Paper 18: Indirect Tax Laws & Practice
Statutory updates for December 2023 examination
From 1st December 2022 to 31st May 2023

Goods and Services Tax (GST)

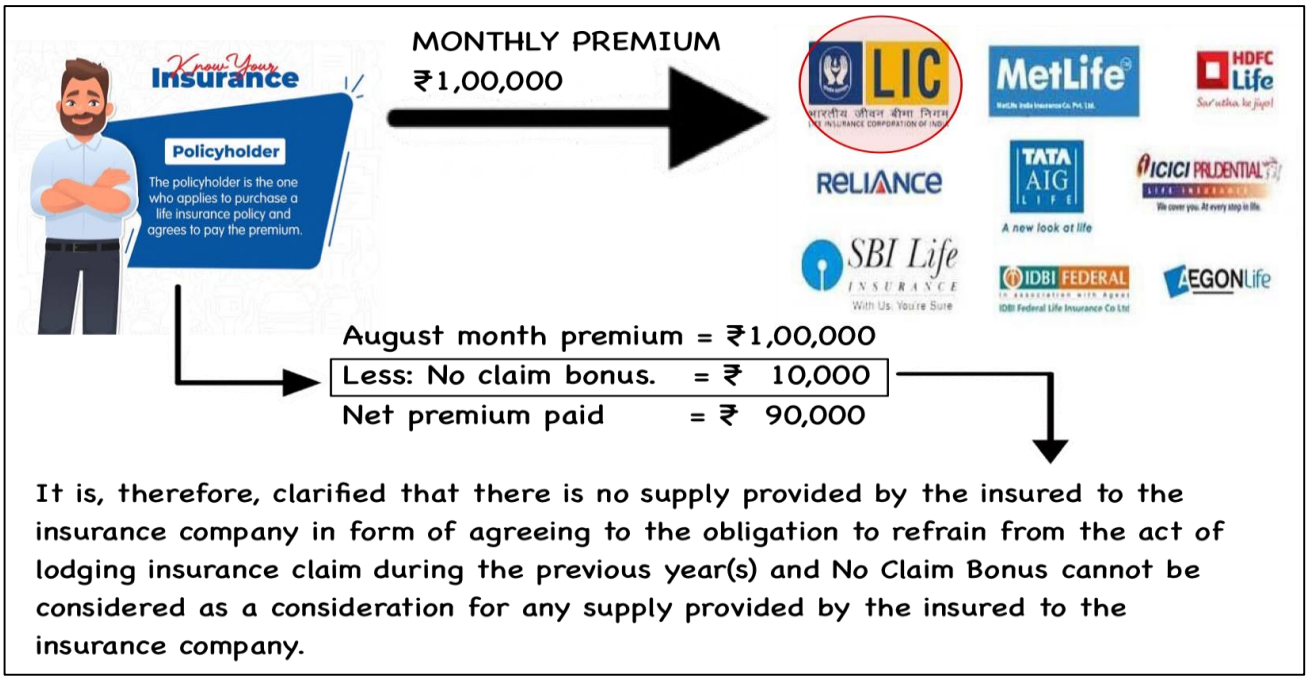
Study Note 2: Levy and Collection of Tax

Scope of Supply:

1. No Claim Bonus is not a consideration, vide Circular No. 186/18/2022-GST-dt. 27.12.2022 has been issued by CBIC to clarify as under:

S. No.	Issue	Clarification
1.	Whether the deduction on account of No Claim Bonus allowed by the insurance company from the insurance premium payable by the insured, can be considered as consideration for the supply provided by the insured to the insurance company, for agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year (s)? 	As per practice prevailing in the insurance sector, the insurance companies deduct No Claim Bonus from the gross insurance premium amount, when no claim is made by the insured person during the previous insurance period(s). The customer/ insured procures insurance policy to indemnify himself from any loss/ injury as per the terms of the policy and is not under any contractual obligation not to claim insurance claim during any period covered under the policy, in lieu of No Claim Bonus. It is, therefore, clarified that there is no supply provided by the insured to the insurance company in form of agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s)and No Claim Bonus cannot be considered as a consideration for any supply provided by the insured to the insurance company.

Simplified approach:



Person Liable to pay GST:

2. In the 49th GST Council Meeting it has been decided to extend the dispensation available to Central Government, State Governments, Parliament and State Legislatures with regard to payment of GST under reverse charge mechanism (RCM) to the Courts and Tribunals also in respect of taxable services supplied by them such as renting of premises to telecommunication companies for installation of towers, renting of chamber to lawyers etc. (Notification No. 02/2023 CT(R) dt. 28.02.2023).

Government or Local Authority to Business Entity

Reverse Charge Mechanism (RCM) applicable:

Description of supply of service	**Supplier of service**	**Recipient of service**	**Person liable to pay GST**
Services supplied by the Central Government, State Government, Union territory, the Parliament and State Legislatures (w.e.f. 01.03.2023 shall also apply to the Courts and Tribunal) or local authority to a business entity excluding: —	Central Government, State Government, Union territory, Parliament and	Any business entity located in the taxable territory.	Recipient

(1) Renting of immovable property to a registered person, w.e.f. 25.1.2018 covered under RCM. However, **Renting of immovable property by government or local authority to un-registered person shall continue under forward charge;** and (2) Services specified below: — (i) Services by the Department of Posts (omitted w.e.f. 18-07-2022 by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Government or Union territory or local authority); (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii)Transport of goods or passengers.	State Legislatures, (**w.e.f. 01.03.2023 Courts and Tribunal**) or local authority		

3. Extension of due date for exercise of option by a GTA to pay GST under forward charge:

A goods transport agency (GTA) has an option to pay GST under forward charge [5% without ITC or 12% with ITC] or reverse charge [5% without ITC]. GTA has to exercise the option to pay GST under forward charge for a financial year by making a declaration in Annexure V by 15th March of the preceding financial year [Notification No. 11/2017- CT (Rate) dated 28.06.2017 amended vide Notification No. 3/2022-CT(R) dt. 13.07.2022].

Notification No. 05/2023-CT(R) dt. 09.05.2023 has further amended Notification No. 11/2017- CT (Rate) to extend the last date for filing Annexure V by a GTA for the financial year 2023-24 to 31st May, 2023. A GTA who commences a new business or crosses the threshold for registration during any financial year, may file Annexure V within 45 days from the date of applying for GST registration or 1 month from the date of obtaining registration, whichever is later.

Note: Payment of tax under reverse charge is the default mode of payment of tax for a GTA. Annexure V is required to be filed only when GTA wishes to pay tax under forward charge.

Exemptions:

4. Following existing Exempted services vide Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017), have been amended:

1. Services by way of renting of residential dwelling for use as residence (w.e.f. 18-07-2022, "except where the residential dwelling is rented to a registered person" shall be inserted); **w.e.f. 01-01-2023 Explanation**:- for the purpose of exemption under this entry, this entry shall cover services by way of renting of residential dwelling to a registered person where, - (i) the registered person is proprietor of a proprietorship concern and rents the residential dwelling in his personal capacity for use as his own residence; and (ii) such renting is on his own account and not that of the proprietorship concern.

w.e.f. 18-07-2022, residential dwelling is rented to a registered person is taxable:

Nature of supply	**Supplier**	**Recipient**	**GST w.e.f.18-07-2022**
Renting of residential dwelling for use as residence	Registered Person or Un-registered person	Registered Person	RCM applicable (i.e. recipient is liable to pay GST)
		Un-registered person	Exempted from GST

No GST on residential property rented in personal capacity for use as a residence (*Notification No. 15/2022-CT(R) dt. 30.12.2022*):

- In the 48th GST Council meeting, the Council clarified that no GST is payable where a residential dwelling is rented to a registered person if the same is rented it in their personal capacity and for use as their own residence.
- This means that where a registered person is a proprietor of a proprietorship firm and they have rented out a residential property in their personal/own capacity (and not that of the proprietorship) and the property is for use as their own residence, then no GST will be applicable.

5. w.e.f. 01-01-2023 exemption from GST available to entry 23A has been withdrawn (vide Notification No. 15/2022 CT(R) dated 30th December 2022).

Entry 23A: Service by way of access to a road or a bridge on payment of annuity is also exempt from GST (Notification No. 32/2017-Central Tax (Rate), dated 13.10.2017)

6. Services provided by educational institution or to educational institution:

Entry No. 66
Services provided by Educational institution or to Educational institution

Services provided –

(a) by an educational institution to its students, faculty and staff;

"(aa) w.e.f. 25.1.2018, by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee;"

are exempted from GST.

"educational institution" means an institution providing services by way of:

(i) pre-school education and education upto higher secondary school or equivalent;

(ii) education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force;

(iii) education as a part of an approved vocational education course.

(b) Services provided to an educational institution, by way of,-

(i) Transportation of students, faculty and staff

(ii) Catering, including any mid-day meals scheme sponsored by the Government;

(iii) Security or cleaning or house-keeping services performed in such educational institution;

(iv) Services relating to admission to, or conduct of examination by, such institution, upto higher secondary;

w.e.f. 25.1.2018, the words "upto higher secondary" shall be omitted; as a result, services relating to admission to, or conduct of examination provided to all educational institutions, as defined in the notification is exempt from GST.

(iva) **w.e.f. 01-03-2023 "For removal of doubts, it is clarified that any authority, board or body set up by the Central Government or State Government including National Testing Agency for conduct of entrance examination for admission to educational institutions shall be treated as educational institution for the limited purpose of providing services by way of conduct of entrance examination for admission to educational institutions" (Notification No. 01/2023 CT(R) dated 28.02.2023)**

(v) "w.e.f. 25.1.2018, supply of online educational journals or periodicals";

w.e.f. 25.1.2018, Provided that nothing contained in sub-items (i), (ii) and (iii) of item (b) shall apply to an educational institution other than an institution providing services by way of pre-school education and education upto higher secondary school or equivalent.

w.e.f. 25.1.2018, "Provided further that nothing contained in sub-item (v) of item (b) shall apply to an institution providing services by way of,-

(i) pre-school education and education upto higher secondary school or equivalent; or

(ii) education as a part of an approved vocational education course.";

It means, to exempt subscription of online educational journals/periodicals by educational institutions who provide degree recognized by any law from GST.

w.e.f. 01-03-2023 exemption available to educational institutions and central and state educational boards for conduct of entrance examination extended to any authority/board/body set up by the Central / State Government including National Testing Agency for conduct of entrance examination for admission to educational in educational institutions.

7. Applicability of GST on accommodation services supplied by Air Force Mess to its personnel (Circular No. 190/02/2023 GST dt. 13.01.2023):

Reference has been received requesting for clarification on whether GST is payable on accommodation services supplied by Air Force Mess to its personnel.

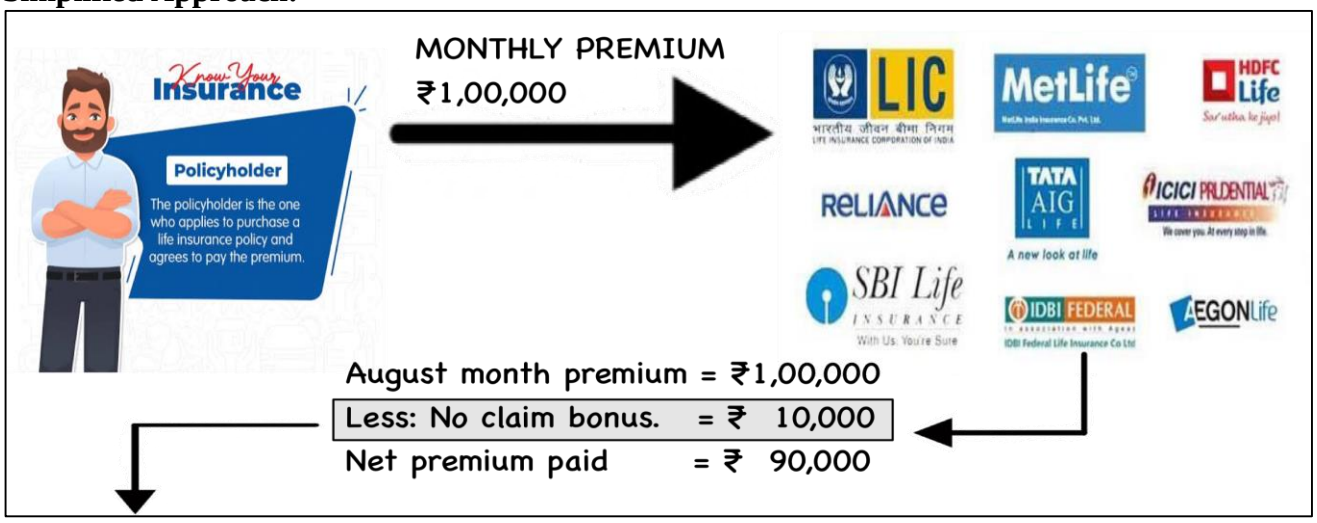
All services supplied by Central Government, State Government, Union Territory or local authority to any person other than business entities (barring a few specified services such as services of postal department, transportation of goods and passengers etc.) are exempt from GST vide Sl. No. 6 of notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017. Therefore, as recommended by the GST Council, it is hereby clarified that accommodation services provided by Air Force Mess and other similar messes, such as, Army mess, Navy mess, Paramilitary and Police forces mess to their personnel or any person other than a business entity are covered by Sl. No. 6 of notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017 provided the services supplied by such messes qualify to be considered as services supplied by Central Government, State Government, Union Territory or local authority.

Study Note 5: Value of Supply under GST

1. No Claim Bonus (NCB) is allowed as discount u/s 15(3) of CGST Act, 2017 (vide Circular No. 186/18/2022-GST- dt. 27.12.2022):

Issue	Clarification
Whether No Claim Bonus provided by the insurance company to the insured can be considered as an admissible discount for the purpose of determination of value of supply of insurance service provided by the insurance company to the unsured? 	The insurance companies make the disclosure of the fact of availability of discount in form of No Claim Bonus (NCB), subject to certain conditions, to the insured in the insurance policy document itself and also provide the details of the no claim Bonus in the invoices. The pre-disclosure of NCB amount in the policy documents and specific mention of the discount in form of No Claim Bonus in the invoice is in consonance with the conditions laid down for deduction of discount from the value of supply under clause (a) of sub-section (3) of section 15. It is, therefore, clarified that NCB is a permissible deduction under clause (a) of sub-section (3) of section 15 of the CGST Act for the purpose of calculation of value of supply of the insurance services provided by the insurance company to the insured. Accordingly, where the deduction on account of NCB is provided in the invoice issued by the insurer to the insured, GST shall be leviable on actual insurance premium amount, payable by the policy holders to the insurer, after deduction of No claim bonus mentioned on the invoice.

Simplified Approach:



It is, therefore, clarified that No Claim Bonus (NCB) is a permissible deduction under clause (a) of sub-section (3) of section 15 of the CGST Act for the purpose of calculation of value of supply of the insurance services provided by the insurance company to the insured. Accordingly, where the deduction on account of NCB is provided in the invoice issued by the insurer to the insured, GST shall be leviable on actual insurance premium amount, payable by the policy holders to the insurer, after deduction of No claim bonus mentioned on the invoice.

2. No GST on incentive paid by Ministry of Electronics and information Technology (MeitY) to acquiring banks (vide Circular No. 190/02/2023 GST dt. 13.01.2023):

Under the Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions, the Government pays the acquiring banks an incentive as a percentage of value of RuPay Debit card transactions and low value BHIM-UPI transactions up to Rs.2000/-.

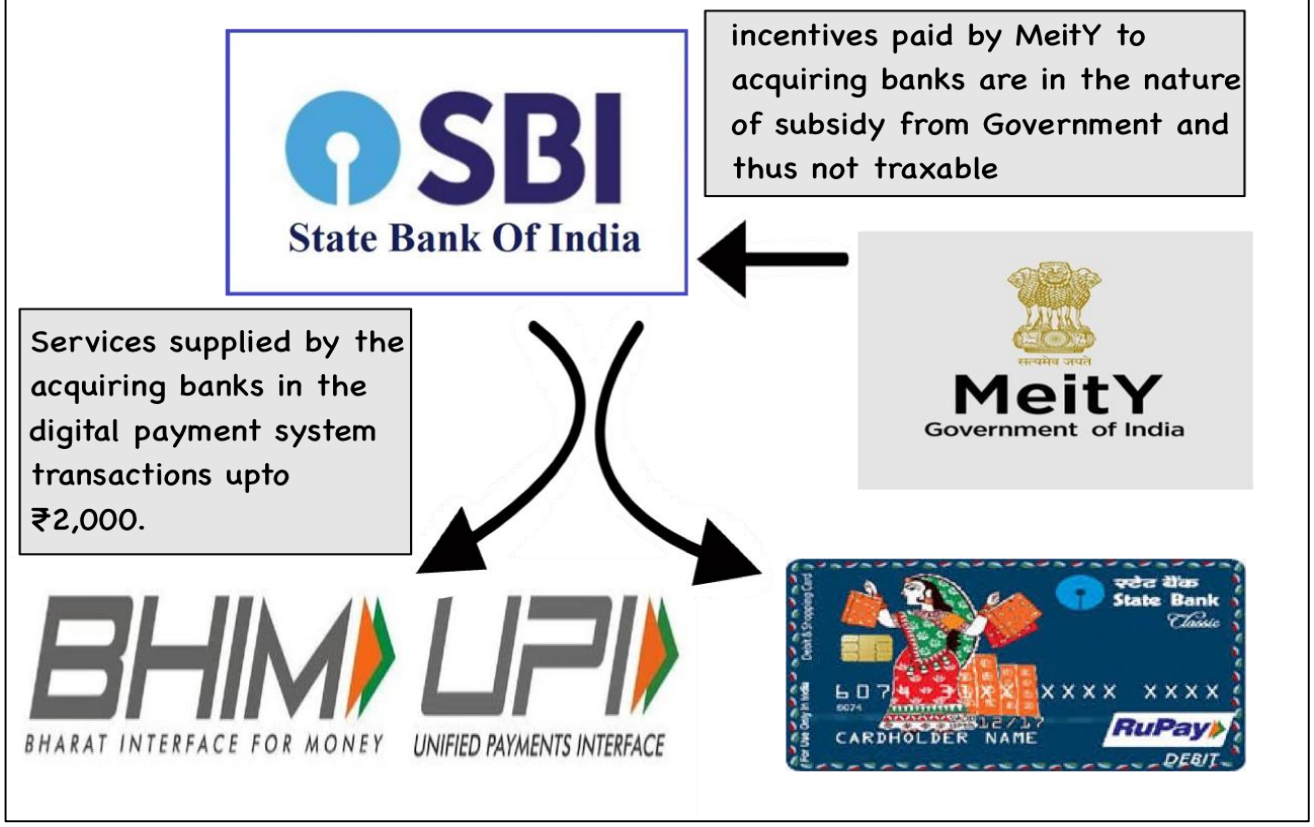
The Payments and Settlements Systems Act, 2007 prohibits banks and system providers from charging any amount from a person making or receiving a payment through RuPay Debit cards or BHIM-UPI.

The service supplied by the acquiring banks in the digital payment system in case of transactions through RuPay/BHIM UPI is the same as the service that they provide in case of transactions through any other card or mode of digital payment. The only difference is that the consideration for such services, instead of being paid by the merchant or the user of the card, is paid by the central government in the form of incentive.

However, it is not a consideration paid by the central government for any service supplied by the acquiring bank to the Central Government. The incentive is in the nature of a subsidy directly linked to the price of the service and the same does not form part of the taxable value of the transaction in view of the provisions of section 2(31) and section 15 of the CGST Act, 2017. As recommended by the Council, it is hereby clarified that incentives paid by MeitY to acquiring banks under the Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions are in the nature of subsidy and thus **not taxable**.

Simplified Approach:

No GST on incentive paid by Ministry of Electronics and information Technology (MeitY) to acquiring banks (vide Circular No. 190/02/2023 GST dt. 13.01.2023):



Study Note 6 : Place of Supply under GST

Place of Supply:

***1. Place of supply of services by way of Transportation of goods including by mail or courier* [*Section 12(8) of IGST Act, 2017*]**

S. No.	Nature of service	Place of supply of service
1	Services by way of Transportation of goods including by mail or courier	Provided to a registered person: • Location of recipient of Service. Provided to a un-registered person: • Location at which such goods are handed over for their transportation. **w.e.f. 1-2-2019:** *Provided that where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods.*

CBIC Circular No. 184/16/2022 GST dated 27.12.2022 clarifies the following issues:

s.no.	*Issue*	*clarification*
1	In case of supply of services by way of transportation of goods, including by mail or courier, where the transportation of goods is to a place outside India, and where the supplier and recipient of the said supply of services are located in India, what would be the place of supply of the said services?	*Place of supply = outside India as per sec 12(8) of IGST Act, 2017.* Illustration: X is a person registered under GST in the state of West Bengal who intends to export goods to a person Y located in Singapore. X avails the services for transportation of goods by air to Singapore from an air cargo operator Z, who is also registered under GST in the state of West Bengal. In thfis case, the place of supply of the services provided by Z to X is the place of destination of goods i.e., Singapore, in terms of the proviso to sub-section (8) of section 12 of IGST Act. In the given case Z would charge IGST from X in terms of sub-section (5) of section 7 of the IGST Act, for supply of services by way of transportation of goods.
2	In the case given in Sl. No. 1, whether the recipient of service of transportation of goods would be eligible to avail input tax credit in respect of the said input service of transportation of goods?	Section 16 of the CGST Act lays down the eligibility and conditions for taking input tax credit whereas, section 17 of the CGST Act provides for apportionment of credit and blocked credits under circumstances specified therein. The said provisions of law do not restrict availment of input tax credit by the recipient located in India if the place of supply of the said input service is outside India. Thus, the recipient of service of transportation of goods shall be eligible to avail input tax

		credit in respect of the IGST so charged by the supplier, subject to the fulfilment of other conditions laid down in section 16 and 17 of the CGST Act. In the illustration given in Sl. No. 1 above, X would be eligible to take input tax credit of IGST in respect of supply of services received by him from Z, subject to the fulfilment of other conditions laid down in section 16 and 17 of the CGST Act.
3	In the case mentioned at Sl. No. 1, what state code has to be mentioned by the supplier of the said service of transportation of goods, where the transportation of goods is to a place outside India, while reporting the said supply in FORM GSTR-1?	The supplier of service shall report place of supply of such service by selecting State code as '96- Foreign Country' from the list of codes in the dropdown menu available on the portal in FORM GSTR-1.

Study Note 7 : Input Tax Credit (ITC)

1. Payment to supplier of goods or services or both [2nd Proviso to Section 16(2) of the CGST Act, 2017]

The recipient shall pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the value along with the tax payable thereon within a period of 180 days from the date of issue of invoice by the supplier.

It means recipient of goods/services should pay to the supplier (Including Taxes), within 180 days from the date of issue of invoice, else the Input Credit shall be reversed

Rule 37(1) has been amended retrospectively w.e.f. 01-10-2022 to provide for reversal of an amount of ITC proportionate to the amount not paid by the recipient to the supplier vis-à-vis the invoice value.

Only proportionate reversal of ITC required in case of part payment of the value of supply plus tax in respect of an inward supply within 180 days (vide Notification No, 26/2022 dt. 26.12.2022):

As per Rule 37(1) of CGST Rules, 2017, A registered person, who has availed of input tax credit on any inward supply of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, but fails to pay to the supplier thereof, the amount towards the value of such supply [whether wholly or partly,] along with the tax payable thereon, within the time limit specified in the second proviso to sub-section(2) of section 16, shall pay [or reverse] an amount equal to the input tax credit availed in respect of such supply **proportionate to the amount not paid to the supplier,** along with interest payable thereon under section 50, while furnishing the return in **FORM GSTR-3B** for the tax period immediately following the period of one hundred and eighty days from the date of the issue of the invoice:

2. Rule 37A. Reversal of input tax credit in the case of non-payment of tax by the supplier and re-availment thereof.-

Newly inserted rule 37A, Where input tax credit has been availed by a registered person in the return in **FORM GSTR-3B** for a tax period in respect of such invoice or debit note, the details of which have been furnished by the supplier in the statement of outward supplies in **FORM GSTR-1** or using the invoice furnishing facility, but the return in **FORM GSTR-3B** for the tax period corresponding to the said statement of outward supplies has not been furnished by such supplier till the 30th day of September following the end of financial year in which the input tax credit in respect of such invoice or debit note has been availed, the said amount of input tax credit shall be reversed by the said registered person, while furnishing a return in **FORM GSTR-3B** on or before the 30th day of

November following the end of such financial year:

Provided that where the said amount of input tax credit is not reversed by the registered person in a return in **FORM GSTR-3B** on or before the 30th day of November following the end of such financial year during which such input tax credit has been availed, such amount shall be payable by the said person along with interest thereon under section 50.

Provided further that where the said supplier subsequently furnishes the return in **FORM GSTR-3B** for the said tax period, the said registered person may re-avail the amount of such credit in the return in **FORM GSTR-3B** for a tax period thereafter (Notification No, 26/2022 CT dt 26.12.2022).

Study Note 8 : Registration under GST

1. Amendments in rule 8 of the CGST Rules, 2017 - Application for registration [vide Notification No. 26/2022-CT dt. 26.12.2022]:

i. Sub-rule (1) has been amended to do away with the requirement of mentioning mobile no. and e-mail address in the application for registration.

ii. The Permanent Account Number (PAN) shall also be verified through OTP sent to the mobile no. and e-mail address linked to the PAN. Consequently, clause (b) and (c) of sub-rule (2) which required verification of mobile no. and e-mail address have been omitted.

iii. Sub-rule (4A) has been substituted to provide that registration application by a person who has opted for authentication of Aadhaar number and is identified on the common portal, based on data analysis and risk parameters, shall be followed by biometric-based Aadhaar authentication and taking of photographs of the applicant where the applicant is an individual or of such individuals in relation to the applicant as notified under section 25(6C) where the applicant is not an individual, along with the verification of the original copy of the documents uploaded with the application in FORM GST REG-01at one of the Facilitation Centers notified by the Commissioner for the purpose of this sub-rule and the application shall be deemed to be complete only after completion of the process laid down under this sub-rule.

iv. A new sub-rule (4B) has been inserted to provide that the provisions of sub-rule (4A) shall not apply to those States or Union Territories as may be notified by the Government on the recommendations of the Council.

It has been notified vide Notification No. 27/2022-CT dt. 26.12.2022 that the provisions of sub-rule (4A) of rule 8 shall not apply in all the States and Union territories except the State of Gujarat. Therefore, biometric based Aadhaar authentication and taking of photograph for completion of registration application is applicable only in Gujarat.

v. Sub-rule (5) has been amended to provide that on receipt of an application under sub-rule (4A) also, an acknowledgement shall be issued electronically to the applicant in FORM GST REG-02.

note: in order to improve the registration process, biometric based aadhaar authentication of the high-risk applicants who opt for authentication of Aadhaar number has been introduced on a pilot basis in the State of Gujarat.

2. Amendments in rule 9 of the CGST Rules, 2017 (Verification of the application and approval) vide Notification No. 26/2022-CT dt. 26.12.2022:

New proviso (aa) has been inserted in sub-rule (1) to lay down that registration shall be granted within thirty days of submission of application to a person, who has undergone authentication of Aadhaar number as specified in sub-rule (4A) of rule 8, and is identified on the common portal, based on data analysis and risk parameters, for carrying out physical verification of places of business. Consequential amendment has been made in sub-rule (2) by inserting a new proviso (aa) therein as well.

3. Amendment in rule 12 of the CGST Rules, 2017(Grant of registration to persons required to deduct tax at source or to collect tax at source) vide Notification No. 26/2022-CT dt. 26.12.2022: Sub-rule (3) has been amended to specify that TDS and TCS registrations can also now be cancelled by the proper officer on a request made in writing by a person to whom such registration has been granted.

Hitherto, there was no option available for an e-commerce operator having TCS registration to apply for cancellation of TCS registration in case of the closure of the operations of e-commerce operator. Similarly, there was also no option for a TDS registrant to apply for cancellation of TDS registration. Thus, rule 12(3) has been suitably amended to apply for cancellation of registration.

4. **Guidelines for Special All-India Drive against Fake Registrations (vide Instruction No. 01/2023-GST dt. 04.05.2023):**

The Central and State Tax administrations have decided to launch a Special Drive on All-India basis to detect suspicious/ fake registrations and to conduct requisite verification for timely remedial action to prevent any further revenue loss to the Government. Accordingly, the following guidelines have been issued by the CBIC:

(i) Period of special drive: 16th May 2023 to 15th July 2023

(ii) Identification of fraudulent GSTINs: Based on detailed data analytics and risk parameters, GSTN will identify such fraudulent GSTINs for State and Central Tax authorities and will share the details of such identified suspicious GSTINs, jurisdiction wise, with the concerned State/ Central Tax administration (through DGARM in case of Central Tax authorities) for initiating verification drive and conducting necessary action subsequently.

This may also be supplemented by the officers with analytical tools like BIFA (Business Intelligence & Fraud Analytics), ADVAIT (Advanced Analytics in Indirect Taxation), NIC Prime, E-Way analytics, etc., as well as through human intelligence, Aadhar database, other local learnings and the experience gained through the past detections and modus operandi alerts.

(iii) Information Sharing Mechanism: A nodal officer shall be appointed immediately by each of the Zonal CGST Zone and State to ensure seamless flow of data and for coordination with GSTN/ DGARM and other Tax administrations. The Nodal officer of the State/ CGST Zone shall ensure that the data received from GSTN/ DGARM/ other tax administrations is made available to the concerned jurisdictional formation within two days positively.

(iv) Action to be taken by field formations:

a. On receipt of data from GSTN/DGARM through the Nodal Officer, a time bound exercise of verification of the suspicious GSTINs shall be undertaken by the concerned jurisdictional tax officer(s). If, after detailed verification, it is found that the taxpayer is non-existent and fictitious, then the tax officer may immediately initiate action for **suspension and cancellation of the registration** of the said taxpayer in accordance with the provisions of section 29 of CGST Act, read with the rules thereof.

b. The matter may also be examined for blocking of input tax credit in Electronic Credit Ledger as per the provisions of Rule 86A of CGST Rules without any delay.

c. The details of the recipients to whom the input tax credit has been passed by such non-existing taxpayer may be identified through the details furnished in FORM GSTR-1 by the said taxpayer. Where the recipient GSTIN pertains to the jurisdiction of the said tax authority itself, suitable action may be initiated for demand and recovery of the input tax credit wrongly availed by such recipient on the basis of invoice issued by the said non-existing supplier, without underlying supply of goods or services or both. In cases, where the recipient GSTIN pertains to a different tax jurisdiction, the details of the case along with the relevant documents/ evidences, may be sent to the concerned tax authority, as early as possible.

d. Action may also be taken to identify the masterminds/ beneficiaries behind such fake GSTIN for further action, wherever required, and also for recovery of Government dues and/ or provisional attachment of property/ bank accounts, etc. as per provisions of section 83 of CGST Act. Further, during the investigation/ verification, if any linked suspicious GSTIN is detected, similar action may be taken/ initiated in respect of the same.

Study Note 9: Tax Invoice, Credit and Debit Notes and Other Documents under GST

1. Amendment in rule 46 (Tax invoice) [vide Notification No. 26/2022 CT dt. 26.12.2022]:

A proviso has been inserted after clause (f) to state that where any taxable service is supplied by or through an electronic commerce operator or by a supplier of online information and database access or retrieval (OIDAR) services to a recipient who is un-registered, irrespective of the value of such supply, a tax invoice issued by the registered person shall contain the name and address of the recipient along with its PIN code and the name of the State and the said address shall be deemed to be the address on record of the recipient.

2. Amendment in rule 46A (Invoice cum bill of supply) [vide Notification No. 26/2022 CT dt. 26.12.2022]:

A proviso has been inserted in rule 46A providing that the said single "invoice-cum-bill of supply" shall contain the particulars as specified under rule 46 or rule 54, as the case may be, and rule 49.

Rule 46	Rule 49	Rule 54
Prescribes the particulars that a tax invoice issued by a registered person should contain…	Prescribes that are to be included in a bill of supply issued by a supplier	Prescribes the particulars in respect of tax invoices issued in special cases like Input Service Distributor, Banking and Financial Institutions, Insurance companies, Goods Transport Agency..

3. Exemption from generation of e-invoice available for the entity as a whole and not restricted by the nature of supply being made by the said entity (Circular No. 186/18/2022-GST-dt. 27.12.2022):

Issue	Clarification
Whether the exemption from mandatory generation of e-invoices in terms of Notification No. 13/2020-CT, dated 21st March, 2020, as amended, is available	In terms of *Notification No. 13/2020-Central Tax dated 21st March, 2020*, as amended, certain entities/sectors have been exempted from mandatory generation of e-invoices as per sub-rule (4) of rule 48 of Central Goods and Services Tax Rules, 2017. It is hereby clarified that the said exemption from generation of e-invoices is for the entity as a whole and is not restricted by the nature of supply being made by the said entity. Illustration: A Banking Company providing banking services, may

for the entity as whole, or whether the same is available only in respect of certain supplies made by the said entity?	also be involved in making supply of some goods, including bullion. The said banking company is exempted from mandatory issuance of e-invoice in terms of *Notification No. 13/2020-Central Tax, dated 21st March, 2020*, as amended, for all supplies of goods and services and thus, will not be required to issue e-invoice with respect to any supply made by it.

4. E-invoicing applicability limit reduced from Rs. 10 crores to Rs. 5 crores from 1st August 2023 (vide Notification No. 10/2023 – CT dated 10.05.2023):

The threshold limit of aggregate turnover for the applicability of e-invoicing provisions has been reduced from Rs 10 crores to Rs. 5 crores. In other words, registered persons having an aggregate turnover of more than Rs. 5 crores in any preceding financial year from 2017-18 onwards will be liable to generate e-invoice. The said amendment will be effective from 01.08.2023.

Note: E-invoicing is not mandatory for following registered persons:

(i) Government department

(ii) Local authority

(iii) SEZ unit

(iv) Insurer/Banking company/Financial institution, including a NBFC

(v) GTA

(vi) Passenger transportation service provider

(vii) Supplier providing admission to exhibition of cinematograph films in multiplex screens.

Study Note 11: Payment of Tax

1. Electronic Cash Ledger to be updated on the basis of e-Scroll of the RBI in case of failure of bank to communicate details of Challan Identification Number to the common portal (Rule 87(8) amended vide Notification No. 26/2022 CT dated 26.12.2022):

A new proviso has been inserted in sub-rule (8) which lays down that where the bank fails to communicate details of Challan Identification Number to the Common Portal, the Electronic Cash Ledger may be updated on the basis of e-Scroll of the Reserve Bank of India in cases where the details of the said e-Scroll are in conformity with the details in challan generated in FORM GST PMT-06 on the Common Portal.

Study Note 13: Returns under GST

1. Maximum late fee payable under section 47 for delayed filing of annual return:

The amount of late fee for delayed filing of Form GSTR-9 (Annual Return) for FY 2022-23 onwards has been restricted for specific class of registered persons, in the following manner:

Based on Notification No. 07/2023-CT dt. 31.03.2023:

Class of registered persons	Amount of late fee
Registered persons having an aggregate turnover up to Rs. 5 crore in the relevant financial year	Rs. 50 [Rs. 25 each for CGST & SGST] per day subject to a maximum of 0.04% [0.02% each for CGST & SGST] of turnover in the State or Union Territory
Registered persons having an aggregate turnover of more than Rs. 5 crore and up to Rs. 20 crore in the relevant financial year	Rs. 100 [Rs. 50 each for CGST & SGST] per day subject to a maximum of 0.04% [0.02% each for CGST & SGST] of turnover in the State or Union Territory

Note: For registered persons other than the above, late fee as provided under section 47 shall be leviable i.e., Rs. 200 [Rs. 100 each for CGST & SGST] per day subject to a maximum of 0.5% [0.25 % each for CGST & SGST] of turnover in the State or Union Territory.

Provided that for the registered persons who fail to furnish the return under section 44 of the said Act by the due date for any of the financial years 2017-18, 2018-19, 2019-20, 2020-21 or 2021-22, but furnish the said return between the period from the 1st day of April, 2023 to the 30th day of June, 2023, the total amount of late fee under section 47 of the said Act payable in respect of the said return, shall stand waived which is in excess of ten thousand rupees.

2. New rule 88C (Manner of dealing with difference in liability reported in statement of outward supplies and that reported in return) and amendment in rule 59 (Form and manner of furnishing details of outward supplies)

Taxpayer to be intimated the difference in liability in Form GSTR-1 and Form GSTR-3B and be required to pay the differential liability or explain the difference:

Rule 88C(1) of the CGST Rules, 2017, lays down that where the tax payable by a registered person, in accordance with the statement of outward supplies furnished by him in FORM GSTR-1 or using the Invoice Furnishing Facility in respect of a tax period, exceeds the amount of tax payable by such

person in accordance with the return for that period furnished by him in FORM GSTR-3B, by such amount and such percentage, as may be recommended by the Council, the said registered person shall be intimated of such difference in Part A of FORM GST DRC-01B, electronically on the common portal, and a copy of such intimation shall also be sent to his e-mail address provided at the time of registration or as amended from time to time, highlighting the said difference and directing him to—

(a) pay the differential tax liability, along with interest under section 50, through FORM GST DRC-03; or

(b) explain the aforesaid difference in tax payable on the common portal, within a period of 7 days.

Sub rule (2) provides that the registered person referred to in sub-rule (1) shall, upon receipt of the intimation referred to in that sub-rule, either-

(a) pay the amount of the differential tax liability, as specified in Part A of FORM GST DRC-01B, fully or partially, along with interest under section 50, through FORM GST DRC-03 and furnish the details thereof in Part B of FORM GST DRC-01B electronically on the common portal; or

(b) furnish a reply electronically on the common portal, incorporating reasons in respect of that part of the differential tax liability that has remained unpaid, if any, in Part B of FORM GST DRC-01B, within the period specified in the said sub-rule.

Sub-rule (3) provides that where any amount specified in the intimation referred to in sub-rule (1) remains unpaid within the period specified in that sub-rule and where no explanation or reason is furnished by the registered person in default or where the explanation or reason furnished by such person is not found to be acceptable by the proper officer, the said amount shall be recoverable in accordance with the provisions of section 79.

Further, a new clause (d) has been inserted in **rule 59(6)** to provide that a registered person, to whom an intimation has been issued on the common portal under the provisions of sub-rule (1) of rule 88C in respect of a tax period, shall not be allowed to furnish FORM GSTR-1 or using the invoice furnishing facility for a subsequent tax period, unless he has either deposited the amount specified in the said intimation or has furnished a reply explaining the reasons for any amount remaining unpaid, as required under the provisions of sub-rule (2) of rule 88C [Notification No. 26/2022 CT dated 26.12.2022].

Study Note 15 : Exports, Imports and Refunds under GST

1. Prescribing manner of filing an application for refund by unregistered persons Rule 89(2) amended (Notification No, 26/2022 CT dated 26.12.2022 read with Circular No. 188/20/2022 GST dated 27.12.2022):

Instances have been brought to the notice where the unregistered buyers, who had entered into an agreement/ contract with a builder for supply of services of construction of flats/ building, etc. and had paid the amount towards consideration for such service, either fully or partially, along with applicable tax, had to get the said contract/ agreement cancelled subsequently due to non-completion or delay in construction activity in time or any other reasons. In a number of such cases, the period for issuance of credit note on account of such cancellation of service under the provisions of section 34 of the Central Goods and Service Tax Act, 2017 (hereinafter referred to as 'CGST Act') may already have got expired by that time. In such cases, the supplier may refund the amount to the buyer, after deducting the amount of tax collected by him from the buyer.

Similar situation may arise in cases of long-term insurance policies where premium for the entire period of term of policy is paid upfront along with applicable GST and the policy is subsequently required to be terminated prematurely due to some reasons. In some cases, the time period for issuing credit note under the provisions of section 34 of the CGST Act may have already expired and therefore, the insurance companies may refund only the proportionate premium net off GST.

Hitherto, there was no facility available to such unregistered buyers/recipients for claiming refund of amount of tax borne by them in the event of cancellation of the contract/agreement for supply of services of construction of flats/building or on termination of long-term insurance policy.

It would be pertinent to mention that sub-section (1) of section 54 of the CGST Act already provides that any person can claim refund of any tax and interest, if any, paid on such tax or any other amount paid by him, by making an application before the expiry of two years from the relevant date in such form and manner as may be prescribed. Further, in terms of clause (e) of sub-section (8) of section 54 of the CGST Act, in cases where the unregistered person has borne the incidence of tax and not passed on the same to any other person, the said refund shall be paid to him instead of being credited to Consumer Welfare Fund (CWF).

In order to enable such unregistered person to file application for refund under subsection (1) of section 54, in cases where the contract/agreement for supply of services of construction of flat/ building has been cancelled or where long-term insurance policy has been terminated, a new functionality has been made available on the common portal which allows unregistered persons to take a temporary registration and apply for refund under the category '**Refund for Unregistered person**'. Further, sub-rule (2) of rule 89 of Central Goods and Service Tax Rules, 2017 (hereinafter referred to as 'CGST Rules') has been amended and statement 8 has been inserted in FORM GST RFD-01 vide Notification No. 26/2022-Central Tax dated 26.12.2022 to provide for the documents required to be furnished along with the application of refund by the unregistered persons and the statement to be uploaded along with the said refund application.

In such cases, the following documentary evidences are required:

i. as per a new clause (ka) has been inserted in sub-rule (2) of rule 89 to prescribe that the refund application shall be accompanied by a statement containing the details of invoices viz. number, date, value, tax paid and details of payment, in respect of which refund is being claimed along with copy of such invoices, proof of making such payment to the supplier, the copy of agreement or registered agreement or contract, as applicable, entered with the supplier for supply of service, the letter issued by the supplier for cancellation or termination of agreement or contract for supply of service, details of payment received from the supplier against cancellation or termination of such agreement along with proof thereof, **in a case where the refund is claimed by an unregistered person where the agreement or contract for supply of service has been cancelled or terminated.**

ii. Further, a new clause (kb) inserted in rule 89(2) thereafter prescribes that refund application shall be accompanied by a certificate issued by the supplier to the effect that he has paid tax in respect of the invoices on which refund is being claimed by the applicant; that he has not adjusted the tax amount involved in these invoices against his tax liability by issuing credit note; and also, that he has not claimed and will not claim refund of the amount of tax involved in respect of these invoices, in a case where the refund is claimed by an unregistered person where the agreement or contract for supply of service has been cancelled or terminated.

iii. A proviso has been inserted in clause (m) to clarify that a certificate from Chartered Accountant or Cost Accountant shall not be required in cases where refund is being claimed by an unregistered person who has borne incidence of tax (even if the amount of refund claimed exceeds ₹2 lakh).

Filing of refund application:

Step 1: The unregistered person, who wants to file an application for refund under sub-section (1) of section 54 of CGST Act, in cases where the contract/agreement for supply of services of construction of flat/ building has been cancelled or where long-term insurance policy has been terminated, shall obtain a temporary registration on the common portal using his Permanent Account Number (PAN). While doing so, the unregistered person shall select the same state/UT where his/her supplier, in respect of whose invoice refund is to be claimed, is registered. Thereafter, the unregistered person would be required to undergo Aadhaar authentication in terms of provisions of rule 10B of the CGST Rules. Further, the unregistered person would be required to enter his bank account details in which he seeks to obtain the refund of the amount claimed. The applicant shall provide the details of the bank account which is in his name and has been obtained on his PAN.

Step 2: The application for refund shall be filed in FORM GST RFD-01 on the common portal under the category '**Refund for unregistered person**'. The applicant shall upload statement 8 (in pdf format) and all the requisite documents as per the provisions of sub-rule (2) of rule 89 of the CGST Rules. The refund amount claimed shall not exceed the total amount of tax declared on the invoices in respect of which refund is being claimed. Further, the applicant shall also upload the certificate issued by the supplier in terms of clause (kb) of sub-rule (2) of rule 89 of the CGST Rules along with the refund application. The applicant shall also upload any other document(s) to support his claim that he has paid and borne the incidence of tax and that the said amount is refundable to him.

Step 3: Separate applications for refund have to be filed in respect of invoices issued by different suppliers. Further, where the suppliers, in respect of whose invoices refund is to be claimed, are registered in different States/UTs, the applicant shall obtain temporary registration in the each of the concerned States/UTs where the said supplier are registered.

Step 4: Where the time period for issuance of credit note under section 34 of the CGST Act has not expired at the time of cancellation/termination of agreement/contract for supply of services, the concerned suppliers can issue credit note to the unregistered person. In such cases, the supplier would be in a position to also pay back the amount of tax collected by him from the unregistered person and therefore, there will be no need for filing refund claim by the unregistered persons in these cases. Accordingly, the refund claim can be filed by the unregistered persons only in those cases where at the time of cancellation/termination of agreement/contract for supply of services, the time period for issuance of credit note under section 34 of the CGST Act has already expired.

Step 5: Relevant date for filing of refund: As per sub-section (1) of section 54 of the CGST Act, time period of two years from the relevant date has been specified for filing an application of refund. Further, the relevant date in respect of cases of refund by a person other than supplier is the date of receipt of goods or services or both by such person in terms of provisions of clause (g) in Explanation (2) under section 54 of the CGST Act. However, in respect of cases where the supplier and the unregistered person (recipient) have entered into a long-term contract/ agreement for the supply, with the provision of making payment in advance or in instalments, for example construction of flats or long-term insurance policies, if the contract is cancelled/ terminated before completion of service for any reason, there may be no date of receipt of service, to the extent supply has not been made/ rendered. Therefore, in such type of cases, it has been decided that for the purpose of determining relevant date in terms of clause (g) of Explanation (2) under section 54 of the CGST Act, **date of issuance of letter of cancellation of the contract/ agreement for supply by the supplier** will be considered as the date of receipt of the services by the applicant.

Step 6; Minimum refund amount: Sub-section (14) of section 54 of the CGST Act provides that no refund under subsection (5) or sub-section (6) shall be paid to an applicant, if amount is less than one thousand rupees. Therefore, no refund shall be claimed if the amount is less than one thousand rupees.

Step 7: The proper officer shall process the refund claim filed by the unregistered person in a manner similar to other RFD-01 claims. The proper officer shall scrutinize the application with respect to completeness and eligibility of the refund claim to his satisfaction and issue the refund sanction order in FORM GST RFD-06 accordingly. The proper officer shall also upload a detailed speaking order along with the refund sanction order in FORM GST RFD-06.

Step 8: In cases where the amount paid back by the supplier to the unregistered person on cancellation/termination of agreement/contract for supply of services is less than amount paid by such unregistered person to the supplier, only the proportionate amount of tax involved in such amount paid back shall be refunded to the unregistered person.

2. Following instructions have been released by CBIC with respect to manner of processing and sanction of IGST refunds withheld in terms of rule 96(4)(c), transmitted to the jurisdictional GST authorities under rule 96(5A) of the CGST Rules, 2017 (vide CBIC Instruction NO. 04/2022 GST dated 28.09.2022):

(i) Standard Operating Procedures (SOPs) for verification of risky exporters and their suppliers dated 23.01.2020 were issued to CGST and Customs formations as well as Directorate General of Analytics and Risk Management (DGARM) and SOP dated 20.05.2020 were issued to CGST formations and DGARM providing for the procedure to be followed for verification of the risky exporters and their suppliers.

(ii) The said SOPs provided that DGARM would identify the exporters and their suppliers on the basis of risk parameters, approved by the Competent Authority and would forward the list of such exporters to the Risk Management Centre for Customs (RMCC) for putting alert in the system. In such cases, the Customs authorities were required to conduct the detailed examination of the export goods of such identified exporters.

(iii) Further, the jurisdictional CGST authorities were required to conduct detailed verification of such identified exporters and their suppliers and forward the verification report to DGARM. On receipt of verification report from CGST officers, DGARM was required to take a decision for issuance of NOC or otherwise.

(iv) In cases, where NOC has been issued by DGARM, the same was communicated to the Customs authorities at the port of export for release of withheld IGST refunds of such exporter. Further, DGARM was also required to review whether the exporters can be removed from the list of identified exporters. However, with retrospective amendment of rule 96 of the CGST Rules w.e.f. 01.07.2017 providing for withholding of IGST refund in cases where the verification of credentials of the exporter, identified on the basis of data analytic including the availment of ITC by the exporter is considered essential before grant of refund.

(v) Further, sub-rule (5A) has been inserted in rule 96 to provide for transmission of IGST refunds, withheld in terms of provisions of rule 96(4)(c) of the CGST Rules, as system generated refund in Form GST RFD-01 and to provide that the said system generated form shall be deemed to be the application for refund in such cases and such application for refund shall be deemed to have been filed on the date of such transmission on the portal. In addition, sub-rule (5C) has also been inserted in rule 96 to provide that such system generated refund in FORM GST RFD-01 have to be dealt with in accordance with rule 89 i.e., in a manner similar to other GST RFD-01 refund claims.

(vi) In view of the aforesaid amendments, certain changes have been made in the alert module on ICES for which an Advisory has been issued by DG Systems to all the system managers. In the said advisory, it has been inter-alia informed that a new role for putting an all-India suspension, either on IEC or GSTIN of the exporter as the case may be, to withhold IGST refunds has been developed

for officers of DGARM. An option to revoke the said alert has also been made available to DGARM officers.

(vii) DGARM on the basis of data analysis and risk parameters, would identify the exporters where verification of credentials of the exporter, including the availment of ITC by the exporter, is considered essential before grant of refund. DGARM would then place an all- India alert on such exporter on Indian Customs EDI system along with the reasons for putting the said alert. Once an alert is placed on an exporter, the IGST refunds of such exporters would be withheld and the data in respect of Shipping Bills filed by such exporter, for which IGST Scroll could not be generated due to DGARM alert, along with the reasons thereof would be transmitted to GSTN through ICEGATE for generation of refund claims in FORM GST RFD-0l in terms of provisions of sub-rule (5A) of rule 96.

(viii) Such refund claims will be made available to the jurisdictional proper officer on back- office system under the category "Any other (GST paid on export of goods)" with the remarks "Refund of IGST paid on export of goods (Refund not processed by ICEGATE)".

(ix) Further, the risk parameters, on basis of which the exporter has been identified as risky by DGARM, would be shared with the jurisdictional tax officers along with the system generated refund claim in FORM GST RFD-01.

(x) In cases, where the verification report in respect of the exporter has already been submitted to DGARM by the jurisdictional CGST authorities, the details of the same would also be shared with the jurisdictional proper officer, along with the said system generated refund claim in FORM GST RFD-01. On receipt of such refunds, the jurisdictional proper officer shall immediately process such refund claims in a manner similar to other RFD-01 refunds filed under the provisions of rule 89 of the CGST Rules, 2017.

(xi) However, it may be noted that as these refund claims have been generated by the system on the basis of Shipping Bills/ Bills of Export filed by the exporter, these claims would be auto-acknowledged by the system and no Deficiency Memo in Form GST RFD-03 can be issued against such system generated Form GST RFD-01 refund claims.

(xii) The proper officer shall ascertain the genuineness of the exporter & verify the correctness of availment and utilisation of ITC by the exporter and exercise due diligence in processing the said refund claims to safeguard the interest of revenue. The proper officer may conduct the physical verification of places of business of the exporter, if required, to ensure that the exporter is existing at his declared place of business and is functional/active.

(xiii) The proper officer shall pass a detailed speaking order in respect of the refund claim and shall duly upload the same along with the refund sanction order in Form GST RFD-06 on the portal in terms

of Instruction No. 03/2022-GST dated 14.06.2022. The officer will also follow the timelines for processing of the refund claim in terms of provisions of sub- section (7) of section 54 of the CGST Act. It is needless to mention that the procedure of review and post-audit as prescribed in para 2.2 of above-mentioned notification will also be applicable to such refund claims.

(xiv) In cases where the detailed investigation of the exporter or his suppliers is required to be conducted to verify the genuineness and correctness of ITC availed by the exporter, the matter may be examined, if required, for resorting to provisions of sub-section (11) of section 54 of the Act for withholding of the refund.

(xv) Further, the proper officer would also be required to provide feedback on the common portal while issuing refund sanction order in FORM GST RFD-06 as with recommendation as to whether the alert against the said taxpayer need to be continued or whether the same can be removed. The functionality for the same would be available on the system in due course.

(xvi) GSTN shall transmit the data regarding the outcome of processing of refund by the proper officer, along with the feedback received from the proper officer on the requirement of removal or continuation of alert, to DGARM for necessary action for removal or continuation of alert.

In view of the above, the SOP's dated 20.01.2020 and 20.05.2020 prescribing the procedure to be followed for verification of the risky exporters and their suppliers, are hereby superseded.

Study Note 19 : Advance Concepts under GST

Demand and Adjudication:

1. CBIC Clarification petatining to cases where it is concluded that the notice issued under section 74(1) not sustainable for reason that the charges of fraud etc. not been established against the ntoice and tax payable being determined deeming as if the notice was issued under section 73(1).

Circular No. 185/17/2022-GST dt. 27.12.2022 has been issued to clarify issues with regard to applicability of provisions of section 75(2) as under:

s.no.	Issue	Clarification
1	In some of the cases where the show cause notice has been issued by the proper officer to a noticee under sub-section (1) of section 74 of CGST Act for demand of tax not paid/ short paid or erroneous refund or input tax credit wrongly availed or utilized, the appellate authority or appellate tribunal or the court concludes that the said notice is not sustainable under sub-section (1) of section 74 of CGST Act for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax have not been established against the noticee and directs the proper officer to re-determine the amount of tax payable by the noticee, deeming the notice to have been issued under sub-section (1) of section 73 of CGST Act, in accordance with the provisions	• Sub-section (3) of section 75 of CGST Act provides that an order, required to be issued in pursuance of the directions of the appellate authority or appellate tribunal or the court, has to be issued within two years from the date of communication of the said direction. • Accordingly, in cases where any direction is issued by the appellate authority or appellate tribunal or the court to re-determine the amount of tax payable by the noticee by deeming the notice to have been issued under sub-section (1) of section 73 of CGST Act in accordance with the provisions of sub-section (2) of section 75 of the said Act, the proper officer is required to issue the order of redetermination of tax, interest and penalty payable within the time limit as specified in under sub-section (3) of section 75 of the said Act, i.e.

	of sub-section (2) of section 75 of CGST Act. What would be the time period for re-determination of the tax, interest and penalty payable by the noticee in such cases?	within a period of two years from the date of communication of the said direction by appellate authority or appellate tribunal or the court, as the case may be.
2	How the amount payable by the noticee, deeming the notice to have been issued under sub-section (1) of section 73, shall be re-computed/ re-determined by the proper officer as per provisions of sub-section (2) of section 75?	• In cases where the amount of tax, interest and penalty payable by the noticee is required to be re-determined by the proper officer in terms of sub-section (2) of section 75 of CGST Act, the demand would have to be re-determined keeping in consideration the provisions of sub-section (2) of section 73, read with sub-section (10) of section 73 of CGST Act. • Sub-section (1) of section 73 of CGST Act provides for issuance of a show cause notice by the proper officer for tax not paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized, in cases which do not involve fraud or wilful misstatement or suppression of facts to evade tax. Sub-section (2) of section 73 of CGST Act provides that such show cause notice shall be issued at least 3 months prior to the time limit specified in sub-section 10 of section 73 for issuance of order. As per sub-section (9) of section 73 of CGST Act, the proper officer is required to determine the tax, interest and penalty due from the noticee and issue an order. As per sub-section (10) of section 73 of CGST Act, an order under sub-section (9) of section 73 has to be issued by the proper officer within three

		years from the due date for furnishing of annual return for the financial year in respect of which tax has not been paid or short paid or input tax credit has been wrongly availed or utilized or from the date of erroneous refund. • It transpires from a combined reading of these provisions that in cases which do not involve fraud or wilful-misstatement or suppression of facts to evade payment of tax, the show cause notice in terms of sub-section (1) of section 73 of CGST Act has to be issued within 2 years and 9 months from the due date of furnishing of annual return for the financial year to which such tax not paid or short paid or input tax credit wrongly availed or utilized relates, or within 2 years and 9 months -from the date of erroneous refund. • Therefore, in cases where the proper officer has to re-determine the amount of tax, interest and penalty payable deeming the notice to have been issued under sub-section (1) of section 73 of CGST Act in terms of sub-section (2) of section 75 of the said Act, the same can be re-determined for so much amount of tax short paid or not paid, or input tax credit wrongly availed or utilized or that of erroneous refund, in respect of which show cause notice was issued within the time limit as specified under sub-section (2) of section 73 read with sub-section (10)

		of section 73 of CGST Act. Thus, only the amount of tax short paid or not paid, or input tax credit wrongly availed or utilized, along with interest and penalty payable, in terms of section 73 of CGST Act relating to such financial years can be re-determined, where show cause notice was issued within 2 years and 9 months from the due date of furnishing of annual return for the respective financial year. Similarly, the amount of tax payable on account of erroneous refund along with interest and penalty payable can be re-determined only where show cause notice was issued within 2 years and 9 months from the date of erroneous refund. • In case, where the show cause notice under sub-section (1) of section 74 was issued for tax short paid or tax not paid or wrongly availed or utilized input tax credit beyond a period of 2 years and 9 months from the due date of furnishing of the annual return for the financial year to which such demand relates to, and the appellate authority concludes that the notice is not sustainable under sub-section (1) of section 74 of CGST Act thereby deeming the notice to have been issued under sub-section (1) of section 73, the entire proceeding shall have to be dropped, being hit by the limitation of time as specified in section 73.

		• Similarly, where show cause notice under sub-section (1) of section 74 of CGST Act was issued for erroneous refund beyond a period of 2 years and 9 months from the date of erroneous refund, the entire proceeding shall have to be dropped. • In cases, where the show cause in terms of sub-section (1) of section 74 of CGST Act was issued for tax short paid or not paid tax or wrongly availed or utilized input tax credit or on account of erroneous refund within 2 years and 9 months from the due date of furnishing of the annual return for the said financial year, to which such demand relates to, or from the date of erroneous refund, as the case may be, the entire amount of the said demand in the show cause notice would be covered under re-determined amount. • Where the show cause notice under sub-section (1) of section 74 was issued for multiple financial years, and where notice had been issued before the expiry of the time period as per sub-section (2) of section 73 for one financial year but after the expiry of the said due date for the other financial years, then the amount payable in terms of section 73 shall be re-determined only in respect of that financial year for which show cause notice was issued before the expiry of the time period as specified in sub-section (2) of section 73.

2. **Clarification regarding the treatment of statutory dues under GST law in respect of the taxpayers for whom the proceedings have been finalised under Insolvency and Bankruptcy Code, 2016 (IBC):-**

As per Circular No.134/04/2020-GST dated 23rd March, 2020, no coercive action can be taken against the corporate debtor with respect to the dues of the period prior to the commencement of Corporate Insolvency Resolution Process (CIRP). Such dues will be treated as 'operational debt' and the claims may be filed by the proper officer before the NCLT in accordance with the provisions of the IBC.

Circular No. 187/19/2022-GST dt. 27.12.2022 has been issued to clarify on the modalities for implementation of the order of the adjudicating authority under IBC, with respect to demand for recovery against such corporate debtor under the CGST Act as well under the existing laws and the treatment of such statutory dues under CGST Act and existing laws, after finalization of the proceedings under IBC, has been issued.

As per section 84 of CGST Act, if the government dues against any person under CGST Act are reduced as a result of any appeal, revision or other proceedings in respect of such government dues, then an intimation for such reduction of government dues has to be given by the Commissioner to such person and to the appropriate authority with whom the recovery proceedings are pending. Further, recovery proceedings can be continued in relation to such reduced amount of government dues.

The word 'other proceedings' is not defined in CGST Act. It is to be mentioned that the adjudicating authorities and appellate authorities under IBC are quasi-judicial authorities constituted to deal with civil disputes pertaining to insolvency and bankruptcy. For instance, under IBC, NCLT serves as an adjudicating authority for proceedings which are initiated on application from any stakeholder of the entity like the firm, creditors, debtors, employees etc. and passes an order approving the resolution plan. As the proceedings conducted under IBC also adjudicate the government dues pending under the CGST Act or under existing laws against the corporate debtor, the same appear to be covered under the term 'other proceedings' in section 84.

Rule 161 of CGST Rules, 2017 prescribes FORM GST DRC-25 for issuing intimation for such reduction of demand specified under section 84. Accordingly, in cases where a confirmed

demand for recovery has been issued by the tax authorities for which a summary has been issued in FORM GST DRC-07/DRC 07A against the corporate debtor, and where the proceedings have been finalised against the corporate debtor under IBC reducing the amount of statutory dues payable by the corporate debtor to the government under CGST Act or under existing laws, the jurisdictional Commissioner shall issue an intimation in FORM GST DRC-25 reducing such demand, to the taxable person or any other person as well as the appropriate authority with whom recovery proceedings are pending.

3. Standard Operating Procedure (SOP) for scrutiny of returns for FY 2019-20 and onwards (vide Instruction No. 02/2023-GST dt. 26.05.2023*)*

Instruction No. 02/2022- GST dated 22nd March 2022 was issued to provide a SOP for scrutiny of returns under section 61 of the CGST Act as an interim measure till the time a Scrutiny Module for online scrutiny of returns is made available on the ACES-GST application. DG Systems has now developed functionality "Scrutiny of Returns", containing the online workflow for scrutiny of returns in the CBIC ACES-GST application. The GSTINs selected for scrutiny for the Financial Year 2019-20 have also been made available on the scrutiny dashboard of the proper officers on ACES-GST application. In view of this, the SOP for scrutiny of returns provided in the Instruction No. 02/2022-GST dated 22nd March 2022 stands modified to the following extent in respect of scrutiny of returns for financial years 2019-20 onwards:

a. Selection of returns for scrutiny

The Directorate General of Analytics and Risk Management (DGARM) will select the GSTINs registered with Central tax authorities, whose returns are to be scrutinized for a financial year, based on identified risk parameters. The details of GSTINs selected for scrutiny for a financial year will be made available by DGARM through DG Systems on the scrutiny dashboard of the concerned proper officer of Central Tax on ACES-GST application. The GSTIN in respect of which risk has been identified, the amount of tax/ discrepancy involved (i.e., likely revenue implication) will be shown on the scrutiny dashboard of the proper officer.

b. Scrutiny Schedule

The proper officer, with the approval of the divisional Assistant / Deputy Commissioner, shall finalize a **month-wise scrutiny schedule** in respect of GSTINs selected for scrutiny. The proper officer shall conduct scrutiny of returns pertaining to a minimum of 4 GSTINs per month. Scrutiny of returns of one GSTIN shall mean scrutiny of all returns pertaining to a financial year for which the said GSTIN has been identified for scrutiny.

c. Process of scrutiny by the proper officer

- The Proper Officer shall scrutinize the returns and related particulars furnished by the registered person to verify the correctness of returns with the help of various returns and statements furnished by the registered person and data/details made available through various sources like DGARM, ADVAIT, GSTN, E-Way Bill Portal, etc.
- At this stage, the proper officer is expected to rely upon the information available with him on records. As far as possible, scrutiny of returns should have minimal interface between the proper officer and the registered person and, there should normally not be any need for seeking documents/ records from the taxpayers before issuance of FORM GST ASMT-10.
- The proper officer shall issue a notice to the registered person in FORM GST ASMT-10 through the scrutiny functionality on ACES-GST application informing him of the discrepancies noticed and seeking his explanation thereto. The notice in FORM ASMT-10 issued through scrutiny functionality on ACES-GST application shall be communicated by the system to the concerned registered person through common portal. As far as possible, the proper officer shall quantify the amount of tax, interest and any other amount payable in relation to such discrepancies after considering payment, if any, already made by the registered person through Form DRC-03. The proper officer shall mention the parameter-wise details of the discrepancies noticed and shall also upload the worksheets and annexures, if any. A single compiled notice in FORM GST ASMT-10 shall be issued to the taxpayer for all returns pertaining to the financial year under scrutiny.
- The registered person may accept the discrepancy communicated to him in ASMT-10 and pay the tax, interest and any other amount arising from such discrepancy and inform the same or may furnish an explanation for the discrepancy in FORM GST ASMT-11 to the proper officer.
- If the explanation furnished by the registered person or the information submitted in respect of acceptance of discrepancy and payment of dues is found to be acceptable by the proper officer, he shall conclude the proceedings by informing the registered person in FORM GST ASMT-12.
- In case no satisfactory explanation is furnished by the registered person in FORM GST ASMT-11 within a period of thirty days of being informed by the proper officer or such further period as may be permitted by him or where the registered person, after accepting the discrepancies, fails to pay the tax, interest and any other amount arising from such discrepancies, the proper officer, may proceed to determine the tax and other dues under section 73 or section 74.
- For proceeding under section 73 or section 74, monetary limits as specified in *Circular No. 31/*05*/2018-GST dated 9th February 2018* shall be adhered to. However, if the proper officer is of the opinion that the matter needs to be pursued further through audit or investigation to determine the correct liability of the said registered person, then he may take the approval of the jurisdictional

Principal Commissioner / Commissioner through the divisional Assistant / Deputy Commissioner, through e-file or other suitable mode, for referring the matter to the Audit Commissionerate or anti-evasion wing of the Commissionerate, as the case may be.

d. Timelines for scrutiny of returns

S.No.	Process	Timelines/ Frequency
1.	Communication of list of GSTINs selected for scrutiny on ACES GST Application for a financial year	From time to time
2.	Finalization of scrutiny schedule with the approval of the concerned Assistant/ Deputy Commissioner	Within seven working days of receipt of the details of the concerned GSTINs on ACESGST application
3.	Issuance of notice by the proper officer for intimating discrepancies in FORM GST ASMT-10, where required	Within the month, as mentioned in scrutiny schedule for scrutiny of the returns of the said GSTIN.
4.	Reply by the registered person in FORM GST ASMT-11	Within a period of thirty days of being informed by the proper officer in FORM GST ASMT-10 or such further period as may be permitted by the proper officer.
5.	Issuance of order in FORM GST ASMT-12 for acceptance of reply furnished by the registered person, where applicable	Within thirty days from receipt of reply from by the registered person in FORM GST ASMT-11.
6.	Initiation of appropriate action for determination of the tax and other dues under section 73 or section 74, in cases where no reply is furnished by the registered person	Within a period of fifteen days after completion of the period of thirty days of issuance of notice in FORM GST ASMT-10 or such further period as permitted by the proper officer.
7.	Initiation of appropriate action for determination of the tax and other dues under section 73 or section 74, in cases where reply is furnished by the registered person, but the same is not found acceptable by the proper officer	Within thirty days from receipt of reply from the registered person in FORM GST ASMT-11.
8.	Reference, if any, to the Audit Commissionerate or the anti-evasion wing of the Commissionerate for action,	Within thirty days from receipt of reply from the registered person in FORM GST ASMT-11 or within a

	under section 65 or section 66 or section 67, as the case may be.	period of forty-five days of issuance of FORM GST ASMT-10 in case no explanation is furnished by the registered person.

The scrutiny functionality has been provided on ACES-GST application only for the Financial Year 2019-20 onwards, therefore, the procedure specified in Instruction No. 02/2022 dated 22.03.2022 shall continue to be followed for the scrutiny of returns for the financial years 2017-18 and 2018-19.

Appeals and Revisions:

4. Amendment in rule 108 (Appeal to the Appellate Authority):

As per Rule 108(3), in respect of an appeal filed by the aggrieved person (taxpayer), has been substituted (vide Notification No. 26/2022-CT dt. 26.12.2022) as under:

In GST regime, when an order which is appealed against is issued or uploaded by the adjudicating authority on the common portal, the same can be viewed by the Appellate Authority**.** Where the decision or order appealed against is uploaded on the common portal, a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal. As a result requirement of submission of certified copy of the said order dispensed with.

However, in cases where the decision or order has been passed manually and has not been uploaded on the common portal, the same is not available to the Appellate Authority on the common portal. If so (i.e. decision or order appealed against is not uploaded on the common portal), the appellant shall submit a self-certified copy of the said decision or order within a period of seven days from the date of filing of FORM GST APL-01 and a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf, and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal. However, if the said self-certified copy of the decision or order is not submitted within a period of seven days from the date of filing of FORM GST APL-01, the date of submission of such copy shall be considered as the date of filing of appeal.

5. Substitution of rule 109 (Application to the Appellate Authority), vide Notification No. 26/2022-CT dt. 26.12.2022 as under:

Sub-rule (1) provides that an application to the Appellate Authority under sub-section (2) of section 107 shall be filed in FORM GST APL-03 (i.e. Departmental Appeal), along with the relevant documents, either electronically or otherwise as may be notified by the Commissioner and a provisional acknowledgment shall be issued to the appellant immediately.

Sub-rule (2) provides that where the decision or order appealed against is uploaded on the common portal, a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal under sub-rule (1).

Where the decision or order appealed against is not uploaded on the common portal, the appellant shall submit a self-certified copy of the said decision or order within a period of seven days from the date of filing of FORM GST APL-03 and a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf, and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal.

However, where the said self-certified copy of the decision or order is not submitted within a period of seven days from the date of filing of FORM GST APL-03, the date of submission of such copy shall be considered as the date of filing of appeal.

6. New rule 109C - Withdrawal of Appeal (vide Notification No. 26/2022-CT dt. 26.12.2022)**:**

Earlier, there was no provision in the GST law for withdrawal of the appeal filed under section 107(1) (i.e. appeal filed by taxpayer) or section 107(2) (i.e. appeal filed by the department) before the first appellate authority against decision or orders of the adjudicating authority by aggrieved person or authorized officer respectively.

The appellant may, at any time before issuance of show cause notice under sub-section (11) of section 107 or before issuance of the order under the said sub-section, whichever is earlier, in respect of any appeal filed in FORM GST APL-01 or FORM GST APL-03, file an application for withdrawal of the said appeal by filing an application in FORM GST APL-01/03W.

Where the final acknowledgment in FORM GST APL-02 has been issued, the withdrawal of the said appeal would be subject to the approval of the appellate authority and such application for withdrawal of the appeal shall be decided by the appellate authority within seven days of filing of such application.

Any fresh appeal filed by the appellant pursuant to such withdrawal shall be filed within the time limit specified in sub-section (1) or sub-section (2) of section 107, as the case may be.

Note: section 107(11) of the CGST Act, 2017: The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against but shall not refer the case back to the adjudicating authority that passed the said decision or order:

Study Note 21 : E-waybills under GST

Amendment in rule 138(14) (Information to be furnished prior to commencement of movement of goods and generation of e-way bill) vide Notification No. 26/2022-CT dt. 26.12.2022:
Rule 138(14) illustrates the cases where e-way bill is not required to be generated.

One such case is where jewellery, goldsmiths' and silversmiths' wares and other articles (Chapter 71) are being transported. Thus, jewellery, goldsmiths' and silversmiths' wares and other articles (chapter 71) can be transported without generating e-way bill.

This provision has been amended to provide that henceforth, e-way bill needs to be generated for transporting imitation jewellery (7117).

Study Note 23 : Anti-Profiteering

1. Empowering the Competition Commission of India to handle Anti-Profiteering cases under the CGST Act:

Central Government on the recommendations of GST Council has empowered the Competition Commission of India (CCI) established under section 7(1) of the Competition Act, 2002 to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

The above amendment shall become effective from 01.12.2022 (Notification No. 23/2022-CT dt. 23.11.2022). Resultantly, National Anti-Profiteering Authority (NAA) ceased to exist from 01.12.2022.

Further, rule 127 which provides for 'Duties of the Authority' has been amended to substitute the word 'Duties' with the word 'Functions'.

Furthermore, in the Explanation provided after rule 137, the meaning of 'Authority' has been amended to mean the authority notified under sub-section (2) of section 171 of the Act.

The above amendments shall become effective from 01.12.2022 (Notification No. 24/2022-CT dt. 23.11.2022).

In rule 161, for the word, "order", the words, "intimation or notice" shall be substituted (NT. No. 26/2022 CT dated 26.12.2022).

CUSTOMS LAWS

Study Note 4 : Valuation under Customs

Customs (Assistance in Value Declaration of Identified Imported Goods) Rules, 2023 (vide Notification No. 03/2023 Cus (N.T.) dated 11.01.2023 read with customs circular no. 01/2023 Cus dated 11.01.2023):

The trend of undervaluing imported goods, for the purpose of evading customs duty or for other ulterior purposes, has been on a constant rise. Finance Act, 2022, amended section 14 of the Customs Act, 1962, with the intent of addressing the issue of undervaluation in imports. Now, the Central Government has notified the Customs (Assistance in Value Declaration of Identified Imported Goods) Rules, 2023 (CAV Rules, 2023) which shall come into force from 11th February 2023, to tackle the menace of undervaluation of imports.

The aspects in these rules are explained in the following steps:

Step 1: Written Reference: Any person having a reason to believe that the value of any class of goods, imported thereof may not have been declared truthfully or accurately, shall make a written reference (containing evidence and other specified details) of the same to the **Board**, and submit the same **electronically**. The reference may also be made to an **officer of Customs** (i.e., the Commissioner or Additional Director General), or to **any person representing a government department**.

The written reference shall also be accompanied with all evidence which established the claims made by person submitting the written reference. Thereafter, the written reference so received shall be forwarded to the Screening Committee.

Step 2: Examination by the Screening Committee: The Screening Committee shall, after having taken all material evidence on record, do a scrutiny of the same. Thereafter, having conducted a preliminary examination, the findings of the Screening Committee shall be recorded within a period of 15-21 days. Based on preliminary examinations and findings, the written reference may have the following fate:

- On being found suitable for a detailed examination, shall be taken up for detailed evaluation by the Evaluation Committee.
- being found unsuitable for a detailed examination, the Screening Committee shall close the reference after recording their reasons.

Step 3: Examination by the Evaluation Committee: The Evaluation Committee, after having conducted a detailed examination of the relevant class of goods by analyzing the international prices

of the goods, research papers and reports, disclosures made under the act etc., shall submit a reasoned **Report**, signed by all members of the Evaluation Committee.

The detailed Report being submitted by the Evaluation Committee shall provide complete description of the class of imported goods, with the 8-digit HS code, the Unique Quantity Code (UQC) used by the importer, along with other technical specifications as provided under Rule 8 of CAV Rules, 2023. Alternatively, the Evaluation Committee may close the reference and submit its reasons for such closure to the Screening Committee for filing.

Step 4: Confirmation and recommendation by Screening Committee: The detailed Report submitted by the Evaluation Committee shall subsequently be forwarded to the Screening Committee under Rule 9 of CAV Rules, 2023 for recommendation (regarding completeness of the Report) and rectifications, if any. The Screening Committee shall make its recommendation to the Board within 15 days of receipt of such Report.

Step 5: Recommendation by the Board: The recommendations made by the Screening Committee shall be considered by the Board, and on the said Report being accepted, the board may issue an **Order under Rule 5** wherein specifications regarding the 8-digit HS Code, Unique Quantity Code and other details shall be specified.

Step 6: Procedure with respect to the identified goods:

(A) Obligations on the importer:-

Once certain goods have been identified in the Order by the Board under these Rules, the importer of such goods will have to declare the value of goods as specified under Rule 10 of the CAV Rules, 2023, while importing such identified goods. As such, the overall consequences or additional obligations that may be cast upon the importer are as follows:

(1) *Unique Quantity Code (UQC)*, as specified in the Order, would be necessarily used by the importer to declare the value in the bill of entry.

(2) *Technical or other specifications* (e.g., make, model, brand, grade, size, quality, composition, quantity in UQC) to be declared in the bill of entry.

(3) *Other additional obligations* may have to be met by the importer to demonstrate the truthfulness and accuracy of the declared value (including manufacturer invoice, manufacturer test report, expert certification issued in the country of origin, manufacturing process, costing, purchase order or contract etc.)

(B) Assessment including provisional assessment:-

(1) The importer shall have to fulfil the details as required by the Customs Automated System. If the details have not been provided, the importer shall have to, if required by the proper officer, provide such details within 10 days.

(2) The importer shall have to provide further information and documents as required by the proper officer to examine the truthfulness of the declared value.

(3) The proper officer shall clear the goods after provisional assessment, on request of the importer and upon furnishing appropriate security under section 18 of the Customs Act, 1962.

(4) The proper officer may accept the declared value of the goods upon being satisfied with the truthfulness and accuracy of the declared value.

(5) Where the importer does not provide requisite information or does not fulfil other obligations cast upon him or where the proper officer has reasonable doubt about the truth or accuracy of the declared value, the further proceedings shall take place as per Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

Step 7: Review: After half of the validity period has lapsed, the Screening Committee shall review its order issued under Rule 5, to identify whether the goods specified under Rule 5 may be de-specified before its expiration period, or the validity period of the specified goods might be extended as per the reasoned report of the Screening Committee.

Step 8: Exceptions.- These rules shall not be applied to, –

(a) imports not involving duty;

(b) goods for which tariff value has been fixed by the Board in terms of sub-section (2) of section 14 of the Act;

(c) goods which attract import duty on specific rate basis;

(d) imports made in terms of authorization or license issued under duty exemption scheme of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992) in which the inputs imported prior to export are physically contained in the export product;

(e) imports where buyer and seller are related and an investigation on relationship has already been contemplated or finalized;

(f) Project imports;

(g) imports by Government, Public Sector Undertakings;

(h) imports made in non-commercial quantities;

(i) goods imported for the purpose of re-export; or

(j) imports specified by the Board.

Study Note – 5: Import and Export Procedure

Section 51A of the Customs Act, 1962, Payment of duty, interest, penalty, etc.—

(1) Every deposit made towards duty, interest, penalty, fee or any other sum payable by a person under the provisions of this Act or under the Customs Tariff Act, 1975 (51 of 1975) or under any other law for the time being in force or the rules and regulations made thereunder, using authorised mode of payment shall, subject to such conditions and restrictions, be credited to the electronic cash ledger of such person, to be maintained in such manner, as may be prescribed.

(2) The amount available in the electronic cash ledger may be used for making any payment towards duty, interest, penalty, fees or any other sum payable under the provisions of this Act or under the Customs Tariff Act, 1975 (51 of 1975) or under any other law for the time being in force or the rules and regulations made thereunder in such manner and subject to such conditions and within such time as may be prescribed.

(3) The balance in the electronic cash ledger, after payment of duty, interest, penalty, fee or any other amount payable, may be refunded in such manner as may be prescribed.

(4) Notwithstanding anything contained in this section, if the Board is satisfied that it is necessary or expedient so to do, it may, by notification, exempt the deposits made by such class of persons or with respect to such categories of goods, as may be specified in the notification, from all or any of the provisions of this section.]

Phased implementation of Electronic Cash Ledger (ECL) w.e.f. 1-4-2023 section 51A of Customs Act, 1962:-

Section 51A(4) provides that CBIC may by notification exempt certain deposits to which provisions of Electronic Cash Ledger will not be applicable. Accordingly, in the first phase from 01.04.2023 till 30.04.2023, CBIC has exempted following deposits from the payment of electronic cash ledger under section 51A of the Customs Act, 1962.

Exemption of deposits under Section 51A of Customs Act, 1962:-

(i) with respect to goods imported or exported in customs stations where customs automated system is not in place;

(ii) with respect to accompanied baggage;

(iii) with respect to goods imported or exported at international courier terminals;

(iv) other than those used for making electronic payment of:

(a) any duty of customs, including cesses and surcharges levied as duties of customs;

(b) integrated tax;

(c) Goods and Service Tax Compensation Cess;

(d) interest, penalty, fees or any other amount payable under the said Act, or the Customs Tariff Act, 1975.

In the second phase, from 01.05.2023, the exemptions cited above would continue, except for the deposits with respect to goods imported or exported at international courier terminals (Notification No. 18/2023 and 19/2023 Cus dated 30.03.2023).