10.	The Tobacco Cess Act, 1975	21.05.2016

11.	The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Cess Act, 1976 [3 Cesses]	21.05.2016
12.	The Cine-workers Welfare Cess Act, 1981	21.05.2016
13.	Cess on cement [by notification]	Exempted in 2016., Abolished with effect from 01.07.2017 by the Taxation Laws (Amendment) Act, 2017.
14.	Cess on strawboard [by notification]	Exempted in 2016. Abolishedy with effect from 01.07.2017 by the Taxation Laws (Amendment) Act, 2017.
15.	Research & Development Cess	01.04.2017
16.	The Rubber Act, 1947 – Cess on Rubber	Abolished with effect from 01.07.2017 by the Taxation Laws (Amendment) Act.
17.	The Industries (Development and Regulation). Abolished with effect from Act, 1951, Cess on Automobile	01.07.2017 by the Taxation laws (Amendment) Act.
18.	The Tea Act, 1953 – Cess on Tea	Abolished with effect from 01.07.2017 by the Taxation Laws (Amendment) Act.
19.	The Coal Mines (Conservation and Development) Act, 1974 – Cess on Coal	Abolished with effect from 01.07.2017 by the Taxation Laws (Amendment) Act
20.	The Bidi Workers' Welfare Cess Act, 1976 – Cess on Bidis	Abolished with effect from 01.07.2017 by the Taxation Laws (Amendment) Act.
21.	The Water (Prevention and Control of Pollution) Cess Act, 1977 – Cess levied on water Consumed by certain industries and by Local authorities.	Abolished with effect from 01.07.2017 by the Taxation Laws (Amendment) Act.
22.	The Sugar Cess Act, 1982, Cess on Sugar The Sugar Development Fund Act, 1982–	Abolished with effect from 01.07.2017 by the Taxation Laws (Amendment) Act
23.	The Jute Manufacturers Cess Act, 1983 – Cess on jute goods manufactured or produced wholly or in part of jute	Abolished w.e.f. 01.07.2017 by the Taxation Laws (Amendment) Act.
24.	The Finance Act, 2010 – Clean Energy Cess	Abolished with effect from 01.07.2017 by the Taxation Laws (Amendment) Act.
25.	The Finance Act, 2015 – Swachh Bharat Cess	Abolished with effect from 01.07.2017 by the Taxation Laws (Amendment) Act.
26.	The Finance Act, 2016 – Infrastructure Cess and Krishi Kalyan Cess	Abolished with effect from 01.07.2017 by the Taxation Laws (Amendment) Act

As a result of the above multiple taxes being subsumed and abolition of cess which would impact cost of goods and services whether directly or indirectly, businesses are expected to witness an improvement in the cost structure of goods and or services supplied by them.

CHAPTER - 3

Input and Input Services

Availability of input tax credit on goods and services for payment of output tax is one of the key features of GST. Input Tax Credit (ITC) provisions help in avoiding cascading effect of taxes. The input tax credit provisions under the central excise , service tax and GST are different. Input Tax credit provisions under GST are more liberal as compared to Cenvat Credit Rules. On comparison of the ITC provisions under Cenvat Credit Rules and GST, it can be seen that the scope of inputs, input service and capital goods is wider in GST. More ITC is allowed to taxpayers under GST.

Therefore it is important to understand the concept of inputs, input service and capital goods under Cenvat Credit Rules (CCR) and GST.

Input under Rule 2(k) of Cenvat Credit Rule 2004	**Input under Sec. 2(59) of CGST Act, 2017**
1. All goods used in the factory by the manufacturer of the final product; or 2. Any goods including accessories, cleared along with the final product, the value of which is included in the value of the final product and goods used for providing free warranty for final products; or 3. All goods used for generation of electricity or steam for captive use; or 4. All goods used for providing any output service; *But excludes the following* ***i)*** *light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol;* ***ii)*** *any goods used for -* *a) construction or execution of works contract of a building or a civil structure or a part thereof; or* *b) laying of foundation or making of structures for support of capital goods, except for the provision of service portion in the execution of a works contract or construction service as listed under clause (b) of section 66E of the Act;]*	Any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business; • It covers goods used or intended to be used by supplier. There is no condition that such goods should be used for making an outward supply. However, it should be used for business purpose. • Further, similar to Rule 2(k) of CCR, once a good qualifies as capital goods, it will not be considered as inputs. • The inputs need not be used at the place of business. Rather credit is available on inputs/materials used for providing taxable supply at customer's site

iii) *capital goods except when used as parts or components in the manufacture of a final product;* ***iv)*** *motor vehicles;* ***v)*** *any goods, such as food items, goods used in a guesthouse, residential colony, club or a recreation facility and clinical establishment, when such goods are used primarily for personal use or consumption of any employee; and* ***vi)*** *any goods which have no relationship whatsoever with the manufacture of a final product.*	

Input Service under Rule 2(l) of Cenvat Credit Rule 2004	**Input Service under Sec. 2(59) of CGST Act, 2017**
a) Input service means any service used by used by the manufacturer or output service provider, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products, up to the place of removal b) services used in relation to modernization, renovation or repairs of a factory or an office relating to such factory or premises c) Advertisement or sale promotion d) Market research e) storage up to the place of removal f) procurement of input g) accounting, auditing, financing, recruitment, and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of input or capital goods and outward transportation up to the place of removal	Any service used or intended to be used by a supplier in the course or furtherance of business; *Definition of Input Service is much wider and seeks to cover any service used or intended to be used by supplier in course of business.*

But excludes the following (A) service portion in the execution of a works contract and construction services including service listed under clause(b) of section 66E of the Finance Act in so far as they are used for – (i) construction or execution of works contract of a building or a civil structure or a part thereof; or (ii) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; (B) Services provided by way of renting of a motor vehicle, in so far as they relate to a motor vehicle which is not a capital goods; or (BA) Service of general insurance business, servicing, repair and maintenance , in so far as they relate to a motor vehicle which is not a capital goods, except when used by – (a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person ; or (b) an insurance company in respect of a motor vehicle insured or reinsured by such person; or (C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;	

Capital Goods under Rule 2(a) of Cenvat Credit Rule 2004	Capital Goods under Sec. 2(19) of CGST Act, 2017
(i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading 6805, grinding wheels and the like, and parts thereof falling under heading 6804 and wagons of sub-heading 860692 of the First Schedule to the Excise Tariff Act; **(ii)** pollution control equipment; **(iii)** components, spares and accessories of the goods specified at (i) and(ii) **(iv)** moulds and dies, jigs and fixtures; **(v)** refractories and refractory materials; **(vi)** tubes and pipes and fittings thereof; **(vii)** storage tank; and **(viii)** motor vehicle other than those falling under tariff headings 802, 8703, 8704, 8711 and their chassis but including dumpers and trippers used- **(1)** in the factory of the manufacturer of the final products, or **(1A)** outside the factory of the manufacturer of the final products for generation of electricity or for pumping of water for captive use within the factory; or **(2)** for providing output service; **(B)** motor vehicle designed for transportation of goods including their chassis registered in the name of the service provider, when used for- **(i)** providing an output service of renting of such motor vehicle; or **(ii)** transportation of inputs and capital goods used for providing an output service; or	Capital goods means goods, the value of which is capitalized in the books of account of the person claiming ITC and which are used or intended to be used in the course or furtherance of business.

(iii) providing an output service of courier agency **(C)** motor vehicle designed to carry passengers including their chassis, registered in the name of the provider of service, when used for providing output service of- **(i)** transportation of passengers; or **(ii)** renting of such motor vehicle; or **(iii)** imparting motor driving skills **(D)** components, spares and accessories of motor vehicles which are capital goods for the assessee	

Blocked credit as per GST Sec 17 of CGST Act, 2017 restricts the scope of input, input service and capital goods. Input tax credit shall not admissible in respect of the following, namely:—

(a) motor vehicles for transportation of persons having approved seating capacity of not more that 13 persons (including the driver), except when they are used for making the following taxable services namely:-

(A) further supply of such motor vehicle ; or

(B) transportation of passengers; or

(C) imparting training on driving such motor vehicles;

(aa) vessels and aircraft except when they are used-

(i) for making the following taxable supplies namely:-

(A) further supply of such vessels or aircrafts; or

(B) transportation of passengers; or

(C) imparting training on navigating such vessels; or

(D) imparting training on flying such aircraft;

(ii) for transportation of goods;

(ab) service of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicle, vessels or aircraft referred to in clause (a) or clause (aa):

Provided that input tax credit in respect of such services shall be available-

(i) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;

(ii) where received by a taxable person engaged-

(I) in the manufacture of such motor vehicles, vessels or aircraft; or

(II) in the supply of general insurance service in respect of such motor vehicles, vessels or aircraft insured by him,

(b) the following supply of goods or services or both—

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicle services, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purpose specified therein, life insurance and health insurance:

Provided that, the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

(ii) membership of a club, health and fitness centre; and

(iii) travel benefits extended to employees on vacation such as leave or home travel concession:

Provided that, the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide to its employees under any law for the time being in force;

(c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;

(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation.– For the purposes of clauses (c) and (d), the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;

(e) goods or services or both on which tax has been paid under section 10;

(f) goods or services or both received by a non-resident taxable person except on goods imported by him;

(g) goods or services or both used for personal consumption;

(h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and

(i) any tax paid in accordance with the provisions of sections 74, 129 and

"plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes –

i. land, building or any other civil structures;

ii. telecommunication towers; and

iii. pipelines laid outside the factory premises

Scope of "in the course or furtherance of business"

"In the course or furtherance of business "can be used synonymously to "in relation to business". The concept of "in relation to" has been discussed in series of decisions by Hon. Courts and Tribunals. For the ready reference few of them are given below.

- Hon. Supreme Court in the case of **Doypack Systems Pvt. Ltd. V/s UOI 1988 (036) ELT 0201 (S.C.),** held that the scope of words "in relation to" is very wide.

- In the case of **ABB Ltd. v. CCE (CEGAT Bangalore – 3 member large bench)** (Appeal No. ST/336/2007 decided on 18-5-2009) various aspects of definition of 'input service' have been clarified'. It has been held that any activity relating to business is 'input service' - There is no qualification to the word 'activities'. There is no restriction that activities relating to business should be relating to only main activities or essential activities. All activities relating to business fall within the definition of 'input service'. It was further held that Definition of input service' is not confined to 'manufacture' but has to be interpreted on basis of requirements of business - The definition of 'input service' has to be interpreted in the light of the requirements of business and cannot be read restrictively so as to confine only upto the factory or only upto depot of manufacturers.

- In the case of **CCE v. Ultratech Cement Ltd (2010) TIOL-745-HC-MUM-ST,** Hon Bombay High Court held that concept of Input Service extends to all services used in relation to the business of manufacturing the final product. The definition of "input service" is very wide and covers not only services

which are directly used in or in relation to the manufacture of final products but also includes various services used in relation to the business of manufacture of final product, be it prior to the manufacture of final products or after the manufacture of final product.

To put it differently, the definition of input service is not restricted to services used in or in relation to the business of manufacturing the final product.

Thus in GST, Registered person shall be allowed to avail credit of input tax paid on input or input services or capital goods used in the course or furtherance of business, barring the specific exclusion under Sec 17 of CGST Act.

CHAPTER - 4

Pre GST and Post GST Factors to be considered while comparing

Following are the major areas, where the taxpayer will get benefit of input tax credit, which was not available under the subsumed tax laws.

Central Sales Tax

Central Sales Tax was leviable on interstate transactions with respect to sale of goods. The taxpayer was not entitled to avail setoff of CST paid by him on his purchases.

CST is subsumed in GST and now on interstate transactions Integrated GST (IGST) is leviable.

The taxpayer is entitled to avail input tax credit of IGST paid by him on his inward supply of goods, services or goods and services. Effectively there will be direct reduction in landed cost of inward supplies.

Stock Transfers to Depots

Since Customers were not ready to absorb cost of CST, many companies have opened depots in different states. At the time of stock transfers to depot outside the state, VAT/ CST was not payable against form "F". However, set off of input tax was disallowed to taxpayer proportionate to value of interstate stock transfers.

Now every interstate transaction including stock transfers will attract IGST. The input tax credit of IGST is available to tax payer. Therefore the disallowance of set off will not be a cost anymore.

Entry Tax, Octroi , Local Body Tax (LBT)

Some states were charging entry tax on goods. Similarly some local bodies such as municipal corporations were charging Octroi or Local Body Tax on the goods entering into the respective areas.

Now Entry Tax, Octroi and LBT is subsumed in State Goods and Services Tax (SGST).

Input tax credit of Entry Tax, Octroi and LBT was not available therefore it was cost to the taxpayer.

Under GST, taxpayer is entitled to avail input tax credit of SGST and therefore Entry Tax, Octroi and LBT is not a cost anymore

Savings arising from non payment of Luxury Tax , Entertainment Tax

Luxury Tax and Entertainment Tax are abolished from the appointed day and are subsumed in SGST. Since input tax credit of Luxury Tax and Entertainment Tax was not available, it was a cost.

Non reversal of proportionate Cenvat credit under Rule 6(3) of Cenvat Credit Rules, 2004

Cenvat credit was not available on inputs and input services used in manufacture of exempted goods and trading activity if he is engaged in manufacture of excisable and exempt goods or trading.

Now, input tax credit of CGST is available on trading activities also. Also the list of exemptions from tax is reduced to a great extent.

Therefore the cost on account of reversal of Cenvat credit on provision of exempted services, manufacture of exempted goods and trading activities will be saved.

Carrying out process which does not amount to manufacture

Certain processes like kitting, making cable jointing kits, cutting, slitting, testing etc do not amount to manufacture under sec 2(f) of the Central Excise Act,1944. Therefore persons engaged in doing such processes were not entitled for Cenvat credit.

Now every commercial activity will attract GST and therefore the persons engaged in doing these processes will be entitled to take input tax credit of GST on inward supplies of goods as well as services. This will reduce landed cost of input services and inputs.

Input tax credit is available to wholesalers, retailer hotel, restaurants, outdoor caterers etc.

Prior to GST, traders, wholesalers and retailers, hotel restaurants, outdoor caterers etc were not entitled for Cenvat credit of service tax paid on input services.

Now since they are required to pay GST, they will be entitled for input tax credit on inward supplies.

Availability of credit on opening stock

Companies engaged in manufacture of exempted goods, warehouses and depots of goods from where goods were sold to consumers or in retail market , wholesalers, retailers , may have opening stock on the appointed day. Since GST will have to be paid on supply of goods from such places, they are entitled to take input tax credit of Central Taxes on opening stock of inputs, input contained in semi finished goods and finished goods as per the transitional provisions. This will reduce their landed cost of goods in stock.

In case of real estate, they are to be treated as services and in the Transition provisions they have not used the word for services. This can have an impact on the price reduction.

LBT on job work.

Job workers were exempt from LBT subject to prior permission of Municipal Corporation. If prior permission is not obtained, then LBT was payable on 10% of the value of the goods received for job work from outside the corporation limit. Since LBT is subsumed in GST, job workers are not required to pay LBT on job work charges.

Purchase Tax/ URD.

In some states, buyers were required to pay tax on the goods purchased from unregistered dealers. Input tax credit of the same was not allowed. Under GST, Input Tax credit of the tax paid under reverse charge is also allowed subject to restrictions provided under Sec 17 of the CGST Act, 2017.

Cenvat Credit on Furniture, Storage racks, Assets used in Office etc capitalized in books of account.

As per Rule 2(a) of the Cenvat Credit Rules, 2004 as amended, *capital goods" means :*

(A) the following goods, namely :-

(i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, [heading 6805, grinding wheels and the like, and parts thereof falling under [heading 6804 and wagons of sub-heading 860692]] of the First Schedule to the Excise Tariff Act;

(ii) pollution control equipment;

(iii) components, spares and accessories of the goods specified at (i) and (ii);

(iv) moulds and dies, jigs and fixtures;

(v) refractories and refractory materials;

(vi) tubes and pipes and fittings thereof;

(vii) storage tank, [and]

(viii) motor vehicles other than those falling under tariff headings 8702, 8703, 8704, 8711 and their chassis [but including dumpers and tippers], used -

(1) in the factory of the manufacturer of the final products, or

(1A) outside the factory of the manufacturer of the final products for generation of electricity [or for pumping of water] for captive use within the factory; or

(2) for providing output service;

(B) motor vehicle designed for transportation of goods including their chassis registered in the name of the service provider, when used for -

(i) providing an output service of renting of such motor vehicle; or

(ii) transportation of inputs and capital goods used for providing an output service; or

(iii) providing an output service of courier agency;

(C) motor vehicle designed to carry passengers including their chassis, registered in the name of the provider of service, when used for providing output service of -

(i) transportation of passengers; or

(ii) renting of such motor vehicle; or

(iii) imparting motor driving skills;

(D) components, spares and accessories of motor vehicles which are capital goods for the assessee;

The definition of capital goods as per rule 2(a) of Cenvat Credit Rules was entirely different from the capital goods as understood in accounting principles for income tax or even for Companies Act. Generally spare parts, tools, tubes, fittings etc are not capitalized in books of account. But for cenvat purpose they were capital goods.

Further, as per the definition, the goods should be used in the factory of the manufacturer of the final products or outside the factory of the manufacturer of the final products for generation of electricity [or for pumping of water] for captive use within the factory. Thus equipments, appliances or machines used in the office of the manufacturer were not entitled for availing cenvat credit, though they are capitalized in the books of account.

The term capital goods is defined in section 2(19) of CGST Act. Capital Goods means goods, the value of which is capitalized in the books of accounts of the person claiming the credit and which are used or intended to be used in the course or furtherance of business.

Sec 17 of the CGST Act excludes the following goods from the scope of Capital Goods :

a) motor vehicles and other conveyances except when they are used

   (i) for making the following taxable supplies, namely

      (A) further supply of such vehicles or conveyances ; or

      (B) transportation of passengers; or

      (C) imparting training on driving, flying, navigating such vehicles or conveyances;

   (ii) for transportation of goods.

Thus the scope of capital goods for the purpose of ITC is wider in GST. ITC can be claimed on the equipments, appliances etc irrespective of their use in the office of the manufacturer. This is an additional benefit to the manufacturers. Even Traders, Wholesalers, Retailers, Service Providers can also claim ITC on capital goods.

Admissibility of input tax credit on inputs (ED as well VAT) used by service providers.

Service providers were not entitled for credit (Set off) of VAT on input material used for providing output services. Under GST, suppliers of service as well as traders, dealers, wholesalers, retailers are entitled for input tax credit of GST. This will reduce their input cost.

Further, credit of Special Additional Duty (SAD) was not admissible to service providers. Since SAD is subsumed in GST, input tax credit can be availed by service providers. This will reduce their input cost.

Developers, Builders, Construction contractors.

Under Cenvat credit scheme, builders, developers, Construction contractors were not entitled for Cenvat credit of duty paid on inputs. Under GST, input tax credit on their inputs such as cement, steel, is allowed to them. They are also entitled for input tax credit on the opening stock of inputs and input contents in work in progress and unbilled finished work. This will result in bringing down cost of material used in the work substantially.

Price Reduction on input supplies by vendors

GST law provides that the benefits arising out of GST are to be passed on to customers. Therefore prices of inward supply will also be reduced. Of course this can be done through negotiations with suppliers. This will reduce cost of inward supplies.

Refund of accumulated credit on account of inverted duty structure

In many cases, the duty payable on the finished goods was less than the credit available to the manufacturer. For example, the duty payable on pharmaceutical products was 6% whereas the inputs like bulk drugs, packing material etc attract duty @ 12.5%. Thus credit availed on inputs use to remain accumulated with the manufacturer of the pharmaceutical products. The credit could not be used as credit on inputs, capital goods and input services was more than duty paid on finished goods. The GST Act specifically provide for refund of such unutilized input tax credit. This will reduce the cost of production of such products.

Duty paid on captively consumed goods

Notification No. 67/1995-CE provide exemption from payment of duty on intermediate goods or capital goods further used in manufacture of excisable goods. In case of final product exempted from duty, the exemption was not available. Since there is no concept of captive consumption and the GST is leviable on supply, no GST is payable on the goods used further by the same taxpayer.

Abolition of Cesses

As many as 13 cesses have ceased to exist with the rollout of GST, from 1st July 2017. which include Krishi Kalyan Cess and Swacha Bharat Cess.

During the period 2015 to June 2017 as many as 13 cesses levied by the Central Government along with Central Excise and Service Tax have been abolished. These include Education cess, Secondary ad Higher Education Cess. Thus total 26 cesses have been abolished in the last two year. This also has an impact on cost of production. List of Cesses abolished has been given below.

Transitional provisions

The impact of transitional provisions on input tax credit needs to be analyzed in terms of provisions of Sec 140 to 143 of CGST and SGST Acts. Though this will be limited to the extent of opening stock in hand, it will provide more insight on assessing the impact of other factors.

Negative impact

Adverse impact due to increase in tax rate on services, where input tax credit is not available.

Services were liable to Service tax @ 14%, Krishi Kalyan Cess, @ 0.5% and Swacha Bharat Cess @ 0.5%. Now services attract GST @ 18% in general.

Sec 17 of CGST Act provides list on inputs and input services, where input tax credit is not available. On most of the services listed in Sec 17 of the CGST Act, Cenvat credit was also not allowed. Since these services are leviable to GST @ 18% as against Service Tax @ 15% including cesses, these services will become costlier.

Impact on working capital due to delay in getting input tax credit.

Working capital will be affected due to following.

- Input tax credit is admissible only after matching details of transactions with suppliers' Returns.
- GST is payable on advances received from the customers.
- GST is payable on interstate stock transfers.
- GST is payable on goods and services received from unregistered suppliers.
- Interest cost on working capital may increase due to this.

Pruning of exemption list

Many exemptions available under Central Excise, Service Tax, and VAT are removed in GST. The incidence of tax on said goods will increase the price of the goods.

Compliance cost

The compliance by way filing returns, audit, reconciliation of input tax credit etc. is more in GST. However, this cannot be quantified in monitory terms.

How to determine impact

The impact of the above factors for each organization will vary. If the organization is having multiple units then unit-wise impact will vary. The impact needs to be worked out considering the provisions of input tax credit under the erstwhile tax laws and provisions under GST.

A comparison of provision applicable to the respective organization or unit can be prepared. The quantum can be worked out on the basis of past two- three years actual and also considering the budgeted product mix, sales mix, purchase mix and interstate stock transfers etc. The impact in terms of percentage of turnover will be more appropriate for reducing the price of the goods or services.

Broad Guidelines for Assessment of Impact

A business may need to consider the following aspects while working on the aspects of compliance with the anti- profiteering provisions. As the GST law on anti-profiteering envisages a reduction in prices to comply with the provision, a reduction in price could be derived by way comparing the following:

- Difference in tax rates pre and post GST to depict the reduction in prices specially in case of MRP based goods

- Difference in input tax credit pre and post GST and thus resultant reduction in cost of goods and services

It is important to mention that methodology for determining the quantification of benefits would vary from business to business depending on the products and services offered by them. In the absence of broad guidelines in the GST law, some indicative factors which may need to be considered while assessing the impact could be as under:

- Nature of business- manufacturing, trading, retail, services, etc.
- Assessment of impact at product level and/ or at an organization level

- Nature of product, location of manufacture, factors impacting manufacture and its cost
- Nature of services, mode of delivery, capital goods and inputs used for provision of services
- Identifying the quantifiable benefit at product level – in case of product wise approach and thus depend on product costing system
- Benefits arising from transition credits and broad methodology to deal Identification of credits flow pre and post GST at the product level and at the organizational level and quantification of the incremental benefits
- Impact of indirect taxes pre and post on cost of goods and services dealt in by the business
- Impact of indirect taxes on cost of marketing, selling and distribution of goods and services
- Benefits arising from transition credits and broad methodology to deal with such benefits vis a vis on going benefits
- Relevance of Legal Metrology provisions and need to declare the MRP or otherwise
- Impact of reduction in tax rates on goods and services flowing from decrease in tax rates both in pre and post GST regime.

CHAPTER - 5

Pre Packaged Commodities and GST

The reduction in the price in the case of commodities covered under Legal Metrology (Packaged Commodities) Rules, 2011/ MRP provisions under Central Excise needs to be reflected by way of reduction in MRP. Just reduction in selling price to dealers or distributors will not suffice the purpose.

Meaning of 'Retail Sale Price'

As per Rule 2(1) of Legal Metrology (Packaged Commodities) Rules [Earlier rule 2 (r) Standards of weights and Measures (Packaged Commodities) Rule], 'retail sale price', in relation to a commodity, means

- The maximum price at which the commodity in packaged from may be sold to ultimate consumer,
- And the price shall be printed on the package in the manner given below- **'Maximum or Max Retail Price ……..… inclusive of all taxes' or 'MRP… Incl. Of taxes'**

Fraction of 50 paise is permissible but any other fraction of paise is not permissible.

In view of different rates of taxes in different States, a manufacturer can print different rates for sale in different States/areas. A retailer can sell the goods below MRP printed on the package.

Definition of MRP under Central Excise Act –

Explanation 1 to section 4A (4) of Central Excise Act defines 'retail sale price' as

- The maximum price at which the excisable goods in packaged from may be sold to the ultimate consumer and
- Include all taxes local or otherwise, freight, transport charges commission payable to dealers, and all charges towards advertisement, delivery, packing, forwarding and the like, as the case may be,
- And the price is the sole consideration for such sale.

However, if any Act, Rules or other law requires that price declared on a package should be exclusive of any taxes, then 'retail sale price' in such cases, will be exclusive of such taxes.

MRP under Drugs (Prices Control) Order, 2013

Earlier, in case of drugs, prices were to be indicated exclusive of taxes. However, under Drugs (Prices Control) Order, 2013 (DPCO Order) (earlier 1995 order) these packages are also required to indicate MRP inclusive of all taxes.

Payment of duty and taxes on goods covered under MRP

Thus, MRP is inclusive of all taxes, duties , dealers margin and all incidental expenses. Goods covered under MRP are sold to dealers or distributors at much lower price than the printed MRP. Excise duty on the goods covered under MRP provisions was leviable under Sec 4A of the Central Excise Act, 1944.

Section 4A of CEA empowered Central Government to specify goods on which duty will be payable based on 'retail sale price'. Excise duty on the goods covered under MRP was payable on value equal to MRP less abatement prescribed under Notification No. 49/2008-CE(NT) dt. 24.12.2008, as amended from time to time, irrespective of the actual selling price of the goods. VAT was payable on the actual selling price plus excise duty paid on it.

The provisions for valuation on MRP basis under Central Excise are summarized below.-

(a) The goods should be covered under provisions of Legal Metrology Act and Rules [earlier Standards of Weights and Measures Act or Rules] [section 4A (1)].

(b) Central Government has to issue a notification in the Official Gazette specifying the commodities to which the provision is applicable and the abatements permissible. Central Government can permit reasonable abatement (deductions) from the 'retail sale price' [section 4A (2)].

(c) While allowing such abatement Central Government shall take into account excise duty, sale tax and other taxes payable on the goods [section 4A(3)].

(d) The 'retail sale price' should be the maximum price at which excisable goods in packaged forms are sold to ultimate consumer. It includes all taxes, freight, transport charges, commission payable to dealers and all charges towards advertisement, delivery, packing, forwarding charges etc. If under certain law, MRP is required to be without taxes and duties, that price can be the 'retail sale price' [Explanation1 to section 4A].

(e) If more than one 'retail sale price' is printed on the same packing, the maximum of such retail price will be considered [Explanation 2(a) to section 4A]. If different MRP are printed on different packages for different areas, each such price will be 'retail sale price' for purpose of valuation [Explanation 2(c) to section 4A].

(f) Removing excisable goods without MRP or wrong MRP or tampering, altering of removing MRP declared on a package is an offence and goods are liable to confiscation [section 4A (4)]. If price is altered such increased price will be the 'retail sale price' for purpose of valuation [Explanation 2 (b) to section 4A].

Tax incidence on the goods covered under MRP under earlier tax regime.

The payment of Excise Duty and VAT was to be worked out as per the following. Assumptions

MRP ₹ 100/- ,

Abatement 30%

Actual selling price to dealer ₹ 55/-

Excise Duty 9%

VAT 9%

Value under Sec 4A of the Central Excise Act - ₹ 100 less abatement @30% = ₹ 70

Excise duty @9% on ₹ 70/- = ₹ 6.30

Value for VAT - Selling price ₹ 55/- plus Excise duty at actual i.e 6.30 = ₹ 61.30 VAT @ 9% on ₹ 63.75 = ₹ 5.52

Total Tax and duty payable = ₹ 11.82

GST on goods covered under MRP

Under GST, tax is payable on the transaction value of the goods. As per Sec 15(1) of the CGST Act, 2017 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.

As per Sec 15(2) of the CGST Act 2017, the value of supply shall include any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this act (CGST).

Value shall also include incidental expenses, including commission and packing, interest and late fee or penalty for delayed payment of any consideration for any supply, subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments. The value shall not include discounts.

Unlike Excise law, no separate method for valuation of goods covered under MRP is provided under GST. Therefore GST on the goods covered under MRP needs to be worked out treating the MRP inclusive of taxes.

For Example if the MRP is ₹100/- and GST is applicable @ 18%, the value and GST payable on it is to worked out as per the following –

Value	100 / 118 × 100	= 84.75
Tax	84.75 × 18%	= 15.25
Total		= 100.00

From the above examples, it can be seen that even though the value and tax rate are

same, the incidence of taxes under Excise and VAT and GST is different.

In the transitional phase, because of the change in the tax rate as compared to earlier tax regime, the MRP may undergo a change. The unsold stock will have impact of the same.

Pre Packaged Commodities – impact of GST on unsold stock

The impact needs to be determined for the goods covered under MRP provisions also. The MRP printed on the package needs to be modified suitably to comply with the anti profiteering provisions.

Ministry of Consumer Affairs, Food and Public Distribution, Department of Consumer Affairs, vide instruction No. WM-10(31)/2017 Dt.04.07.2017, has permitted the manufacturer or packer or importers of pre packaged commodities to declare the changed retail sale price (MRP) on the unsold stock of manufactured / packed / imported prior to 1st July after inclusion of the increased amount of tax due to GST if any, in addition to the existing retail sale price (MRP) for three months w.e.f.1st July 2017 to 30th September 2017.

It has been clarified that declaration of the changed retail sale price (MRP) shall be made by way of stamping or putting sticker or online printing, as the case may be, after complying with the following conditions:

(i) The difference between the retail sale price originally printed on the package and the revised pride shall not, in any case, be higher, than the extent of increase in the tax if any, or in the case of imposition of fresh tax, such fresh tax, on account of implementation of GST Act and Rules.

(ii) The original MRP shall continue to be displayed and the revised price shall not overwrite on it.

(iii) Manufacturers or packers or importers shall make at least two advertisements in one or more newspapers in this regard and also by circulation of notices to the dealers and to the Director of Legal Metrology in the Central Government and Controllers of Legal Metrology in the States and Union Territories, indicating the change in the price of such packages.

It has been further clarified that under sub-rule (3) of rule 6 of the Legal Metrology (Packaged Commodities) Rules, 2011 "for reducing the Maximum Retail Price (MRP), a sticker with the revised lower MRP (inclusive of all taxes) may be affixed and the same shall not cover the MRP declaration made by the manufacturer or the packer or importer, as the case may be, on the label of the package".

It is also clarified that any packaging material or wrapper which could not be exhausted by the manufacturer or packer or importer prior to 1st July, 2017, may be used for packing of material upto 30th September, 2017 or till such date the packing material or wrapper is exhausted, whichever is earlier, after making corrections required in retail sale price (MRP) on account of implementation of G.S.T. by way of stamping or putting sticker or online printing.

CHAPTER - 6

Documents to be verified for assessing impact

Following information / documents may be obtained for Impact Analysis.

Document	Purpose
ER1.	Reversal under Rule 6 of CCR. Clearance of Exempt Goods.. Stock Transfers. Duty paid on captively consumed goods.
ER4	Discounts, Freight, Valuation.
ST3	Service Tax under RCM. In-admissible service tax on rent a cab, Works contract, Repairs & Maintenance, Employee related services etc.
Cost Audit Report	Indirect Taxes reconciliation. Impact of disallowance of Cenvat credit u/r 6 of CCR, inadmissible inputs and input services.
Summary of VAT Returns.	Disallowance of set off on account of Interstate stock transfers.
VAT Audit Report.	Purchase Tax, Disallowance of set off, CST payment etc.
Trial Balance	Payment of LBT, Octroi, Entry Tax, Purchase Tax. Other Taxes and Cesses Repairs and Maintenance Cost.
Tax Audit Report	Details of capital goods on which Cenvat Credit is not availed. Furniture Fixtures etc.

Other details which may be useful for assessing financial impact.

- Comparison of inputs under Cenvat Credit Rules and GST
- Comparison of input services under Cenvat Credit Rules and GST
- Comparison of capital goods under Cenvat Credit Rules and GST
- Details of capital goods received from customers, Financial Institutions etc.
- Standard Operating Procedures (SOP) followed by the organization.
- Pending cases under Excise, VAT, Customs and Service Tax and other indirect Taxes.
- Details of Warehouses, C & F Agents and stock transfers – intra state and interstate.
- Details of imports.

- Inventory at Warehouses, C & F Agents outside state.
- Open contracts, Purchase Orders.
- Price Lists – pre GST and post GST
- Discount Structure and various discount schemes – pre GST and post GST.
- Tax rates – pre GST and post GST.

CHAPTER - 7

Anti-Profiteering Rules

Provision relating to anti-proffering measure has been introduced vide section 171 of CGST Act. The idea is that the taxable person should pass on benefit of reduction in rate of tax on any supply of goods or services or the benefit of input tax credit to the customer by way of commensurate reduction in prices of goods or services.

Gist of rules

In exercise of the powers conferred in section 164 read with section 171 of the CGST Act, 2017, the Central Government has issued Anti Profiteering Rules. Chapter XV of CGST Rules, 2017 deals with the Anti Profiteering Rules.

As per Sec 171(2) of CGST Act, The Central Government may, on recommendation of GST Council by notification, constitute an Authority, or empower any existing Authority constituted under any law, to examine whether input tax credits availed by any registered person or the reduction in the tax rate actually have resulted in a commensurate reduction in the price of the said goods or services or both supplied by him.

The Authority referred to in section 171(1) shall exercise such functions and have such powers as may be prescribed – section 171(3) of CGST Act.

The Central Government has constituted an authority called "National Anti-Profiteering Authority under the Goods and Services Tax" (NAA) having its office at 6th floor, Tower-one, Jeevan Bharati,. Connaught Place, New Delhi-110 001. The authority is consists of a chairman and other four technical members.

The Chairman and members of the authority shall be appointed by the Central Government on the recommendations of the Selection Committee.

An officer not below the rank of Additional Commissioner working in the Director General of Anti-profiteering shall be the Secretary of the Authority. Mr. B. N. Sharma, IAS has been appointed as the Chairman of NAA.

There is a standing committee consist of two Centre members and two state members. Currently the members of the Standing Committee are:

Centre Members:-

i) Shri Pranesh Pathak,Commissioner of CGST,Faridabad.

ii) Shri. Vivek Ranjan, Principal Commissioner, CGST and CX, Gurugram.

State Members:-

i) Shri H.Rajesh Prasad, Commissioner, State Tax, Govt. of NCT of Delhi

ii) Shri Amit Kumar Agarwal,Excise & Taxation Commissioner, Govt. of Haryana.

Further, State level screening committee has been constituted in each State by the State Governments which consists of

a. One officer of the State Government, to be nominated by the Commissioner, and

b. One officer of the Central Government, to be nominated by the Chief Commissioner.

The Authority will may determine methodology and procedures for determination as to whether reduction in rate tax on supply or benefit of ITC has been passed on to the recipient by way of commensurate reduction in prices of supply of goods or services.

Duties of the Authority

1. To determine whether any reduction in rate of tax on any supply of goods or services or the benefit of the input tax credit has been passed on to the recipient by way of commensurate reduction in prices.

2. To identify the registered person who has not passed on the benefit of reduction in rate of tax on supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices.

3. To order

   (a) Reduction in prices.

   (b) Return to recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of eighteen percent from the date of collection of higher amount till the date of return of such amount or recovery of the amount not returned in case the eligible person does not claim return of the amount or is no identifiable , and depositing the same in the fund referred in sec 57 of the CGST Act.

   (c) Imposition of penalty as prescribed under the Act ; and

   (d) Cancellation of registration under the Act.

   (e) To furnish performance report to the Council by the tenth day of the close of each quarter.

4. To furnish performance report to the Council by the tenth day of the close of each quarter.

Examination of the application by Standing Committee and Screening Committee

The Standing Committee shall, within a period of 2 months from the date of the receipt of a written application or within such extended period not exceeding a further period of 1 month for reasons to be recorded in writing as may be allowed by the Authority, examine the accuracy and adequacy of the evidence provided in the application to determine whether there is prima-facie evidence to support the claim of the applicant that the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has not been passed on to the recipient by way of commensurate reduction in prices.

Applications on the issues of local nature or those forwarded by the Standing Committee shall first be examined by the State level Screening Committee. Screening committee shall within 2 months from the date of receipt of a written application, or within such extended period not exceeding a further period of 1 month for reasons to be recorded in writing as may be allowed by the Authority, upon being satisfied that the supplier has contravened the provisions of section 171, forward the application with its recommendations to the Standing Committee for further action.

Investigation and proceedings

Where standing committee is satisfied that there is a prima facie evidence of profiteering is found, it shall refer the matter to Director General of Anti Profiteering for a detailed investigation.

The Director General of Anti-profiteering shall conduct investigation and collect evidence necessary to determine whether the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has been passed on to the recipient by way of commensurate reduction in prices.

Before initiation of the investigation, The Director General of Anti-profiteering shall issue a notice to the interested parties containing, inter alia, information on the following, namely

(a) the description of the goods or services in respect of which the proceedings have been initiated;

(b) summary of the statement of facts on which the allegations are based; and

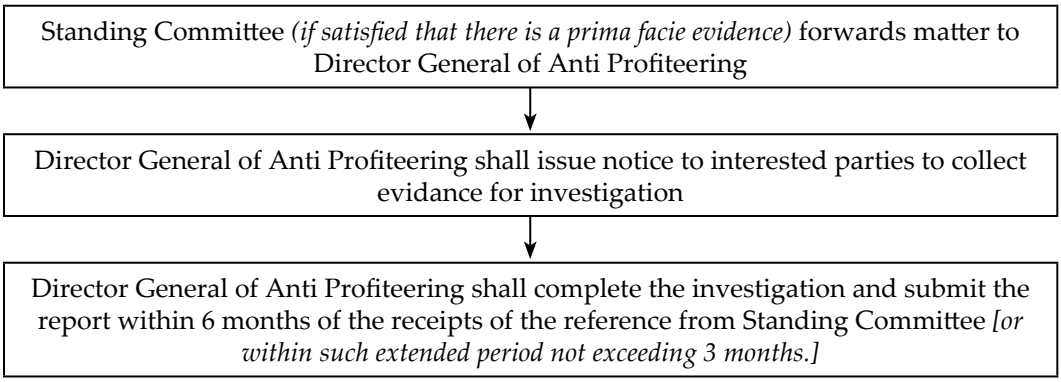
(c) the time limit allowed to the interested parties and other persons who may have information related to the proceedings for furnishing their reply.

The Director General of Anti-profiteering may also issue notices to such other persons as deemed fit for a fair enquiry into the matter.

Director General of Anti-profiteering shall complete the investigation and submit the report with its findings along with relevant records within a period of 6 months of the receipts of the reference from Standing Committee or within such extended period not exceeding 3 months.

Director General of Anti-profiteering can take the assistance of other authorities. He has power to summon persons to give evidence and produce documents.

As per Rule 130 of CGST and SGST Rules, 2017, provisions of section 11 of RTI Act relating to disclosure of confidential information supplied by third party will apply to information received by Director General of Anti-profiteering.



Order of the authority

The Authority shall **within a period of 6 months** from the date of receipts of report from Director General of Anti-profiteering determine whether a registered person has passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices.

An opportunity of personal hearing shall be given to the interested party before finalization of the order. Authority may seek clarification from the Director General of Anti-profiteering on the report submitted.

Where the Authority determines that a registered person has not passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices, the Authority may order-

(a) reduction in prices;

(b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of 18%. from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount including interest not returned, as the case may be;

(c) the deposit of an amount equivalent to 50% of the amount determined under the above clause along with interest at the rate of 18% from the date of collection of the higher amount till the date of deposit of such amount in the Fund constituted under

section 57 and the remaining 50%. of the amount in the Fund constituted under section 57 of the Goods and Services Tax Act, 2017 of the concerned State, where the eligible person does not claim return of the amount or is not identifiable;

(d) imposition of penalty as specified under the Act; and

(e) cancellation of registration under the Act.

Compliance by the registered person

Order of the Authority shall immediately be complied with by the registered person otherwise recovery proceedings shall be initiated as per the provision of CGST or SGST or UTGST or IGST Act.

The Authority may require any authority of central tax, State tax or Union territory tax to monitor the implementation of the order passed by it.

Interest and Penalty

Where the authority after due examination comes to a conclusion that any registered party has profiteered, such person shall be liable to pay penalty equivalent to 10% of the amount so profiteered.

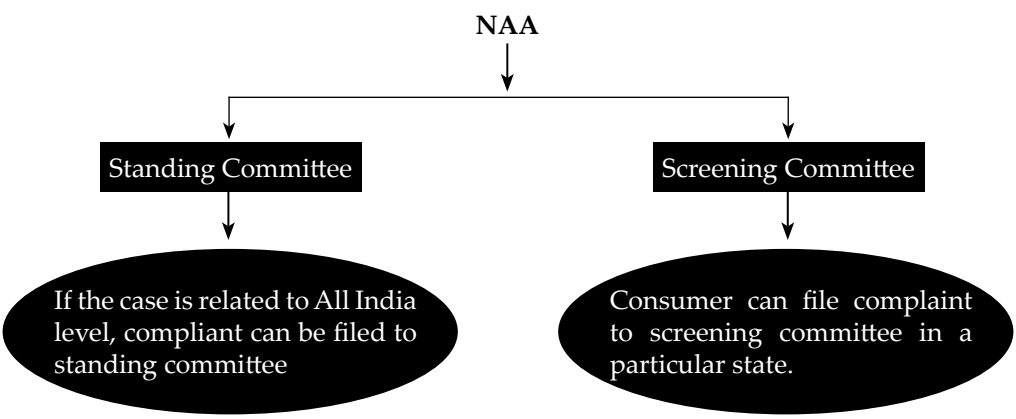
No penalty shall be leviable if the profiteered amount is deposited within 30 days of the date of passing of the order by the authority.

Rule 21(c) of CGST and SGST Rules, 2017 provides for cancellation of registration for violation of provisions relating to anti profiteering.

Moreover, interest at the rate of 18% is leviable on the amount to be returned to the recipient or deposit the amount to fund constituted under section 57 of this act.

Sunset Clause:

As per Rule 137 of CGST and SGST Rules, 2017, Anti profiteering clause has sunset clause of 2 years.



Powers and functions

If NAA finds that company has not passed on benefits of tax reduction, it can direct entity to pass on benefits to consumers along with interest from the date of collection of the higher amount till date of return of such amount. If the beneficiary cannot be identified, NAA can ask company to transfer amount to the 'Consumer Welfare Fund', as provided under Section 57 of CGST Act. In extreme cases NAA can impose a penalty on defaulting business entity and even order cancellation of its registration under GST.

NAA also has power to cancel registration of any entity or business if it fails to pass on benefit of lower taxes under GST regime to consumers, and empowers consumers to approach it in case of any complaint.

CHAPTER - 8

Role of Cost and Management Accountants

If the power to deregister or cancellation of registration is invoked frequently and lightly by the authority under Anti Profiteering provisions, it will create fear and distrust amongst the trade and industry.

Role of Cost and Management Accountants

- The Authority during the course of determination of whether the benefit of reduction in rate of tax on supply of goods or services or the benefit of input tax credit has been passed on to the recipient by way of commensurate reduction in prices, may take the help of cost accountants as an expert in the field of costing and pricing of goods or services.
- Further, the Authority can order special audit by Cost and Management Accountants under Sec 66(1) of the CGST Act which will be very useful in taking any such decision.
- The authority may take a report of cost sheet with respect to the goods or services under investigation duly certified by a cost accountant relating to the cost of products or services in pre GST regime and post GST regime to take any such decision.
- The organizations can also undertake voluntary audit by the Cost and Management
- Accountants with respect to benefits received due to implementation of GST.
- The anti-profiteering rules provide for constitution of screening committees in each state and also the standing committee. These committees may refer matters to Cost and Management accountants or Cost and Management accountants can approach them for assistance in verification of data for assessing the impact.

Cost and Management Accountants should be prepared with the detailed knowledge of GST law and its applications to the different transactions and procedures followed by the respective organizations.

Suggested format of certificate is given below to be issued by Cost Accountant

Name of the Supplier :

Address of the Supplier :

GSTIN Number:

Product/ Service Description :

Sales value of the product/ Service :

Sr. No.	Details of tax benefit		Impact of Tax on Cost and Management prior to GST	Impact of Tax on Cost and Management after GST
1	CST purchases			
2	Inter unit Stock Transfers			
3	Product exempt prior to 1.7.17, now taxable.			
4	Reversal of input tax credit under VAT on account of interstate stock transfers and others			
5	Cess on imported goods.			
6	Reversal of input tax credit / cenvat credit on account of exempted goods and services if now taxable.			
7	Entry tax, Octroi / LBT paid earlier.			
8	Dealers –Excise duty / CVD included in Cost and Management, now available as ITC			
9	Services -			
	Impact of ITC on services where credit is not admissible. Such as outdoor catering, rent a cab, and other services			
10	Input tax credit on furniture and other office equipment, now available.			
11	Purchase tax / URD under VAT Acts.			
12	Impact of Special Additional Duty w.r.t service providers			

13	Increase in working capital due to increased burden of tax, delay in set off etc.			
14	Price reduction, if any, received from vendors.			
15	Refund of accumulated credit on account of lower tax rates than inputs.			
16	Increase in Cost and Management due to withdrawal of exemptions			
17	Any other impact specific to the industry.			
Others (Please specify)				
Total tax benefit				
% to sales value.				
MRP based products -				
MRP declared				

TO WHOM SO EVER IT MAY CONCERN

I / We have verified the records of ---------- relating to the product under consideration.

The Tax benefit statement preparation is the responsibility of the Company's Management. My / our audit including examining, on test basis, evidence supporting these statements to verify that these statements are free of material mis-statement. My / our observations and suggestions are based on the information contained in these statements.

On the basis of documents produced before me / us and explanations and information provided by the concerned officials, I / we hereby certify that the tax benefit arising on account of Goods and Services Tax as compared to taxes prior to 1st July, 2017, for the product under consideration is_____% to sales value of the product.

Place: For ABC & Co.

Date: Cost Accountants

(Registration No)

Signature

Membership No.

UDIN. Explanatory notes – The basis and parameters used for determining impact may be given by the Cost and Management Accountant.

CHAPTER - 9

EPC Sector and Anti-profiteering

Full form of EPC is Engineering, Procurement and Construction. Generally big projects like construction of power projects, water treatment plants, solar projects, electrification and transmission projects, material handling projects etc. are tendered under EPC basis.

The contracts are generally divided into two or three parts. Supplies of materials are covered under the supply contract. Civil and erection contracts are awarded under one or two divisible modes. However, all the divisible contracts are linked with cross fall breach clause under General Conditions of the Contract (GCC) read with Special Conditions of Contract (SCC).

In pre GST regime both VAT and Service tax was levied on works contract. VAT was payable on the goods part whereas service tax was payable under service part of the contract. However, the provision and value of goods involved in the execution of works contract was litigation prone. VAT rates were varied across the States on the property of the goods transferred in execution of works contract. In service tax part the determination of value of service is also a litigation prone and industry usually preferred to follow rule 2A of valuation rule and paid service tax accordingly.

Definition of works contract under VAT, Service Tax and Goods & Services tax are given below:

VAT Act	Service Tax	Goods & Services Tax Act
Bihar VAT Act: Works Contract means any agreement for carrying out for cash or deferred payment or other valuable consideration, the construction, fitting out, improvement or repair of any building, road, bridge or other immovable or movable property. **Karnataka VAT Act:** Works contract includes any agreement for carrying out for cash, deferred payment or other valuable consideration, the building, construction, manufacture, processing, fabrication, erection, installation, fitting out, improvement, modification, repair or commissioning of any movable or immovable property.	Works contract means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or part thereof in relation to such property.	works contract means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.

Rajasthan Vat Act: works contract means a contract for carrying out any work which includes assembling, construction, building, altering, manufacturing, processing, fabricating, erection, installation, fitting out, improvement, repair or commissioning of any movable or immovable property. ***Note: All other States Vat Act have similar definition of works contract.***		

The major difference in definition of works contract in pre GST and post GST regime is that in pre GST regime works contract covers both movable and immovable property where as in GST it relates only to immovable property. However, goods and services tax act does not define the meaning of immovable property. We may refer General Clauses Act, 1897 and Transfer of Property Act, 1882 respectively to understand the definition of immovable property.

Before evaluating the impact analysis, cost accountants shall go through the following contract documents of the projects:

a. Notice Inviting Tender (NIT);

b. Special Conditions to contract (SCC);

c. General Conditions to Contract (GCC);

d. Taxes and duties part of the contract;

e. Pre bid meeting documents

f. Bill of Quantity (BoQ);

Further, analysis of the unexecuted portion and also unbilled portion of the contract value with respect to the supply part and service part must be carefully evaluated. Taxes and duties clause with respect to the following issues must be analysed with due care.

a. Excise duty on brought-out items as well as own manufactured items;

b. CST sale and issuance of FORM C by the employer;

c. Sale in the course of import;

d. Entry tax payment;

e. Exemption of excise duty, like in mega power project;

f. Service tax on provision of civil, erection & commissioning services;

g. Changes in duties and taxes clause.

Provision of changes in statutory variation including imposition of new taxes& duties shall be verified from GCC and SCC part of the contract documents. Element of taxes included in the contract value shall also be verified properly. Impacts of the following taxes are to be analysed with respect to the unexecuted portion as well as unbilled portion of the contract in GST regime.

1. Impact of Central Sales Tax

Central Sales Tax is non-creditable tax and it is part of the cost of procurement of materials. Cost accountants shall verify the central sales tax amount included in the procurement of materials under supply contract which are sold under sale in transit basis as per section 3(b) read with section 6(2) of CST Act, 1956 at the time of evaluation of tax implication.

This exercise shall also be carried out in evaluating of civil contract also. Materials like steel, cement etc. are used in civil contract. Cost Accountants shall verify whether the procurement of steel and cement is intra-state or inter-state and accordingly the impact of CST amount is to be taken care.

Further, the CST amount included in the raw materials used in manufacture of goods to be sold to the customer (employer) shall also be a direct saving towards introduction of GST.

2. Impact of entry tax

Entry tax is also a non-creditable State Tax and it is not applicable for all States. Cost Accountants shall verify the respective State laws where the project is being executed. Provisions of the Entry Tax law is to be verified as entry tax in some of the States are applicable only a few goods and the rates are also varied.

Further, the terms of the contract are to be verified whether the employer will separately reimburse the entry tax on actual basis or it will be the liability of the contractor. The impact of entry tax on the procurement of goods outside of local limit, generally State, has to be computed on materials under supply contract as well as service contract.

3. Impact of Excise Duty

Cost Accountants shall also verify the amount of excise duty considered in procurement of goods which are resold to employer under supply contract being a trading of the goods. Excise duty on procurement of steel, cement etc. which are used in civil work shall also be computed as no cenvat credit is available.

Exemption of excise duty shall also be checked. In mega power projects no excise duty is payable on supply of goods provided the employer shall issue Project Authority Certificate (PAC) to the supplier to enable the benefit of exemption. Now, with the introduction of Goods and Services Tax such exemption of GST is not available on supply of goods to mega power project.

4. Impact of Purchase tax:

Under VAT law there is a provision of purchase tax on procurement of goods from unregistered dealer for use other than resale, used in execution of works contract etc. No input tax credit was available on purchase tax paid. It is basically tax under reverse charge but without any input credit. Abolition of VAT has directly reduced the cost on

such purchase tax element. Cost accountants shall verify the materials costs like printing, stationery, maintenance of site office equipment etc. included in administration overhead, site overhead to evaluate the tax impact.

5. Impact of Countervailing duty and Special Additional Duty on sale in the course of import:

CVD and SAD impact on the imported materials to be sold under sale in the course of import basis as per the provision of section 5(2) of CST Act, 1956 is to be verified from supply contract.

6. Impact of Swachh Bharat Cess (SBC):

Swachh Bharat Cess is non cenvatable. SBC has been abolished and hence there is a direct impact on the cost of input services.

7. Other issues:

Value of the contract shall be verified whether it is inclusive of all taxes and duties or a exclusive contract. In case of inclusive contract, it shall be verified the contract date and the respective rates of taxes referring the statutory variation clause in the contract. Communications with the client with respect to price revision after introduction of GST.

Suggested Format of Certification to be issued by Cost Accountants

Name of the Organization :

GSTN Number :

Project Name :

Location of the project :

Contract reference Number and date of contract :

Unbilled and unexecuted amount of the contract :

Sl No	Particulars	Amount of Tax implication in Pre GST	Amount of Tax implication in Post GST
Part A	***Supply Contract:***		
	(i) CST Sale Part: (Resale of goods)		
	(a) CST amount included in procurement of goods which are subsequently sold to customer under section 3(b) read with section 6(2) of CST Act, 1956. The transaction is commonly known as sale in transit.		

	(b) Central Excise Duty amount included in procurement of goods which are subsequently sold to customer under section 3(b) read with section 6(2) of CST Act, 1956. The transaction is commonly known as sale in transit.		
	(ii) CST Sale Part: (Own manufactured goods)		
	(a) Non-cenvatable excise duty on own manufactured goods which are sold to customer under supply contract		
	(b) CST component on materials procured to manufacture of goods which are sold to customer		
	(iii) Sale in the course of import: (Resale of goods)		
	(a) Additional Duty of Customs included in the procurement of goods which are sold to customer and commonly known as 5(2) sale under CST Act, 1956		
	(b) Special Duty of Customs included in the procurement of goods which are sold to customer and commonly known as 5(2) sale under CST Act, 1956		
	(iv) Entry Tax on goods sold to customer		
	Amount of entry tax included in the procurement of goods which are subsequently sale to customer		
	(v) VAT Sale:		
	(a) Component of excise duty included in procurement of goods which are subsequently sale to customer charging VAT under supply contract		
	(b) Component of CST and Entry tax included in procurement of goods which are subsequently sale to customer charging VAT under supply contract		

	(c) impact on exemptions have been withdrawn in GST regime, like excise duty on supply of goods to mega power projects		
Part B	***Civil Contract, Installation and Commissioning Contract:***		
	(a) Amount Excise duty involved in procurement of goods used in execution of civil job like steel, cement etc.		
	(b) Amount CST involved in procurement of goods used in execution of civil job like steel, cement, Bitumen etc.		
	(c) Amount CST involved in hiring of goods used in execution of civil job.		
	(d) Any other non-cenvatable amount included in the civil cost like Excise duty on electro rods etc.		
	(e) Swachh Bharat Cess (SBC) on procurement of input services for execution of Civil, Erection and commissioning job		
	(f) Others items		
Part C	**Total Tax implication**		
	Contract value (Balance portion in GST Regime)		
	Tax benefit to be passed on to the employer (customer)		
	% of tax implication to be passed on to employer(customer)		
	Revised contract value (increase or decrease) subject to the conditions laid down in the clauses of the contract		

TO WHOM IT MAY CONCERN

I/We have verified the records including contract documents as provided by the management of the company in relation to contract no…… date……. Further we have also verified the unbilled portion of the contract duly provided by the project management of the company and certified by the respective finance and project head.

The preparation of the tax benefit statement with respect to a particular project is the responsibility of the management. My/our audit including examining, on test basis, whether the evidences supporting the statement is true and fair with respect to the operation of the project as well as organization. My / our observations and suggestions are based on the information contained in these statements.

On the basis of documents produced before me / us and explanations and information provided by the concerned officials, I / we hereby certify that the tax benefit arising on account of Goods and Services Tax as compared to taxes prior to 1st July, 2017, for the project under consideration is _____% to the unbilled portion of the contract value of the project.

Place:

Date:

For ABC & Co.

Cost Accountants

(Registration No)

Signature

Membership No.

UDIN.

Explanatory Notes:

a. List of documents verified

b. Notes on exemption of any existing taxes, like excise duty.

c. Other matters.

CHAPTER - 10

Format for filing complaint

Format for filing complaint -- To be filed before Standing Committee/State level Screening Committee in terms of Rule 128 of CGST Rules, 2017]

Who can file complaint

Any person (consumer) who feel that the benefit of reduction in prices on account of GST is not being passed on to him when he purchases any goods or services may apply for relief to Screening Committees in the particular state

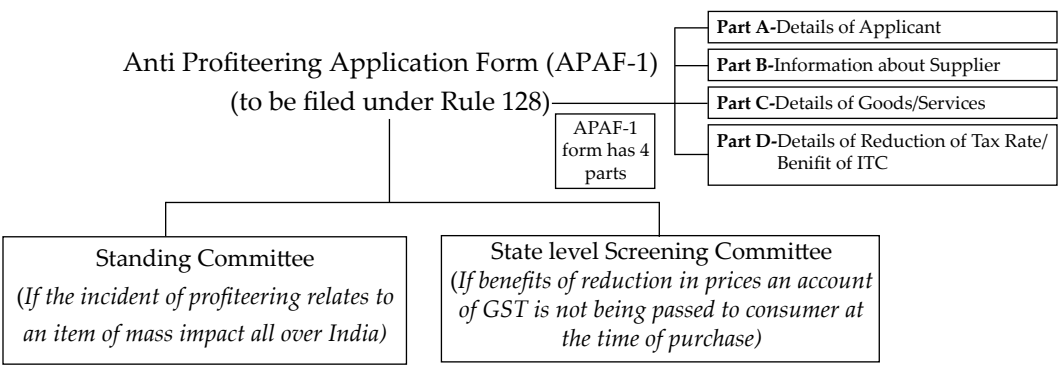
In case the incident of profiteering relates to an item of mass impact all over India, the application may be directly made to the Standing Committee.

The application can be made by recipient of the goods or services, Commissioner of GST or any other person.

Procedure of processing the complaint

After forming a prima facie view if there is an element of profiteering, the standing committee shall refer the matter for detailed investigation to Director General of Safeguards, CBIC , which shall report its findings to NAA.

Anti Profiteering Application Form (APAF-1), to be filed before Standing Committee / State level Screening Committee in terms of Rule 128 of CGST Rules 2017 has been issued.



The application form is divided into four parts.

1. **In part A of the application**, *the applicant has to provide general information about the applicant* such as name of the applicant, address, GST registration number , proof of identity, contact details etc..

2. **In part B**, *the general information about the supplier who has not passed on the benefit is to be provided.* This includes name of the supplier, category i.e. manufacturer, service provider, trader or other, Address of the supplier, GST Registration number, Contact details etc.

3. **Part C** *is about the details of goods and services.* Description of the goods or services, HSN or SAC, Actual Price / value charged per unit – pre GST and Post GST. In case goods are covered under MRP , then pre GST and post GST MRP and comparative price / value pre GST and post GST after considering any discount / rebate given by other supplier. It is pertinent to note that this comparison is to be given by the applicant only.

4. **Part D** consists of the *details of reduction in Tax rate / benefit of input tax credit.* The applicant has to provide details of pre GST tax structure, post GST tax structure, Pre GST total tax per unit and post unit. Post GST tax reduction in amount of tax per unit, benefit of input tax credit i.e. details of input tax credit which was not available pre GST and available now , transitional credit and post GST per unit value to be reduced.

- The instructions for filling Anti profiteering application form are also annexed to the form. It is specified that following information is to be provided by the applicant
- Rate of Pre-GST Indirect Taxes (Such as Excise Duty, Value Added Tax, Central Sales Tax, Luxury Tax, Service Tax etc.) or earlier Goods & Service Tax (Including compensation cess) applicable on the goods/ services and the assessable/ taxable/ base amount per unit to the extent possible on which such rate of Indirect Taxes were applied in arriving at effective Pre-GST amount of Tax per unit or earlier GST (Including compensation cess) amount of Tax per unit.
- GST Rates viz. CGST, SGST/UTGST, IGST, Compensation Cess and other indirect taxes effective after change in Rates, if any by Central Government on recommendation of Goods & Services Tax Council after GST implementation applicable on the goods/ services and the assessable /taxable/base amount per unit on which such rate of Indirect Taxes are applied in arriving effective Post- GST/later GST amount of Tax per unit.
- Post GST reduction in Tax per unit by deducting Post-GST tax amount per unit from Pre-GST tax amount per unit as calculated above.
- Attach working sheets for computation of the Input Taxes/Duties Pre-GST per unit, credit of which was not available to the supplier before implementation of GST (out of the Taxes/Duties subsumed in GST, Illustrative list is given below):

  a. Central Excise duty

  b. Duties of Excise (Medicinal and Toilet Preparations)

  c. Additional Duties of Excise (Goods of Special Importance)

  d. Additional Duties of Excise (Textiles and Textile Products)

  e. Additional Duties of Customs (commonly known as CVD)

  f. Special Additional Duty of Customs (SAD)

g. Service Tax

h. Central Surcharges and Cesses so far as they relate to supply of goods and services

i. State VAT

j. Central Sales Tax

k. Luxury Tax

l. Entry Tax (all forms)

m. Entertainment and Amusement Tax (except when levied by the local bodies)

n. Taxes on advertisements

o. Purchase Tax

p. Taxes on lotteries, betting and gambling

q. State Surcharges and Cesses so far as they relate to supply of goods and services.

- It has been specified not to include details of Taxes/Duties, credit of which was available prior to GST and provide information only in respect of Input Taxes/ Duties, credit of which was not available to the supplier before implementation of GST.
- Transitional Input Tax Credit availed in terms of Section 140(3) of CGST Act, 2017 read with Rule 117 of CGST Rules, 2017 which is not passed on to the recipient.
- The change in actual price/value charged per unit by deducting Actual price/ value charged per unit Pre-GST from Actual price/value charged per unit Post- GST.
- The total amount of benefit not passed on by adding Post-GST reduction in amount of Tax per unit + Post-GST benefit of Input Tax Credit per unit on inputs + Difference (+/-) between Post-GST and Pre-GST actual price/value charged per unit.
- The GST on amount of benefit not passed on by multiplying amount of benefit not passed on as calculated in and total GST rate (in percentage) calculated in.
- The Post-GST per unit price/value to be reduced from actual price/value charged per unit Post-GST.

After detailed scrutiny of the application, in the event the NAA finds that there is a necessity to apply anti profiteering measures, it has the authority to order the following

- Order the supplier to reduce the prices or return the undue benefit availed by the supplier, with interest to the recipient of the goods or services.
- If the benefit cannot be passed on to the recipient, it can be ordered to be deposited in the Consumer Welfare Fund.
- Impose a penalty on the defaulting business entity or even order the cancellation of its registration under GST.

FORM of application of Anti-profiteering is available at –

Anti-Profiteering Application Form (APAF - 1)

[To be filed before Standing Committee/State level Screening Committee in terms of Rule 128 of CGST Rules, 2017]

A.	**General information about the Applicant**		
A.1	Name		
A.2	Address		
A.3	Contact Number		
A.4*	E-mail ID		
A.5	Proof of identity (Please Tick-?)	Aadhaar Card	
		Voter ID	
		Permanent Account Number (PAN) Card	
		Driving Licence	
		Passport	
		Ration Card having photograph of the applicant	
		Any other proof of Identity (Specify)	
B.	**General information about the Supplier who has not passed on the benefit**		
B.1	Name		
B.2	Address		
B.3*	Contact Number		
C.	**Particulars of Goods/Services**		
C.1	Description		
C.2	Earlier Price/Value per unit	?	
C.3	Present Price/Value per unit	?	
C.4	Earlier MRP	?	
C.5	Present MRP	?	

D.	**Details of reduction in Tax Rate/ Benefit of Input Tax Credit (ITC)** (Please Tick-?)		**?**		**?**
D.1	Whether the benefit of reduction in tax rate has been passed on (Please enclose evidence like copies of Invoice, Price List etc.).	**Yes**		**No**	
D.2*	Whether the benefit of ITC has been passed on (Please enclose evidence).	**Yes**		**No**	
D.3*#	Additional information, if any.				

Declaration:

I hereby declare that the information furnished above is true to the best of my knowledge and that I have exercised due diligence in submitting such information. I understand that providing incomplete or incorrect information will make the application invalid.

Date: Signature of the Applicant

Place:

Note 1 - Fill up the application form legibly in BLOCK LETTERS only.

Note 2 - Fields marked with asterisk (*) are optional.

#Note 3 - In case the applicant wants to keep his name and details confidential, please specify it.

Note 4 - Filled up application form is to be sent to the State level Screening Committee in case issue is of local nature and in other cases to the Standing Committee.

Procedure & Methodology

Rule 126

The National Anti-Profiteering Authority under the Goods & Services Tax has notified the following Methodology and Procedure for determination as to whether the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit has been passed on by the registered person to the recipient by way of commensurate reduction in prices.

(1) This Methodology and Procedure is called the National Anti-Profiteering Authority under the Goods & Services Tax (here-in-after referred to as the Authority) Methodology and Procedure, 2018.

(2) The Authority shall be known as the "National Anti-Profiteering Authority under the Goods & Services Tax" i.e. "NAA".

(3) The principal seat of the Authority shall be at New Delhi however, the Authority may hold its sittings at such place or places within the territory of India as it deems fit.

(4) The Authority shall have its own seal which shall contain the words "National Anti-Profiteering Authority under the Goods & Services Tax" with the insignia used by the Central Government.

(5) The Authority shall observe the same office hours and holidays as are observed by the Central Government.

(6) In the discharge of its functions the Authority shall be guided by the principles of natural justice and shall have the power to regulate its own procedure. No order whether interim or final shall be passed by it without affording opportunity of being heard to the concerned interested party.

(7) No act or proceedings of the Authority shall be invalid merely on the ground that there was a vacancy or any defect in the constitution or appointments made in the Authority or there was any irregularity in the procedure followed by the Authority not affecting merits of the case.

(8) The Authority may engage in accordance with the procedure specified such number of experts and professionals of integrity and outstanding ability who have special experience in accounts, business, law or other relevant fields to assist it in carrying out its responsibilities.

(9) The Authority may inquire into any alleged contravention of the provisions of section 171 of the Central Goods & Services Tax Act, 2017 on its own motion or on receipt of information from any interested party as defined in the Rule 137 (c), person, body, association or on a reference having been made to it by the Central Government or the State Government.

(10) As per Rule 134 (1) a minimum of 3 members of the Authority shall constitute quorum at its meetings.

(11) If the Members of the Authority differ in their opinion on any point, the point shall be decided according to the opinion of the majority of the members present and voting, and in the event of equality of votes, the Chairman shall have the second or casting vote, Rule 134 (2).

(12) On receipt of the information as mentioned in Para 9 above, in case the Authority is of the opinion that there exists a prima facie case it shall direct the Director General of Anti profiteering to cause an investigation to be made in a fixed time frame and submit report.

(13) The report received from the Director-General of Anti-profiteering under Para 10 supra and rule 129 (6) of the Central Goods & Services Tax Rules, 2017 shall be registered by endorsing on it the date of its receipt and shall also be caused to be entered in a register to be kept by the Secretary of the Authority as defined under Rule 125. The report shall be accompanied with all the record relied upon during the investigation by the Director General of Anti-profiteering. The Director-General shall supply 7 copies of the report in addition to the number of copies to be served upon each interested party.

(14) In case the report filed by the Director General of Anti-profiteering recommends that there is no violation of the provisions of section 171 of the above Act, the Authority may send a copy of the report to the complaint interested party and invite objections from it and after hearing the above party may either close the matter or pass any order it may deem just and proper or under Rule 133 (4) direct the Director General of Anti-profiteering to further investigate the matter as the case may be.

(15) After registration of the report a notice shall be issued to the interested parties or their agents or their counsels intimating the date, time and place fixed for hearing and a copy of the report shall also be supplied to such parties along with the notice.

(16) Notice to the interested parties may be served through e-mail, speed post or courier or through any or all of the above means on the address provided by them to the Director-General of Anti-profiteering and they may appear before the Authority in person or though their agent or counsel. A minimum period of 15 days shall be given to such parties for appearance and filing reply which may be extended on justifiable grounds.

(17) The Authority may also summon any additional record as it deems fit from any person, interested party, authority of the Central or the State Govt.

(18) The Authority may also allow the interested parties to examine the original documents placed on the report.

(19) The Authority may dismiss the proceedings in default or dispose them ex-parte in case the interested parties do not appear on the date fixed for the hearing.

(20) The Authority may re-institute the proceedings dismissed or disposed-off by it ex-parte in case any interested party applies to re-institute them, duly supported by an affidavit mentioning the grounds on which it wants to re-institute the proceedings.

In case the Authority is satisfied that the interested party was prevented by sufficient cause from attending the proceedings it may re-institute the same with or without imposing cost.

(21) Any application for re-institution of proceedings shall be made within a period of 15 days from the date of passing of the order. Provided that such an application may be entertained and allowed by the Authority after the expiry of 15 days if it is satisfied that the applicant was prevented by sufficient cause from filing the application in time.

(22) On the date fixed for hearing the interested party on whose complaint the proceedings have been initiated shall be heard first after which the opposite interested party/ parties shall be heard.

(23) No adjournments shall be ordinarily granted and an adjournment shall be given only on highly compelling grounds and shall also be subject to cost if circumstances so warrant.

(24) The interested parties shall not be allowed to produce additional oral or documentary evidence before the Authority.

(25) The interested parties shall be ordinarily required to file written submissions only; however they can address oral arguments with the permission of the Authority.

(26) The interested party on whose part the proceedings have been initiated shall file or address the arguments first and shall also supply copies of such arguments to the other interested parties who shall be entitled to file their arguments, copies of which shall be supplied to the opposite interested parties, who shall be entitled to rebut the same.

(27) In case any interested party dies during the pendency of the proceedings, any interested party may file an application for impleadment of the legal heirs of such party within a period of15 days failing which the proceedings shall abate. Any legal representative may file application for his impleadment within a period of 15 days from the date of order of abatement, which shall be entertained and allowed by the Authority in case it is satisfied with the cause shown by such representative in support of his application. However, there shall be no abatement of the proceedings once the interested parties have been heard and the order reserved which shall be passed not withstanding such death and shall have the same force and effect as if it had been passed before the death took place. Any issue regarding impleadment of the legal heirs may be decided by the Authority in a summary manner.

(28) The Authority may add or delete any interested party depending upon the facts of each case.

(29) The Authority may pass any interim or final order in the proceedings pending before it as is deemed just and proper by it in the facts and circumstances of the case.

(30) The Authority on its own motion or on the application of any interested party may correct any clerical, arithmetical or factual mistake apparent from the record within a period of 3 months from the passing of the order.

(31) Copies of the orders passed by the Authority duly certified and sealed by the Secretary shall be supplied free of cost to all the interested parties including the concerned authorities of the Central and the State Governments.

(32) Any other person may obtain copy of the order passed by the Authority on payment of fee of ₹ 10/- per page or part thereof.

(33) All notices, letters, communications and correspondence in respect of the proceedings pending or disposed of by the Authority shall be made by the Secretary or any other officer duly authorised by him.

(34) All records of the proceedings pending or disposed of by the Authority shall be kept in the custody of the Secretary or any other officer authorised by him.

(35) Any order passed by the Authority shall be published in the law journals, print and electronic media in case such publication is permitted by the Authority.

(36) The Chairman and Technical Members of the Authority shall be deemed to be public servants under section 21 of the Indian Penal Code1860 (45 of 1860).

(37) No criminal or civil proceedings shall lie against the Chairman or Technical Members of the Authority or any of its officers for any order passed or action taken by them in good faith.

(38) No investigation or prosecution shall be instituted against the Chairman and the Technical Members of the Authority without the approval of the Central Government.

(39) The Authority shall be competent to initiate, recommend and file disciplinary, civil, criminal and contempt proceedings against any person, interested party or authority of the Central or the State Governments before the appropriate Courts of law or administrative authority as it deems fit.

(40) The Authority shall be competent to defend any civil or criminal proceedings launched against it or its Chairman or the Technical Members or officers or staff at its own expense, while acting in discharge of its/their functions.

(41) No civil court shall have jurisdiction to entertain any suit in respect of the proceedings pending before the Authority.

Annexure - I

INPUT TAX CREDIT

Section 16. Eligibility and conditions for taking input tax credit.—

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49,be entitled to take credit of input tax charged on any supply of goods or services or both to him *which are used or intended to be used in the course or furtherance of his business* and *the said amount shall be credited to the electronic credit ledger of such person.*

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(b) he has received the goods or services or both.

[Explanation.—For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services—

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.]

(c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39:

Time when input tax credit can be availed when goods received in lots or instalment
Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of 180 days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961(43 of 1961), the input tax credit on the said tax component shall not be allowed.

(4) 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 invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.

Explanation- There will be no other way to get Input Tax Credit beyond the Time Period mention under Sec 16 of CGST Act, 2017. If the taxpayer ,due to any of the reason, unable to take Input Tax Credit within time frame as specified under GST Law, then ITC will get lapsed and it will consider to be part of Cost of Business.

[Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.]

Interpretation

Registered Taxpayer must satisfied the below condition before taking ITC:-

1. He is in possession of Tax Invoice or Debit note issued by registered supplier and other document as prescribed under Rule 36 of CGST Rules,2017.
2. He has received Goods or Services or Both.
3. Tax paid to Government.
4. He has furnished the return under Section 39.

Note –

1. Goods or Service Receiver fails to pay value of Service or goods to supplier (except Reverse Charge) within 180 days from the date of issue of invoice by the supplier

An amount equal to the ITC availed by the recipient shall be added to his output tax liability, along with interest

2. Depreciation under I.T Act claimed for Fixed Asset- ITC can not be availed on the purchase of same Fixed Asset

17. Apportionment of credit and blocked credits.—

(1) Goods or Service Partly Used for Business and Partly used for Other Purpose Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, *the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.*

(2) Supply of Goods or Service including Zero Rated and Exempted Supply-Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, *the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.*

(3) The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

[Explanation.—For the purposes of this sub-section, the expression ''value of exempt supply'' shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule.]

(4) **ITC Rules for Banking Company and NBFC-**A banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the option to

- Either comply with the provisions of sub-section (2),
- Avail of, every month, an amount equal to 50% of the eligible ITC on inputs, capital goods and input services in that month and the rest shall lapse:

Provided that the option once exercised shall not be withdrawn during the remaining part of the financial year:

Provided further that the restriction of 50% shall not apply to the tax paid on supplies made by one registered person to another registered person having the same Permanent Account Number.

(5) Non availment of ITC-Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:—

(a) motor vehicles for transportation of persons having approved seating capacity of **not more than 13 persons** (including the driver), except when they are used for making the following taxable supplies, namely:—

(A) further supply of such motor vehicles; or

(B) transportation of passengers; or

(C) imparting training on driving such motor vehicles;

(aa) vessels and aircraft except when they are used—

(i) for making the following taxable supplies, namely:—

(A) further supply of such vessels or aircraft; or

(B) transportation of passengers; or

(C) imparting training on navigating such vessels; or

(D) imparting training on flying such aircraft;

(ii) for transportation of goods;

(ab) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa):

Provided that the input tax credit in respect of such services shall be available—

(i) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;

(ii) where received by a taxable person engaged—

(I) in the manufacture of such motor vehicles, vessels or aircraft; or

(II) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;

(b) the following supply of goods or services or both—

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause(a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:

Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

(ii) membership of a club, health and fitness centre; and

(iii) travel benefits extended to employees on vacation such as leave or home travel concession:

Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.]

(c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;

(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation.—For the purposes of clauses (c) and (d), the expression "construction" includes reconstruction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;

(e) goods or services or both on which tax has been paid under section 10;

(f) goods or services or both received by a non-resident taxable person except on goods imported by him;

(g) goods or services or both used for personal consumption;

(h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and

(i) any tax paid in accordance with the provisions of sections 74, 129 and 130.

(6) The Government may prescribe the manner in which the credit referred to in sub-sections (1)and (2) may be attributed.

Explanation.—For the purposes of this Chapter and Chapter VI, the expression "plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes—

(i) land, building or any other civil structures;

(ii) telecommunication towers; and

(iii) pipelines laid outside the factory premises.]

Items on which ITC is not available	Exception when ITC available
Motor Vehicles	1. Extended supply of such vehicles or conveyances; 2. Transportation of passengers 3. Driving Training
Other Conveyances (Vessels and Aircraft)	1. Training on driving, navigating such vehicles 2. Conveyances for transportation of goods
Foods, Outdoor Catering, Beauty Treatment, Health Services Cosmetic, Plastic Surgery	Where an inward supply of goods or services or both of a particular category is consumed by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply
Membership of a Club , Health Centre , Fitness Centre	-
Rent-a-cab, Life Insurance, Health Insurance	1. The Government states the services which are mandatory for an employer to provide to its employees under any law for the time being in force; 2. Such inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same Category of goods or services or both or as part of a taxable composite or mixed supply.
Travel benefits extended to employees on vacation such as leave , on home travel concession	-
Works contract services when supplied for construction of an immovable property	Where it is an input service for extended supply of works contract service and plant and machinery

Goods or services or both received by a taxable person for construction of an immovable property	Goods or services received on his own account including when such goods or services or both are used in the course or furtherance of business and plant and machinery
Goods or services or both on which tax has been paid under section 10 composition scheme	
Goods or services or both received by a non-resident taxable person	Goods imported by him
Goods or services or both used for personal consumption	-
Goods lost, written off, destroyed, stolen,	-
Goods disposed of by way of gift or free samples	-
Any tax paid in accordance with the provisions of sections 74, 129 and 130	Fraud, Misstatement, etc
Repairs/ insurance of motor vehicle/ Vessels/Aircraft	1. Motor Vehicle for transportation of persons having approved seating capacity of more than 13 persons. (e.g. A Bus) 2. Motor Vehicle for transportation of goods. (e.g. A Truck) 3. Motor Vehicle used for making following taxable supplies, namely:— (A) further supply of such motor vehicles (e.g. In case of a Car Dealer) (B) transportation of passengers (e.g. In case of a Taxi Service Provider) (C) imparting training on driving such motor vehicles (e.g. In case of a Driving School) 4. Services received by a taxable person engaged— (I) in the manufacture of such motor vehicles (II) in the supply of general insurance services in respect of such motor vehicles insured by him;

18. Availability of credit in special circumstances.— (1) Subject to such conditions and restrictions as may be prescribed—

(a) a person who has applied for registration under this Act within thirty days from the date on which he becomes liable to registration and has been granted such registration

shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act;

Example: XYZ company, crosses the turnover limit of ₹ 20 Lacs for registration on 01/11/2019 and applies for registration on 20/11/2019 and is granted registration on 02/12/2019 – It can avail ITC of inputs held in stock/semi-finished/finished goods held in stock as on 31/10/2019.

(b) a person who takes registration under sub-section (3) of section 25 shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of grant of registration;

Example: ABC Company applies for registration on 20/11/2019 and is granted registration on 02/12/2019, it can take input tax credit of inputs held in stock/semi-finished/finished goods held in stock as on 01/12/2019.

(c) where any registered person ceases to pay tax under section 10, he shall be entitled to take credit of input tax in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the day immediately preceding the date from which he becomes liable to pay tax under section 9:

Provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed;

Example: Mr. Roy , registered under composite scheme ceases to pay tax under section 10 on 01/04/2020, it can take input tax credit of inputs held in stock/semi-finished/finished goods held in stock and input tax credit on capital goods available as on 31/03/2020.

(d) where an exempt supply of goods or services or both by a registered person becomes a taxable supply, such person shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock relatable to such exempt supply and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable:

Provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed.

(2) ITC for Invoice upto 1 Year-A registered person shall not be entitled to take input tax credit under sub-section (1) in respect of any supply of goods or services or both to him after the expiry of 1 year from the date of issue of tax invoice relating to such supply.

(3) Transfer of credit on sale, merger, amalgamation, lease or transfer of a business- Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilised in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed.

(4) Reversal of ITC-Where any registered person who has availed of input tax credit opts

to pay tax under section 10 or, where the goods or services or both supplied by him become wholly exempt, he shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods, reduced by such percentage points as may be prescribed, on the day immediately preceding the date of exercising of such option or, as the case may be, the date of such exemption:

Provided that after payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse.

(5) The amount of credit under sub-section (1) and the amount payable under sub-section (4) shall be calculated in such manner as may be prescribed.

(6) In case of supply of capital goods or plant and machinery, on which input tax credit has been taken, the registered person shall pay an amount equal to

- the input tax credit taken on the said capital goods or plant and machinery reduced by such percentage points as may be prescribed

or

- the tax on the transaction value of such capital goods or plant and machinery determined under section 15, whichever is higher:

Provided that where refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value of such goods determined under section 15.

19. Taking input tax credit in respect of inputs and capital goods sent for job work.—(1) The principal shall, subject to such conditions and restrictions as may be prescribed, be allowed input tax credit on inputs sent to a job worker for job work.

(2) Notwithstanding anything contained in clause (b) of sub-section (2) of section 16, the principal shall be entitled to take credit of input tax on inputs even if the inputs are directly sent to a job worker for job work without being first brought to his place of business.

(3) Where the inputs sent for job work are not received back by the principal after completion of job work or otherwise or are not supplied from the place of business of the job worker in accordance with clause (a) or clause (b) of sub-section (1) of section 143 within one year of being sent out, it shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were sent out:

Provided that where the inputs are sent directly to a job worker, the period of one year shall be counted from the date of receipt of inputs by the job worker.

Example: PQR Ltd sends out inputs to ABC Co., a job worker for job work purpose on 01/04/2019 and receives back the inputs on 30/06/2019, within 1 year – PQR Ltd is eligible to take input tax credit on such inputs on the date when he receives the inputs from the supplier.
Example: If PQR Ltd receives the inputs on 01/04/2020, after 1 year, then he is not eligible to take input tax credit on such inputs, and he has to reverse the input tax credit if already taken and the transaction shall be deemed to be supply, the date of supply shall be 01/04/2019

(4) The principal shall, subject to such conditions and restrictions as may be prescribed, be allowed input tax credit on capital goods sent to a job worker for job work.

(5) Notwithstanding anything contained in clause (b) of sub-section (2) of section 16, the principal shall be entitled to take credit of input tax on capital goods even if the capital goods are directly sent to a job worker for job work without being first brought to his place of business.

Example: BS Ltd purchases capital goods from a company and asks him to deliver the same directly to LP Co. for job work purpose. The job worker receives the capital goods at his place of business on 30/06/2019, BS Ltd can take input tax credit on the date when the capital goods are received by the job worker.

(6) Where the capital goods sent for job work are not received back by the principal within a period of three years of being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were sent out:

Example: BS Ltd purchases capital goods from a company and asks him to deliver the same directly to LP Co. for job work purpose. The job worker receives the capital goods at his place of business on 30/06/2019.If BS Ltd will receive the capital goods, after completion of job work on 31/07/2022, after 3 years, BS Ltd. is not eligible to take input credit on such capital goods and he has to reverse the input tax credit if already taken and the transaction shall be deemed to be supply, the date of supply shall be 30/06/2019

Provided that where the capital goods are sent directly to a job worker, the period of three years shall be counted from the date of receipt of capital goods by the job worker.

(7) Nothing contained in sub-section (3) or sub-section (6) shall apply to moulds and dies, jigs and fixtures, or tools sent out to a job worker for job work.

Explanation.—For the purpose of this section, "principal" means the person referred to in section 143.

20. Manner of distribution of credit by Input Service Distributor.—

(1) The Input Service Distributor shall distribute the credit of central tax as central tax or integrated tax and integrated tax as integrated tax or central tax, by way of issue of a document containing the amount of input tax credit being distributed in such manner as may be prescribed.

(2) The Input Service Distributor may distribute the credit subject to the following conditions, namely:—

(a) the credit can be distributed to the recipients of credit against a document containing such details as may be prescribed;

(b) the amount of the credit distributed shall not exceed the amount of credit available for distribution;

(c) the credit of tax paid on input services attributable to a recipient of credit shall be distributed only to that recipient;

(d) the credit of tax paid on input services attributable to more than one recipient of credit shall be distributed amongst such recipients to whom the input service is attributable and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate

of the turnover of all such recipients to whom such input service is attributable and which are operational in the current year, during the said relevant period;

(e) the credit of tax paid on input services attributable to all recipients of credit shall be distributed amongst such recipients and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all recipients and which are operational in the current year, during the said relevant period.

Explanation.—For the purposes of this section,—

(a) the "relevant period" shall be—

(i) if the recipients of credit have turnover in their States or Union territories in the financial year preceding the year during which credit is to be distributed, the said financial year; or

(ii) if some or all recipients of the credit do not have any turnover in their States or Union territories in the financial year preceding the year during which the credit is to be distributed, the last quarter for which details of such turnover of all the recipients are available, previous to the month during which credit is to be distributed;

(b) the expression "recipient of credit" means The recipients of credit are the persons who is having the same Permanent Account Number (PAN) as that of the Input service distributor.

(c) the term "turnover", in relation to any registered person engaged in the supply of taxable goods as well as goods not taxable under this Act, means the value of turnover, reduced by the amount of any duty or tax levied 1[under entries 84 and 92A] of List I of the Seventh Schedule to the Constitution and entries 51 and 54 of List II of the said Schedule.

21. Manner of recovery of credit distributed in excess.—Where the Input Service Distributor distributes the credit in contravention of the provisions contained in section 20 resulting in excess distribution of credit to one or more recipients of credit, the excess credit so distributed shall be recovered from such recipients along with interest, and the provisions of section 73 or section 74, as the case may be, shall, mutatis mutandis, apply for determination of amount to be recovered.

Section No	Description of provisions
16	Eligibility and conditions for taking input tax credit There are certain conditions mentioned in the law which are treated as the valid conditions for availing credit under GST and hence those items attribute to the eligible ITC under GST
17	Apportionment of credit and blocked credits As per subsection 5 of the Sec 17 of the CGST Act 2017, ITC cannot be availed for a certain class of supply of goods and services.
18	Availability of credit in special circumstances
19	Taking input tax Credit in respect of inputs and capital goods sent for job work
20	Manner of distribution of credit by Input Service Distributor
21	Manner of recovery of credit distributed in excess

Annexure - II

INPUT TAX CREDIT

(Extracts from Central Goods and Services Tax Rules, 2017)

36. Documentary requirements and conditions for claiming input tax credit.-

(1) The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely,-

(a) an *invoice issued by the supplier of goods or services* or both in accordance with the provisions of section 31;

(b) an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, subject to the payment of tax;

(c) a *debit note issued by a supplier* in accordance with the provisions of section 34;

(d) a *bill of entry* or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports;

(e) an *Input Service Distributor invoice or Input Service Distributor credit note* or any document issued by an Input Service Distributor in accordance with the provisions of sub-rule (1) of rule 54.

(2) Input tax credit shall be availed by a registered person only if all the applicable particulars as specified in the provisions of Chapter VI are contained in the said document, and the relevant information, as contained in the said document, is furnished in FORM GSTR-2 by such person:

[Provided that if the said document does not contain all the specified particulars but contains the details of the amount of tax charged, description of goods or services, total value of supply of goods or services or both, GSTIN of the supplier and recipient and place of supply in case of inter-State supply, input tax credit may be availed by such registered person.]

(3) No input tax credit shall be availed by a registered person in respect of any tax that has been paid in pursuance of any order where any demand has been confirmed on account of any fraud, willful misstatement or suppression of facts.

(4) Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed 10% of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37.

Example for Rule 36(4)- ITC available only 20% more of Invoices uploaded by Supplier

Total ITC to be availed as per books	₹ 40,000
Invoices in respect of ITC uploaded by the suppliers	₹ 30,000
Invoices in respect of ITC not uploaded by the suppliers	₹ 10,000
Invoices in respect of ITC uploaded by the suppliers	₹ 30,000
ADD: 10% of ₹ 30,000/-	₹ 3,000
Total ITC can be availed for the month	₹ 33,000

37. Reversal of input tax credit in the case of non-payment of consideration.-

(1) A registered person, who has availed of input tax credit on any inward supply of goods or services or both, but fails to pay to the supplier thereof, the value of such supply along with the tax payable thereon, within the time limit specified in the second proviso to sub section(2) of section 16, shall furnish the details of such supply, the amount of value not paid and the amount of input tax credit availed of proportionate to such amount not paid to the supplier in FORM GSTR-2 for the month immediately following 180 days from the date of the issue of the invoice:

Provided that the value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16:

[Provided further that the value of supplies on account of any amount added in accordance with the provisions of clause (b) of sub-section (2) of section 15 shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.]

(2) The amount of input tax credit referred to in sub-rule (1) shall be added to the output tax liability of the registered person for the month in which the details are furnished.

(3) The registered person shall be liable to pay interest at the rate notified under subsection (1) of section 50 for the period starting from the date of availing credit on such supplies till the date when the amount added to the output tax liability, as mentioned in sub-rule (2), is paid.

(4) The time limit specified in sub-section (4) of section 16 shall not apply to a claim for re-availing of any credit, in accordance with the provisions of the Act or the provisions of this Chapter, that had been reversed earlier.

38. Claim of credit by a banking company or a financial institution.-A banking company or a financial institution, including a non-banking financial company, engaged in the supply of services by way of accepting deposits or extending loans or advances that chooses not to comply with the provisions of sub-section (2) of section 17, in accordance with the option permitted under sub-section (4) of that section, shall follow the following procedure, namely,-

(a) the said company or institution shall not avail the credit of,-

- **(i)** the tax paid on inputs and input services that are used for non-business purposes; and
- **(ii)** the credit attributable to the supplies specified in sub-section (5) of section 17, in FORM GSTR-2;

(b) the said company or institution shall avail the credit of tax paid on inputs and input services referred to in the second proviso to sub-section (4) of section 17 and not covered under clause (a);

(c) fifty per cent. of the remaining amount of input tax shall be the input tax credit admissible to the company or the institution and shall be furnished in FORM GSTR-2;

(d) the amount referred to in clauses (b) and (c) shall, subject to the provisions of sections 41, 42 and 43, be credited to the electronic credit ledger of the said company or the institution.

39. Procedure for distribution of input tax credit by Input Service Distributor.-

(1)An Input Service Distributor shall distribute input tax credit in the manner and subject to the following conditions, namely,-

(a) the input tax credit available for distribution in a month shall be distributed in the same month and the details thereof shall be furnished in FORM GSTR-6in accordance with the provisions of Chapter VIII of these rules;

(b) the Input Service Distributor shall, in accordance with the provisions of clause (d), separately distribute the amount of ineligible input tax credit (ineligible under the provisions of sub-section (5) of section 17 or otherwise) and the amount of eligible input tax credit;

(c) the input tax credit on account of central tax, State tax, Union territory tax and integrated tax shall be distributed separately in accordance with the provisions of clause (d);

(d) the input tax credit that is required to be distributed in accordance with the provisions of clause (d) and (e) of sub-section (2) of section 20 to one of the recipients ‗R1', whether registered or not, from amongst the total of all the recipients to whom input tax credit is attributable, including the recipient(s) who are engaged in making exempt supply, or are otherwise not registered for any reason, shall be the amount , "C1" to be calculated by applying the following formula -

$C1 = (t1 \div T) \times C$

where,

"C" is the amount of credit to be distributed,

"t1" is the turnover, as referred to in section 20, of person R1 during the relevant

period, and

"T" is the aggregate of the turnover, during the relevant period, of all recipients to whom the input service is attributable in accordance with the provisions of section 20;

(e) the input tax credit on account of integrated tax shall be distributed as input tax credit of integrated tax to every recipient;

(f) the input tax credit on account of central tax and State tax or Union territory tax shall-

(i) in respect of a recipient located in the same State or Union territory in which the Input Service Distributor is located, be distributed as input taxcredit of central tax and State tax or Union territory tax respectively;

(ii) in respect of a recipient located in a State or Union territory other than that of the Input Service Distributor, be distributed as integrated tax and the amount to be so distributed shall be equal to the aggregate of the amount of input tax credit of central tax and State tax or Union territory tax that qualifies for distribution to such recipient in accordance with clause (d);

(g) the Input Service Distributor shall issue an Input Service Distributor invoice, as prescribed in sub-rule (1) of rule 54, clearly indicating in such invoice that it is issued only for distribution of input tax credit;

(h) the Input Service Distributor shall issue an Input Service Distributor credit note, as prescribed in sub-rule (1) of rule 54, for reduction of credit in case the input taxcredit already distributed gets reduced for any reason;

(i) any additional amount of input tax credit on account of issuance of a debit note to an Input Service Distributor by the supplier shall be distributed in the manner and subject to the conditions specified in clauses (a) to (f) and the amount attributable to any recipient shall be calculated in the manner provided in clause (d) and such credit shall be distributed in the month in which the debit note is included in the return in FORM GSTR-6;

(j) any input tax credit required to be reduced on account of issuance of a credit note to the Input Service Distributor by the supplier shall be apportioned to each recipient in the same ratio in which the input tax credit contained in the original invoice was distributed in terms of clause (d), and the amount so apportioned shall be-

(i) reduced from the amount to be distributed in the month in which the credit note is included in the return in FORM GSTR-6; or

(ii) added to the output tax liability of the recipient where the amount so apportioned is in the negative by virtue of the amount of credit under distribution being less than the amount to be adjusted.

Example for Rule 39(1)(j)(ii)

M/s B receives services worth ₹ 2,00,000 on which GST of ₹ 36,000 was paid.

M/s D distributed this credit to two dealers X and Y in the ratio of 1:2

X and Y claimed the ITC in the GSTR 2.

Now M/s D has received a credit note worth Rs 47,200 (including GST of ₹ 7,200)

This GST of ₹ 7,200 has to be reversed by X and Y in the ratio of 1:2

X will reverse ITC of ₹ 2,400 (7,200 * 1 / 3)

Y will reverse ITC of ₹ 4,800 (7,200 * 2 / 3)

This will be included in the GSTR 2 by both X and Y in the reversal of input tax credit section.

(2) If the amount of input tax credit distributed by an Input Service Distributor is reduced later on for any other reason for any of the recipients, including that it was distributed to a wrong recipient by the Input Service Distributor, the process specified in clause (j) of sub rule (1) shall apply, mutatis mutandis, for reduction of credit.

(3) Subject to sub-rule (2), the Input Service Distributor shall, on the basis of the Input Service Distributor credit note specified in clause (h) of sub-rule (1), issue an Input Service Distributor invoice to the recipient entitled to such credit and include the Input Service Distributor credit note and the Input Service Distributor invoice in the return in FORM GSTR-6 for the month in which such credit note and invoice was issued.

40. Manner of claiming credit in special circumstances.-(1) The input tax credit claimed in accordance with the provisions of sub-section (1) of section 18 on the inputs held in stock

or inputs contained in semi-finished or finished goods held in stock, or the credit claimed on capital goods in accordance with the provisions of clauses (c) and (d) of the said sub-section, shall be subject to the following conditions, namely,-

(a) the input tax credit on capital goods, in terms of clauses (c) and (d) of subsection (1) of section 18, shall be claimed after reducing the tax paid on such capital goods by five percentage points per quarter of a year or part thereof from the date of the invoice or such other documents on which the capital goods were received by the taxable person.

[(b) the registered person shall within a period of thirty days from the date of becoming eligible to avail the input tax credit under sub-section (1) of section 18, or within such further period as may be extended by the Commissioner by a notification in this behalf, shall make a declaration, electronically, on the common portal in FORM GST ITC-01 to the effect that he is eligible to avail the input tax credit as aforesaid:

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

(c) the declaration under clause (b) shall clearly specify the details relating to the inputs held in stock or inputs contained in semi-finished or finished goods held in stock, or as the case may be, capital goods–

(i) on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of the Act, in the case of a claim under clause (a) of sub-section (1) of section 18;

(ii) on the day immediately preceding the date of the grant of registration, in the case of a claim under clause (b) of sub-section (1) of section 18;

(iii) on the day immediately preceding the date from which he becomes liable to pay tax under section 9, in the case of a claim under clause (c) of sub-section (1) of section 18;

(iv) on the day immediately preceding the date from which the supplies made by the registered person becomes taxable, in the case of a claim under clause (d) of sub-section (1) of section 18;

(d) the details furnished in the declaration under clause (b) shall be duly certified by a practicing chartered accountant or a cost accountant if the aggregate value of the claim on account of central tax, State tax, Union territory tax and integrated tax exceeds two lakh rupees;

(e) the input tax credit claimed in accordance with the provisions of clauses (c) and (d) of sub-section (1) of section 18 shall be verified with the corresponding details furnished by the corresponding supplier in FORM GSTR-1 or as the case may be, in FORM GSTR- 4, on the common portal.

(2) The amount of credit in the case of supply of capital goods or plant and machinery, for the purposes of sub-section (6) of section 18, shall be calculated by reducing the input tax on the said goods at the rate of five percentage points for every quarter or part thereof from the date of the issue of the invoice for such goods.

41. Transfer of credit on sale, merger, amalgamation, lease or transfer of a business.-(1) A registered person shall, in the event of sale, merger, de-merger, amalgamation, lease or transfer or change in the ownership of business for any reason, furnish the details of sale,

merger, de-merger, amalgamation, lease or transfer of business, in FORM GST ITC-02, electronically on the common portal along with a request for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee:

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

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

(2) The transferor shall also submit a copy of a certificate issued by a practicing chartered accountant or **cost accountant** certifying that the sale, merger, de-merger, amalgamation, lease or transfer of business has been done with a specific provision for the transfer of liabilities.

(3) The transferee shall, on the common portal, accept the details so furnished by the transferor and, upon such acceptance, the un-utilized credit specified in FORM GST ITC-02 shall be credited to his electronic credit ledger.

(4) The inputs and capital goods so transferred shall be duly accounted for by the transferee in his books of account.

[Rule 41A. Transfer of credit on obtaining separate registration for multiple places of business within a State or Union territory.- (1) A registered person who has obtained separate registration for multiple places of business in accordance with the provisions of rule 11 and who intends to transfer, either wholly or partly, the unutilised input tax credit lying in his electronic credit ledger to any or all of the newly registered place of business, shall furnish within a period of thirty days from obtaining such separate registrations, the details in FORM GST ITC-02A electronically on the common portal, either directly or through a Facilitation Centre notified in this behalf by the Commissioner:

Provided that the input tax credit shall be transferred to the newly registered entities in the ratio of the value of assets held by them at the time of registration.

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

(2) The newly registered person (transferee) shall, on the common portal, accept the details so furnished by the registered person (transferor) and, upon such acceptance, the unutilised input tax credit specified in FORM GST ITC-02A shall be credited to his electronic credit ledger.] 45

42. Manner of determination of input tax credit in respect of inputs or input services and reversal thereof.-(1) The input tax credit in respect of inputs or input services, which attract the provisions of sub-section (1) or sub-section (2) of section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely,-

(a) the total input tax involved on inputs and input services in a tax period, be denoted as "T';

(b) the amount of input tax, out of "T', attributable to inputs and input services intended to be used exclusively for the purposes other than business, be denoted as "T1';

(c) the amount of input tax, out of "T', attributable to inputs and input services intended to be used exclusively for effecting exempt supplies, be denoted as "T2';

(d) the amount of input tax, out of _T', in respect of inputs and input services on which credit is not available under sub-section (5) of section 17, be denoted as "T3';

(e) the amount of input tax credit credited to the electronic credit ledger of registered person, be denoted as "C1' and calculated as

$$C1 = T- (T1+T2+T3);$$

(f) the amount of input tax credit attributable to inputs and input services intended to be used exclusively for effecting supplies other than exempted but including zero rated supplies, be denoted as "T4';

[Explanation: For the purpose of this clause, it is hereby clarified that in case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the said Act, value of T4 shall be zero during the construction phase because inputs and input services will be commonly used for construction of apartments booked on or before the date of issuance of completion certificate or first occupation of the project, whichever is earlier, and those which are not booked by the said date.]

(g) 'T1', 'T2', 'T3' and 'T4' shall be determined and declared by the registered person at the invoice level in FORM GSTR-2 [and at summary level in FORM GSTR-3B]

(h) input tax credit left after attribution of input tax credit under clause [(f)] 48 shall be called common credit, be denoted as 'C2' and calculated as

$$C2 = C1- T4;$$

(i) the amount of input tax credit attributable towards exempt supplies, be denoted as _D1' and calculated as

$$D1= (E÷F) × C2$$

where,

'E' is the aggregate value of exempt supplies during the tax period, and 'F' is the total turnover in the State of the registered person during the tax period:

[Provided that in case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the Act, the value of _E/F' for a tax period shall be calculated for each project separately, taking value of E and F as under:-

E= aggregate carpet area of the apartments, construction of which is exempt from tax plus aggregate carpet area of the apartments, construction of which is not exempt from tax, but are identified by the promoter to be sold after issue of completion certificate or first occupation, whichever is earlier;

F= aggregate carpet area of the apartments in the project;

Explanation 1: In the tax period in which the issuance of completion certificate or first occupation of the project takes place, value of E shall also include aggregate carpet area of the apartments, which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier;

Explanation 2: Carpet area of apartments, tax on construction of which is paid or payable at the rates specified for items (i), (ia), (ib), (ic) or (id), against serial number 3 of the Table in the notification No. 11/2017-Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated 28th June, 2017 vide GSR number 690(E) dated 28th June, 2017, as amended, shall be taken into account for calculation of value of _E' in view of Explanation (iv) in paragraph 4 of the notification No. 11/2017-Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated 28th June, 2017 vide GSR number 690(E) dated 28th June, 2017, as amended.]

[Provided further] that where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of _E/F' shall be calculated by taking values of 'E' and 'F' of the last tax period for which the details of such turnover are available, previous to the month during which the said value of _E/F' is to be calculated;

Explanation: For the purposes of this clause, it is hereby clarified that the aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 [and entry 92A]51 of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule;

(j) the amount of credit attributable to non-business purposes if common inputs and input services are used partly for business and partly for non-business purposes, be denoted as _D2', and shall be equal to five per cent. of C2; and

(k) the remainder of the common credit shall be the eligible input tax credit attributed to the purposes of business and for effecting supplies other than exempted supplies but including zero rated supplies and shall be denoted as 'C3',

where,-

$$C3 = C2 - (D1+D2);$$

[(l) the amount 'C3', 'D1' and 'D2' shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in FORM GSTR-3B or through FORM GST DRC-03;]

(m) the amount equal to aggregate of 'D1' and 'D2' shall be [reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03:]

Provided that where the amount of input tax relating to inputs or input services used partly for the purposes other than business and partly for effecting exempt supplies has been identified and segregated at the invoice level by the registered person, the same shall be included in 'T1' and 'T2' respectively, and the remaining amount of credit on such inputs or input services shall be included in 'T4'.

(2) [Except in case of supply of services covered by clause (b) of paragraph 5 of the Schedule II of the Act, the input tax credit] 54 determined under sub-rule (1) shall be calculated finally for the financial year before the due date for furnishing of the return for the month of September following the end of the financial year to which such credit relates, in the manner specified in the said sub-rule and-

(a) where the aggregate of the amounts calculated finally in respect of 'D1' and 'D2' exceeds the aggregate of the amounts determined under sub-rule (1) in respect of 'D1' and 'D2', such excess shall be [reversed by the registered person in FORM GSTR-3B or through

FORM GST DRC-03] in the month not later than the month of September following the end of the financial year to which such credit relates and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment; or

(c) where the aggregate of the amounts determined under sub-rule (1) in respect of 'D1' and 'D2' exceeds the aggregate of the amounts calculated finally in respect of 'D1' and 'D2', such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year to which such credit relates.

[(3) In case of supply of services covered by clause (b) of paragraph 5 of the Schedule II of the Act, the input tax determined under sub-rule (1) shall be calculated finally, for each ongoing project or project which commences on or after 1st April, 2019, which did not undergo or did not require transition of input tax credit consequent to change of rates of tax on 1st April, 2019 in accordance with notification No. 11/2017- Central Tax (Rate), dated the 28th June, 2017, published vide GSR No. 690(E) dated the 28th June, 2017, as amended for the entire period from the commencement of the project or 1stJuly, 2017, whichever is later, to the completion or first occupation of the project, whichever is earlier, before the due date for furnishing of the return for the month of September following the end of financial year in which the completion certificate is issued or first occupation takes place of the project, in the manner prescribed in the said sub-rule, with the modification that value of E/F shall be calculated taking value of E and F as under:

E= aggregate carpet area of the apartments, construction of which is exempt from tax plus aggregate carpet area of the apartments, construction of which is not exempt from tax, but which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier:

F= aggregate carpet area of the apartments in the project;

and,-

(a) where the aggregate of the amounts calculated finally in respect of 'D1' and 'D2' exceeds the aggregate of the amounts determined under sub-rule (1) in respect of 'D1' and 'D2', such excess shall be reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03 in the month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation of the project takes place and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment; or

(b) where the aggregate of the amounts determined under sub-rule (1) in respect of 'D1' and 'D2' exceeds the aggregate of the amounts calculated finally in respect of 'D1' and 'D2', such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project.

(4) In case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the Act, the input tax determined under sub-rule (1) shall be calculated finally, for commercial portion in each project, other than residential real estate project (RREP), which underwent

transition of input tax credit consequent to change of rates of tax on the 1st April, 2019 in accordance with notification No. 11/2017- Central Tax (Rate), dated the 28th June, 2017, published vide GSR No. 690(E) dated the 28th June, 2017, as amended for the entire period from the commencement of the project or 1st July, 2017, whichever is later, to the completion or first occupation of the project, whichever is earlier, before the due date for furnishing of the return for the month of September following the end of financial year in which the completion certificate is issued or first occupation takes place of the project, in the following manner.

(a) The aggregate amount of common credit on commercial portion in the project (C3aggregate_comm) shall be calculated as under, C3aggregate_comm =[aggregate of amounts of C3 determined under sub- rule (1) for the tax periods starting from 1st July, 2017 to 31st March, 2019, x (AC / AT)] + [aggregate of amounts of C3 determined under sub- rule (1)for the tax periods starting from 1st April, 2019 to the date of completion or first occupation of the project, whichever is earlier]

Where, -

AC = total carpet area of the commercial apartments in the project

AT = total carpet area of all apartments in the project

(b) The amount of final eligible common credit on commercial portion in the project

(C3final_comm) shall be calculated as under

C3final_comm =C3aggregate_comm x (E/ F)

Where, -

E = total carpet area of commercial apartments which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier.

F = AC = total carpet area of the commercial apartments in the project

(c) where, C3aggregate_comm exceeds C3final_comm, such excess shall be reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03 in the month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of section 50 for the period starting from 1st April of the succeeding financial year till the date of payment;

(d) where, C3final_comm exceeds C3aggregate_comm, such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project.

(5) Input tax determined under sub- rule (1) shall not be required to be calculated finally on completion or first occupation of an RREP which underwent transition of input tax credit consequent to change of rates of tax on 1st April, 2019 in accordance with notification No. 11/2017- Central Tax (Rate), dated the 28th June, 2017, published vide GSR No. 690(E) dated the 28th June, 2017, as amended.

(6) Where any input or input service are used for more than one project, input tax credit with respect to such input or input service shall be assigned to each project on a reasonable basis and credit reversal pertaining to each project shall be carried out as per sub-rule (3).]

43. Manner of determination of input tax credit in respect of capital goods and reversal thereof in certain cases.-(1) Subject to the provisions of sub-section (3) of section 16, the input tax credit in respect of capital goods, which attract the provisions of sub-sections (1) and (2) of section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely,-

(a) the amount of input tax in respect of capital goods used or intended to be used exclusively for non-business purposes or used or intended to be used exclusively for effecting exempt supplies shall be indicated in FORM GSTR-2 [and FORM GSTR-3B] and shall not be credited to his electronic credit ledger;

(b) the amount of input tax in respect of capital goods used or intended to be used exclusively for effecting supplies other than exempted supplies but including zero rated supplies shall be indicated in FORM GSTR-2 [and FORM GSTR-3B] and shall be credited to the electronic credit ledger;

[Explanation: For the purpose of this clause, it is hereby clarified that in case of supply of services covered by clause (b) of paragraph 5 of the Schedule II of the said Act, the amount of input tax in respect of capital goods used or intended to be used exclusively for effecting supplies other than exempted supplies but including zero rated supplies, shall be zero during the construction phase because capital goods will be commonly used for construction of apartments booked on or before the date of issuance of completion certificate or first occupation of the project, whichever is earlier, and those which are not booked by the said date.]

(c) the amount of input tax in respect of capital goods not covered under clauses (a) and (b), denoted as „A, being the amount of tax as reflected on the invoice, shall credit directly to the electronic credit ledger and the validity of the useful life of such goods shall extend upto five years from the date of the invoice for such goods:

Provided that where any capital goods earlier covered under clause (a) is subsequently covered under this clause, input tax in respect of such capital goods denoted as "A" shall be credited to the electronic credit ledger subject to the condition that the ineligible credit attributable to the period during which such capital goods were covered by clause (a),denoted as "Tie", shall be calculated at the rate of five percentage points for every quarter or part thereof and added to the output tax liability of the tax period in which such credit is claimed:

Provided further that the amount "Tie" shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in **FORM GSTR-3B**

Explanation.-An item of capital goods declared under clause (a) on its receipt shall not attract the provisions of sub-section (4) of section 18, if it is subsequently covered under this clause (d) the aggregate of the amounts of 'A' credited to the electronic credit ledger under clause (c) in

respect of common capital goods whose useful life remains during the tax period, to be denoted as 'Tc', shall be the common credit in respect of such capital goods:

Provided that where any capital goods earlier covered under clause (b) are subsequently covered under clause (c), the input tax credit claimed in respect of such capital good(s) shall be added to arrive at the aggregate value Tc.

(e) the amount of input tax credit attributable to a tax period on common capital goods during their useful life, be denoted as _Tm' and calculated asTm= Tc÷60

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

(g) the amount of common credit attributable towards exempted supplies, be denoted as _Te', and calculated asTe= (E÷ F) x Tr where,'E' is the aggregate value of exempt supplies, made, during the tax period, and "F' is the total turnover [in the State] of the registered person during the tax period:

[Provided that in case of supply of services covered by clause (b) of paragraph 5 of the Schedule II of the Act, the value of _E/F' for a tax period shall be calculated for each project separately, taking value of E and F as under:

E= aggregate carpet area of the apartments, construction of which is exempt from tax plus aggregate carpet area of the apartments, construction of which is not exempt from tax, but are identified by the promoter to be sold after issue of completion certificate or first occupation, whichever is earlier;

F= aggregate carpet area of the apartments in the project;

Explanation1: In the tax period in which the issuance of completion certificate or first occupation of the project takes place, value of E shall also include aggregate carpet area of the apartments, which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier.

Explanation 2: Carpet area of apartments, tax on construction of which is paid or payable at the rates specified for items (i), (ia), (ib), (ic) or (id), against serial number 3 of the Table in notification No. 11/2017-Central Tax (Rate) published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated 28th June, 2017 vide GSR No. 690 (E) dated 28th June, 2017, as amended, shall be taken into account for calculation of value of _E' in view of Explanation (iv) in paragraph 4 of the notification No. 11/2017-Central Tax (Rate) published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated the 28th June, 2017 vide GSR No. 690 (E) dated 28th June, 2017, as amended.]

[Provided further] that where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of 'E/F' shall be calculated by taking values of 'E' and 'F' of the last tax period for which the details of such turnover are available, previous to the month during which the said value of 'E/F' is to be calculated;

Explanation.- For the purposes of this clause, it is hereby clarified that the aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 [and entry 92A]63 of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule;

(h) the amount 'Te' along with the applicable interest shall, during every tax period of the useful life of the concerned capital goods, be added to the output tax liability of the person making such claim of credit.

[(i) The amount 'Te' shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in FORM GSTR3B.]

[(2) In case of supply of services covered by clause (b) of paragraph 5 of schedule II of the Act, the amount of common credit attributable towards exempted supplies (Te final) shall be calculated finally for the entire period from the commencement of the project or 1st July, 2017, whichever is later, to the completion or first occupation of the project, whichever is earlier, for each project separately, before the due date for furnishing of the return for the month of September following the end of financial year in which the completion certificate is issued or first occupation takes place of the project, as under:

Te final= [(E1 + E2 + E3) /F] x Tc final

Where,-

E1= aggregate carpet area of the apartments, construction of which is exempt from tax

E2= aggregate carpet area of the apartments, supply of which is partly exempt and partly

taxable, consequent to change of rates of tax on 1st April, 2019, which shall be calculated as under, -

E2= [Carpet area of such apartments] x [V1/ (V1+V2)],-

Where,-

V1 is the total value of supply of such apartments which was exempt from tax; and V2 is the total value of supply of such apartments which was taxable

E3 = aggregate carpet area of the apartments, construction of which is not exempt from tax, but have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier:

F= aggregate carpet area of the apartments in the project;

Tc final = aggregate of A final in respect of all capital goods used in the project and A final for each capital goods shall be calculated as under,

A final= A x (number of months for which capital goods is used for the project/ 60) and,-
(a) where value of Te final exceeds the aggregate of amounts of 'Te' determined for each tax period under sub-rule (1), such excess shall be reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03 in the month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment; or

(b) where aggregate of amounts of 'Te' determined for each tax period under sub-rule (1) exceeds Te final, such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project.

Explanation.- For the purpose of calculation of Tc final , part of the month shall be treated as one complete month.

(3) The amount Te final and Tc final shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax.

(4) Where any capital goods are used for more than one project, input tax credit with respect to such capital goods shall be assigned to each project on a reasonable basis and credit reversal pertaining to each project shall be carried out as per sub-rule (2)

(5) Where any capital goods used for the project have their useful life remaining on the completion of the project, input tax credit attributable to the remaining life shall be availed in the project in which the capital goods is further used;]

[Explanation 1: -For the purposes of rule 42 and this rule, it is hereby clarified that the aggregate value of exempt supplies shall exclude: -

(a) [the value of supply of services specified in the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 42/2017- Integrated Tax (Rate), dated the 27th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number GSR 1338(E) dated the 27th October, 2017;]

(b) the value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount, except in case of a banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances; and

(c) the value of supply of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India.]

[Explanation 2: For the purposes of rule 42 and this rule,-

(i) the term —apartment shall have the same meaning as assigned to it in clause (e) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

(ii) the term —project shall mean a real estate project or a residential real estate project;

(iii) the term —Real Estate Project (REP) shall have the same meaning as assigned to it in in clause (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

(iv) the term —Residential Real Estate Project (RREP) shall mean a REP in which the carpet area of the commercial apartments is not more than 15% of the total carpet area of all the apartments in the REP;

(v) the term 'promoter' shall have the same meaning as assigned to it in in clause (zk) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

(vi) Residential apartment shall mean an apartment intended for residential use as declared to the Real Estate Regulatory Authority or to competent authority;

(vii)'Commercial apartment' shall mean an apartment other than a residential apartment;

(viii) the term "competent authority as mentioned in definition of —residential apartment, means the local authority or any authority created or established under any law for the

time being in force by the Central Government or State Government or Union Territory Government, which exercises authority over land under its jurisdiction, and has powers to give permission for development of such immovable property;

(ix) the term —Real Estate Regulatory Authority shall mean the Authority established under sub- section (1) of section 20 (1) of the Real Estate (Regulation and Development) Act, 2016 (No. 16 of 2016) by the Central Government or State Government;

(x) the term —carpet area shall have the same meaning assigned to it in in clause (k) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

(xi) —an apartment booked on or before the date of issuance of completion certificate or first occupation of the project shall mean an apartment which meets all the following three conditions, namely-

(a) part of supply of construction of the apartment service has time of supply on or before the said date; and

(b) consideration equal to at least one installment has been credited to the bank account of the registered person on or before the said date; and

(c) an allotment letter or sale agreement or any other similar document evidencing booking of the apartment has been issued on or before the said date.

(xii) The term —ongoing project shall have the same meaning as assigned to it in notification No. 11/2017- Central Tax (Rate), dated the 28th June, 2017, published vide GSR No. 690(E) dated the 28th June, 2017, as amended;

(xiii) The term —project which commences on or after 1 st April, 2019 shall have the same meaning as assigned to it in notification No. 11/2017- Central Tax (Rate), dated the 28th June, 2017, published vide GSR No. 690(E) dated the 28th June, 2017, as amended;]

44. Manner of reversal of credit under special circumstances.-(1) The amount of input tax credit relating to inputs held in stock, inputs contained in semi-finished and finished goods held in stock, and capital goods held in stock shall, for the purposes of sub-section (4) of section 18 or sub-section (5) of section 29, be determined in the following manner, namely,-

(a) for inputs held in stock and inputs contained in semi-finished and finished goods held in stock, the input tax credit shall be calculated proportionately on the basis of the corresponding invoices on which credit had been availed by the registered taxable person on such inputs;

(b) for capital goods held in stock, the input tax credit involved in the remaining useful life in months shall be computed on pro-rata basis, taking the useful life as five years.

Illustration:

Capital goods have been in use for 4 years, 6 month and 15 days. The useful remaining life in month s= 5 months ignoring a part of the month. Input tax credit taken on such capital goods= C .Input tax credit attributable to remaining useful life= C multiplied by 5/60

(2) The amount, as specified in sub-rule (1) shall be determined separately for input tax credit of central tax, State tax, Union territory tax and integrated tax.

(3) Where the tax invoices related to the inputs held in stock are not available, the registered

person shall estimate the amount under sub-rule (1) based on the prevailing market price of the goods on the effective date of the occurrence of any of the events specified in sub-section (4) of section 18 or, as the case may be, sub-section (5) of section29.

(4) The amount determined under sub-rule (1) shall form part of the output tax liability of the registered person and the details of the amount shall be furnished in FORM GST ITC-03, where such amount relates to any event specified in sub-section (4) of section 18 and in FORM GSTR-10, where such amount relates to the cancellation of registration.

(5) The details furnished in accordance with sub-rule (3) shall be duly certified by a practicing chartered accountant or **cost accountant.**

(6) The amount of input tax credit for the purposes of sub-section (6) of section 18 relating to capital goods shall be determined in the same manner as specified in clause (b) of sub-rule (1) and the amount shall be determined separately for input tax credit of central tax, State tax, Union territory tax and integrated tax:

Provided that where the amount so determined is more than the tax determined on the transaction value of the capital goods, the amount determined shall form part of the output tax liability and the same shall be furnished in FORM GSTR-1.

[**44A. Manner of reversal of credit of Additional duty of Customs in respect of Golddore bar.-** The credit of Central tax in the electronic credit ledger taken in terms of the provisions of section 140 relating to the CENVAT Credit carried forward which had accrued on account of payment of the additional duty of customs levied under sub-section (1) of section 3 of the Customs Tariff Act, 1975 (51 of 1975), paid at the time of importation of gold dore bar, on the stock of gold dore bar held on the 1st day of July, 2017 or contained in gold or gold jewellery held in stock on the 1stday of July, 2017 made out of such imported gold dore bar, shall be restricted to one-sixth of such credit and 5/6 of such credit shall be debited from the electronic credit ledger at the time of supply of such gold dore bar or the gold or the gold jewellery made therefrom and where such supply has already been made, such debit shall be within one week from the date of commencement of these Rules.]

45. Conditions and restrictions in respect of inputs and capital goods sent to the job worker.-(1)The inputs, semi-finished goods or capital goods shall be sent to the job worker under the cover of a challan issued by the principal, including where such goods are sent directly to a job-worker, [and where the goods are sent from one job worker to another job worker, the challan may be issued either by the principal or the job worker sending the goods to another job worker:

Provided that the challan issued by the principal may be endorsed by the job worker, indicating therein the quantity and description of goods where the goods are sent by one job worker to another or are returned to the principal:

Provided further that the challan endorsed by the job worker may be further endorsed by another job worker, indicating therein the quantity and description of goods where the goods are sent by one job worker to another or are returned to the principal.]

(2) The challan issued by the principal to the job worker shall contain the details specified in rule 55.

(3) The details of challans in respect of goods dispatched to a job worker or received from a job worker [or sent from one job worker to another] during a quarter shall be included

in FORM GST ITC-04furnished for that period on or before the 25th day of the month succeeding the said quarter[or within such further period as may be extended by the Commissioner by a notification in this behalf:

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

(4) Where the inputs or capital goods are not returned to the principal within the time stipulated in section 143,it shall be deemed that such inputs or capital goods had been supplied by the principal to the job worker on the day when the said inputs or capital goods were sent out and the said supply shall be declared in FORM GSTR-1 and the principal shall be liable to pay the tax along with applicable interest.

Explanation.- For the purposes of this Chapter,-

(1) the expressions —capital goods shall include —plant and machinery‖ as defined in the Explanation to section 17;

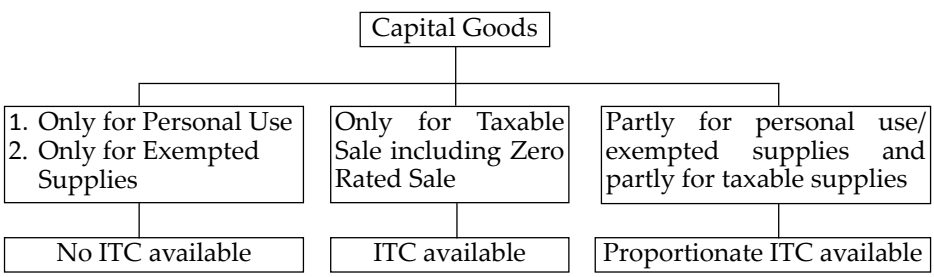
(2) for determining the value of an exempt supply as referred to in sub-section (3) of section 17-

(a) the value of land and building shall be taken as the same as adopted for the purpose of paying stamp duty; and

(b)the value of security shall be taken as one per cent. of the sale value of such security.

Rule No	Description of provisions
36	**Documents and conditions for claiming Input Tax Credit** For claiming Input Tax Credit under GST, a certain set of conditions has to be fulfilled by an assesee which comprise of the following- 1) Documentation requirement-On the basis – tax invoice/ debit note issued by a registered supplier, or other prescribed taxpaying document 2) Receipt status-Goods and/or services have been received 3) Payment of Tax-Tax actually paid by the supplier to the credit of the appropriate Government, either in cash or by utilization of ITC 4) Furnishing of return-He has furnished the monthly return under Section 39 **Other conditions for claiming Input tax Credit** – All the applicable particulars should be mentioned in the documents as prescribed – All the relevant information is furnished in FORM GSTR2 – ITC can be availed if such payment has not been made as per the demand raised on account of any fraud, willful misstatement or suppression of facts etc

37	**Reversal of Input Tax Credit in the case of non payment of consideration** Applicability For the assesee who has availed ITC on the inward supply of goods or/ and services but has not paid the value of such supply to the supplier Non payment on account of Value of supply + amount of tax thereon Time limit As per the second proviso of Sec 16(2) i.e. 180 days Action to be taken by such assesse Furnishing of details in Form GSTR 2 , which will include the following- – Supply details – Amount of value not paid – Amount of input tax credit availed of proportionate to such amount not paid to the supplier When is to be submitted In the Form GSTR 2 for the month immediately following the period of 180 days from the date of issue of invoice
38	**Claim of credit by a banking company or a financial institution** Applicability For the Banking company, Financial Institutions including Non Banking Financial Companies engaged in the supply of services by way of accepting deposits or extending loans or advances. Non availment of credit on account of – Tax paid on inputs and input services that are used for non business purposes – The credit on account of supplies specified in sec 17(5) of the CGST Act i.e Blocked Credits
39	**Procedure of distribution of Input Tax Credit by Input service Distributor** Rule 39 provides for the detailed requirements and conditions to be fulfilled by the Input Service Distributors for availing the Input Tax Credit, the manner is prescribed as follows- – To be distributed in the same month of to which the credit belongs – The details to be furnished in the Form GSTR 6 – Separate distribution for the eligible and ineligible Input Tax Credit – Separate distribution of the Input tax Credit on account of Central, State, Union territory and Integrated Tax

	– The input Tax credit on account of Integrated Tax shall be distributed as input tax credit of integrated tax to every recipient – An Input Service Distributor Service Note shall be issued by the Input Service Distributor – The invoice issued should clearly mentioned that it is issued only for distribution of Input Tax Credit – Formula for distribution of Input Tax Credit in terms of provisions of law **C1 = (t1/T)*C** C= Amount of credit to be distributed t1 = turnover referred to in section 20of Person R1 during the relevant period T = Aggregate turnover during relevant period of all recipients to whom input service is attributed as per provision of section 20
40	**Manner of Claiming credit under Special circumstances**
43	**Manner of determination of input tax credit of capital goods and reversal thereof** <u>Applicability</u> On the inputs held in stock or inputs contained in semi finished or finished goods held in stock , credit claimed on capital goods <u>Input Tax credit on Capital Goods</u> There can be four different scenarios for availing Input tax Credit on Capital Goods namely-  <u>1.Capital Goods used only for personal use</u> <u>2. Capital Goods only for exempted sales</u> Input Tax Credit is not available for personal purchases or for capital goods used in exempted sales. The same will be included in the form GSTR 2 and will not be credited to the Electronic Credit Ledger <u>3. Capital Goods used for normal sales</u> The Input tax credit on such sales will be available and the same will be reflected in GSTR 2 and will be credited in the electronic credit ledger.

	4. Capital Goods used partly for personal/ exempted and partly for normal sales The amount of Input tax Credit on account of Exempt Supplies will be calculated as follows Credit related to exempt supplies = $\frac{\text{Value of Exempt Supplies}}{\text{Total Turnover}}$ * Credit for Tax Period The remaining amount after reducing the credit on account of exempt supplies will be allowed as Input Tax Credit
41	**Transfer of credit on sale , merger, amalgamation, lease, or transfer of a business** Applicability – Sale – Demerger – Amalgamation – Demerger – Lease – Transfer or change in the ownership of business or any other reasons Action by assesee The details of any of the above activity which has taken place will be submitted in Form GST ITC 02 Mode of Submission Electronically on the common portal along with the request for transfer of untilised input tax credit lying in his electronic credit ledger to the transferee
42	**Manner of determination of input tax credit in respect of inputs or input services and reversal thereof** The detailed calculation along with the requisite formula has been explained in the relevant provisions of Rule 42 of the CGST rules.

44	**Manner of reversal of credit under special circumstances** <u>Applicability</u> a. On the inputs held in stock or inputs contained in semi finished or finished goods held in stock , b. credit claimed on capital goods <u>Availment of Input Tax Credit</u> a. ITC to be calculated proportionately on the basis of eth corresponding invoices b. The useful life will be taken as 5 years for the capital goods – 5 years to be taken from the date of Purchase and the total ITC will be distributed over the useful life of the asset
45	**Conditions and restrictions in respect of inputs and capital goods sent to the job worker** <u>Applicability</u> Will be allowed to the Principal Manufacturer if a capital asset has been sent to a job worker for job work
	<u>Condition</u> – The goods sent must be received back within 3 years of being sent – The goods must have been sent from the principal place of business or directly from the place of supply of the supplier of such goods – The input goods must be received back within one year – In case the goods are not received back within the stipulated time as mentioned above, then such goods will be treated as deemed supply and accordingly the provisions of the law will be applicable.
New Section 49 A	**Effective from 01/02/2019-** A new section has been inserted to provide that the input tax credit on account of central tax and state tax/union territory tax can be utilised towards the payment of integrated tax, central tax and state tax/union territory tax only after the input tax credit available on account of integrated tax has been first utilised fully towards such payment.
New Section 49 B	**Effective from 01/02/2019-**A new section has been inserted to allow the government, on the recommendation of the GST Council, to provide a specific order in which a registered person can utilize input tax credit, viz. integrated tax, central tax and state tax or union territory, for the settlement of the tax liability.

Annexure - III

CENVAT CREDIT RULES, 2004

[Notification No. 23/2004-C.E. (N.T.), dated 10-9-2004 as amended]

In exercise of the powers conferred by section 37 of the Central Excise Act, 1944 (1 of 1944) and section 94 of the Finance Act, 1994 (32 of 1994) and in supersession of the CENVAT Credit Rules, 2002 and the Service Tax Credit Rules, 2002, except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely :

Short title, extent and commencement.

RULE 1. — (1) These rules may be called the CENVAT Credit Rules, 2004.

They extend to the whole of (2) India :

Provided that nothing contained in these rules relating to availment and utilization of credit of service tax shall apply to the State of Jammu and Kashmir.

They shall come into force from the date of their (3) publication in the Official Gazette.

Definitions.

RULE 2. — In these rules, unless the context otherwise requires, -

(a) "capital goods" means

(A) the following goods, namely :-

(i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, [heading 6805, grinding wheels and the like, and parts thereof falling under [heading 6804 and wagons of sub-heading 860692]] of the First Schedule to the Excise Tariff Act;

(ii) pollution control equipment;

(iii) components, spares and accessories of the goods specified at (i) and (ii);

(iv) moulds and dies, jigs and fixtures;

(v) refractories and refractory materials;

(vi) tubes and pipes and *] * fittings thereof;

(vii) storage tank, [and]

(viii) motor vehicles other than those falling under tariff headings 8702, 8703, 8704, 8711 and their chassis [but including dumpers and tippers], used -

(1) in the factory of *]; or * the manufacturer of the final products,

[(1A) outside the factory of the manufacturer of the final products for generation of electricity [or for pumping of water] for captive use

within the factory; or

(2) for providing output service;

(B) motor vehicle designed for transportation of goods including their chassis registered in the name of the service provider, when used for -

(i) providing an output service of renting of such motor vehicle; or

(ii) transportation of inputs and capital goods used for providing an output service; or

(iii) providing an output service of courier agency;

(C) motor vehicle designed to carry passengers including their chassis, registered in the name of the provider of service, when used for providing output service of -

(i) transportation of passengers; or

(ii) renting of such motor vehicle; or

(iii) imparting motor driving skills;

(D) components, spares and accessories of motor vehicles which are capital goods for the assessee;

(b) "Customs Tariff Act" means the Customs Tariff Act, 1975 (b) (51 of 1975);

(c) "Excise Act" means the Central Excise Act, 1944 (1 of (c) 1944);

(d) "exempted goods" means excisable goods which are exempt (d) from the whole of the duty of excise leviable thereon, and includes goods which are chargeable to "Nil" rate of duty and goods in respect of which the benefit of an exemption under Notification No. 1/2011-C.E., dated the 1st March, 2011 or under entries at serial numbers 67 and 128 of Notification No. 12/2012-C.E., dated the 17th March, 2012 is availed]

(E) "exempted service" means a -

(1) taxable service which is exempt from the whole of the service tax leviable thereon; or

(2) service, on which no service tax is leviable under section 66B of the Finance Act; or

(3) taxable service whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken;

but shall not include a service -

(a) which is exported in terms of rule 6A of the Service Tax Rules, 1994; or

(b) by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India;

(F) "Excise Tariff Act" means the Central Excise Tariff Act, 1985 (Act 5 of 1986);

(G) "Finance Act" means the Finance Act, 1994 (32 of 1994);

(H) "final products" means excisable goods manufactured or produced from input, or using input service;

(IJ) "first stage dealer" means a dealer, who purchases the goods directly from, -

(i) the manufacturer under the cover of an invoice issued in terms of the provisions of Central Excise Rules, 2002 or from the depot of the said manufacturer, or from premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer, under cover of an invoice; or

(ii) an importer or from the depot of an importer or from the premises of the consignment agent of the importer, under cover of an invoice;

(K) ''input" means -

(i) all goods used in the factory by the manufacturer of the final product; or

(ii) any goods including accessories, cleared along with the final product, the value of which is included in the value of the final product and goods used for providing free warranty for final products; or

(iii) all goods used for generation of electricity or steam [or pumping of water] for captive use; or

(iv) all goods used for providing any [output service, or]

(v) all capital goods which have a value upto ten thousand rupees per piece.]

but excludes -

(A) light diesel oil, high speed diesel oil or motor spirit commonly known as petrol;

(B) any goods used for -

(a) construction or execution of works contract of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods, except for the provision of service portion in the execution of a works contract or construction service as listed under clause (b) of section 66E of the Act;]

(C) capital goods, except when,-

(i) used as parts or components in the manufacture of a final product; or

(ii) the value of such capital goods is upto ten thousand rupees per piece;

(D) motor vehicles;

(E) any goods, such as food items, goods used in a guesthouse, residential colony, club or a recreation facility and clinical establishment, when such goods are used primarily for personal use or consumption of any employee; and

(F) any goods which have no relationship whatsoever with the manufacture of a final product.

Explanation. - For the purpose of this clause, "free warranty" means a warranty provided by the manufacturer, the value of which is included in the price of the final product and is not charged separately from the customer;

(L) "input service" means any service, -

(i) used by a provider of [output service] for providing an output service; or

(ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal, and includes services used in relation to modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal;

[but excludes], -

(A) service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for -

(a) construction or execution of works contract of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or

services provided by way of renting of a motor vehicle], in (B) so far as they relate to a motor vehicle which is not a capital goods; or

(B) service of general insurance business, servicing, repair and maintenance, in so far as they relate to a motor vehicle which is not a capital goods, except when used by -

(a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or

(b) an insurance company in respect of a motor vehicle insured or reinsured by such person; or]

(C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily

for personal use or consumption of any employee;

Explanation. - For the purpose of this clause, sales promotion includes services by way of sale of dutiable goods on commission basis

(M) "input service distributor" means an office of the manufacturer or producer of final products or provider of output service, which receives invoices issued under rule 4A of the Service Tax Rules, 1994 towards purchases of input services and issues invoice, bill or, as the case may be, challan for the purposes of distributing the credit of service tax paid on the said services to such manufacturer or producer or provider, [or an outsourced manufacturing unit] as the case may be;

(N) "job work" means processing or working upon of raw material or semi- finished goods supplied to the job worker, so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation which is essential for aforesaid process and the expression "job worker" shall be construed accordingly;

"large tax payer" shall have the meaning assigned to it in [(na) the Central Excise Rules, 2002;]

(NAA) "manufacturer" or "producer", -

(i) in relation to articles of jewellery or parts of articles of [(i) jewellery or both, falling under heading 7113 of the First Schedule to the Excise Tariff Act, includes a person who is liable to pay duty of excise leviable on such goods under sub-rule (1) of rule 9 of the Articles of Jewellery (Collection of Duty) Rules, 2016;"

(ii) in relation to articles of precious metals falling under (ia) heading 7114 of the First Schedule to the Excise Tariff Act, includes a person who is liable to pay duty of excise leviable on such goods under sub- rule (1) of rule 12AA of the Central Excise Rules, 2002;]

(iii) in relation to goods falling under Chapters 61, 62 or 63 of the First Schedule to the Excise Tariff Act, includes a person who is liable to pay duty of excise leviable on such goods under sub-rule (1A) of rule 4 of the Central Excise Rules, 2002;]

(O) "notification" means the notification published in the (o) Official Gazette;

(P) "output service" means any service provided by a provider of service located in the taxable territory but shall not include a service, -

(1) specified in section 66D of the Finance Act; or

(2) where the whole of service tax is liable to be paid by the recipient of service.

(Q) "person liable for paying service tax" has the meaning as (q) assigned to it in clause (d) of sub-rule (1) of rule 2 of the Service Tax Rules, 1994

(QA) "place of removal" means-

(i) a factory or any other place or premises of production or manufacture of the excisable goods;

(ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;

(iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory, from where such goods are removed;]

(R) "provider of taxable service" include a person liable for (r) paying service tax;

(S) "second stage dealer" means a dealer who purchases the (s) goods from a first stage dealer;

(T) words and expressions used in these rules and not defined (t) but defined in the Excise Act or the Finance Act shall have the meanings respectively assigned to them in those Acts.

RULE 3. CENVAT credit.

(1) A manufacturer or producer of final products or a provider of output service shall be allowed to take credit (hereinafter referred to as the CENVAT credit) of -

(i) the duty of excise specified in the First Schedule to the Excise Tariff Act, leviable under the Excise Act :

[**Provided** that CENVAT credit of such duty of excise shall not be allowed to be taken when paid on any goods -

(a) in respect of which the benefit of an exemption under Notification No. 1/2011-C.E., dated the 1st March, 2011 is availed; or

(b) specified in serial numbers 67 and 128 in respect of which the benefit of an exemption under Notification No. 12/2012-C.E., dated the 17th March, 2012 is availed;]

(ii) the duty of excise specified in the Second Schedule to the Excise Tariff Act, leviable under the Excise Act;

(iii) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978 (40 of 1978);

(iv) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);

(v) the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001);

(vi) the Education Cess on excisable goods leviable under section 91 read with section 93 of the Finance (No. 2) Act, 2004 (23 of 2004);

(via) the Secondary and Higher Education Cess on excisable goods leviable under section 136 read with section 138 of the Finance Act, 2007 (22 of 2007);

(vii) the additional duty leviable under section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under clauses (i), (ii), (iii), (iv), (v) [, (vi) and (via)]:

*] * [*

(viia) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act [*] : * *

Provided that a provider of [output] service shall not be eligible to take credit of such additional duty;

(viii) the additional duty of excise leviable under section 157 of the Finance Act, 2003 (32 of 2003);

(ix) the service tax *] * leviable under section 66 of the Finance Act; [* (ixa) the service tax leviable under section 66A of the Finance Act; (ixb) the service tax leviable under section 66B of the Finance Act;

(x) the Education Cess on taxable services leviable under section 91 read with section 95 of the Finance (No. 2) Act, 2004 (23 of 2004);

(xa) the Secondary and Higher Education Cess on taxable services leviable under section 136 read with section 140 of the Finance Act, 2007 (22 of 2007); and

(xi) the additional duty of excise leviable under [section 85 of Finance Act, 2005 (18 of 2005),:

paid on -

(i) any input or capital goods received in the factory of manufacture of final product or [by] the provider of output service on or after the 10th day of September, 2004; and

(ii) any input service received by the manufacturer of final product or by the provider of output services on or after the 10th day of September, 2004, including the said duties, or tax, or cess paid on any input or input service, as the case may be, used in the manufacture of intermediate products, by a job-worker availing the benefit of exemption specified in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 214/86-Central Excise, dated the 25th March, 1986, published in the Gazette of India vide number G.S.R. 547(E), dated the 25th March, 1986, and received by the manufacturer for use in, or in relation to, the manufacture of final product, on or after the 10th day of September, 2004 :

[**Provided** that the CENVAT credit shall be allowed to be taken of the amount equal to central excise duty paid on the capital goods at the time of de-bonding of the unit in terms of the para 8 of Notification No. 22/2003-Central Excise, published in the Gazette of India, part II, Section 3, sub-section (i), vide number G.S.R. 265(E), dated, the 31st March, 2003.]

Explanation. - For the removal of doubts it is clarified that the manufacturer of the final products and the provider of output service shall be allowed CENVAT credit of additional duty leviable under section 3 of the Customs Tariff Act on goods falling under heading 9801 of the First Schedule to the Customs Tariff Act.

(1a) A provider of output service shall be allowed to take [(1a) CENVAT credit of the Krishi Kalyan Cess on taxable services leviable under section 161 of the Finance Act, 2016 (28 of 2016)].

(2) Notwithstanding anything contained in (2) sub-rule (1), the manufacturer or producer of final products shall be allowed to take CENVAT credit of the duty paid on inputs lying in stock or in process or inputs contained in the final products lying in stock on the date on which any goods manufactured by the said manufacturer or producer cease to be exempted goods or any goods become excisable.

(3) Notwithstanding anything contained in (3) sub-rule (1), in relation to a service which ceases to be an exempted service, the provider of the output service shall be allowed to take CENVAT credit of the duty paid on the inputs received on and after the 10th day of September, 2004 and lying in stock on the date on which any service ceases to be an exempted service and used for providing such service.

(4) The CENVAT credit may be utilized for payment of

(a) any duty of excise on any final product; or

(b) an amount equal to CENVAT credit taken on inputs if such inputs are removed as such or after being partially processed; or

(c) an amount equal to the CENVAT credit taken on capital goods if such capital goods are removed as such; or

(d) an amount under sub-rule (2) of rule 16 of Central Excise Rules, 2002; or

(e) service tax on any output service :

Provided that while paying duty of excise or service tax, as the case may be, the CENVAT credit shall be utilized only to the extent such credit is available on the last day of the month or quarter, as the case may be, for payment of duty or tax relating to that month or the quarter, as the case may be :

Provided further that CENVAT credit shall not be utilized for payment of any duty of excise on goods in respect of which the benefit of an exemption under Notification No. 1/2011-C.E., dated the 1st March, 2011 is availed :

Provided [also] that the CENVAT credit of the duty, or service tax, paid on the inputs, or input services, used in the manufacture of final products cleared after availing of the exemption under the following notifications of Government of India in the Ministry of Finance (Department of Revenue), -

(i) No. 32/99-Central Excise, dated the 8th July, 1999 [G.S.R. 508(E), dated 8th July, 1999];

(ii) No. 33/99-Central Excise, dated the 8th July, 1999 [G.S.R. 509(E), dated 8th July, 1999];

(iii) No. 39/2001-Central Excise, dated the 31st July, 2001 [G.S.R. 565(E), dated the 31st July, 2001];

(iv) No. 56/2002-Central Excise, dated the 14th November, 2002 [G.S.R. 764(E), dated the 14th November, 2002];

(v) No. 57/2002-Central Excise, dated 14th November, 2002 [G.S.R. 765(E), dated the 14th November, 2002];

(vi) No. 56/2003-Central Excise, dated the 25th June, 2003 [G.S.R. 513(E), dated the 25th June, 2003]; and

(vii) No. 71/2003-Central Excise, dated the 9th September, 2003 [G.S.R. 717(E), dated the 9th September, 2003],

shall, respectively, be utilized only for payment of duty on final products, in respect of which exemption under the said respective notifications is availed of :

[**Provided** also that no credit of the additional duty *] * leviable under sub-section (5) of section 3 of the Customs Tariff Act, [* shall be utilized for payment of service tax on any output service :

[**Provided** also that the CENVAT credit of any duty specified in sub-rule (1), except the National Calamity Contingent duty in item (v) thereof, shall not be utilized for payment of the [National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001) :]]

[**Provided** also that the CENVAT credit of any duty specified in sub-rule (1) shall not be utilized for payment of the Clean Energy Cess leviable under section 83 of the Finance Act, 2010 (14 of 2010) :]

[Provided also that the CENVAT credit of any duty specified in sub-rule (1) shall not be utilised for payment of the Swachh Bharat Cess leviable under sub-section (2) of section 119 of the Finance Act, 2015 (20 of 2015) :]

Provided also that the CENVAT credit of any duty mentioned in sub-rule (1), other than credit of additional duty of excise leviable under [section 85 of Finance Act, 2005 (18 of 2005)], shall not be utilized for payment of said additional duty of excise on final products:]

[**Provided** also that CENVAT credit shall not be utilized for payment of Infrastructure Cess leviable under [sub-section (1) of section 162 of the Finance Act, 2016 :]]

[**Provided** also that the Cenvat credit of any duty specified in sub-rule (1) shall not be utilised for payment of Krishi Kalyan Cess leviable under section 161 of the Finance Act, 2016 (28 of 2016);]

[Explanation. - CENVAT credit cannot be used for payment of service tax in respect of services where the person liable to pay tax is the service recipient.]

(5) When inputs or capital goods, on which CENVAT credit has been taken, are removed as such from the factory, or premises of the provider of output service, the manufacturer of the final products or provider of output service, as the case may be, shall pay an amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in rule 9 :

Provided that such payment shall not be required to be made where any inputs [or capital goods] are removed outside the premises of the provider of output service for providing the output service : *] * [*

[Provided further that such payment shall not be required to be made where any inputs are removed outside the factory for providing free warranty for final products :]

(5A) (a) If the capital goods, on which CENVAT credit has been taken, are removed after being used, the manufacturer or provider of output services shall pay an amount equal to the CENVAT Credit taken on the said capital goods reduced by the percentage points calculated by straight line method as specified below for each quarter of a year or part thereof from the date of taking the CENVAT Credit, namely

(i) for computers and computer peripherals :

for each quarter in the first year @ 10%
for each quarter in the second year @ 8%
for each quarter in the third year @ 5%
for each quarter in the fourth and fifth year @ 1%

for capital goods, other than computers and computer peripherals @ 2.5% for each quarter :

Provided that if the amount so calculated is less than the amount equal to the duty leviable on transaction value, the amount to be paid shall be equal to the duty leviable on transaction value.

If the capital goods are cleared as waste and scrap, the (b) manufacturer shall pay an amount equal to the duty leviable on transaction value.]

(5B) If the value of any,

(i) input, or

(ii) capital goods before being put to use,

[on which CENVAT credit has been taken is written off fully or partially or where any provision to write off fully or partially has been made in the books of account then] the manufacturer or service provider, as the case may be, shall pay an amount equivalent to the CENVAT credit taken in respect of the said input or capital goods :

Provided that if the said input or capital goods is subsequently used in the manufacture of final products or the provision of [output] services, the manufacturer or output service provider, as the case may be, shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier subject to the other provisions of these rules.]

[(5C) Where on any goods manufactured or produced by an assessee, the payment of duty is ordered to be remitted under rule 21 of the Central Excise Rules, 2002, the CENVAT credit taken on the inputs used in the manufacture or production of said goods [and the CENVAT credit taken on input services used in or in relation to the manufacture or production of said goods] shall be reversed.]

[Explanation 1.- The amount payable under sub-rules (5), (5A), (5B) and (5C), unless specified otherwise, shall be paid by the manufacturer of goods or the provider of output service by debiting the CENVAT credit or otherwise on or before the 5th day of the following month except for the month of March, where such payment shall be made on or before the 31st day of the month of March.

Explanation 2. - If the manufacturer of goods or the provider of output service fails to

pay the amount payable under sub-rules (5), (5A), (5B) and (5C), it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken and utilized.]

(6) The amount paid under [sub-rule (5) and sub-rule (5A)] shall be eligible as CENVAT credit as if it was a duty paid by the person who removed such goods under [sub-rule (5) and sub-rule (5A)].

(7) Notwithstanding anything contained in sub-rule (1) [, sub-rule (1a)] and sub-rule (4),-

(a) CENVAT credit in respect of inputs or capital goods produced or manufactured, by a hundred per cent. export-oriented undertaking or by a unit in an Electronic Hardware Technology Park or in a Software Technology Park other than a unit which pays excise duty levied under section 3 of the Excise Act read with serial numbers 3, 5, 6 and 7 of Notification No. 23/2003-Central Excise, dated the 31st March, 2003 [G.S.R. 266(E), dated the 31st March, 2003] and used in the manufacture of the final products or in providing an output service, in any other place in India, in case the unit pays excise duty under section 3 of the Excise Act read with serial number 2 of the Notification No. 23/2003-Central Excise, dated the 31st March, 2003 [G.S.R. 266(E), dated the 31st March, 2003], shall be admissible equivalent to the amount calculated in the following manner, namely:-

Fifty per cent of [X multiplied by {(1+BCD/100) multiplied by (CVD/100)}], where BCD and CVD denote *ad valorem* rates, in per cent. of basic customs duty and additional duty of customs leviable on the inputs or the capital goods respectively and X denotes the assessable value :

[**Provided** that the CENVAT credit in respect of inputs and capital goods cleared on or after 1st March, 2006 from an export oriented undertaking or by a unit in Electronic Hardware Technology Park or in a Software Technology Park, as the case may be, on which such unit pays excise duty under section 3 of the Excise Act read with serial number 2 of the Notification No. 23/2003-Central Excise, dated 31st March, 2003 [G.S.R. 266(E), dated the 31st March, 2003] shall be equal to [X multiplied by [(1+BCD/200) multiplied by (CVD/100)]] :

[**Provided** further that the CENVAT credit in respect of inputs and capital goods cleared on or after the 7th September, 2009 from an export-oriented undertaking or by a unit in Electronic Hardware Technology Park or in a Software Technology Park, as the case may be, on which such undertaking or unit has paid -

(A) excise duty leviable under section 3 of the Excise Act read with serial number 2 of the Notification No. 23/2003-Central Excise, dated 31st March, 2003 [G.S.R. 266(E), dated the 31st March, 2003]; and

(B) the Education Cess leviable under section 91 read with section 93 of the Finance (No. 2) Act, 2004 and the Secondary and Higher Education Cess leviable under section 136 read with section 138 of the Finance Act, 2007, on the excise duty referred to in (A), shall be the aggregate of -

(1) that portion of excise duty referred to in (A), as is equivalent to -

(i) the additional duty leviable under sub-section (1) of section 3

of the Customs Tariff Act, which is equal to the duty of excise under clause (a) of sub-section (1) of section 3 of the Excise Act;

(ii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act; and

(II) the Education Cess and the Secondary and Higher Education Cess referred to in (B).

(b) CENVAT credit in respect of

(i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978);

(ii) the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001);

(iii) the education cess on excisable goods leviable under section 91 read with section 93 of the Finance (No. 2) Act, 2004 (23 of 2004);

[(iiia) the Secondary and Higher Education Cess on excisable goods leviable under section 136 read with section 138 of the Finance Act, 2007 (22 of 2007);]

(iv) the additional duty leviable under section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under items (i), (ii) and (iii) above;

(v) the additional duty of excise leviable under section 157 of the Finance Act, 2003 (32 of 2003);

(vi) the education cess on taxable services leviable under section 91 read with section 95 of the Finance (No. 2) Act, 2004 (23 of 2004);

(via) the Secondary and Higher Education Cess on taxable services leviableunder section 136 read with section 140 of the Finance Act, 2007 (22 of 2007); and

(vii) the additional duty of excise leviable under [section 85 of the Finance Act, 2005 (18 of 2005)],

[shall be utilized towards payment of duty of excise or as the case may be, of service tax leviable under the said Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 or the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001), or the education cess on excisable goods leviable under section 91 read with section 93 of the said Finance (No. 2) Act, 2004 (23 of 2004), or the Secondary and Higher Education Cess on excisable goods leviable under section 136 read with section 138 of the Finance Act, 2007 (22 of 2007) or the additional duty of excise leviable under section 157 of the Finance Act, 2003 (32 of 2003), or the education cess on taxable services leviable under section 91 read with section 95 of the said Finance (No. 2) Act, 2004 (23 of 2004), or the Secondary and Higher Education Cess on taxable services leviable under section 136 read with section 140 of the Finance Act, 2007 (22 of 2007), or the additional duty of excise leviable under section 85 of the Finance Act, 2005 (18 of 2005) respectively, on any final products manufactured

by the manufacturer or for payment of such duty on inputs themselves, if such inputs are removed as such or after being partially processed or on any output service :]

[**Provided** that the credit of the education cess on excisable goods and the education cess on taxable services can be utilized, either for payment of the education cess on excisable goods or for the payment of the education cess on taxable services :

Provided further that the credit of the Secondary and Higher Education Cess on excisable goods and the Secondary and Higher Education Cess on taxable services can be utilized, either for payment of the Secondary and Higher Education Cess on excisable goods or for the payment of the Secondary and Higher Education Cess on taxable services :]

[**Provided** also that the credit of Education Cess and Secondary and Higher Education Cess paid on inputs or capital goods received in the factory of manufacture of final product on or after the 1st day of March, 2015 can be utilized for payment of the duty of excise leviable under the First Schedule to the Excise Tariff Act :

Provided also that the credit of balance fifty per cent. Education Cess and Secondary and Higher Education Cess paid on capital goods received in the factory of manufacture of final product in the financial year 2014-15 can be utilized for payment of the duty of excise specified in the First Schedule to the Excise Tariff Act :

Provided also that the credit of Education Cess and Secondary and Higher Education Cess paid on input services received by the manufacturer of final product on or after the 1st day of March, 2015 can be utilized for payment of the duty of excise specified in the First Schedule to the Excise Tariff Act :]

[**Provided** also that the credit of Education Cess and Secondary and Higher Education Cess paid on inputs or capital goods received in the premises of the provider of output service on or after the 1st day of June, 2015 can be utilized for payment of service tax on any output service :

Provided also that the credit of balance fifty per cent. Education Cess and Secondary and Higher Education Cess paid on capital goods received in the premises of the provider of output service in the financial year 2014-15 can be utilized for payment of service tax on any output service :

Provided also that the credit of Education Cess and Secondary and Higher Education Cess paid on input service in respect of which the invoice, bill, challan or Service Tax Certificate for Transportation of Goods by Rail (referred to in rule 9), as the case may be, is received by the provider of output service on or after the 1st day of June, 2015 can be utilized for payment of service tax on any output service.

Explanation. - For the removal of doubts, it is hereby declared that the credit of the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) paid on or after the 1st day of April, 2000, may be utilised towards payment of duty of excise

leviable under the First Schedule or the Second Schedule to the Excise Tariff Act.]

(c) the CENVAT credit, in respect of additional duty leviable under section 3 of the Customs Tariff Act, paid on marble slabs or tiles falling under [tariff items 2515 12 20 and 2515 12 90 respectively] of the First Schedule to the Excise Tariff Act shall be allowed to the extent of thirty rupees per square meter;

(d) Cenvat credit in respect of Krishi Kalyan Cess on taxable services leviable under section 161 of the Finance Act, 2016 (28 of 2016) shall be utilised only towards payment of Krishi Kalyan Cess on taxable services leviable under section 161 of the Finance Act, 2016 (28 of 2016).

Explanation. - Where the provisions of any other rule or notification provide for grant of whole or part exemption on condition of non-availability of credit of duty paid on any input or capital goods, or of service tax paid on input service, the provisions of such other rule or notification shall prevail over the provisions of these rules.

RULE 4. Conditions for allowing CENVAT credit.

(1) The CENVAT credit in respect of inputs may be taken immediately on receipt of the inputs in the factory of the manufacturer or in the premises of the provider of output service [or in the premises of the job worker, in case goods are sent directly to the job worker on the direction of the manufacturer or the provider of output service, as the case may be] :

[**Provided** that in respect of final products, namely, articles of [jewellery or other articles of precious metals falling under Heading 7113 or 7114, as the case may be] of the First Schedule to the Excise Tariff Act, the CENVAT credit of duty paid on inputs may be taken immediately on receipt of such inputs in the registered premises of the person who get such final products manufactured on his behalf, on job work basis, subject to the condition that the inputs are used in the manufacture of such final product by the job worker :]

[**Provided** further that the CENVAT credit in respect of inputs may be taken by the provider of output service when the inputs are delivered to such provider, subject to maintenance of documentary evidence of delivery and location of the inputs :]

[**Provided** also that the manufacturer or the provider of output service shall not take CENVAT credit after [one year] of the date of issue of any of the documents specified in sub-rule (1) of rule 9.]

(2) (a) The CENVAT credit in respect of capital goods received in a factory or in the premises of the provider of output service [or outside the factory of the manufacturer of the final products for generation of electricity for captive use within the factory, [or in the premises of the job worker, in case capital goods are sent directly to the job worker on the direction of the manufacturer or the provider of output service, as the case may be]] at any point of time in a given financial year shall be taken only for an amount not exceeding fifty per cent. of the duty paid on such capital goods in the same financial year :

Provided that the CENVAT credit in respect of capital goods shall be allowed for the

whole amount of the duty paid on such capital goods in the same financial year if such capital goods are cleared as such in the same financial year :

[**Provided** further that the CENVAT credit of the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, [* * * *] in respect of capital goods shall be allowed immediately on receipt of the capital goods in the factory of a manufacturer :]

Provided also that where an assessee is eligible to avail of the exemption under a notification based on the value of clearances in a financial year, the CENVAT credit in respect of capital goods received by such assessee shall be allowed for the whole amount of the duty paid on such capital goods in the same financial year :

[**Provided** also that the CENVAT credit in respect of capital goods may be taken by the provider of output service when the capital goods are delivered to such provider, subject to maintenance of documentary evidence of delivery and location of the capital goods.]

[***Explanation.*** - For the removal of doubts, it is hereby clarified that-

(i) an assessee engaged in the manufacture of articles of jewellery or parts of articles of jewellery or both, falling under heading 7113 of the First Schedule of the Excise Tariff Act, shall be eligible, if his aggregate value of clearances of all excisable goods for home consumption in the preceding financial year, computed in the manner specified in the said notification, did not exceed rupees fifteen crore;].

(ii) an assessee, other than (a) above, shall be eligible, if his aggregate value of clearances of all excisable goods for home consumption in the preceding financial year, computed in the manner specified in the said notification, did not exceed rupees four hundred lakhs.]

(b) The balance of CENVAT credit may be taken in any financial year subsequent to the financial year in which the capital goods were received in the factory of the manufacturer, or in the premises of the provider of output service, if the capital goods, other than components, spares and accessories, refractories and refractory materials, moulds and dies and goods falling under [heading 6805, grinding wheels and the like, and parts thereof falling under heading 6804] of the First Schedule to the Excise Tariff Act, are in the possession of the manufacturer of final products, or provider of output service in such subsequent years.

Illustration. - A manufacturer received machinery on the 16th day of April, 2002 in his factory. CENVAT of two lakh rupees is paid on this machinery. The manufacturer can take credit up to a maximum of one lakh rupees in the financial year 2002-2003, and the balance in subsequent years.

(3) The CENVAT credit in respect of the capital goods shall be allowed to a manufacturer, provider of output service even if the capital goods are acquired by him on lease, hire purchase or loan agreement, from a financing company.

(4) The CENVAT credit in respect of capital goods shall not be allowed in respect of that part of the value of capital goods which represents the amount of duty on such capital goods, which the manufacturer or provider of output service claims as depreciation

under section 32 of the Income-tax Act, 1961 (43 of 1961).

(5)(a) (i) The CENVAT credit on inputs shall be allowed even if any inputs as such or after being partially processed are sent to a job worker and from there subsequently sent to another job worker and likewise, for further processing, testing, repairing, re-conditioning or for the manufacture of intermediate goods necessary for the manufacture of final products or any other purpose, and it is established from the records, challans or memos or any other document produced by the manufacturer or the provider of output service taking the CENVAT credit that the inputs or the products produced therefrom are received back by the manufacturer or the provider of output service, as the case may be, within one hundred and eighty days of their being sent from the factory or premises of the provider of output service, as the case may be :

Provided that credit shall also be allowed even if any inputs are directly sent to a job worker without their being first brought to the premises of the manufacturer or the provider of output service, as the case may be, and in such a case, the period of one hundred and eighty days shall be counted from the date of receipt of the inputs by the job worker;

(ii) the CENVAT credit on capital goods shall be allowed even if any capital goods as such are sent to a job worker for further processing, testing, repair, re-conditioning or for the manufacture of intermediate goods necessary for the manufacture of final products or any other purpose, and it is established from the records, challans or memos or any other document produced by the manufacturer or the provider of output service taking the CENVAT credit that the capital goods are received back by the manufacturer or the provider of output service, as the case may be, within two years of their being so sent :

Provided that credit shall be allowed even if any capital goods are directly sent to a job worker without their being first brought to the premises of the manufacturer or the provider of output service, as the case may be, and in such a case, the period of two years shall be counted from the date of receipt of the capital goods by the job worker;

(iii) if the inputs or capital goods, as the case may be, are not received back within the time specified under sub-clause (i) or (ii), as the case may be, by the manufacturer or the provider of output service, the manufacturer or the provider of output service shall pay an amount equivalent to the CENVAT credit attributable to the inputs or capital goods, as the case may be, by debiting the CENVAT credit or otherwise, but the manufacturer or the provider of output service may take the CENVAT credit again when the inputs or capital goods, as the case may be, are received back in the factory or in the premises of the provider of output service.

(c) The CENVAT credit shall also be allowed to a manufacturer of final products in respect of jigs, fixtures, moulds and dies or tools falling under Chapter 82 of the First Schedule to the Excise Tariff Act, sent by such manufacturer to, -

(i) another manufacturer for the production of goods; or

(ii) a job worker for the production of goods on his behalf, according to his specifications :

Provided that such credit shall also be allowed where jigs, fixtures, moulds and dies or tools falling under Chapter 82 of the First Schedule to the Excise Tariff Act, are sent by the manufacturer of final products to the premises of another manufacturer or job worker without bringing these to his own premises.

(6) The [Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be,] having jurisdiction over the factory of the manufacturer of the final products who has sent the input or partially processed inputs outside his factory to a job-worker may, by an order, which shall be [valid for three financial years], in respect of removal of such input or partially processed input, and subject to such conditions as he may impose in the interest of revenue including the manner in which duty, if leviable, is to be paid, allow final products to be cleared from the premises of the job- worker.

(7) The CENVAT credit in respect of input service shall be allowed, on or after the day on which the invoice, bill or, as the case may be, challan referred to in rule 9 is received :

[Provided that in respect of input service where whole or part of the service tax is liable to be paid by the recipient of service, credit of service tax payable by the service recipient shall be allowed after such service tax is paid :

Provided further that in case the payment of the value of input service and the service tax paid or payable as indicated in the invoice, bill or, as the case may be, challan referred to in rule 9 is not made within three months of the date of the invoice, bill or, as the case may be, challan, the manufacturer or the service provider who has taken credit on such input service, shall pay an amount equal to the CENVAT credit availed on such input service, except an amount equal to the CENVAT credit of the tax that is paid by the manufacturer or the service provider as recipient of service, and in case the said payment is made, the manufacturer or output service provider, as the case may be, shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier subject to the other provisions of these rules :]

Provided also that if any payment or part thereof, made towards an input service is refunded or a credit note is received by the manufacturer or the service provider who has taken credit on such input service, he shall pay an amount equal to the CENVAT credit availed in respect of the amount so refunded or credited :

Provided also that CENVAT credit in respect of an invoice, bill or, as the case may be, challan referred to in rule 9, issued before the 1st day of April, 2011 shall be allowed, on or after the day on which payment is made of the value of input service and the service tax paid or payable as indicated in invoice, bill or, as the case may be, challan referred to in rule 9 :

Provided also that the manufacturer or the provider of output service shall not take CENVAT credit after [one year] of the date of issue of any of the documents specified in sub-rule (1) of rule 9 [, except in case of services provided by Government, local authority or any other person, by way of assignment of right to use any natural resource :

[Provided also that CENVAT Credit of Service Tax paid in a financial year, on the one-time charges payable in full upfront or in instalments, for the service of assignment of the right to use any natural resource by the Government, local authority or any other person, shall be spread evenly over a period of three years :

Provided also that where the manufacturer of goods or provider of output service, as the case may be, further assigns such right assigned to him by the Government or any other person, in any financial year, to another person against consideration, such amount of balance CENVAT credit as does not exceed the service tax payable on the consideration charged by him for such further assignment, shall be allowed in the same financial year].

Explanation I.- The amount mentioned in this [Rule], unless specified otherwise, shall be paid by the manufacturer of goods or the provider of output service by debiting the CENVAT credit or otherwise on or before the 5th day of the following month except for the month of March, when such payment shall be made on or before the 31st day of the month of March.

Explanation II. - If the manufacturer of goods or the provider of output service fails to pay the amount payable under this [Rule], it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken.

Explanation III.- In case of a manufacturer who avails the exemption under a notification based on the value of clearances in a financial year and a service provider who is an individual or proprietary firm or partnership firm, the expressions, "following month" and "month of March" occurring in sub-rule (7) shall be read respectively as "following quarter" and "quarter ending with the month of March.]

RULE [5. Refund of CENVAT Credit. —

(1) A manufacturer who clears a final product or an intermediate product for export without payment of duty under bond or letter of undertaking, or a service provider who provides an output service which is exported without payment of service tax, shall be allowed refund of CENVAT credit as determined by the following formula subject to procedure, safeguards, conditions and limitations, as may be specified by the Board by notification in the Official Gazette :

Refund amount	=	(Export turnover of goods + Export turnover of services) / Total turnover	×	Net CENVAT credit

Where, -

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

(B) "Net CENVAT credit" means total CENVAT credit availed on inputs and input services by the manufacturer or the output service provider reduced by the amount reversed in terms of sub-rule (5C) of rule 3, during the relevant period;

(C) "Export turnover of goods" means the value of final products and intermediate products cleared during the relevant period and exported without payment of Central Excise duty under bond or letter of undertaking;

(D) "Export turnover of services" means the value of the export service calculated in the following manner, namely :-

Export turnover of services = payments received during the relevant period for export services + export services whose provision has been completed for which payment had been received in advance in any period prior to the relevant

period - advances received for export services for which the provision of service has not been completed during the relevant period;

(E) "Total turnover" means sum total of the value of -

(a) all excisable goods cleared during the relevant period including exempted goods, dutiable goods and excisable goods exported;

(b) export turnover of services determined in terms of clause (D) of sub-rule (1) above and the value of all other services, during the relevant period; and

(c) all inputs removed as such under sub-rule (5) of rule 3 against an invoice, during the period for which the claim is filed.

(2) This rule shall apply to exports made on or after the 1st April, 2012:

Provided that the refund may be claimed under this rule, as existing, prior to the commencement of the CENVAT Credit (Third Amendment) Rules, 2012, within a period of one year from such commencement :

Provided further that no refund of credit shall be allowed if the manufacturer or provider of output service avails of drawback allowed under the Customs and Central Excise Duties and Service Tax Drawback Rules, 1995, or claims rebate of duty under the Central Excise Rules, 2002, in respect of such duty; or claims rebate of service tax under the [Service Tax Rules, 1994] in respect of such tax.

Explanation 1. - For the purposes of this rule, -

(1) "export service" means a service which is provided as per [rule 6A of the Service Tax Rules, 1994];

(1A) "export goods" means any goods which are to be taken out of India to a place outside India.

(2) "relevant period" means the period for which the claim is filed.

Explanation 2. - For the purposes of this rule, the value of services shall be determined in the same manner as the value for the purposes of sub-rules (3) and (3A) of rule 6 is determined.

RULE [5A. Refund of CENVAT credit to units in specified areas.

Notwithstanding anything contrary contained in these rules, where a manufacturer has cleared final products in terms of notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 20/2007-Central Excise, dated the 25th April, 2007 and is unable to utilize the CENVAT credit of duty taken on inputs required for manufacture of final products specified in the said notification, other than final products which are exempt or subject to nil rate of duty, for payment of duties of excise on said final products, then the Central Government may allow the refund of such credit subject to such procedure, conditions and limitations, as may be specified by notification.

Explanation : For the purposes of this rule, "duty" means the duties specified in sub-rule (1) of rule 3 of these rules.]

RULE[5B. Refund of CENVAT credit to service providers providing services taxed on reverse charge basis.

A provider of service providing services notified under sub-section (2) of section 68 of the Finance Act and being unable to utilise the CENVAT credit availed on inputs and input services for payment of service tax on such output services, shall be allowed refund of such unutilised CENVAT credit subject to procedure, safeguards, conditions and limitations, as may be specified by the Board by notification in the Official Gazette.]

RULE 6.[Obligation of a manufacturer or producer of final products and a [provider of output service]].

[(1) The CENVAT credit shall not be allowed on such quantity of input as is used in or in relation to the manufacture of exempted goods or for provision of exempted services or input service as is used in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services and the credit not allowed shall be calculated and paid by the manufacturer or the provider of output service, in terms of the provisions of sub-rule (2) or sub- rule (3), as the case may be :

Provided that the CENVAT credit on inputs shall not be denied to job worker referred to in rule 12AA of the Central Excise Rules, 2002, on the ground that the said inputs are used in the manufacture of goods cleared without payment of duty under the provisions of that rule.

Explanation 1. - For the purposes of this rule, exempted goods or final products as defined in clauses (d) and (h) of rule 2 shall include non-excisable goods cleared for a consideration from the factory.

Explanation 2. - Value of non-excisable goods for the purposes of this rule, shall be the invoice value and where such invoice value is not available, such value shall be determined by using reasonable means consistent with the principles of valuation contained in the Excise Act and the rules made thereunder.

Explanation 3. - For the purposes of this rule, exempted services as defined in clause

(e) of rule 2 shall include an activity, which is not a 'service' as defined in section 65B(44) of the Finance Act, 1994 [provided that such activity has used inputs or input services].

Explanation 4. - Value of such an activity as specified above in Explanation 3, shall be the invoice/agreement/contract value and where such value is not available, such value shall be determined by using reasonable means consistent with the principles of valuation contained in the Finance Act, 1994 and the rules made thereunder.]

[(2) A manufacturer who exclusively manufactures exempted goods for their clearance upto the place of removal or a service provider who exclusively provides exempted services shall pay the whole amount of credit of input and input services and shall, in effect, not be eligible for credit of any inputs and input services.]

[(3)	(a)	A manufacturer who manufactures two classes of goods, namely :-
		(i) non-exempted goods removed;
		(ii) exempted goods removed;
		Or

	(b)	a provider of output service who provides two classes of services, namely:-
		(i) non-exempted services;
		(ii) exempted services,
	shall follow any one of the following options applicable to him, namely :-	
	[(i)	pay an amount equal to six *per cent.*of value of the exempted goods and seven *per cent.* of value of the exempted services subject to a maximum of the sum total of opening balance of the credit of input and input services available at the beginning of the period to which the payment relates and the credit of input and input services taken during that period; or]
	(ii)	pay an amount as determined under sub-rule (3A) :

Provided that if any duty of excise is paid on the exempted goods, the same shall be reduced from the amount payable under clause (i) :

Provided further that if any part of the value of a taxable service has been exempted on the condition that no CENVAT credit of inputs and input services, used for providing such taxable service, shall be taken then the amount specified in clause (i) shall be seven *per cent.* of the value so exempted:

Provided also that in case of transportation of goods or passengers by rail, the amount required to be paid under clause (i) shall be an amount equal to two *per cent.* of value of the exempted services.

Explanation 1. - If the manufacturer of goods or the provider of output service, avails any of the option under this sub-rule, he shall exercise such option for all exempted goods manufactured by him or, as the case may be, all exempted services provided by him, and such option shall not be withdrawn during the remaining part of the financial year.

Explanation 2.- No CENVAT credit shall be taken on the duty or tax paid on any goods and services that are not inputs or input services.

Explanation 3. - For the purposes of this sub-rule and sub-rule (3A),-

(a) "non-exempted goods removed" means the final products excluding exempted goods manufactured and cleared upto the place of removal;

(b) "exempted goods removed" means the exempted goods manufactured and cleared upto the place of removal;

(c) "non-exempted services" means the output services excluding exempted services.]

For determination of amount required to be paid under [(3A) clause (ii) of sub- rule (3), the manufacturer of goods or the provider of output service shall follow the following procedure and conditions, namely :-

(a) the manufacturer of goods or the provider of output service shall intimate in writing to the Superintendent of Central Excise giving the following particulars, namely :-

(i)	name, address and registration number of the manufacturer of goods or provider of output service;
(ii)	date from which the option under this clause is exercised or proposed to be exercised;
(iii)	description of inputs and input services used exclusively in or in relation to the manufacture of exempted goods removed or for provision of exempted services and description of such exempted goods removed and such exempted services provided;
(iv)	description of inputs and input services used exclusively in or in relation to the manufacture of non-exempted goods removed or for the provision of non-exempted services and description of such non-exempted goods removed and non-exempted services provided;
(v)	CENVAT credit of inputs and input services lying in balance as on the date of exercising the option under this condition;

the manufacturer of final products or the provider of output service shall determine the credit required to be paid, out of this total credit of inputs and input services taken during the month, denoted as T, in the following sequential steps and provisionally pay every month, the amounts determined under sub-clauses (i) and (iv), namely :-

(i)	the amount of CENVAT credit attributable to inputs and input services used exclusively in or in relation to the manufacture of exempted goods removed or for provision of exempted services shall be called ineligible credit, denoted as A, and shall be paid;
(ii)	the amount of CENVAT credit attributable to inputs and input services used exclusively in or in relation to the manufacture of non-exempted goods removed or for the provision of non-exempted services shall be called eligible credit, denoted as B, and shall not be required to be paid;
(iii)	credit left after attribution of credit under sub-clauses (i) and (ii) shall be called common credit, denoted as C and calculated as,- $C = T - (A + B)$;

Explanation. - Where the entire credit has been attributed under sub-clauses (i) and (ii), namely ineligible credit or eligible credit, there shall be left no common credit for further attribution.

(iv)	the amount of common credit attributable towards exempted goods removed or for provision of exempted services shall be called ineligible common credit, denoted as D and calculated as follows and shall be paid, - $D = (E/F) \times C$;
	where E is the sum total of –
	(a) value of exempted services provided; and
	(b) value of exempted goods removed, during the preceding financial year;

	where F is the sum total of -

	(a)	value of non-exempted services provided,
	(b)	value of exempted services provided,
	(c)	value of non-exempted goods removed, and
	(d)	value of exempted goods removed, during the preceding financial year:
Provided that where no final products were manufactured or no output service was provided in the preceding financial year, the CENVAT credit attributable to ineligible common credit shall be deemed to be fifty *per cent.* of the common credit;		
(v)	remainder of the common credit shall be called eligible common credit and denoted as G, where,- G = C - D;	
Explanation.- For the removal of doubts, it is hereby declared that out of the total credit T, which is sum total of A, B, D, and G, the manufacturer or the provider of the output service shall be able to attribute provisionally and retain credit of B and G, namely, eligible credit and eligible common credit and shall provisionally pay the amount of credit of A and D, namely, ineligible credit and ineligible common credit.		
(vi)	where manufacturer or the provider of the output service fails to pay the amount determined under sub-clause (i) or sub-clause (iv), he shall be liable to pay the interest from the due date of payment till the date of payment of such amount, at the rate of fifteen *per cent.* per annum;	

the manufacturer or the provider of output service shall determine the amount of CENVAT credit attributable to exempted goods removed and provision of exempted services for the whole of financial year, out of the total credit denoted as T (Annual) taken during the whole of financial year in the following manner, namely :-

(i)	the CENVAT credit attributable to inputs and input services used exclusively in or in relation to the manufacture of exempted goods removed or for provision of exempted services on the basis of inputs and input services actually so used during the financial year, shall be called Annual ineligible credit and denoted as A (Annual);
(ii)	the CENVAT credit attributable to inputs and input services used exclusively in or in relation to the manufacture of non-exempted goods removed or for the provision of non-exempted services on the basis of inputs and input services actually so used shall be called Annual eligible credit and denoted as B(Annual);
(iii)	common credit left for further attribution shall be denoted as C(Annual) and calculated as, - C(Annual) = T(Annual) – [A(Annual) + B(Annual)];
(iv)	common credit attributable towards exempted goods removed or for provision of exempted services shall be called Annual ineligible common credit, denoted by D(Annual) and shall be calculated as, - D(Annual) = (H/I) x C(Annual);

	where H is sum total of-	
	(a)	value of exempted services provided; and
	(b)	value of exempted goods removed; during the financial year;
		where I is sum total of -
	(a)	value of non-exempted services provided,
	(b)	value of exempted services provided,
	(c)	value of non-exempted goods removed; and
	(d)	value of exempted goods removed; during the financial year;

the manufacturer or the provider of output service shall pay on or before the 30th June of the succeeding financial year, an amount equal to difference between the total of the amount of Annual ineligible credit and Annual ineligible common credit and the aggregate amount of ineligible credit and ineligible common credit for the period of whole year, namely, [{A(Annual) + D(Annual)} – {(A+D) aggregated for the whole year)}], where the former of the two amounts is greater than the later;

(b) where the amount under clause (d) is not paid by the 30th June of the succeeding financial year, the manufacturer of goods or the provider of output service, shall, in addition to the amount of credit so paid under clause (d), be liable to pay on such amount an interest at the rate of fifteen *per cent.* per annum, from the 30th June of the succeeding financial year till the date of payment of such amount;

(c) the manufacturer or the provider of output service, shall at the end of the financial year, take credit of amount equal to difference between the total of the amount of the aggregate of ineligible credit and ineligible common credit paid during the whole year and the total of the amount of annual ineligible credit and annual ineligible common credit, namely, [{(A+D) aggregated for the whole year)} – {A(Annual) + D(Annual)}], where the former of the two amounts is greater than the later;

(d) the manufacturer of the goods or the provider of output service shall intimate to the jurisdictional Superintendent of Central Excise, within a period of fifteen days from the date of payment or adjustment, as per the provisions of clauses (d), (e) and (f) , the following particulars, namely :-

(i)	details of credit attributed towards eligible credit, ineligible credit, eligible common credit and ineligible common credit, month-wise, for the whole financial year, determined as per the provisions of clause (b);
(ii)	CENVAT credit annually attributed to eligible credit, ineligible credit, eligible common credit and ineligible common credit for the whole of financial year, determined as per the provisions of clause (c);
(iii)	amount determined and paid as per the provisions of clause (d), if any, with the date of payment of the amount;
(iv)	interest payable and paid, if any, determined as per the provisions of clause (e); and
(v)	credit determined and taken as per the provisions of clause (f), if any, with the date of taking the credit.]

[(3AA) Where a manufacturer or a provider of output service has failed to exercise the option under sub-rule (3) and follow the procedure provided under sub-rule (3A), the Central Excise Officer competent to adjudicate a case based on amount of CENVAT credit involved, may allow such manufacturer or provider of output service to follow the procedure and pay the amount referred to in clause (ii) of sub- rule (3), calculated for each of the months, *mutatis-mutandis* in terms of clause (c) of sub-rule (3A), with interest calculated at the rate of fifteen *per cent.* per annum from the due date for payment of amount for each of the month, till the date of payment thereof.

(3AB) Assessee who has opted to pay an amount under clause (ii) or clause (iii) of sub-rule (3) in the financial year 2015-16, shall pay the amount along with interest or take credit for the said financial year in terms of clauses (c), (d), (e), (f), (g), (h) or (i) of sub-rule (3A), as they prevail on the day of publication of this notification and for this purpose these provisions shall be deemed to be in existence till the 30th June, 2016.]

[(3B) A banking company and a financial institution including a non-banking financial company, engaged in providing services by way of extending deposits, loans or advances, in addition to options given in sub-rules (1), (2) and (3), shall have the option to pay for every month an amount equal to fifty *per cent.* of the CENVAT credit availed on inputs and input services in that month.]

(3C)*] * * *

(3D) Payment of an amount under sub-rule (3) shall be deemed to be CENVAT credit not taken for the purpose of an exemption notification wherein any exemption is granted on the condition that no CENVAT credit of inputs and input services shall be taken.

*[**Explanation I.** -* "Value" for the purpose of sub-rules (3) and (3A), —

(a) shall have the same meaning as assigned to it under section 67 of the Finance Act, read with rules made thereunder or, as the case may be, the value determined under section 3, 4 or 4A of the Excise Act, read with rules made thereunder;

(b) in the case of a taxable service, when the option available under sub-rules (7), (7A), (7B) or (7C) of rule 6 of the Service Tax Rules, 1994, has been availed, shall be the value on which the rate of service tax under section 66B of the Finance Act, read with an exemption notification, if any, relating to such rate, when applied for calculation of service tax results in the same amount of tax as calculated under the option availed;

(c) in case of trading, shall be the difference between the sale price and the cost of goods sold (determined as per the generally accepted accounting principles without including the expenses incurred towards their purchase) or ten per cent. of the cost of goods sold, whichever is more;

(d) in case of trading of securities, shall be the difference between the sale price and the purchase price of the securities traded or one per cent. of the purchase price of the securities traded, whichever is more;

(e) shall not include the value of services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.]

Explanation II. - The amount mentioned in sub-rules (3), (3A) [and (3B)], unless specified otherwise, shall be paid by the manufacturer of goods or the provider of output service by debiting the CENVAT credit or otherwise on or before the 5th day of the following month

except for the month of March, when such payment shall be made on or before the 31st day of the month of March.

Explanation III. - If the manufacturer of goods or the provider of output service fails to pay the amount payable under sub-rules (3), (3A) [and (3B)], it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken.

Explanation IV. - In case of a manufacturer who avails the exemption under a notification based on the value of clearances in a financial year and a service provider who is an individual or proprietary firm or partnership firm, the expressions, "following month" and "month of March" occurring in sub- rules (3) and (3A) shall be read respectively as "following quarter" and "quarter ending with the month of March".]

[(4) No CENVAT credit shall be allowed on capital goods used exclusively in the manufacture of exempted goods or in providing exempted services for a period of two years from the date of commencement of the commercial production or provision of services, as the case may be, other than the final products or output services which are exempt from the whole of the duty of excise leviable thereon under any notification where exemption is granted based upon the value or quantity of clearances made or services provided in a financial year :

Provided that where capital goods are received after the date of commencement of commercial production or provision of services, as the case may be, the period of two years shall be computed from the date of installation of such capital goods.]

(5) *] * * [

(6) The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable in case the excisable goods removed without payment of duty are either -

(i) cleared to a unit in a special economic zone or to a developer of a special economic zone for their authorized operations; or]

(ii) cleared to a hundred per cent. export-oriented undertaking; or

(iii) cleared to a unit in an Electronic Hardware Technology Park or

Software Technology Park; or

(iv) supplied to the United Nations or an international organization for their official use or supplied to projects funded by them, on which exemption of duty is available under notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 108/95-Central Excise, dated the 28th August, 1995, number G.S.R. 602(E), dated the 28th August, 1995; or

(iva) supplied for the use of foreign diplomatic missions or consular missions or career consular offices or diplomatic agents in terms of the provisions of Notification No. [12/2012-Central Excise, dated the 17th March, 2012, number G.S.R. 163(E), dated the 17th March, 2012]; or]

(v) cleared for export under bond in terms of the provisions of the Central Excise Rules, 2002; or

(vi) gold or silver falling within Chapter 71 of the said First Schedule, arising in the course of manufacture of copper or [zinc by smelting; or]

[(vii) all goods which are exempt from the duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty leviable under sub-section (1) of section 3 of the said Customs Tariff Act when imported into India and are supplied,

(a) against International Competitive Bidding; or

(b) to a power project from which power supply has been tied up through tariff based competitive bidding; or

(c) to a power project awarded to a developer through tariff based competitive bidding, in terms of Notification No. [12/2012-Central Excise, dated the 17th March, 2012];

[(viii) supplies made for setting up of solar power generation projects or facilities.] [(ix) *] * * * * *

(6A) [The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable in case the taxable services are provided, without payment of service tax, to a unit in a Special Economic Zone or to a developer of a Special Economic Zone for their authorized operations.]

[(7) The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable in case the taxable services are provided, without payment of service tax, to a unit in a Special Economic Zone or to a developer of a Special Economic Zone for their authorized operations or when a service is exported [or when a service is provided or agreed to be provided by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India.]

(8) For the purpose of this rule, a service provided or agreed to be provided shall not be an exempted service when :-

(a) the service satisfies the conditions specified under rule 6A of the Service Tax Rules, 1994 and the payment for the service is to be received in convertible foreign currency; and

(b) such payment has not been received for a period of six months or such extended period as may be allowed from time-to-time by the Reserve Bank of India, from the date of provision

[**Provided** that if such payment is received after the specified or extended period allowed by the Reserve Bank of India but within one year from such period, the service provider shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier in terms of sub-rule (3) to the extent it relates to such payment, on the basis of documentary evidence of the payment so received.

[RULE 7. Manner of distribution of credit by input service distributor. —

The input service distributor shall distribute the CENVAT credit in respect of the service tax paid on the input service to its manufacturing units or unit providing output service or an outsourced manufacturing units, as defined in Explanation 4, subject to the following conditions, namely :—

(a) the credit distributed against a document referred to in rule 9 does not exceed the amount of service tax paid thereon;

(b) the credit of service tax attributable as input service to a particular unit shall be distributed only to that unit;

(c) the credit of service tax attributable as input service to more than one unit but not to all the units shall be distributed only amongst such units to which the input service is attributable and such distribution shall be pro rata on the basis of the turnover of such units, during the relevant period, to the total turnover of all such units to which such input service is attributable and which are operational in the current year, during the said relevant period;

(d) The credit of service tax attributable as input service to all the units shall be distributed to all the units pro rata on the basis of the turnover of such units during the relevant period to the total turnover of all the units, which are operational in the current year, during the said relevant period;

(e) outsourced manufacturing unit shall maintain separate account for input service credit received from each of the input service distributors and shall use it only for payment of duty on goods manufactured for the input service distributor concerned;

(f) credit of service tax paid on input services, available with the input service distributor, as on the 31st of March, 2016, shall not be transferred to any outsourced manufacturing unit and such credit shall be distributed amongst the units excluding the outsourced manufacturing units.

Explanation. - The provision of this clause shall, mutatis-mutandis, apply to any outsourced manufacturer commencing production of goods on or after the 1st of April, 2016;

(g) provisions of rule 6 shall apply to the units manufacturing goods or provider of output service and shall not apply to the input service distributor.

Explanation 1. - For the purposes of this rule, "unit" includes the premises of a provider of output service or the premises of a manufacturer including the factory, whether registered or otherwise or the premises of an outsourced manufacturing unit.

Explanation 2. - For the purposes of this rule, the total turnover shall be determined in the same manner as determined under rule 5 :

Provided that the turnover of an outsourced manufacturing unit shall be the turnover of goods manufactured by such outsourced manufacturing unit for the input service distributor.

Explanation 3. - For the purposes of this rule, the 'relevant period' shall be, -

(a) if the assessee has turnover in the 'financial year' preceding to the year during which credit is to be distributed for month or quarter, as the case maybe, the said financial year; or;

(b) if the assessee does not have turnover for some or all the units in the preceding financial year, the last quarter for which details of turnover of all the units are available, previous to the month or quarter for which credit is to be distributed.

Explanation 4. - For the purposes of this rule, "outsourced manufacturing unit" means a job-worker who is liable to pay duty on the value determined under rule 10A of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 on the

goods manufactured for the input service distributor or a manufacturer who manufactures goods, for the input service distributor under a contract, bearing the brand name of such input service distributor and is liable to pay duty on the value determined under section 4A of the Excise Act.

RULE [7A. Distribution of credit on inputs by the office or any other premises of output service provider. —

(1) A provider of output service shall be allowed to take credit on inputs and capital goods received, on the basis of an invoice or a bill or a challan issued by an office or premises of the said provider of output service, which receives invoices, issued in terms of the provisions of the Central Excise Rules, 2002, towards the purchase of inputs and capital goods.

(2) The provisions of these rules or any other rules made under the Central Excise Act, 1944, as made applicable to a first stage dealer or a second stage dealer, shall *mutatis mutandis* apply to such office or premises of the provider of output service.]

RULE 7B. Distribution of credit on inputs by warehouse of manufacturer.

(1) A manufacturer having one or more factories, shall be allowed to take credit on inputs received under the cover of an invoice issued by a warehouse of the said manufacturer, who receives inputs under cover of [documents specified under Rule 9], towards the purchase of such inputs.

(2) The provisions of these rules or any other rules made under the Excise Act as applicable to a first stage dealer or a second stage dealer, shall, *mutatis mutandis*, apply to such warehouse of the manufacturer.

RULE 8. Storage of input outside the factory of the manufacturer. —

The Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, having jurisdiction over the factory of a manufacturer of the final products may, in exceptional circumstances having regard to the nature of the goods and shortage of storage space at the premises of such manufacturer, by an order, permit such manufacturer to store the input in respect of which CENVAT credit has been taken, outside such factory, subject to such limitations and conditions as he may specify :

Provided that where such input is not used in the manner specified in these rules for any reason whatsoever, the manufacturer of the final products shall pay an amount equal to the credit availed in respect of such input.

RULE 9. Documents and accounts. —

(1) The CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of any of the following documents, namely :-

(a) an invoice issued by -

(i) a manufacturer or a service provider for clearance of -

(I) inputs or capital goods from his factory or depot or from the premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said

manufacturer;

(II) inputs or capital goods as such;

(ii) an importer;

(iii) an importer from his depot or from the premises of the consignment agent of the said importer if the said depot or the premises, as the case may be, is registered in terms of the provisions of Central Excise Rules, 2002;

(iv) a first stage dealer or a second stage dealer, as the case may be, in terms of the provisions of Central Excise Rules, 2002; or

(b) a supplementary invoice, issued by a manufacturer or importer of inputs or capital goods in terms of the provisions of Central Excise Rules, 2002 from his factory or depot or from the premises of the consignment agent of the said manufacturer or importer or from any other premises from where the goods are sold by, or on behalf of, the said manufacturer or importer, in case additional amount of excise duties or additional duty leviable under section 3 of the Customs Tariff Act, has been paid, except where the additional amount of duty became recoverable from the manufacturer or importer of inputs or capital goods on account of any non-levy or short-levy by reason of fraud, collusion or any willful misstatement or suppression of facts or contravention of any provisions of the Excise Act, or of the Customs Act, 1962 (52 of 1962) or the rules made thereunder with intent to evade payment of duty.

Explanation. - For removal of doubts, it is clarified that supplementary invoice shall also include challan or any other similar document evidencing payment of additional amount of additional duty leviable under section 3 of the Customs Tariff Act; or

[(bb) a supplementary invoice, bill or challan issued by a provider of output service, in terms of the provisions of Service Tax Rules, 1994 except where the additional amount of tax became recoverable from the provider of service on account of non- levy or non-payment or short-levy or short-payment by reason of fraud or collusion or willful misstatement or suppression of facts or contravention of any of the provisions of the Finance Act or of the rules made thereunder with the intent to evade payment of service tax; or]

(c) a bill of entry; or

(d) a certificate issued by an appraiser of customs in respect of goods imported through a Foreign Post Office; [or, as the case may be, an Authorized Courier, registered with the Principal Commissioner of Customs or the Commissioner of Customs in-charge of the Customs airport,]

[(e) a challan evidencing payment of service tax, by the service recipient as the person liable to pay service tax; or]

(f) an invoice, a bill or challan issued by a provider of input service on or after the 10th day of September, 2004; or

[(fa) a Service Tax Certificate for Transportation of goods by Rail (herein after referred to as STTG Certificate) issued by the Indian Railways, along with the

photocopies of the railway receipts mentioned in the STTG certificate; or]

(g) an invoice, bill or challan issued by an input service distributor under Rule 4A of the Service Tax Rules, 1994 :

[**Provided** that the credit of additional duty of customs levied under sub- section (5) of section 3 of the Customs Tariff Act, 1975 (51 of 1975) shall not be allowed if the invoice or the supplementary invoice, as the case may be, bears an indication to the effect that no credit of the said additional duty shall be admissible.]

[(2) No CENVAT credit under sub-rule (1) shall be taken unless all the particulars as prescribed under the Central Excise Rules, 2002 or the Service Tax Rules, 1994, as the case may be, are contained in the said document :

Provided that if the said document does not contain all the particulars but contains the details of duty or service tax payable, description of the goods or taxable service, [assessable value, Central Excise or Service tax registration number of the person issuing the invoice, as the case may be,] name and address of the factory or warehouse or premises of first or second stage dealers or [provider of output service], and the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, is satisfied that the goods or services covered by the said document have been received and accounted for in the books of the account of the receiver, he may allow the CENVAT credit.]

(4) The CENVAT credit in respect of input or capital goods purchased from a first stage dealer or second stage dealer shall be allowed only if such first stage dealer or second stage dealer, as the case may be, has maintained records indicating the fact that the input or capital goods was supplied from the stock on which duty was paid by the producer of such input or capital goods and only an amount of such duty on *pro rata* basis has been indicated in the invoice issued by him :

[**Provided** that provisions of this sub-rule shall apply *mutatis mutandis* to an importer who issues an invoice on which CENVAT credit can be taken.]

(5) The manufacturer of final products or the provider of output service shall maintain proper records for the receipt, disposal, consumption and inventory of the input and capital goods in which the relevant information regarding the value, duty paid, CENVAT credit taken and utilized, the person from whom the input or capital goods have been procured is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit.

(6) The manufacturer of final products or the provider of output service shall maintain proper records for the receipt and consumption of the input services in which the relevant information regarding the value, tax paid, CENVAT credit taken and utilized, the person from whom the input service has been procured is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit.

(7) The manufacturer of final products shall submit within ten days from the close of each month to the Superintendent of Central Excise, a monthly return in the form specified, by notification, by the Board :

Provided that where a manufacturer is availing exemption under a notification based on the value or quantity of clearances in a financial year, he shall file a quarterly return in the form specified, by notification, by the Board within [ten days] after the close of the quarter to which the return relates.

(8) A first stage dealer or a second stage dealer [or a registered importer], as the case may be, shall submit within fifteen days from the close of each quarter of a year to the Superintendent of Central Excise, a return in the form specified, by notification, by the Board :

[**Provided** that the first stage dealer or second stage dealer [or a registered importer], as the case may be, shall submit the said return electronically.]

(9) The provider of output service availing CENVAT credit shall submit a half yearly return in form specified, by notification, by the Board to the Superintendent of Central Excise, by the end of the month following the particular quarter or half year.

(10) The input service distributor, shall furnish a half yearly return in such form as may be specified, by notification, by the Board, giving the details of credit received and distributed during the said half year to the jurisdictional Superintendent of Central Excise, not later than the last day of the month following the half year period.

(11) The provider of output service, availing CENVAT credit referred to in sub- rule (9) or the input service distributor referred to in sub-rule (10), as the case may be, may submit a revised return to correct a mistake or omission within a period of sixty days from the date of submission of the return under sub- rule (9) or sub-rule (10), as the case may be.

[RULE 9A. Annual return.

(1) A manufacturer of final products or provider of output services, shall submit to the Superintendent of Central Excise an annual return for each financial year, by the 30th day of November of the succeeding year, in the form as specified by a notification by the Board.

(2) The provisions of rule 12 of the Central Excise Rules 2002, in so far as they relate to annual return shall, *mutatis-mutandis*, apply to the annual return required to be filed under this rule.]

RULE 10. Transfer of CENVAT credit.

(1) If a manufacturer of the final products shifts his factory to another site or the factory is transferred on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of the factory to a joint venture with the specific provision for transfer of liabilities of such factory, then, the manufacturer shall be allowed to transfer the CENVAT credit lying unutilized in his accounts to such transferred, sold, merged, leased or amalgamated factory.

(2) If a provider of output service shifts or transfers his business on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of the business to a joint venture with the specific provision for transfer of liabilities of such business, then, the provider of output service shall be allowed to transfer the

CENVAT credit lying unutilized in his accounts to such transferred, sold, merged, leased or amalgamated business.

(3) The transfer of the CENVAT credit under sub-rules (1) and (2) shall be allowed only if the stock of inputs as such or in process, or the capital goods is also transferred along with the factory or business premises to the new site or ownership and the inputs, or capital goods, on which credit has been availed of are duly accounted for to the satisfaction of the Deputy Commissioner of Central Excise or, as the case may be, the Assistant Commissioner of Central Excise.

RULE [10A. Transfer of CENVAT credit of additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act. —

(1) A manufacturer or producer of final products, having more than one registered premises, for each of which registration under the Central Excise Rules, 2002 has been obtained on the basis of a common Permanent Account Number under the Income-tax Act, 1961 (43 of 1961), may transfer unutilized CENVAT credit of additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, lying in balance with one of his registered premises at the end of a quarter, to his other registered premises by—

(i) making an entry for such transfer in the documents maintained under rule 9;

(ii) issuing a transfer challan containing registration number, name and address of the registered premises transferring the credit and receiving such credit, the amount of credit transferred and the particulars of such entry as mentioned in clause (i), and such recipient premises may take CENVAT credit on the basis of the transfer challan :

Provided that nothing contained in this sub-rule shall apply if the transferring and recipient registered premises are availing the benefit of the following notifications of the Government of India in the Ministry of Finance (Department of Revenue), namely :-

(i) No. 32/99-Central Excise, dated the 8th July, 1999 [G.S.R. 508(E), dated the 8th July, 1999];

(ii) No. 33/99-Central Excise, dated the 8th July, 1999 [G.S.R. 509(E), dated the 8th July, 1999];

(iii) No. 39/2001-Central Excise, dated the 31st July, 2001 [G.S.R. 565(E), dated the 31st July, 2001];

(iv) No. 56/2002-Central Excise, dated the 14th November, 2002 [G.S.R. 764(E), dated the 14th November, 2002];

(v) No. 57/2002-Central Excise, dated the 14th November, 2002 [G.S.R.. 765(E), dated the 14th November, 2002];

(vi) No. 56/2003-Central Excise, dated the 25th June, 2003 [G.S.R. 513(E), dated the 25th June, 2003];

(vii) No. 71/2003-Central Excise, dated the 9th September, 2003 [G.S.R. 717(E), dated the 9th September, 2003];

(viii) No. 20/2007-Central Excise, dated the 25th April, 2007 [G.S.R. 307(E), dated the 25th April, 2007]; and

(ix) No. 1/2010-Central Excise, dated the 6th February, 2010 [G.S.R. 62(E), dated the 6th February, 2010].

(2) The manufacturer or producer shall submit the monthly return, as specified under these rules, separately in respect of transferring and recipient registered premises.]

RULE 11. Transitional provision. —

(1) Any amount of credit earned by a manufacturer under the CENVAT Credit Rules, 2002, as they existed prior to the 10th day of September, 2004 or by a provider of output service under the Service Tax Credit Rules, 2002, as they existed prior to the 10th day of September, 2004, and remaining unutilized on that day shall be allowed as CENVAT credit to such manufacturer or provider of output service under these rules, and be allowed to be utilized in accordance with these rules.

(2) A manufacturer who opts for exemption from the whole of the duty of excise leviable on goods manufactured by him under a notification based on the value or quantity of clearances in a financial year, and who has been taking CENVAT credit on inputs or input services before such option is exercised, shall be required to pay an amount equivalent to the CENVAT credit, if any, allowed to him in respect of inputs lying in stock or in process or contained in final products lying in stock on the date when such option is exercised and after deducting the said amount from the balance, if any, lying in his credit, the balance, if any, still remaining shall lapse and shall not be allowed to be utilized for payment of duty on any excisable goods, whether cleared for home consumption or for export.

[(3) A manufacturer or producer of a final product shall be required to pay an amount equivalent to the CENVAT credit, if any, taken by him in respect of inputs received for use in the manufacture of the said final product and is lying in stock or in process or is contained in the final product lying in stock, if, -

(i) he opts for exemption from whole of the duty of excise leviable on the said final product manufactured or produced by him under a notification issued under section 5A of the Act; or

(ii) the said final product has been exempted absolutely under section 5A of the Act, and after deducting the said amount from the balance of CENVAT credit, if any, lying in his credit, the balance, if any, still remaining shall lapse and shall not be allowed to be utilized for payment of duty on any other final product whether cleared for home consumption or for export, or for payment of service tax on any output service, whether provided in India or exported.

(4) A provider of output service shall be required to pay an amount equivalent to the CENVAT credit, if any, taken by him in respect of inputs received for providing the said service and is lying in stock or is contained in the taxable service pending to be provided, when he opts for exemption from payment of whole of the service tax leviable on such taxable service under a notification issued under section 93 of the Finance Act, 1994 (32 of 1994) and after deducting the said amount from the balance of CENVAT credit, if any, lying in his credit, the balance, if any, still remaining shall

lapse and shall not be allowed to be utilized for payment of duty on any excisable goods, whether cleared for home consumption or for export or for payment of service tax on any other output service, whether provided in India or exported.

RULE 12. Special dispensation in respect of inputs manufactured in factories located in specified areas of North East region, Kutch district of Gujarat, State of Jammu and Kashmir and State of Sikkim.

—Notwithstanding anything contained in these rules, [but subject to the proviso to clause (i) of sub-rule (1) of Rule 3], where a manufacturer has cleared any inputs or capital goods, in terms of notifications of the Government of India in the Ministry of Finance (Department of Revenue) No. 32/99-Central Excise, dated the 8th July, 1999 [G.S.R. 508(E), dated the 8th July, 1999] or No. 33/99-Central Excise, dated the 8th July, 1999 [G.S.R. 509(E), dated the 8th July, 1999] or No. 39/2001-Central Excise, dated the 31st July, 2001 [G.S.R. 565(E), dated the 31st July, 2001] or notification of the Government of India in the erstwhile Ministry of Finance and Company Affairs (Department of Revenue) No. 56/2002-Central Excise, dated the 14th November, 2002 [G.S.R. 764(E), dated 14th November, 2002] or No. 57/2002-Central Excise, dated the 14th November, 2002 [GSR 765(E), dated the 14th November, 2002] or notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 56/2003-Central Excise, dated the 25th June, 2003 [G.S.R. 513(E), dated the 25th June, 2003] or 71/2003-Central Excise, dated the 9th September, 2003 [G.S.R. 717(E), dated the 9th September, 2003, [or No. 20/2007-Central Excise, dated the 25th April, 2007 [GSR 307(E), dated the 25th April, 2007]] [or No. 1/2010-Central Excise, dated the 6th February, 2010 [G.S.R. 62(E), dated the 6th February, 2010]] the CENVAT credit on such inputs or capital goods shall be admissible as if no portion of the duty paid on such inputs or capital goods was exempted under any of the said notifications.

RULE [12A. Procedure and facilities for large tax payer. —

Notwithstanding anything contained in these rules, the following procedure shall apply to a large taxpayer, -

(1) A large tax payer may remove inputs, except motor spirit, commonly known as petrol, high speed diesel and light diesel oil or capital goods, as such, on which CENVAT credit has been taken, without payment of an amount specified in sub-rule (5) of rule 3 of these rules, under the cover of a transfer challan or invoice, from any of his registered premises (herein after referred to as the sender premises) to his other registered premises, other than a premises of a first or second stage dealer (herein after referred to as the recipient premises), for further use in the manufacture or production of final products in recipient premises subject to condition that -

(a) the final products are manufactured or produced using the said inputs and cleared on payment of appropriate duties of excise leviable thereon within a period of six months, from the date of receipt of the inputs in the recipient premises; or

(b) the final products are manufactured or produced using the said inputs and exported out of India, under bond or letter of undertaking within a period of six months, from the date of receipt of the input goods in the recipient premises, and that any other conditions prescribed by the [Principal Commissioner of

Central Excise or Commissioner of Central Excise, as the case may be], Large Tax payer Unit in this regard are satisfied.

Explanation 1. — The transfer challan or invoice shall be serially numbered and shall contain the registration number, name, address of the large tax payer, description, classification, time and date of removal, mode of transport and vehicle registration number, quantity of the goods and registration number and name of the consignee :

Provided that if the final products manufactured or produced using the said inputs are not cleared on payment of appropriate duties of excise leviable thereon or are not exported out of India within the said period of six months from the date of receipt of the input goods in the recipient premises, or such inputs are cleared as such from the recipient premises, an amount equal to the credit taken in respect of such inputs by the sender premises shall be paid by the recipient premises with interest in the manner and rate specified under rule 14 of these rules.

Provided further that if such capital goods are used exclusively in the manufacture of exempted goods, or such capital goods are cleared as such from the recipient premises, an amount equal to the credit taken in respect of such capital goods by the sender premises shall be paid by the recipient premises with interest in the manner and rate specified under rule 14 of these rules.

Explanation 2.— If a large tax payer fails to pay any amount due in terms of the first and second provisos, it shall be recovered along with interest in the manner as provided under rule 14 of these rules :

Provided also that nothing contained in this sub-rule shall be applicable if the recipient premises is availing following notifications of Government of India in the Ministry of Finance (Department of Revenue), -

(i) No. 32/99-C.E., dated the 8th July, 1999 [G.S.R. 508(E), dated the 8th July, 1999];

(ii) No. 33/99-C.E., dated the 8th July, 1999 [G.S.R. 509(E), dated the 8th July, 1999];

(iii) No. 39/2001-C.E., dated the 31st July, 2001 [G.S.R. 565(E), dated the 31st July, 2001];

(iv) No. 56/2002-C.E., dated the 14th November, 2002 [G.S.R. 764(E), dated the 14th November, 2002];

(v) No. 57/2002-C.E., dated 14th November, 2002 [G.S.R.. 765(E), dated the 14th November, 2002];

(vi) No. 56/2003-C.E., dated the 25th June, 2003 [G.S.R. 513(E), dated the 25th June, 2003];

(vii) No. 71/2003-C.E., dated the 9th September, 2003 [G.S.R. 717(E), dated the 9th September, 2003]; *] * [*

[(viii) No. 20/2007-C.E., dated the 25th April, 2007 [GSR 307(E), dated the 25th April, 2007, and]]

[(ix) No. 1/2010-Central Excise, dated the 6th February, 2010 [G.S.R. 62(E), dated the 6th February, 2010 :]

Provided also that nothing contained in this sub-rule shall be applicable to an export- oriented unit or a unit located in a Electronic Hardware Technology Park or Software Technology Park.

(2) The first recipient premises may take CENVAT credit of the amount paid under first proviso to sub-rule (1) as if it was a duty paid by the sender premises who removed such goods on the basis of a document showing payment of such duties.

(3) CENVAT credit of the specified duties taken by a sender premises shall not be denied or varied in respect of any inputs or capital goods, -

(a) removed as such under sub-rule (1) on the ground that the said inputs or the capital goods have been removed without payment of an amount specified in sub-rule (5) of rule 3 of these rules; or

(b) on the ground that the said inputs or capital goods have been used in the manufacture of any intermediate goods removed without payment of duty under sub-rule (1) of rule 12BB of Central Excise Rules, 2002.

Explanation. - For the purpose of this sub-rule "intermediate goods" shall have the same meaning assigned to it in sub-rule (1) of rule 12BB of the Central Excise Rules, 2002.

(4) A large tax payer may transfer, CENVAT credit taken, on or before the 10th July, 2014, by one of his registered manufacturing premises or premises providing taxable service to his other such registered premises by, -

(i) making an entry for such transfer in the record maintained under rule 9;

(ii) issuing a transfer challan containing registration number, name and address of the registered premises transferring the credit as well as receiving such credit, the amount of credit transferred and the particulars of such entry as mentioned in clause (i),

and such recipient premises can take CENVAT credit on the basis of such transfer challan as mentioned in clause (ii) :

Provided that such transfer or utilization of CENVAT credit shall be subject to the limitations prescribed under clause (b) of sub-rule (7) of rule 3 :

Provided further that nothing contained in this sub-rule shall be applicable if the registered manufacturing premises is availing following notifications of Government of India in the Ministry of Finance (Department of Revenue), -

(i) No. 32/99-C.E., dated the 8th July, 1999 [G.S.R. 508(E), dated the 8th July, 1999];

(ii) No. 33/99-C.E., dated the 8th July, 1999 [G.S.R. 509(E), dated the 8th July, 1999];

(iii) No. 39/2001-C.E., dated the 31st July, 2001 [G.S.R. 565(E), dated the 31st July, 2001];

(iv) No. 56/2002-C.E., dated the 14th November, 2002 [G.S.R. 764(E), dated the 14th November, 2002];

(v) No. 57/2002-C.E., dated 14th November, 2002 [G.S.R.. 765(E), dated the 14th November, 2002];

(vi) No. 56/2003-C.E., dated the 25th June, 2003 [G.S.R. 513(E), dated the 25th June, 2003];

(vii) No. 71/2003-C.E., dated the 9th September, 2003 [G.S.R. 717(E), dated the 9th September, 2003]; *] * [*

[(viii) No. 20/2007-C.E., dated the 25th April, 2007 [GSR 307(E), dated the 25th April, 2007]; and]]

[(ix) No. 1/2010-Central Excise, dated the 6th February, 2010 [G.S.R. 62(E), dated the 6th February, 2010.]

(5) A large tax payer shall submit a monthly return, as prescribed under these rules, for each of the registered premises.

(6) Any notice issued but not adjudged by any of the Central Excise Officer administering the Act or rules made thereunder immediately before the date of grant of acceptance by the [Principal Chief Commissioner of Central Excise or Chief Commissioner of Central Excise, as the case may be], Large Tax Payer Unit, shall be deemed to have been issued by Central Excise officers of the said Unit.

(7) Provisions of these rules, insofar as they are not inconsistent with the provisions of this rule shall *mutatis mutandis* apply in case of a large tax payer.]

RULE [12AAA. Power to impose restrictions in certain types of cases.—

Notwithstanding anything contained in these rules, where the Central Government, having regard to the extent of misuse of CENVAT credit, nature and type of such misuse and such other factors as may be relevant, is of the opinion that in order to prevent the misuse of the provisions of CENVAT credit as specified in these rules, it is necessary in the public interest to provide for certain measures including restrictions on a manufacturer, [registered importer] first stage and second stage dealer [provider of taxable service] or an exporter, may by notification in the Official Gazette, specify the nature of restrictions including restrictions on utilization of CENVAT credit and suspension of registration in case of [an importer or] a dealer and type of facilities to be withdrawn and procedure for issue of such order by the [Principal Chief Commissioner of Central Excise or Chief Commissioner of Central Excise, as the case may be].

***Explanation.* -** For the purposes of this rule, it is hereby clarified that every proposal initiated in terms of the procedure specified under Notification No. 5/2012-C.E. (N.T.), dated the 12th March, 2012 published in the Gazette of India, Part II, Section 3, Sub-section (i) vide number G.S.R. 140(E), dated the 12th March, 2012, which is pending, shall be treated as initiated in terms of the procedure specified under this rule and shall be decided accordingly.]

RULE 13. Power of Central Government to notify goods for deemed CENVAT credit.

Notwithstanding anything contained in rule 3, the Central Government may, by notification, declare the input or input service on which the duties of excise, or additional duty of customs or service tax paid, shall be deemed to have been paid

at such rate or equivalent to such amount as may be specified in that notification and allow CENVAT credit of such duty or tax deemed to have been paid in such manner and subject to such conditions as may be specified in that notification even if, in the case of input, the declared input, or in the case of input service, the declared input service, as the case may be, is not used directly by the manufacturer of final products, or as the case may be, by the provider of [output] service, declared in that notification, but contained in the said final products, or as the case may be, used in providing the [output] service.

[RULE 14. Recovery of CENVAT credit wrongly taken or. erroneously refunded. —

(1)(i) Where the CENVAT credit has been taken wrongly but not utilised, the same shall be recovered from the manufacturer or the provider of output service, as the case may be, and the provisions of section 11A of the Excise Act or section 73 of the Finance Act, 1994 (32 of 1994), as the case may be, shall apply *mutatis mutandis* for effecting such recoveries;

(ii) Where the CENVAT credit has been taken and utilized wrongly or has been erroneously refunded, the same shall be recovered along with interest from the manufacturer or the provider of output service, as the case may be, and the provisions of sections 11A and 11AA of the Excise Act or sections 73 and 75 of the Finance Act, 1994, as the case may be, shall apply *mutatis mutandis* for effecting such recoveries.

(2) *] * * [

[RULE 15. Confiscation and penalty. —

(1) If any person, takes or utilises CENVAT credit in respect of input or capital goods or input services, wrongly or in contravention of any of the provisions of these rules, then, all such goods shall be liable to confiscation and such person, shall be liable to a penalty [in term of clause (a) or clause (b) of sub- section (1) of section 11AC of the Excise Act or sub-section (1) of section 76 of the Finance Act (32 of 1994), as the case may be].

(2) In a case, where the CENVAT credit in respect of input or capital goods or input services has been taken or utilised wrongly by reason of fraud, collusion or any willful misstatement or suppression of facts, or contravention of any of the provisions of the Excise Act, or of the rules made thereunder with intent to evade payment of duty, then, the manufacturer shall also be liable to pay penalty in terms of the provisions of [clause (c), clause (d) or clause (e) of sub-section (1) of section 11AC of the Excise Act.]

(3) In a case, where the CENVAT credit in respect of input or capital goods or input services has been taken or utilised wrongly by reason of fraud, collusion or any willful misstatement or suppression of facts, or contravention of any of the provisions of these rules or of the Finance Act or of the rules made thereunder with intent to evade payment of service tax, then, the provider of output service shall also be liable to pay penalty in terms of the provisions of [sub-section (1) of section 78] of the Finance Act.

(4) Any order under sub-rule (1), sub-rule (2) or sub-rule (3) shall be issued by the Central Excise Officer following the principles of natural justice.]

RULE [15A. General penalty. —

Whoever contravenes the provisions of these rules for which no penalty has been provided in the rules, he shall be liable to a penalty which may extend to five thousand rupees.]

RULE 16. Supplementary provision. —

(1) Any notification, circular, instruction, standing order, trade notice or other order issued under the CENVAT Credit Rules, 2002 or the Service Tax Credit Rules, 2002, by the Central Government, the Central Board of Excise and Customs, the [Principal Chief Commissioner of Central Excise or Chief Commissioner of Central Excise, as the case may be] or the [Principal Commissioner of Central Excise or Commissioner of Central Excise, as the case may be], and in force at the commencement of these rules, shall, to the extent it is relevant and consistent with these rules, be deemed to be valid and issued under the corresponding provisions of these rules.

(2) References in any rule, notification, circular, instruction, standing order, trade notice or other order to the CENVAT Credit Rules, 2002 and any provision thereof or, as the case may be, the Service Tax Credit Rules, 2002 and any provision thereof shall, on the commencement of these rules, be construed as references to the CENVAT Credit Rules, 2004 and any corresponding provision thereof.

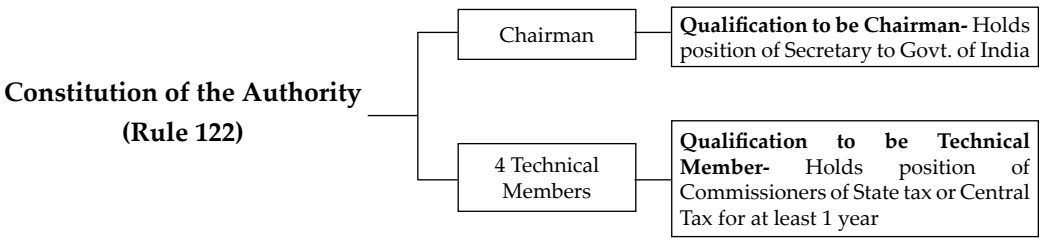
Annexure - IV

Extracts from Central Goods and Services Tax Rules, 2017 – Anti-profiteering

122. Constitution of the Authority.-The Authority shall consist of,-

(a) a Chairman who holds or has held a post equivalent in rank to a Secretary to the Government of India; and

(b) four Technical Members who are or have been Commissioners of State tax or central tax [for at least one year] or have held an equivalent post under the existing law, to be nominated by the Council.

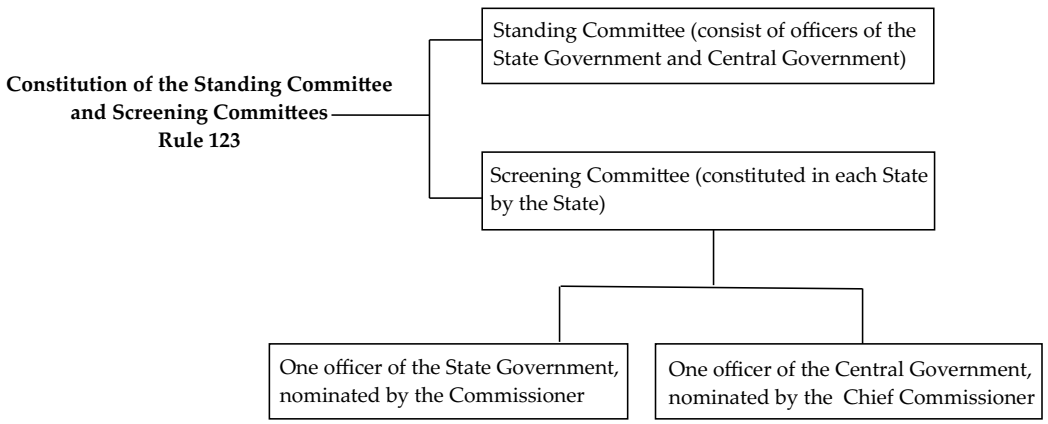


123. Constitution of the Standing Committee and Screening Committees.-(1)The Council may constitute a Standing Committee on Anti-profiteering which shall consist of such officers of the State Government and Central Government as may be nominated by it.

(2) A State level Screening Committee shall be constituted in each State by the State Governments which shall consist of-

(a) one officer of the State Government, to be nominated by the Commissioner, and

(b) one officer of the Central Government, to be nominated by the Chief Commissioner.



124. Appointment, salary, allowances and other terms and conditions of service of the Chairman and Members of the Authority:-(1) The Chairman and Members of

the Authority shall be appointed by the Central Government on the recommendations of a Selection Committee to be constituted for the purpose by the Council.

(3) The Chairman shall be paid a monthly salary of Rs. 2,25,000 (fixed) and other allowances and benefits as are admissible to a Central Government officer holding posts carrying the same pay:

Provided that where a retired officer is selected as a Chairman, he shall be paid a monthly salary of ₹ 2,25,000 reduced by the amount of pension.

[(3) The Technical Member shall be paid a monthly salary and other allowances and benefits as are admissible to him when holding an equivalent Group 'A' post in the Government of India: Provided that where a retired officer is selected as a Technical Member, he shall be paid a monthly salary equal to his last drawn salary reduced by the amount of pension in accordance with the recommendations of the Seventh Pay Commission, as accepted by the Central Government.]

(4) The Chairman shall hold office for a term of two years from the date on which he enters upon his office, or until he attains the age of sixty- five years, whichever is earlier and shall be eligible for reappointment:

Provided that [a] person shall not be selected as the Chairman, if he has attained the age of sixty-two years.

[Provided further that the Central Government with the approval of the Chairperson of the Council may terminate the appointment of the Chairman at any time.]

(5) The Technical Member of the Authority shall hold office for a term of twoyears from the date on which he enters upon his office, or until he attains the age of sixty-five years, whichever is earlier and shall be eligible for reappointment:

Provided that [a] person shall not be selected as a Technical Member if he has attained the age of sixty-two years.

[Provided further that the Central Government with the approval of the Chairperson of the Council may terminate the appointment of the Technical Member at any time.]

Interpretation of Rule 124

Appointment of Chairman and Members of the Authority → By the Central Government→ Recommended by Selection Committee

Salary of Chairman

- ₹ 2,25,000 (fixed) per month and other allowances and benefits as are admissible to a Central Government officer holding posts carrying the same pay
- If the Chairman is retired Officer- ₹ 2,25,000 reduced by the amount of pension

Salary of Technical Member

- Monthly salary and other allowances and benefits will be Same to a person holding Group 'A' post in the Government of India
- If the Technical Member is retired Officer- Monthly salary equal to his last drawn salary reduced by the amount of pension in accordance with the recommendations of the Seventh Pay Commission, as accepted by the Central Government

Tenure of Chairman

2 years from the date of Appointment
or
Until he attains the 65 years

} Whichever is Earlier
[Can be reappointed also]
[Person attained already 62 years will not be appointed as chairman.]

Tenure of Technical Member

2 years from the date of Appointment
or
Until he attains the 65 years

} Whichever is Earlier
[Can be reappointed also]
[Person attained already 62 years will not be appointed as Technical Member.]

125. [Secretary to the Authority.- An officer *not below the rank of Additional Commissioner (working in the Directorate General of [Anti-profiteering]* shall be the Secretary to the Authority.

126. Power to determine the methodology and procedure.- The Authority may determine the methodology and procedure for determination as to whether the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit has been passed on by the registered person to the recipient by way of commensurate reduction in prices.

127. Duties of the Authority.-

(i) Determine whether any reduction in the rate of tax on any supply of goods or services

(ii) The benefit of input tax credit has been passed on to the recipient by way of commensurate reduction in prices;

(iii) Identify the registered person who has not passed on the benefit of reduction in the rate of tax on supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices;

(iv) to order,

(a) reduction in prices;

(b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest @18% from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount not returned, as the case may be, in case the eligible person does not claim return of the amount or is not identifiable, and depositing the same in the Fund referred to in section 57;

(c) imposition of penalty as specified in the Act; and

(d) cancellation of registration under the Act.

(v) furnish a performance report to the Council by 10th of the close of each quarter.

128. Examination of application by the Standing Committee and Screening Committee.-

(1) The Standing Committee shall, within a period of two months from the date of the receipt of a written application [or within such extended period not exceeding a further period of one month for reasons to be recorded in writing as may be allowed by the Authority,] in such form and manner as may be specified by it, from an interested party or from a Commissioner or any other person, examine the accuracy and adequacy of the evidence provided in the application to determine whether there is prima-facie evidence to support the claim of the applicant that the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has not been passed on to the recipient by way of commensurate reduction in prices.

(2) All applications from interested parties on issues of local nature [or those forwarded by the Standing Committee] shall first be examined by the State level Screening Committee and the Screening Committee shall, [within two months from the date of receipt of a written application, or within such extended period not exceeding a further period of one month for reasons to be recorded in writing as may be allowed by the Authority,]upon being satisfied that the supplier has contravened the provisions of section 171, forward the application with its recommendations to the Standing Committee for further action.

Interpretation of Rule 128-There are 3-tier structure for the investigation and adjudication of the complaints regarding profiteering.

1. State-level Screening Committees and Standing Committee

2. Directorate General of Anti-profiteering; and

3. National Anti-profiteering Authority

Applicant (Affected consumers) may file an application

- before the Standing Committee on Anti-profiteering if the profiteering has all-India character

  or

- before the State Screening Committees if the profiteering is of local nature.

The State Screening Committee/Standing Committee will confirm prima facie evidence of profiteering, Director General of Anti-profiteering for investigating profiteering and National Anti-profiteering for determining profiteering and passing appropriate order to ensure consumers benefit from reduced prices.

Rule 128

(1) The Standing Committee shall, **within 2 months** from the date of the receipt of a written application *[or within such extended period not exceeding a **further period of 1 month** for reasons to be recorded in writing as may be allowed by*

*the Authority,]*examine the accuracy and adequacy of the evidence provided in the application *[submitted by from an interested party or from a Commissioner or any other person]* to determine

- whether there is prima-facie evidence to support the claim of the applicant that the benefit of reduction in the rate of tax on any supply of goods or services

  or

- the benefit of input tax credit has not been passed on to the recipient by way of commensurate reduction in prices.

(2) All applications from interested parties on issues **of local nature** [or those forwarded by the Standing Committee shall first be **examined by the State level Screening Committee**

and

The Screening Committee shall forward the application with its recommendations **to the Standing Committee** for further action **within 2 months** from the date of receipt of a written application, or within such extended period not exceeding a **further period of 1 month** for reasons to be recorded in writing as may be allowed by the Authority, upon being satisfied that the supplier has contravened the provisions of section 171,

129. Initiation and conduct of proceedings.-

(1)Where the Standing Committee is satisfied that there is a prima-facie evidence to show that the supplier has not passed on the benefit of reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices, it shall refer the matter to the Director General of [Anti-profiteering] for a detailed investigation.

Interpretation of Rule 129(1). Initiation and conduct of proceedings.-

(1) Where the Standing Committee is satisfied that

- There is a prima-facie evidence to show that the supplier has not passed on the benefit of reduction in the rate of tax on the supply of goods or services

  or

- The benefit of input tax credit to the recipient by way of commensurate reduction in prices,

It shall refer the matter to the Director General of [Anti-profiteering] for a detailed investigation.

(2) The Director General of [Anti-profiteering] shall conduct investigation and collect evidence necessary to determine whether the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has been passed on to the recipient by way of commensurate reduction in prices.

Interpretation of Rule 129 sub rule (2) The Director General of [Anti-profiteering] shall conduct investigation and collect evidence necessary to determine

- Whether the benefit of reduction in the rate of tax on any supply of goods or services

  or

- The benefit of input tax credit has been passed on to the recipient by way of commensurate reduction in prices.

(3) The Director General of [Anti-profiteering] shall, before initiation of the investigation, issue a notice to the interested parties containing, inter alia, information on the following, namely:-

(a) the description of the goods or services in respect of which the proceedings have been initiated;

(b) summary of the statement of facts on which the allegations are based; and

(c) the time limit allowed to the interested parties and other persons who may have information related to the proceedings for furnishing their reply.

(4) The Director General of [Anti-profiteering] may also issue notices to such other persons as deemed fit for a fair enquiry into the matter.

(5) The Director General of [Anti-profiteering] shall make available the evidence presented to it by one interested party to the other interested parties, participating in the proceedings.

(6) The Director General of [Anti-profiteering] *shall complete the investigation within 6 months of the receipt of the reference from the Standing Committee or within such extended period not exceeding a further period 3 months* for reasons to be recorded in writing [as may be allowed by the Authority] and, upon completion of the investigation, furnish to the Authority, a report of its findings along with the relevant records.

130. Confidentiality of information.-

(1) Notwithstanding anything contained in sub rules (3) and (5) of rule 129 and sub-rule (2) of rule 133, the provisions of section 11 of the Right to Information Act, 2005 (22 of 2005), shall apply mutatis mutandis to the disclosure of any information which is provided on a confidential basis.

(2) The Director General of [Anti-profiteering] may require the parties providing information on confidential basis to furnish non-confidential summary thereof and if, in the opinion of the party providing such information, the said information cannot be summarised, such party may submit to the Director General of [Anti-profiteering] a statement of reasons as to why summarization is not possible.

131. Cooperation with other agencies or statutory authorities.-Where the Director

General of [Anti-profiteering] deems fit, he may seek opinion of any other agency or statutory authorities in the discharge of his duties.

132. Power to summon persons to give evidence and produce documents.-

(1) The [Authority,]Director General of [Anti-profiteering] or an officer authorised by him in this behalf, shall be deemed to be the proper officer to exercise the power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing under section 70 and shall have power in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

(2) Every such inquiry referred to in sub-rule (1) shall be deemed to be a judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860).

133. Order of the Authority.-

(1) The Authority shall, within a period of [six] months from the date of the receipt of the report from the Director General of [Anti profiteering] determine whether a registered person has passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices.

(2) An opportunity of hearing shall be granted to the interested parties by the Authority where any request is received in writing from such interested parties.

[(2A) The Authority may seek the clarification, if any, from the Director General of Anti Profiteering on the report submitted under sub-rule (6) of rule 129 during the process of determination under sub-rule (1).]

[(3) Where the Authority determines that a registered person has not passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices, the Authority may order-

(a) reduction in prices;

(b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of eighteen per cent. from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount including interest not returned, as the case may be;

(c) the deposit of an amount equivalent to fifty per cent. of the amount determined under the above clause [along with interest at the rate of eighteen per cent. from the date of collection of the higher amount till the date of deposit of such amount] in the Fund constituted under section 57 and the remaining fifty per cent. of the amount in the Fund constituted under section 57 of the Goods and Services Tax Act, 2017 of the

concerned State, where the eligible person does not claim return of the amount or is not identifiable;

(d) imposition of penalty as specified under the Act; and

(e) cancellation of registration under the Act.

Explanation: For the purpose of this sub-rule, the expression, —concerned State means the State [or Union Territory] in respect of which the Authority passes an order.]

[(4) If the report of the Director General of [Anti-profiteering] referred to in sub-rule (6) of rule 129 recommends that there is contravention or even non-contravention of the provisions of section 171 or these rules, but the Authority is of the opinion that further investigation or inquiry is called for in the matter, it may, for reasons to be recorded in writing, refer the matter to the Director General of [Anti-profiteering] to cause further investigation or inquiry in accordance with the provisions of the Act and these rules.]

[(5) (a) Notwithstanding anything contained in sub-rule (4), where upon receipt of the report of the Director General of Anti-profiteering referred to in sub-rule (6) of rule 129, the Authority has reasons to believe that there has been contravention of the provisions of section 171 in respect of goods or services or both other than those covered in the said report, it may, for reasons to be recorded in writing, within the time limit specified in sub rule (1), direct the Director General of Anti-profiteering to cause investigation or inquiry with regard to such other goods or services or both, in accordance with the provisions of the Act and these rules.

(b) The investigation or enquiry under clause (a) shall be deemed to be a new investigation or enquiry and all the provisions of rule 129 shall mutatis mutandis apply to such investigation or enquiry.]

Interpretation of Rule 133

(1) Within 6 months from the date of the receipt of the report from the Director General of Anti-profiteering , the Authority shall determine

- Whether a registered person has passed on the benefit of the reduction in the rate of tax on the supply of goods or services

or

- The benefit of input tax credit to the recipient by way of commensurate reduction in prices.

(2) An opportunity of hearing shall be granted to the interested parties by the Authority where any request is received in writing from such interested parties.

(2A) The Authority may seek the clarification, if any, from the Director General of Anti Profiteering on the report submitted under sub-rule (6) of rule 129 during the process of determination under sub-rule (1).

(3) Where the Authority determines that

- A registered person has not passed on the benefit of the reduction in the rate of tax on the supply of goods or services

  or

- The benefit of input tax credit to the recipient by way of commensurate reduction in prices, the Authority may order-

(a) reduction in prices;

(b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest 18%. from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount including interest not returned, as the case may be;

(c) the deposit of an amount equivalent 50% of the amount determined under the above clause along with interest 18%. from the date of collection of the higher amount till the date of deposit of such amount in the Fund constituted under section 57 and the remaining fifty per cent. of the amount in the Fund constituted under section 57 of the Goods and Services Tax Act, 2017 of the concerned State, where the eligible person does not claim return of the amount or is not identifiable;

(d) imposition of penalty as specified under the Act; and

(e) cancellation of registration under the Act.

4) If the report of the Director General of Anti-profiteering referred to in sub-rule (6) of rule 129 recommends that there is contravention or even non-contravention of the provisions of section 171 or these rules, but the Authority is of the opinion that further investigation or inquiry is called for in the matter, it may, for reasons to be recorded in writing, refer the matter to the Director General of Anti-profiteering to cause further investigation or inquiry in accordance with the provisions of the Act and these rules.

(a) Notwithstanding anything contained in sub-rule (4), where upon receipt of the report of the Director General of Anti-profiteering referred to in sub-rule (6) of rule 129, the Authority has reasons to believe that there has been contravention of the provisions of section 171 in respect of goods or services or both other than those covered in the said report, it may, for reasons to be recorded in writing, within the time limit specified in sub-rule (1), direct the Director General of Anti-profiteering to cause investigation or inquiry with regard to such other goods or services or both, in accordance with the provisions of the Act and these rules.

(b) The investigation or enquiry under clause (a) shall be deemed to be a new investigation or enquiry and all the provisions of rule 129 shall mutatis mutandis apply to such investigation or enquiry.

134. Decision to be taken by the majority.-

(1) A minimum of three members of the Authority shall constitute quorum at its meetings.

(2) If the Members of the Authority differ in their opinion on any point, the point shall be decided according to the opinion of the majority of the members present and voting, and in the event of equality of votes, the Chairman shall have the second or casting vote.

134. Decision to be taken by the majority.-

(1) Minimum of 3 members of the Authority shall constitute quorum at its meetings.

(2) If the Members of the Authority differ in their opinion on any point,

- The point shall be decided according to the opinion of the majority of the members present and voting,

and

- In the event of equality of votes, the Chairman shall have the second or casting vote.

135. Compliance by the registered person.-Any order passed by the Authority under these rules shall be immediately complied with by the registered person failing which action shall be initiated to recover the amount in accordance with the provisions of the Integrated Goods and Services Tax Act or the Central Goods and Services Tax Act or the Union territory Goods and Services Tax Act or the State Goods and Services Tax Act of the respective States, as the case may be.

136. Monitoring of the order.- The Authority may require any authority of central tax, State tax or Union territory tax to monitor the implementation of the order passed by it.

137. Tenure of Authority.- The Authority shall cease to exist after the expiry of [four years] from the date on which the Chairman enters upon his office unless the Council recommends otherwise.

Explanation.- For the purposes of this Chapter,

(a) —Authority means the National Anti-profiteering Authority constituted under rule 122;

(b) —Committee means the Standing Committee on Anti-profiteering constituted by the Council in terms of sub-rule (1) of rule 123 of these rules;

(c) —interested party includes

a. suppliers of goods or services under the proceedings; and

b. recipients of goods or services under the proceedings;

c. [any other person alleging, under sub-rule (1) of rule 128, that a registered person has not passed on the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices.]

(d) —Screening Committee means the State level Screening Committee constituted in terms of sub-rule (2) of rule 123 of these rules

Rule 137
Tenure of Authority –After the expiry of 4 years from the date on which the Chairman was being appointed

CHAPTER - 11

Anti Profiteering Notifications and Circulars

Notification No. 14/2018 – Central Tax

Dated – 23-03-2018

Amending the CGST Rules, 2017(Third Amendment Rules, 2018)

The Central Government has made further amendments in the Central Goods and Services Tax Rules, 2017, namely: -

In the Central Goods and Services Tax Rules, 2017,-

(i) **in rule 45**, in sub-rule (1), after the words, "where such goods are sent directly to a job worker", occurring at the end, the following shall be inserted, namely:-

", and where the goods are sent from one job worker to another job worker, the challan may be issued either by the principal or the job worker sending the goods to another job worker:

Provided that the challan issued by the principal may be endorsed by the job worker, indicating therein the quantity and description of goods where the goods are sent by one job worker to another or are returned to the principal:

Provided further that the challan endorsed by the job worker may be further endorsed by another job worker, indicating therein the quantity and description of goods where the goods are sent by one job worker to another or are returned to the principal.";

(ii) **in rule 124** – (a) in sub-rule (4), in the first proviso, after the words "Provided that", the letter "a" shall be inserted; (b) in sub-rule (5), in the first proviso, after the words "Provided that", the letter "a" shall be inserted;

(iii) **for rule 125**, the following rule shall be substituted, namely:-

"125. Secretary to the Authority- An officer not below the rank of Additional Commissioner (working in the Directorate General of Safeguards) shall be the Secretary to the Authority.";

(iv) **in rule 127**, in clause (iv), after the words "to furnish a performance report to the Council by the tenth", the word "day" shall be inserted;

(v) **in rule 129**, in sub-rule (6), for the words "as allowed by the Standing Committee", the words "as may be allowed by the Authority" shall be substituted;

(vi) **in rule 133,** after sub-rule (3), the following sub-rule may be inserted, namely:-

"(4) If the report of the Director General of Safeguards referred to in sub-rule (6) of rule 129 recommends that there is contravention or even non-contravention of the provisions of section 171 or these rules, but the Authority is of the opinion that further investigation or inquiry is called for in the matter, it may, for reasons to be

recorded in writing, refer the matter to the Director General of Safeguards to cause further investigation or inquiry in accordance with the provisions of the Act and these rules.";

(vii) **for rule 134,** the following rule shall be substituted, namely:-

"134. Decision to be taken by the majority-

(1) A minimum of 3 members of the Authority shall constitute quorum at its meetings.

(2) If the Members of the Authority differ in their opinion on any point, the point shall be decided according to the opinion of the majority of the members present and voting, and in the event of equality of votes, the Chairman shall have the second or casting vote.";

(viii) **after rule 137**, in the Explanation, in clause (c), after sub-clause b, the following sub clause shall be inserted, namely: -

"c. any other person alleging, under sub-rule (1) of rule 128, that a registered person has not passed on the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices.";

(ix) **after rule 138D,** the following Explanation shall be inserted, with effect from the 1st of April, 2018, namely:-

"Explanation - For the purposes of this Chapter, the expressions 'transported by railways', 'transportation of goods by railways', 'transport of goods by rail' and 'movement of goods by rail' does not include cases where leasing of parcel space by Railways takes place."

Notification No. 21/2018 – Central Tax

Dated – 18-04-2018

Consumer Welfare Fund

The Central Government made further amendments in the Central Goods and Services Tax Rules, 2017, namely:-

(i) **in rule 89,** for sub-rule (5), the following has substituted, namely:-

"(5). In the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula:-

Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} - Tax payable on such inverted rated supply of goods and services.

(a) "Net ITC" shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both; and

(b) "Adjusted Total turnover" shall have the same meaning as assigned to it in sub-rule (4).";

(ii) For rule 97, the following rule has substituted, namely:-

Consumer Welfare Fund -

(1) All amounts of duty/central tax/ integrated tax /Union territory tax/cess and income from investment along with other monies specified in sub-section (2) of section 12C of the Central Excise Act, 1944 (1 of 1944), section 57 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), section 21 of the Union Territory Goods and Services Tax Act, 2017 (14 of 2017) and section 12 of the Goods and Services Tax (Compensation to States) Act, 2017 (15 of 2017) shall be credited to the Fund:

Provided that an amount equivalent to 50% of the amount of integrated tax *(determined under sub-section (5) of section 54 of the Central Goods and Services Tax Act, 2017, read with section 20 of the Integrated Goods and Services Tax Act, 2017),* shall be deposited in the Fund.

(2) Any amount, having been credited to the Fund, shall be paid from the Fund if that is ordered or directed to be paid to any claimant by the proper officer, appellate authority or court.

(3) Accounts of the Fund maintained by the Central Government shall be subject to audit by the Comptroller and Auditor General of India.

(4) The Government shall, by an order, constitute a Standing Committee with a Chairman, a Vice-Chairman, a Member Secretary and such other members and the Committee shall make recommendations for proper utilization of the money credited to the Fund for welfare of the consumers.

(5) (a) The Committee shall meet as and when necessary, generally four times in a year;

(b) The Committee shall meet at such time and place as the Chairman, or in his absence, the Vice-Chairman of the Committee may deem fit;

(c) The meeting of the Committee shall be presided over by the Chairman, or in his absence, by the Vice-Chairman;

(d) The meeting of the Committee shall be called, after giving at least 10 days notice in writing to every member;

(e) The notice of the meeting of the Committee shall specify the place, date and hour of the meeting and shall contain statement of business to be transacted thereat;

(f) No proceeding of the Committee shall be valid, unless it is presided over by the Chairman or Vice-Chairman and attended by a minimum of three other members.

(6) The Committee shall have powers –

(a) to require any applicant to get registered with any authority as the Central Government may specify;

(b) to require any applicant to produce before it, or before a duly authorized officer of the Central Government or the State Government, as the case may be, such books, accounts, documents, instruments, or commodities in custody and control of the applicant, as may be necessary for proper evaluation of the application;

(c) to require any applicant to allow entry and inspection of any premises, from which activities claimed to be for the welfare of consumers are stated to be

carried on, to a duly authorized officer of the Central Government or the State Government, as the case may be;

(d) to get the accounts of the applicants audited, for ensuring proper utilization of the grant;

(e) to require any applicant, in case of any default, or suppression of material information on his part, to refund in lump-sum along with accrued interest, the sanctioned grant to the Committee, and to be subject to prosecution under the Act;

(f) to recover any sum due from any applicant in accordance with the provisions of the Act;

(g) to require any applicant, or class of applicants to submit a periodical report, indicating proper utilization of the grant;

(h) to reject an application placed before it on account of factual inconsistency, or inaccuracy in material particulars;

(i) to recommend minimum financial assistance, by way of grant to an applicant, having regard to his financial status, and importance and utility of the nature of activity under pursuit, after ensuring that the financial assistance provided shall not be misutilised;

(j) to identify beneficial and safe sectors, where investments out of Fund may be made, and make recommendations, accordingly;

(k) to relax the conditions required for the period of engagement in consumer welfare activities of an applicant;

(l) to make guidelines for the management, and administration of the Fund.

(7) The Committee shall not consider an application, unless it has been inquired into, in material details and recommended for consideration accordingly, by the Member Secretary.

(8) The Committee shall make recommendations:-

(a) for making available grants to any applicant;

(b) for investment of the money available in the Fund;

(c) for making available grants (on selective basis) for reimbursing legal expenses incurred by a complainant, or class of complainants in a consumer dispute, after its final adjudication;

(d) for making available grants for any other purpose recommended by the Central Consumer Protection Council (as may be considered appropriate by the Committee);

(e) for making available up to 50% of the funds credited to the Fund each year, for publicity/ consumer awareness on GST, provided the availability of funds for consumer welfare activities of the Department of Consumer Affairs is not less than Rs. 25 crore per annum.

Notification No. 29/2018 – Central Tax

Dated – 06-07-2018

Renaming of DG Safeguards as DG Anti-profiteering

The Central Government has made further amendments in the Central Goods and Services Tax Rules, 2017, namely:-

1. In the Central Goods and Services Tax Rules, 2017, -

   (i) **in rule 125,** for the words "Directorate General of Safeguards", the words "Directorate General of Anti-profiteering" shall be substituted;

   (ii) **in rule 129,** for the words "Director General of Safeguards", wherever they occur, the words "Director General of Anti-profiteering" shall be substituted;

   (iii) **in rule 130**, in sub-rule (2), for the words "Director General of Safeguards", at both places where they occur, the words "Director General of Anti-profiteering" shall be substituted;

   (iv) **in rule 131**, for the words "Director General of Safeguards", the words "Director General of Anti-profiteering" shall be substituted;

   (v) **in rule 132**, in sub-rule (1), for the words "Director General of Safeguards", the words "Director General of Anti-profiteering" shall be substituted;

   (vi) **in rule 133,** for the words "Director General of Safeguards", wherever they occur, the words "Director General of Anti-profiteering" shall be substituted.

Anti-Profiteering Standard Operating Procedure (SOP)
for CGST and SGST field formations

I. Role to be played by officers posted in CGST & SGST field formations as soon as any GST-rate reduction/ additional ITC benefit is announced:-

A. Record Keeping:-

All executive Commissioners of CGST and SGST may utilise all available resources, including human resources, at their disposal to maintain a list of Notifications allowing change in tax rate or any additional ITC benefit, with effective date thereof, and identify, within their jurisdiction, the specific goods along with HSN codes and services which are going to be affected.

B. Identification of Suppliers:-

Commissioners shall identify top twenty suppliers under their jurisdiction (manufacturers/ distributors/ and service providers) in respect of which the prices/ MRP and availability of Input Tax Credit are likely to be impacted by change in tax rate or any additional ITC benefit. The first B2B invoices of these suppliers' value chains, for the relevant period, may be checked, for any prima facie violations of anti-profiteering provisions.

C. Data Collection:-

Commissioners shall get the data collected, from such suppliers across all levels of

the supply chain and collect pre-rate-reduction evidences, such as invoices, which would help them to establish the facts of the case. For this purpose, Commissioners may either use the jurisdictional field functionaries or set up specialized anti-profiteering cell for the purpose of operationalizing and coordinating the anti-profiteering work in their jurisdictions and to help increase awareness regarding the anti-profiteering provisions amongst consumers and other stakeholders.

D. Mock Purchases:-

Commissioners may also cause purchase of any goods or services affected by a rate change. Section 67(12) of the Central Goods and Services Tax Act, 2017, which is reproduced below, authorizes the Commissioners to make mock-purchases so as to gather invoices for evidence.

*"67(12) The Commissioner or an officer authorized by him **may cause purchase of any goods or services** or both by any person authorized by him from the business premises of any taxable person, to check the issue of tax invoices or bills of supply by such taxable person, and on return of goods so purchased by such officer, such taxable person or any person in charge of the business premises shall refund the amount so paid towards the goods after cancelling any tax invoice or bill of supply issued earlier."*

This provision of the Act may be proactively used to collect the evidence for profiteering made by any such supplier.

II. Role to be played by officers posted in CGST & SGST field formations after any GST-rate reduction/ additional ITC benefit is implemented:-

A. Verification of first B2B invoices:-

Commissioners shall identify top 20 suppliers under their jurisdiction (manufacturers/ distributors/ retailers /job workers and service providers) in respect of which the prices/ MRP and availability of Input Tax Credit got actually impacted by change in tax rate. The first B2B invoices of these suppliers' value chain, for the relevant period, may be checked, for any prima facie violation of any anti-profiteering provisions, within a reasonable time. Commissioners and jurisdictional officers may supply the details of any such prima facie violation, along with prima facie estimation, of the profiteering amount involved, if any, to the State-level Screening Committee for further action thereon.

B. Documentation to be checked for Identification of Potential Cases of Profiteering:-

Commissioners shall get the possible cases of profiteering identified, by study of the following data depending on the requirement-

- changes in prices/ MRPs before and after any reduction in tax rates/ increase
- changes in the availability of input tax credit.

Also, they may get specific cases of profiteering identified by studying the changes in cases of increase in tax credit of inputs of suppliers. Scope of these documents may inter alia include:

i) Sale price lists/ MRP Lists of each product / SKU/ Service – pre and post GST change/reduction of rate

ii) Invoice data, GSTR-1 Invoices (Pre & Post)

iii) New MRP stickers with reduced rates affixed (Both Pre & Post)

iv) GSTR-2A to check for pre and post rate changes on inputs

v) ITC ledger of the taxpayer.

C. **Checking the fixation of stickers with revised MRPs:-**

Commissioners shall get it checked that the sale prices/MRPs have been revised / MRP stickers fixed, in cases of reduction of tax rate at all levels of the supply chain, and ascertained as to whether such change in MRP/ prices is prima-facie commensurate with the change in tax rates.

D. **Premise Visits by field officers:-**

In case of any probable profiteering, the field officers, whenever they find any such eventuality, may visit the GST registrant/taxpayer, after approval by competent authority, to collect specific prima facie evidences.

E. ***Centralized Public* Grievance Redress And Monitoring System (*CPGRAMS*)/ Other Complaints:-**

Any CPGRAM or other complaints of the nature of the non-reduction of products' prices even after a GST rate reduction shall be duly forwarded to the Standing Committee on Anti-Profiteering, or to the State Screening Committee on Anti-Profiteering, as the case may be.

F. **Role of Investigative Agencies/ Verification Teams and Audit:-**

GST officers conducting anti-evasion verifications, audits and similar checks, including inspections and search operations, in respect of taxpayers may also include checks from the perspective of identification of cases of profiteering within the scope of Section 171 of the CGST Act, 2017. Necessary instructions may be issued by the CBIC and Commissioners of SGST to the field functionaries in this regard.

While such checks could include scrutiny of multifarious records and returns of the taxpayer, especially the books of accounts, selling price/MRP Lists of each SKU before and after announcement of any tax rate changes, Invoice Data (GSTR-1) and Input data (GSTR-2 or GSTR-2A), officers may actually look for the following pointers -

a. Sudden swelling up of the ITC for the quarters immediately succeeding any GST rate-reduction or changes in tax structure of inputs.

b. Abrupt increase in the net profits for the quarters immediately succeeding any GST rate-reduction or changes in tax structure of inputs.

c. any enhancement of the base price of any product (at the SKU level) immediately after announcement of a GST rate reduction/ additional ITC availability, in a manner that the final price/ MRP of the product, being paid by the recipient/ consumer is not reduced commensurately at any level of the supply chain and the ultimate consumers is denied the benefit.

G. **Role of field functionaries at the local/Range/Circle Level:-**

Local field officers shall also identify possible cases of profiteering through study of the periodic returns, specifically price data, Input Tax Credit, etc. filed by the GST registrants and through interaction with trade and industry.

H. **Complaint Filing by Jurisdictional Office, as per Rule 128:-**

In case of a prima-facie detection of a case of profiteering by any taxpayer, the concerned jurisdictional Commissioner or any officer authorized by the Commissioner, may file, at the earliest and preferably within a reasonable period of one month of such detection, an application under Rule 128 of CGST Rules along with necessary details and evidence, with the concerned State level Screening Committee.

III. Role to be played by Senior Officers Monitoring the Performance of Field Functionaries

Officers conducting inspections and monitoring performance of field functionaries/ offices may also monitor and review/ inspect the performance of the field functionaries from the perspective of anti-profiteering work.

Notification of Detailed Guidelines by NAA, in pursuance of the DoR O.M

Dated - 09.09.2019

The Central Goods and Services Tax Rules, 2017 and in terms of the Office Memorandum No. F.No. 13/1/2017-Ad.I, dated 9th September, 2019, issued the following guideline to be followed by Directorate General of Anti-profiteering (DGAP) with immediate effect for the effective and discharge of its function and responsibilities assigned to it under section 171 of the the Central Goods and Services Tax Rules, 2017.

1. The Authority shall exercise superintendence, direction and control over the Director General of Anti-profiteering and may issue the directions /instruction in this regards from time to time.
2. All Reports, to be furnished to the Authority, under Rule 129(6), 133(2A), 133(4) or 133(5) of the Central Goods and Services Tax Rules, 2017, shall be furnished by the Director General of Anti-profiteering himself.
3. The Director General of Anti-profiteering shall defend his Report during the hearing before the Authority in which he shall be represented by a Gazetted Officer who should be well versed with the facts of the case. A notice shall be issued to the General of Anti-profiteering intimating date, time and place fixed for the hearing.
4. For monitoring the performance of the standing Committee on Anti-profiteering and the State Screening Committee, the Director General of Anti-profiteering shall compile the details of the cases received and disposed of by them every quarter which shall be laid before the Authority, before the tenth of the succeeding month of every quarter.
5. To ensure the effective monitoring of the implementation and compliance of the Authority's order the General of Anti-profiteering shall monitor the compliance and

implementation of Authority's order under Rule 136 of the CGST Rules, 2017, and shall furnish a consolidated status report on the Order pass by the Authority, the tenth of the every month. The concerned jurisdiction Commissioners of the Central and State Tax vertical shall send to enable him to compile the consolidated monthly report.

6. The Authority shall review the following every month:

   a. The status of pendency of investigation and other Report to be furnished under Rules, 2017;

   b. Status of judicial proceeding pending against Authority orders before any judicial fora;

   c. Performance of the State screening Committees on Anti-profiteering and Standing Committee on Anti-profiteering, including the matter of reconstitution of these Committees, if required;

   d. Status of implementation of the Authority's Order;

   e. Any other matter, as may be directed by the Authority.

7. During the review meeting, the General of Anti-profiteering shall be present himself along with the assisting staff as he may deem fit.

8. The General of Anti-profiteering shall furnish Classifications under Rule 133(2A), within the time limit prescribe by the Authority in writing to extend the time limit.

9. The General of Anti-profiteering shall furnish his Report under Rule 133(4), within the time limit prescribe by the Authority. In the event of delay, the General of Anti-profiteering shall, after stating the reasons for such delay, requested Authority to extend the time limit by a further period as deemed fit by the Authority.

10. It is clarified that the report submitted by the General of Anti-profiteering, under Rule 133(4), shall be constructed to be fresh Report for the purposes of Rule 133(1)

11. The General of Anti-profiteering shall act as the coordination/liaison office between the Authority and the government legal counsels defending the Authority's order before any higher judicial fora. All the tasks incidental to ensuring a proper defence before the judiciary, including but not limited to making the para-wise report/ comments, shall be the responsibility of the General of Anti-profiteering.

12. All the Report/replies to the submission made by the other parties shall be furnished by the General of Anti-profiteering within the time limit fixed by the Authority in its orders. In case any extension of the time for filing them is required, the same shall be requested for in writing. In case no reply/ report is proposed to be filed, the same shall be intimated to the Authority, in writing.

13. The Report of the Director General of Anti-profiteering, furnished under Rule 129(6), 133(2A), 133(4) or 133(5) of the above Rules, shall contain his clear finding duly supported by the evidence or documents or statements or affidavits or analysis relied upon by him which shall be placed before the authority.

    Provided that whatever considered necessary, the Director General of Anti-profiteering may, for maintaining confidentiality, submit his Report in two parts, one

of which may contain the documents to which access to the other parties may be allowed and another which shall contain the confidential information to which access may be partially or totally restricted.

14. The Director General of Anti-profiteering shall furnish his Report in seven copies, along with electronic version in document format, to the Authority.

15. All cases of sanction of leave; approval of the tour programmes, including private foreign visits; and initiation/review/acceptance of the APARs, of all the group 'A' officer, including the AD(Cost), working in the Directorate General of Anti-profiteering, for approval and sanction, shall be put up on file before the Chairman of the Authority. The details guidelines in this regard will be issued separately.

    All such administrative function and the powers over the other officer/staff of the Directorate General of Anti-profiteering stand delegated to Director General himself, in accordance with the general administrative and financial delegation within government.

16. The Director General of Anti-profiteering and all his officer shall provide all the necessary secretarial and administrative assistance to the Authority as directed by it from time to time, in furtherance of the mandate of the CGST Act,2017 and the CGST Rules, 2017.

CHAPTER - 12

Case Laws

NAA Order No. 16/2020

M/s Patanjali Ayurveda Ltd.

File No.22011/NAA/127/Patanjali/2018

Director General of Anti-Profiteering Anti-Profiteering vs. M/S Patanjali Ayurveda Ltd.

Fact of the Case:

M/S Patanjali Ayurveda Ltd. has been found guilty of profiteering by the National Anti-Profiteering Authority (NAA) and has been directed to cough up Rs 75.08 crore under the GST anti-profiteering provisions.

While the GST rates were revised from 28% to 18% in 2017, the Haridwar-based FMCG company was found to be holding on to the benefits of goods and services tax (GST) rate reduction instead of passing them to the consumers.

Decision of the case:

The Coram constituting Chairman, N. Sharma and two Technical Members, J. C. Chauhan, and Amand Shah said that the Respondent did not pass on the benefit of the reduction in the tax rates to his recipients by way of commensurate reduction in prices, in terms of Section 171 of the CGST Act, 2017 and respondent had contravened the provisions of Section 171(1) of the CGST Act, 2017

Section 171 of the CGST Act, 2017, provides that any reduction in the rate of tax on any supply of goods or services or the benefit of the input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.

The Company allegedly profiteered the said amount by not passing on to consumers the benefit of deduction in Goods and Service Tax rates announced in November 2017.

The Coram further said that CGST Act mandates that companies should make an immediate

The National Anti-profiteering Authority (NAA), New Delhi has directed Patanjali Ayurveda to deposit 75.08 Crore Rupees the profiteered amount by the company within three months in specified consumer welfare funds of central and state governments along with an 18% interest from the date amount was collected.

NAA Order No. 15/2020

M/s NY Cinemas LLP Pvt. Ltd.

File No.22011/NAA/76/NY/2019

Director General of Anti-Profiteering Vs NY Cinemas LLP

Fact of the Case:

Applicant has alleged that the respondent has not passed on the benefit of reduction in GST rates on 'services by way of admission to exhibition of cinematograph films where price of admission ticket was above one hundred rupees' from 28% to 18% and 'Services by way of admission to exhibition of cinematograph films where price of admission ticket was one hundred rupees or less' from 18% to 12% w.e.f 01.01.2019 by notification 27/2018-CTR dated 31.12.2018 by way of commensurate reduction in prices and instead had increased the base prices to maintain the same cum-tax selling prices of the admission tickets.

Applicant had also submitted copies of invoices with 28% and 18% GST charged.

DGAP in its report stated that the allegation stood established against the respondent in as much as the respondent had realised an excess amount of ₹14/- from the applicant which included both the profiteered amount and the GST on the same.

The respondent had realised an excess amount of ₹4,01,506/- from the other recipients and the applicant no. 1; that the other recipients were not identifiable and, therefore, the authority may consider ordering the deposit of the balance amount of ₹4,01,506/- in the respective Consumer Welfare Funds.

The supplies were made in the States of Punjab, Uttar Pradesh and Gujarat, however, the ambit of this investigation was limited to the theatre situated in the district of Hapur only.

DGAP has in its supplementary report dated 22.01.2020 accepted the contention of the respondent and admitted that due to some error in calculation, few shows of the 3D movie 'Captain Marvel' were included in the amount of profiteering and an amount of ₹11,248/- was wrongly included in the profiteered amount, which amount is required to be reduced.

Decision of the case:

The DGAP report it is evident that the respondent has indulged in profiteering in violation of provisions of Sec171 of the Act and has not passed on the benefit of reduction in the rates of tax to his customers and,

Therefore, is liable for action under rule 133 of the Rules - accordingly, the profiteered amount is determined as ₹3,90,272/- (₹4,01,520/- minus ₹11,248/-) which includes an amount of ₹14/- including GST which the respondent has profiteered in respect of applicant no.1 and ₹3,90,258/- in respect of other recipients.

Respondent is further directed to refund an amount of ₹ 14/- to the Applicant no. 1 along with interest calculated @18%

Respondent is also directed to deposit the balance amount of profiteering of ₹1,95,129/- in the Central CWF and ₹1,95,129/- in the Uttar Pradesh State CWF as per provisions of rule

133(3)(c) of the Rules along with interest @18% and amount to be deposited within three months.Penalty imposable for contravention of Sec 171(1) in terms of Sec 171(3A) of the Act.

NAA Order No. 14/2020

M/s Le Reve Pvt. Ltd.

File No.22011/NAA/71/Le Reve/2019/1480-85

Director General of Anti-Profiteering Vs Le RevePvt Ltd

Fact of the Case:

Applicant alleges profiteering in respect of restaurant service supplied by respondent (a franchisee of M/s Subway Systems India P Ltd.) inasmuch as it is alleged that despite the reduction in the rate of GST from 18% to 5% w.e.f 15.11.2017,

The respondent had not passed on the commensurate benefit since he had increased the base prices of his products –

DGAP has reported that the analysis of the details of item-wise outward taxable supplies made during the period 15.11.2017 to 31.03.2019 revealed that the base prices of different items supplied as a part of restaurant services to make up for the denial of ITC post-GST rate reduction had been increased by the respondent; that on comparison of the pre and post-GST rate reduction prices of the items sold,

it is established that the respondent had increased the base prices by more than 8.01% i.e. by more than what was required to offset the impact of denial of ITC in respect of 248 items sold during the same period and hence the commensurate benefit of reduction in rate of tax from 18% to 5% has not been passed on to the customers;

The profiteered amount came to ₹8,24,260/- (including GST on the base profiteered amount); that the supplies were made in the State of Maharashtra only.

Decision of the case:

The profiteered amount has been correctly arrived at ₹8,24,260/- by the DGAP. Respondent is directed to reduce his prices commensurately in terms of rule 133(3) (a) of the CGST Rules.

Respondent is also directed to deposit an amount of ₹8,24,260/- in two equal parts in the Central Consumer Welfare Fund and the Maharashtra State Government Consumer Welfare fund as per the provisions of rule 133(3)(c) of the Rules

Since the recipients are not identifiable and the supplies were affected in the State of Maharashtra - above amounts to be deposited along with interest @18% within three months failing which it shall be recovered by the SGST Commissioner concerned.

In view of the contravention of provisions of Sec 171(1) of the Act, penalty is imposable u/s 171(3A) of the Act.

NAA Order No. 13/2020

M/s McNROE Pvt. Ltd.

File No.22011/NAA/75/McNROE/2019/1405-55

Director General of Anti-Profiteering VsM/s McNROE Pvt. Ltd

Fact of the Case:

In the case of M/s. McNROE Consumer Products Private Limited, the respondent company was held liable for denying the benefit of tax reduction to its consumers under Section 171 of the Central Goods and Service Tax (CGST) Act, 2017.

The petitioner namely Rahul Sharma claimed that the prices of the products affected by the rate reduction were not decreased commensurately, which ultimately violated Section 171(1) of the Central Goods and Service Tax (CGST) Act 2017.

Decision of the case:

The National Non-Profiteering Authority (NAA) comprising a Chairman, B.N. Sharma; Technical Members, J.C. Chauhan, and Amand Shah held that the respondent company was liable for denying the benefit of tax reduction to its consumers under Section 171 of the Central Goods and Service Tax (CGST) Act, 2017. As per the anti-profiteering rules under Goods and Service Tax (GST), "benefits of input tax credit should have been passed on to the recipient by way of commensurate reduction in prices." However, in the report it is stated that M/s. McNROE Consumer Products Private Limited did not comply with the norms.

The National Non-Profiteering Authority (NAA) imposed the penalty on M/S. McNROE for denying the benefit of tax reduction to the consumers.

NAA Order No. 12/2020

Portronics Digital Pvt. Ltd.

File No.22011/NAA/68/Portronics/2019/1232-35

Director General of Anti-Profiteering VsPortronics Digital Pvt. Ltd

Fact of the Case:

The applicant filed an application against the respondent namely Portronics Digital Private Limited before the standing committee on Anti-Profiteering, wherein the respondent was alleged to have profiteered the supply of the Power Bank "Portronics Power Slice 10" and the applicant has also alleged that the respondent has did not reduced the selling price of the power bank.

However, the respondent has violated Section 171 of the Central Goods and Service Tax (CGST) Act, 2017 which speaks of benefits of input tax credit should have been passed on to the recipient by way of commensurate reduction in prices.

Decision of the case:

The National Anti-Profiteering Authority (NAA) comprising a Chairman, B.N. Sharma; Technical Members, J.C. Chauhan, and Amand Shah held that the respondent has not submitted the supply chain wise data to the Director-General of Anti-Profiteering (DGAP) during an investigation. So the respondent company was directed to coordinate with the authority in the investigation.

Therefore, the Authority directed the Director-General of Anti-Profiteering (DGAP) recomputation of the profiteering amount of the Portronics Digital. And directed the respondent company to co-operate with the investigation. Also, the contention of the applicant will be heard after the recomputation is undertaken and the report is submitted by the Director-General of Anti-Profiteering (DGAP).

NAA Order No. 07/2020

M/s Samsung India Pvt. Ltd.

File No.22011/NAA/75/samsung/2019/1168-1220

Director General of Anti-Profiteering VsM/s Samsung India Pvt. Ltd

Fact of the Case:

Applicant alleges that the Respondent did not reduce the selling price of Samsung 80 cm (32 inches) HD ready LED TV 32FH4003 when the GST rate was reduced from 28% to 18% w.e.f 01.01.2019 [24/2018-CTR] and the price of the product remained the same after tax reduction and thus the benefit of reduction in the GST rate was not passed on to the recipients by way of commensurate reduction in the price in terms of s.171 of the CGST Act, 2017

Decision of the case:

Respondent has contended that he is not the 'supplier' of the goods for the transaction in question and the suppliers were two separate dealers namely 'Jumbo Distributors P Ltd.' and 'EP Electronic Paradise P. Ltd'

On perusal of the complaint, it is revealed that the name of the supplier was written as M/s Samsung India Electronics P Ltd. and to authenticate this contention the applicant had included screenshots of certain e-commerce portals like Amazon etc.

As a manufacturer, the respondent and not the wholesale distributors, dealers or retailers were responsible for fixing the MRPs as only he could fix the MRPs as per the provisions of rule 6 of the Legal Metrology (Packaged Commodities) Rules, 2011

Authority, in terms of Sec 171(1) is also required to ensure that both the above benefits are passed on, however, it has no mandate to act as a price regulator or price controller - Methodology for determination of benefit of ITC or reduction in rate of tax has been prescribed in Sec 171(1) itself and no separate methodology is required to be prescribed under rule 126.

The respondent is totally free to fix his prices and earn profit and he is only required to pass on the above benefit which has been given to him by the Central and State governments by sacrificing their own revenue which he cannot appropriate against his profits, Therefore, Sec 171 is not violative of the provisions of Article 19(1)(g) of the Constitution of India.

Contention of the respondent that pricing for B2C sales is highly dynamic and varies depending upon channel structure and other market factors such as size of business, operating cost, location and logistics etc. is untenable as provisions of Sec 171(1) of the Act.

If there was any increase in his costs, the respondents should have increased his prices before 31.12.2018, however, it cannot be accepted that his costs had increased on the intervening night of 31.12.2018/01.01.2019.

Profiteered amount is determined as ₹37,85,342/- as computed by DGAP in its report dated 12.09.2019 and respondent is directed to reduce his prices commensurately in terms of rule 133(3)(a) of the CGST Rules.

Respondent is directed to deposit the profiteered amount in the Consumer Welfare Fund of the Central and the State Government concerned as the recipients are not identifiable as per provisions of rule 133(3)(c) of the Rules; along with interest @18% and amount to be deposited within three months. Respondent is liable for imposition of penalty u/s 171(3A) of the Act.

NAA Order No. 05/2020

Xiaomi Technologies India Pvt. Ltd.

File No.22011/NAA/75/Xiaomi/2019

Director General of Anti-Profiteering VsXiaomi Technologies India Pvt. Ltd.

Fact of the Case:

The complaint filed by M/s Local Circles India Pvt. Ltd. against M/s Xiaomi Technology India Pvt. Ltd.The M/s Xiaomi Technology India Pvt. Ltd. was engaged in selling power-bank, the Goods and Service Tax (GST) levied was at 18% before Jan 2019 and it continued to charge 18% of Goods and Service Tax (GST) even after Jan 2019 and thus it did not lead to any reduction in the rate of tax applicable to the power bank and as a consequence the price of the power bank has remained same.

The issue raised in this case was whether the Xiaomi violated any provision of Section 171 of the Central Goods and Service Tax (CGST) Act, 2017 or nor? If in case the Xiaomi has violated, then what will be the quantum of profiteering?

Decision of the case:

The NAA bench consisting of B.N. Sharma (Chairman), J.C. Chauhan and Amand Shah (Technical Member) held that power-bank did not come under the purview of the

notification as it is described as the 'Lithium-ion Batteries' and the 18% of Goods and Service Tax (GST) levied is justified. Hence, in the present case in no aspect pertains to the case of profiteering. Therefore the scope of investigation or proceedings is limited to the issue of profiteering and not the issue of classification.

The National Anti-Profiteering Authority (NAA) has dismissed the profiteering allegations against the Xiaomi India.

NAA Order No. 04/2020

M/s Ramprastha Promoters & Developers Pvt. Ltd.

File No.22011/NAA/46/Ramprastha/2019

Director General of Anti-Profiteering Vs. M/s Ramprastha Promoters & Developers Pvt. Ltd.

Fact of the Case:

Section 171(1) mentioned above that it deals with two situations one relating to the passing on the benefit of reduction in the rate of tax and the second pertaining to the passing on the benefit of the ITC.

There has been no reduction in the rate of tax in the post GST period; hence the only issue to be examined is as to whether there was any net benefit of ITC with the introduction of GST.

ITC as a percentage of the turnover that was available to the Respondent during the pre-GST period (April-2016 to June-2017) was 1.72% and during the post-GST period (July-2017 to December-2018), it was 2.64%. This confirms that, post-GST, the Respondent has been benefited from additional ITC to the tune of 0.92% of his turnover and the same was required to be passed on to the Applicant No. 1 and the other flat buyers.

Decision of the case:

The Respondent has profiteered by an amount of ₹ 35,28,744/-(Annex-17) during the period of investigation i.e. 01.07.2017 to 31.12.2018. The above amount of ₹ 35,28,744/- (including 12% GST) that has been profiteered by the Respondent from his home buyers, including Applicant No. 1, shall be refunded by him, along with interest @18% thereon, from the date when the above amount was profiteered by him till the date of such payment, in line with the provisions of Rule 133 (3) (b) of the GCST Rules 2017.

We also take note of the fact that the Respondent has admitted to having profiteered by the above amount before this Authority vide his submissions dated 03.07.2019. Further, we observe that vide his submissions dated 20.08.2019, he has submitted sample credit notes and cheques as evidence to establish his claim of having passed on the benefit, amounting to ₹ 35,28,744/- along with interest thereon amounting to ₹ 7,32,220/- to 397 home buyers of 'Edge Tower'.

Thus the DGAP is directed to verify the above passing on of the ITC benefit and submit report within a period of 03 months from the passing of this order.

the Respondent has benefited from the additional ITC to the extent of 4.52% of the turnover during the period from July, 2017 to December, 2018 and hence the provisions of Section 171 of the CGST Act, 2017 have been contravened by the Respondent as he has not passed on the above benefit to his customers and has profiteered an amount of ₹ 51,12,928/- inclusive of GST @ 12% on the base profiteered amount of ₹ 45,65,114/-.

CHAPTER - 13

FAQ by National Anti Profiteering Authority

1. What is an 'Anti-profiteering' activity?

The suppliers of goods and services should pass on the commensurate benefit of any reduction in the rate of tax on such supplies or the benefit of input tax credit to the recipient by way of commensurate reduction in prices. The action of not passing of such above said benefits to the recipient amounts to "profiteering".

2. What is the anti-profiteering mechanism under CGST Act, 2017?

CGST Act, 2017 mandates a 3-tier structure for the investigation and adjudication of the complaints regarding profiteering.

i. National Anti-profiteering Authority (NAA)

ii. Directorate General of Anti-Profiteering (DGAP)

iii. State-level Screening Committees and Standing Committee.

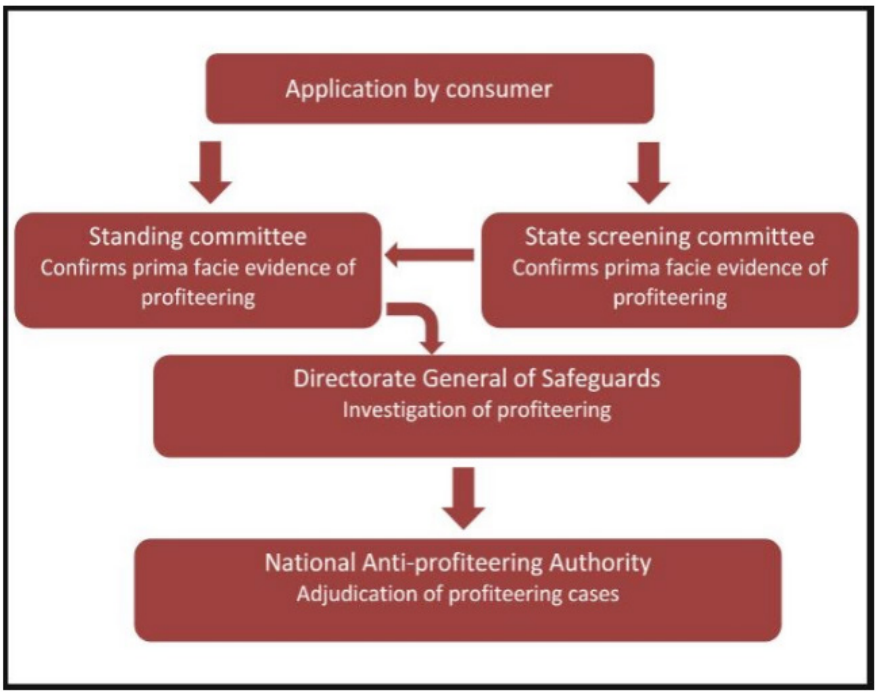
3. How does the Screening Committees and Standing Committee work? GST Council has constituted a Standing Committee, having members from both State and Central governments.

Every State shall have one State-level Screening Committee. It will have one member from State government and one-member from Central government as nominated by the respective appropriate authority.

State screening committee shall forward an application of a local nature, relating to profiteering to the Standing Committee if it is prima facie satisfied that Section 171 of the CGST Act has been contravened. [Rule 128 (2) of CGST Rules, 2017]

If the Standing Committee is satisfied that supplier has contravened the section 171 of CGST Act and there is a prima facie evidence in support of the allegation, the case shall be transferred to DG Anti-Profiteering for further investigation. [Rule 129 (1) of CGST Rules, 2017]

The Committees shall complete the investigation within 2 months from the date of the receipt of a written application or within such extended period not exceeding a further period of 1 month for reasons to be recorded in writing as may be allowed by the Authority.



4. What is the role of DG Anti-Profiteering in the anti-profiteering mechanism?

DG Anti-Profiteering is the investigating-arm in the anti-profiteering mechanism.

It can summon the interested parties or make inquiry or call for the relevant documents for the investigation. It can take help from technical expert in the due course of investigation. [Rule 132 of CGST Rules, 2017]

DG Anti-Profiteering shall complete the investigation within 6 months of the receipt of the reference from the Standing Committee or within such extended period not exceeding a further period of 3 months for reasons to be recorded in writing as may be allowed by the Authority. [Rules 129 (6) of CGST Rules, 2017].

5. Who can file the complaint of profiteering against a supplier?

Any consumer or organisation experiencing the non-reduction in the price of the goods or service despite reduction in the rate of tax can file the complaint with proper prima facie evidences.

Any supplier, trader, wholesaler or retailer, who could not get the commensurate benefit of input tax credit or on account of reduction in the rate of tax, or any interested party or any Commissioner or any other person can file the complaint with proper evidences.

6. How complaint of profiteering can be lodged against a supplier?

There are multiple ways through which aggrieved consumers or recipients of goods and services can register their complaints against profiteering:

1. Online complaint facility:

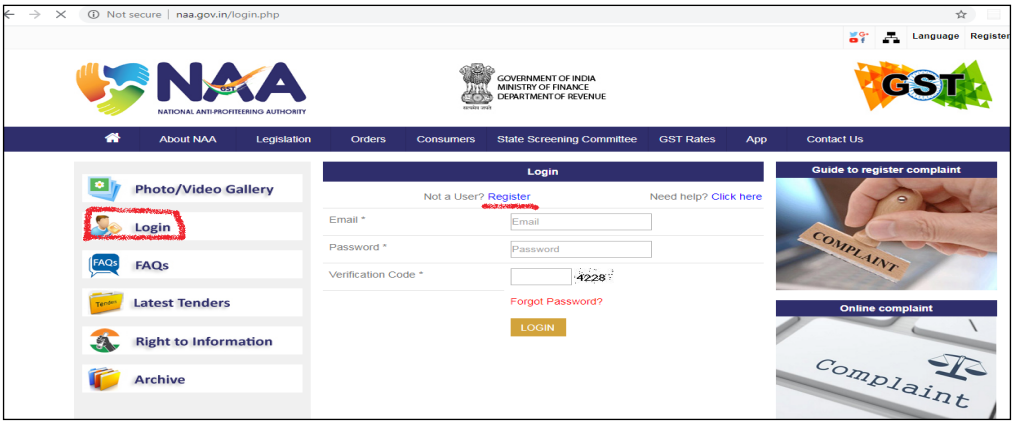
Complainant can register an online complaint at http://www.naa.gov.in/complaint.php

Guidelines for online Complaint

Registration Procedure:

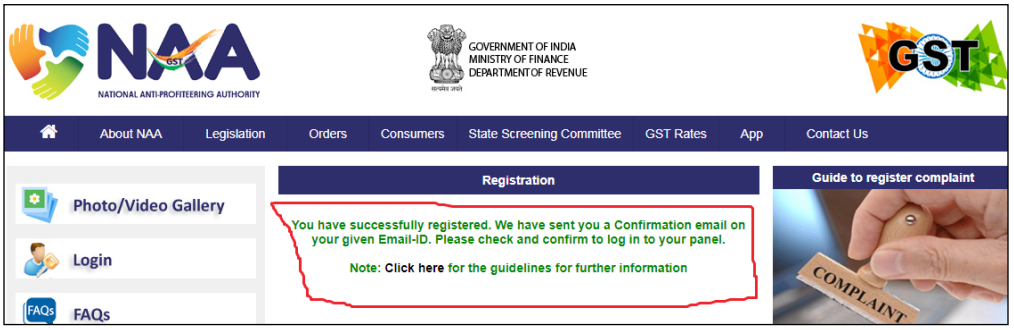
User needs to register himself/herself by filling the required fields in the Registration-form.

Step 1 – Go to National Anti Profiteering Website → Click on LOGIN → Click on Register



Step 2 – Fill up the all details for New Registration

Step 3 – The following message will be displayed



Step 4 – After successfully completing the Registration process, an e-mail will be sent to registered mail-id → Click on the verification link given in the mail by the NAA → Then it will be directed to log-in page of the website

Step 5 – Log-In using registered mail-ID and password.

Log-in will have four facilities:

1. make complaint
2. track-complaint
3. history of complaints
4. edit the profile
5. Log out

Step 6 – Make complaint → User can fill up the details required in the complaint-form along with evidence → User can upload evidence of .jpg, .pig, .doc or .pdf format within 3 MB size.

Step 7 – After successfully completing the Complaint-process, the user will receive the Complaint-ID for tracking the complaint in the future

2. Via Mail:

User can mail the complaint at

Agencies	Mail-Id	Nature of the complaint
Standing Committee	sc.antiprofiteering@gov.in	Complaints of the nature of national-level
State-Screening Committees	State-wise Mail-Ids: http://www.naa.gov.in/docs/SCREENING%20COMMITTEES_UPDATED.xlsx	Complaints of the nature of state-level or local

3. By Post:

Agencies	Postal-Addresses
National Anti-profiteering Authority	National Anti-profiteering Authority Dept. of Revenue, Ministry of Finance 6th Floor, Tower One Jeevan Bharati Building Connaught Place New Delhi-110 001.
Directorate General of Anti-Profiteering	Directorate General of Anti-profiteering, Dept. of Revenue, Ministry of Finance 2nd floor, Bhai Veer Singh Sahitya Sadan, Bhai Veer Singh Marg, Gole market, New Delhi -110 001.
Standing Committee	Directorate General of Anti-profiteering, Dept. of Revenue, Ministry of Finance 2nd floor, Bhai Veer singh sahitya sadan, Bhai Veer singh marg, Gole market, New Delhi -110 001.

The complaints can be sent to the Standing Committee at, E-mail id: sc.antiprofiteering@gov.in

7. How can the status of complaint of profiteering against a supplier be tracked?

The complainant can track the online-complaint through http://www.naa.gov.in/track-complaint.php

Procedure

Step 1-Log-In using registered mail-ID and password → Select "Track-complaint" → Enter the Complaint-ID and captcha → Then the status of the complaint will be available

Complainant can also contact at :

Directorate General of Anti-profiteering, Dept. of Revenue, Ministry of Finance,

2nd floor, Bhai Veer Singh Sahitya Sadan, Bhai Veer Singh Marg,

Gole market, New Delhi -110 001.

Contact no.: 011- 2374 1544,011- 2374 1542,

Email-id: dgap.cbic@gov.in

8. Will the applicant be eligible to recover the amount on account of complaint of profiteering against a supplier?

Under Rule 127 of CGST Rules, 2017, National Anti-profiteering Authority can order the defaulter to return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of 18% from the date of collection of higher amount till the date of return of such amount. The recipient is the eligible to receive the amount.

9. Will NAA provide opportunity of personal hearing to whom complaint is been made?

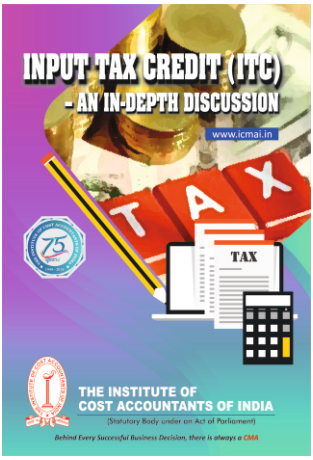
Yes. An opportunity of hearing shall be granted to the interested parties by the Authority if the request is received in writing from such interested parties.

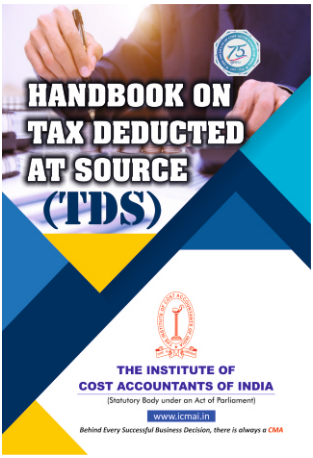
10. What is the consumer welfare fund?

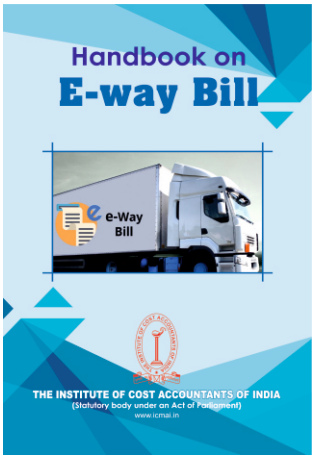
A separate fund has been created by the Central government under to Section 57 and 58 of the CGST Act, 2017 which would be utilized for the welfare of the consumers in the country.

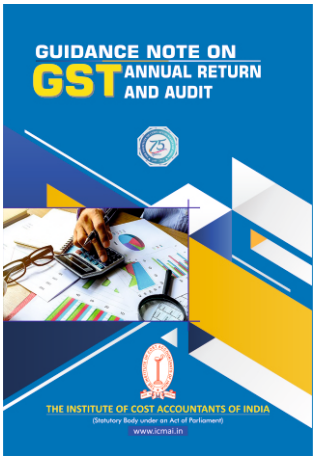
When the recovery of the amount, including interest, is not returned in case the eligible person does not claim return of the amount or the recipient is not identifiable, in such conditions, the recovered amount is deposited in the Consumer Welfare Fund.

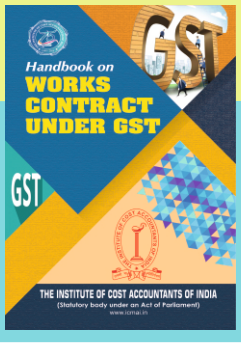
Tax Research Department Publications:

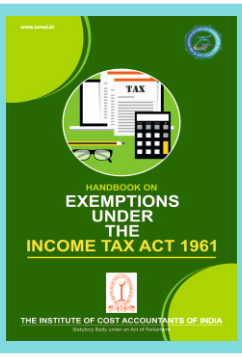


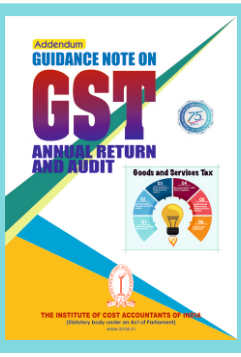












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