

GST AMENDMENTS - 2022

GIST OF IMPORTANT AMENDMENTS IN GST LAW | 2022

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PART 1 – NON RATE AMENDMENTS AND CIRCULARS

NON-RATE NOTIFICATIONS / AMENDMENT RULES / CLARIFICATORY
CIRCULARS

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SUMMARY OF NOTIFICATIONS

NOTIFICATION NO	DATE	CHANGES
09/ 2022	05 th JULY 2022	<p>1.Sec 110(c) & Sec 111 of FA, 2022 becomes effective from this date .</p> <p>2.Sec 110(c) inserts Sec 49(10) to Sec 49 of CGST Act, 2017 permitting transfer of amounts from E- cash ledger between distinct persons</p> <p>3.Sec 111 inserted sub clause (3) to Sec 50 of CGST Act, levy of interest on ITC wrongly availed and utilized.</p>

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NOTIFICATION NO

DATE

CHANGES

10 / 2022	05 th JULY 2022	Exemption from filing annual returns for FY 2021-2022 for persons who's aggregate annual T/O is up to Rs. 2 Cr
11 / 2022	05 th JULY 2022	Extension of due date for filing quarterly returns in form CMP-08 for the 1 st quarter ended 30 th June 2022 is extended till 31 st of July 2022 .
12 / 2022	05 th JULY 2022	Further extension of fee waiver for filing GSTR - 4 from 30 th of June 2022 to 28 th of July 2022
13 / 2022	05 th JULY 2022	Time limit for passing order under Sec 73(10) for the year 2017- 18 has been extended upto 30.09.2023 consequently SCN can be issued u/s 73 on or before 30.06.2023

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14 / 2022	05 th JULY 2022	As Below
<p>i) Introducing new proviso Rule 21A(4) where Rule 21A provides for suspension of registration in certain cases one among being failure to file returns, u/r 21A upon filing pending returns the suspension shall be deemed to be revoked.</p> <p>ii) Sale of Duty Credit Scripts has been added explanation under Rule 43 and sale of such scripts would not be treated as exempt supply and hence there would be no requirement for reveal of any common ITC.</p>		

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| <p>iii) Categories of tax payers exempted from provisions relating to E-invoicing to make declaration in Invoice</p> <p>iv) Introduction of new sub-rule 4B in Rule 86 – Refund on erroneous sanctions shall be credited to E-Credit Ledger.</p> <p>v) By amending Rule 87(3) UPI & IMPS has been added as options for depositing amount in E- Cash Ledger.</p> <p>vi) Rule 87(14) is inserted for transferring the balance in E- Cash Ledger from one registration to another registration of the same entity.</p> | <p>vii) New Rule 88B - Manner of calculation of interest has been introduced retrospective effect from 01.07.2017 for calculation of interest U/S 50.</p> <p>viii) Changes in Formula for Calculating Inverted Duty Structure Refunds</p> <p>ix) Special provisions has been made for export of electricity .</p> <p>x) In case of zero rated supply on export goods the value of goods shall be taken as Free on Board (FOB) declared in shipping bill or value declared in tax invoice W.E.L shall be the value of exports.</p> | <p>xi) Rule 95A deemed to be omitted from 1st July,2019.</p> <p>xii) Rule 96(1)(b) date of rectification of mismatch of GSTR-I & shipping bill is the date of filing refund claim.</p> <p>xiii) Rule 96(4)(c) sanction of refund can be withheld by the department in case of “risky exporters”</p> <p>xiv) Certain changes has been made to GSTR forms Form GSTR- 3B , 9 & 9C and FORM-GST-RFD-01 , and some new forms FORM GST PMT – 03A , FORM GST PMT-06, FORM GST PMT-07, FORM GST PMT-09, are included.</p> |
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NOTIFICATION 9/2022 CENTRAL TAX DT. 05.07.2022

- The council fixes 5th July 2022 as the effective date from which the amendments made to CGST Act, 2017 vide Section 110 (c) and 111 of the Finance Act, 2022 come into force .
- Vide clause (c) of Section 110 of the FA, 2022, a new sub section (10) has been substituted in Section 49. As per this amended sub-section, the amount lying in the electronic cash ledger of a tax payer **can be transferred to another registration** of the same entity, having same PAN.

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- This would be possible, only if the transferor unit is not having any outstanding tax liability. Vide section 111 of the FA, 2022, a new sub-section (3) has been introduced under section 50 of the CGST act, with retrospective effect from 01.07.2017.

Sec 50 (3) where ITC has been **wrongly availed and utilized, the registered person shall be liable to pay interest @ 18% p.a. under new rule 88B of CGST rules , 2017** on the amount wrongly availed and utilized.

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NOTIFICATION 9/2022 CENTRAL TAX DT. 05.07.2022

Sec. 50(3) - Amendment

(3) A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four per cent, as may be notified by the Government on the recommendations of the Council

Replaced with

(3) Where the input tax credit has been wrongly availed and utilised, the registered person shall pay interest on such input tax credit wrongly availed and utilised, at such rate not exceeding twenty-four per cent. as may be notified by the Government, on the recommendations of the Council, and the interest shall be calculated, in such manner as may be prescribed

NOTIFICATION 10/2022 CENTRAL TAX DT. 05.07.2022.

- This notification provides from exemption from filing of annual return in form GSTR-9 and GSTR-9A (for composition tax payers) for the financial year 2021-22, if the aggregate turnover in the said year is upto Rs.2 crores.

NOTIFICATION 11/2022 CENTRAL TAX DT. 05.07.2022.

- Composition taxpayers are required to file a quarterly return in CMP-08, before 18th of the succeeding month. For the quarter ending 30th June 2022, the due date for filing CMP-08 by the composition tax payer has been extended till 31/07/2022.

NOTIFICATION 12/2022 CENTRAL TAX DT. 05.07.2022.

- **GSTR-4 return** to be filed by composition taxpayer, for every Financial Year before 30th April of the succeeding year. If not filed within the due date, late fee as applicable u/s 47 of the CGST act is payable. vide sixth proviso to notification 73/2017 Central Tax Dt. 29.12.2017 (as amended) the late fee for the FY 2021-22 was waived, if the return is filed up to **30th June 2022**. Now this waiver is **extended up to 28th July 2022**.

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NOTIFICATION 13/2022 CENTRAL TAX DT. 05.07.2022.

- **Section 73 deals with determination of tax liabilities**, where no fraud, suppression, etc. are involved. Section 73(10) prescribes that any order for determination of tax liability has to be passed within **3 years** from the due date for filing annual return for a year. The show cause notice has to be issued at least three months before the last date for passing the order.
- As the due date for filing annual return for 2017-18 was extended up to 31.01.2020 (and later till 7th Feb 2020), any order for the year 2017-18, under section 73 has to be passed on or before 6th Feb 2023 and Show Cause Notice should be issued on or before 30.10.2022. Now the time limit for passing order under Section 73 (10) for the year 2017- 18 has been extended up to **30.09.2023**. As a consequence, any show cause notice for the year 2017-18 under Section 73 can be issued on or before **30.06.2023**.

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NOTIFICATION 13/2022 CENTRAL TAX DT. 05.07.2022.

- **Section 54 deals with** application for refund with a normal limitation period of two years. The above notification excludes the period from the **1st day of March, 2020 to the 28th day of February, 2022** for computation of period of limitation for **filing refund application** under Section 54 or section 55 of the said Act
- **Author's Note:** This address many a case where the refund due to exporters was denied due to limitation period expiring in the above window. Now all such exporters can file refund claims for periods, with limitations expiring in the above window and cases which for those whose cases are pending in appeals can also take leverage of the above extension and can make submissions accordingly.

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NOTIFICATION 14/2022 CENTRAL TAX DT. 05.07.2022

- Amendments to CGST Rules 2017, which are as follows:
 - I. **Rule 21A** of the CGST Rules provides for **suspension of registration** of the taxpayer in certain circumstances, one of which being, failure to file returns. Now, by way of introducing second proviso under sub-rule (4) of rule 21A, it has been provided that **upon filing of all returns by the taxpayer, the suspension shall be deemed to be revoked.**
 - **2. Explanation under rule 43**, which is relevant for both Rule 42 and 43, lists out certain cases, which shall be treated as exempt supply for the purposes of proportionate reversal of common ITC. To such list, sale of Duty Credit Scrips has been added. **So, sale of such scripts would not be treated as exempt supply and hence there would be no requirement for reveal of any common ITC**

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3. Certain categories of taxpayers are exempted from the provisions relating to e - invoicing. Clause (s) has been added to rule 46, requiring such persons to make a declaration in this regard in their invoices.


4. Sub-rule (4b) has been introduced in rule 86. as per this sub-rule, if any erroneously sanctioned refund [export refund, inverted rate structure refund or refund of IGST paid on export, sanctioned in contravention of rule 96 (10)] is paid back in cash, equivalent amount would be credited in the electronic credit ledger, as at the time of claiming he refund, the said amount would have been debited from the electronic credit ledger.



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5. UPI and IMPS have been added as options for making deposits into electronic cash ledger, by amending rule 87 (3).

6. Consequent to notifying section 49 (10), sub-rule (14) has been introduced in rule 87, prescribing the procedures for transfer of balance in electronic cash ledger from one registration to another registration of the same entity.



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7.A new rule 88B has been introduced with retrospective effect from 01.07.2017, prescribing the **manner of calculation of interest under section 50.**

➤ As per sub-rule (1), if the tax liability declared in the return is paid belatedly, i.e. If the return is filed belatedly, interest would be payable only on the cash portion of the liability.

➤ As per sub-rule (2), in all other cases (such as short payment of tax, non-payment of tax, etc.) Interest is payable from the due date for payment of such tax, till its payment. Let us assume that instead of paying tax @ 12 %, a taxpayer has paid tax @ 5 %. when the differential tax is paid later, notwithstanding the fact that he had enough ITC to pay the differential tax at the relevant point of time, interest would be payable from the due date for payment of tax till its actual payment.

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➤ **In case of wrong availment of ITC, interest would be payable only if the wrongly availed ITC is utilized.**

➤ the wrongly availed credit is deemed to be utilized when the balance in electronic credit ledger falls below the wrongly availed credit. For example if ITC of Rs. 2 Lakhs is availed wrongly in April 2022 and the closing balance of ITC in June 2022 GSTR 3 B return is Rs.1,20,000, Rs.80,000 of wrongly availed ITC is deemed to have been utilized in the month of June 2022.

➤ The manner of determination of **Date Of Utilization of credit** is also prescribed, which is explained below.

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➤ Generally, The utilization of wrong ITC would be the date of filing of GSTR 3B return or due date or the due date for filing the said return, whichever is earlier. In other words, if the return is filed beyond the due date, the date of utilization of credit would be the due date for filing the return and the taxpayer cannot reduce the interest liability on utilization of wrong credit, by delaying the filing of GSTR-3B.

➤ Apart from utilizing the ITC for payment of tax through GSTR-3B, the ITC may be used for other purposes, such as debiting of electronic credit ledger for claiming refund, etc. If the balance in electronic credit ledger falls before the wrongly availed credit, as a result of utilization of credit for such purposes, the date on which such debit is made, leading to the balance in electronic credit ledger falling short of the amount of the wrongly availed ITC, such date of debit would be the date of utilization of credit.

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8. As per second proviso to rule 89 (I), in case of refund of ITC against supplies made to SEZ unit / SEZ developer, the “specified officer” of the SEZ zone shall certify the receipt of goods and services by SEZ unit / developer. Now, the term “specified officer” would also include “authorized officer” of the SEZ zone, who would be lower in rank than the “specified officer” and would be available in all SEZ.

9. Though electricity is “goods” it is intangible and some of the conditions applicable for export of goods cannot be applied to electricity and hence certain special provisions have made for export of electricity.

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10. In sub-rule (4) of rule 89 an explanation has been added to the effect that the refund entitlement (refund of ITC on account of zero rated supplies), shall be calculated with reference to the FOB value of exports only.

Author's Note: The valuation of export goods is to be made only u/s 15 of the CGST act and in case of CIF exports, the CIF value would be the value in terms of Sec.15(2)(c). It is doubtful as to how Rule 89(4) can specify FOB value for exports.

11. In the said rules, Rule 95A w.r.t. Duty Free Shops, shall be deemed to have been omitted with effect from the 1st July, 2019

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12. In the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula –

Maximum Refund = $\left[\frac{\text{Turnover of Inverted Rated Goods / Services}}{\text{Adjusted Total Turnover}} \right] \times \text{Net ITC}$ Less: Tax payable on such inverted rated supply of goods and services.

Pursuant to the observations of the Supreme Court in case of VKC Footwear vs Union of India

Maximum Refund = $\left[\frac{\text{Turnover of Inverted Rated Goods / Services}}{\text{Adjusted Total Turnover}} \right] \times \text{Net ITC (Inputs)}$

Less: Tax payable on such inverted rated supply $\times \left[\frac{\text{Net ITC (Inputs)}}{\text{ITC on Inputs and Input Services}} \right]$

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12. Clause (b) of sub-rule (1) of rule 96 is being substituted with retrospective effect from 01.07.2017. As per this provision, when there is a mismatch between the details furnished in GSTR-I and in the shipping bills, the date of rectification of such mismatch would be considered as the date of filing refund claim.

13. Clause (c) has been introduced in sub-rule (4) of rule 96 whereby sanction of refund can be withheld by the department in case of “risky exporters”. Provisions are also made for transfer of the refund claim from the customs department to the jurisdictional GST authorities where any further verification is required. It has been provided that the date of such transmission shall be considered as the date of filing of the claim and this stipulation should only for computation the time limit for sanction.

CIRCULARS ISSUED BY CBIC

CBIC through has issued various circulars dated 6th July 2022 w.r.t. notification no 14/2022 issued by GST council and others. The detailed discussions on the circulars are discussed below:

CIRCULAR NO	DATE	CONTENTS OF CIRCULAR
170/02/2022-GST	6 th July, 2022	Mandatory furnishing of correct and proper information of inter-State supplies and amount of ineligible / blocked Input Tax Credit and reversal thereof in return in FORM GSTR-3B and statement in FORM GSTR-I.
171/03/2022-GST	6 th July, 2022	Clarification on various issues relating to applicability of demand and penalty provisions under the Central Goods and Services Tax Act, 2017 in respect of transactions involving fake invoices.
172/04/2022-GST	6 th July, 2022	Clarification on – (1) refund claimed by the recipients of supplies regarded as deemed export; (2). interpretation of section 17(5) of the CGST Act; (3). Perquisites provided by employer to the employees as per contractual agreement; and (4) utilisation of the amounts available in the e-credit ledger and the e-cash ledger for payment of tax and other liabilities

CIRCULARS ISSUED BY CBIC

CIRCULAR NO	DATE	CONTENTS OF CIRCULAR
173/05/2022-GST	6 th July, 2022	Clarification on issue of claiming refund under inverted duty structure where the supplier is supplying goods under some concessional notification
174/06/2022-GST	6 th July, 2022	Prescribing manner of re-credit in electronic credit ledger using FORM GST PMT-03A.
175/07/2022-GST	6 th July, 2022	Manner of filing refund of unutilized ITC on account of export of electricity.
176/08/2022-GST	6 th July, 2022	Withdrawal of Circular No. 106/25/2019-GST dated 29.06.2019. – w.r.t. Duty Free Shops

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CIRCULAR NO. 170/02/2022-GST

- This circular provides for mandatory furnishing of correct and proper information of inter-state supplies and **amount of ineligible / blocked Input Tax Credit and reversal thereof in return in FORM GSTR-3B and statement in FORM GSTR-I**

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CIRCULAR NO. 170/02/2022-GST

- This circular provides for mandatory furnishing of correct and proper information of inter-state supplies and **amount of ineligible / blocked Input Tax Credit and reversal thereof in return in FORM GSTR-3B and statement in FORM GSTR-I**
- **Auto-populated:** In this context, it is pertinent to mention that the facility of static month-wise auto-drafted statement in FORM GSTR-2B for all registered persons has been introduced from August, 2020 (However remains editable)

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CIRCULAR NO. 170/02/2022-GST

- **Auto-populated:** It may be noted that the entire set of data that is available in FORM GSTR-2B is carried to the table 4 in FORM GSTR-3B, except –
 - (a) for the details regarding ITC that is not available to the registered person either on account of limitation of time period as delineated in 16(4) or
 - (b) where the recipient of an intra-State supply is located in a different State / UT than that of place of supply.
- **Ineligible ITC – To be reversed:** It is pertinent to mention that the ineligible ITC, which was earlier not part of calculation of eligible/available ITC, is now part of calculation of eligible/available ITC in view of auto-population of Table 4(A) of FORM GSTR-3B from various tables of FORM GSTR-2B. Thereafter, the registered person is required to identify ineligible ITC as well as the reversal of ITC to arrive at the Net ITC available, which is to be credited to the ECL. In light of the above, the procedure to be followed by registered person is being detailed hereunder for correct reporting of information in the return:

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CIRCULAR NO. 170/02/2022-GST

- A. Table 4A – Gross ITC Available:** Total ITC (eligible as well as ineligible) is being auto-populated from statement in FORM GSTR-2B in different fields of Table 4A of FORM GSTR-3B (except for the ineligible ITC on account of limitation u/s 16(4) or where the recipient of an intra-State supply is located in a different State than POS)
- B. Permanent Reversal – Table 4B(1):** Registered person will report in **Table 4 (B) (1)** reversal of ITC, which are absolute in nature and are not reclaimable, such as on account of –
- (i) Rule 38 (reversal of credit by a banking company or a financial institution),
 - (ii) Rule 42 / rule 43 (reversal on Inputs / IS / Capital Goods used for supply of exempted goods or services) and
 - (iii) Blocked ITC u/s 17(5) of the CGST Act
- C. Temporary Reversal – Table 4B(2):** Ex: Rule 37 of CGST Rules (non-payment of consideration to supplier within 180 days), Sec. 16(2)(b) / (c) of the CGST Act in Table 4 (B) (2). Table 4 (B) (2) may also be used by registered person for reversal of any ITC availed in Table 4(A) in previous tax periods because of some inadvertent mistake

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CIRCULAR NO. 170/02/2022-GST

- D. Reclaim of ITC:** Such ITC may be reclaimed in Table 4(A)(5) on fulfilment of necessary conditions. Further, all such reclaimed ITC shall also be shown in Table 4(D)(1).
- E. Net ITC:** Therefore, the net ITC Available will be calculated in Table 4 (C) which is as per the formula $(4A - [4B (1) + 4B (2)])$ and same will be credited to the ECL of the registered person.
- F. Table 4D:** all such reclaimed ITC shall also be shown in Table 4(D)(1). Table 4D As the details of ineligible ITC under section 17(5) are being provided in Table 4(B), no further details of such ineligible ITC will be required to be provided in Table 4(D)(1).

ITC not available, on account of limitation of time period as delineated u/s 16(4) or where the recipient of an intra-State supply with different state POS, may be reported by the registered person in Table 4D (2). Such details are available in Table 4 of FORM GSTR-2B

Reversal of ITC of ineligible credit u/s 17(5) or any other provisions is required to be made under Table 4(B) and not under Table 4(D) of FORM GSTR3B.

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CIRCULAR NO. 170/02/2022-GST

Illustration:

1. A Registered person M/s ABC is a manufacturer (supplier) of goods. He supplies both taxable as well as exempted goods. In a specific month, say April, 2022, he has received input and input services as detailed in Table 1 below. The details of auto-population of Input Tax Credit on all Inward Supplies in various rows of Table 4 (A) of FORM GSTR-3B are shown in column (7) of the Table 1 below:

Table 1

S. No.	Details	IGST	CGST	SGST	Total	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	ITC on Import of goods	1,00,000	-	-	1,00,000	Auto-populated in Table 4(A)(1)
2	ITC on Import of Services	50,000	-	-	50,000	
3	ITC on Inward Supplies under RCM	-	25,000	25,000	50,000	Auto-populated in Table 4(A)(3)
4	ITC on Inward Supplies from ISD	50,000	-	-	50,000	Auto-populated in Table 4(A)(4)
5	ITC on other inward supplies	2,00,000	1,50,000	1,50,000	5,00,000	Auto-populated in Table 4(A)(5)
6	Total	4,00,000	1,75,000	1,75,000	7,50,000	

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CIRCULAR NO. 170/02/2022-GST

Other relevant facts:

Note 1: Of the other inward supplies mentioned in row (5), M/s ABC has received goods on which ITC is barred under section 17(5) of the CGST Act having integrated tax of Rs. 50,000/-

Note 2: In terms of rule 42 and 43 of the CGST Rules, M/s ABC is required to reverse ITC of Rs. 75,500/- integrated tax, Rs. 52,000/- central tax and Rs. 52,000/- state tax.

Note 3: M/s ABC had not received the supply during April, 2022 in respect of an invoice for an inwards supply auto-populated in row (5) having integrated tax of Rs. 10,000/-.

Note 4: M/s ABC has reversed ITC of Rs. 500/- central tax and Rs. 500/- state tax on account of Rule 37 i.e. where consideration was not paid to the supplier within 180 days.

Note 5: An amount of ITC of Rs 10,000/- central Tax and Rs 10,000/- state tax, ineligible on account of limitation of time period as delineated in sub-section (4) of section 16 of the CGST Act, has not been auto-populated in Table 4(A) of FORM GSTR-3B from GSTR-2B.

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CIRCULAR NO. 170/02/2022-GST

Based on the facts mentioned in Table 1 above, M/s ABC is required to avail ITC after making necessary reversals in Table 4 of FORM GSTR-3B as detailed in Table 2 below:

Table 2

4. Eligible ITC				
Details	IGST	CGST	SGST/UTGST	Explanation
1	2	3	4	
(A) ITC Available (whether in full or part)	----	----	----	
1. Import of Goods	1,00,000	----	----	
2. Import of Services	50,000	----	----	
3. Inward Supplies liable to Reverse Charge (other than 1 & 2 above)	----	25,000	25,000	
4. Inward Supplies from ISD	50,000	----	----	
5. All other ITC	2,00,000	1,50,000	1,50,000	
(B) ITC Reversed / Reduced	----	----	----	

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CIRCULAR NO. 170/02/2022-GST

1. Reversal of ITC as per rule 42 and 43 of CGST Rules	125,500	52,000	52,000	1. Refer para 4.3 (B) of circular 2. Reversal of Rs. 75,500/- integrated tax, Rs. 52,000/- central tax and Rs. 52,000/- state tax under rule 42 and 43 [Note 2] 3. Ineligible ITC of Integrated tax of Rs. 50,000/- under section 17(5) [Note 1]
2. Others	10,000	500	500	1. Refer para 4.3 (C) of circular 2. Reversal of integrated tax of Rs. 10,000/-, where supply is not received [Note 3] 3. Reversal of ITC of Rs 500/- central tax and Rs 500/- state tax on account of Rule 37 [Note 4]
(C) Net ITC Available (A)-(B)	2,64,500	122500	122500	C=A1+A2+A3+A4+A5-B1-B2
(D) Ineligible ITC				
1. As per section 17(5)	-	-	-	1. Refer para 4.3 (E) of circular 2. Reversals under section 17(5) are not required to be shown in this row. The same are to be shown under 4(B)(1)
2. Others		10,000	10,000	1. Refer para 4.3(F) of circular 2. Ineligible ITC on account of limitation of time period as delineated in sub-section (4) of section 16 of the CGST Act, which has not been auto-populated in Table 4(A) of GSTR-3B

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CIRCULAR NO. 171/03/2022-GST – FAKE INVOICES

Fake Invoices - Applicability of Demand and Penalty provisions under the CGST 2017

Person issuing Fake Invoice – No Tax Demand: In respect of fake invoices being issued by any registered supplier against another registered person without actual supply of goods or services or both, in terms of Sec 7 of the CGST Act no tax liability arises for the said transaction as there is no supply and accordingly, no demand and recovery is required to be made under the provisions of section 73 or section 74 of CGST act in respect of the same.

Person issuing Fake Invoice – Penalty: Besides, no penal action u/s 73 or 74 is required to be taken against the supplier in respect of the said transaction. However, the registered person, shall be liable for penal action under section 122 (1)(ii) of the CGST act for issuing tax invoices without actual supply of goods or services or both.

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CIRCULAR NO. 171/03/2022-GST – FAKE INVOICES

Person taking ITC – ITC Recovered + INTEREST + 74 PENALTY: Since the registered person who has availed and utilized fraudulent ITC on the basis of the said tax invoice, without receiving the Goods / Services, in contravention of Sec. 16(2)(b) of CGST act, he shall be liable for the recovery of the said ITC, along with interest u/s 50 and penalty u/s 74

Person taking ITC – No 122 PENALTY: Further, as per provisions of section 75(13) of CGST act, if penal action for fraudulent availment or utilization of ITC is taken against a person u/s 74 of CGST act, no penalty for the same act, i.e. For the said fraudulent availment or utilization of ITC, can be imposed on the person under any other provisions of CGST act, including u/s 122.

Further Supply – 122 PENALTY: In cases where the deemed buyer has claimed ITC based on the tax invoice issued by the supplier and further transfers on the said ITC to another registered person by issuing fake invoice then the 1st person who has claimed ITC and passed on shall be liable for penal action both u/s 122(1)(ii) and 122(1)(vii), for issuing invoices without actual supply of Goods / Services as also for taking/ utilizing ITC without actual receipt of goods and/or service.

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CIRCULAR NO. 172/04/2022-GST

- The Board has issued various clarifications in certain provisions pertaining to GST are as follows:
 1. Refund claimed by the recipients of supplies regarded as deemed export.
 2. Clarification on Sec 17(5) with regard to input tax credit on supplies made to employees.
 3. Perquisites provided by employer to the employees as per contractual agreement.
 4. Utilisation of the amounts available in the electronic credit ledger and the electronic cash ledger for payment of tax and other liabilities.

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I. REFUND CLAIM BY RECIPIENT OF SUPPLIES REGARDED AS DEEMED EXPORTS

- **Tax on Inward Supplies – Not ITC:** The ITC of tax paid on deemed export supplies, allowed to the recipients for claiming refund of such tax paid, is not ITC in terms of the provisions of Chapter V of the CGST Act, 2017. Therefore, the ITC so availed by the recipient of deemed export supplies would not be subjected to provisions of Section 17 of the CGST Act, 2017.
- **No further refund u/r 89(5):** The ITC of tax paid on deemed export supplies, allowed to the recipients for claiming refund of such tax paid, is not ITC in terms of the provisions of Chapter V of the CGST Act, 2017. Therefore, such ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is not to be included in the “Net ITC” for computation of refund of unutilized ITC on account of zero-rated supplies under rule 89(4) or on account of inverted rated structure under rule 89(5) of the CGST Rules, 2017.

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2. CLARIFICATION ON SEC 17(5) WITH REGARD TO INPUT TAX CREDIT ON SUPPLIES MADE TO EMPLOYEES

- Sec 17(5) (b) (iii) ITC can be availed on supplies made by employer to his employees where it's a statutory obligation under any law for the time being in force. It is clarified that the proviso after sub-clause (iii) of clause (b) of sub-section (5) of section 17 of the CGST Act is applicable to the whole of clause (b) of sub-section (5) of section 17 of the CGST Act.

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INELIGIBLE CREDITS

(ELIGIBLE IF THEY ARE USED FOR FURTHER SUPPLY OF SAME CATEGORY)



Life Insurance



Health Insurance

Eligibility (Both 2nd and 3rd):

1. They are notified as Obligatory Services of ER to EE under any law
2. They are used for providing Outward Supply of same category. Eg: Reinsurance

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INELIGIBLE CREDITS

**Membership of a Club****Health / Fitness Centre**

**Travel Benefits to
Employees on Vacation for
LTC
Other Travel eligible if >13
seater**

Eligibility:

1. They are notified as Obligatory Services of ER to EE under any law

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CLARIFICATION W.R.T. LEASING

Sec 17(5) (b) (i) of CGST act blocks ITC w.r.t. "Food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, .."

Vide this circular no. 172/04/2022 its clarified that the term leasing refers to leasing of motor vehicles, vessels and aircrafts only and not to leasing of any other items.

Impact: Restriction of ITC w.r.t. leasing covers only leasing of motor vehicles, vessels and aircrafts only and not leasing of any other items

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3. PERQUISITES PROVIDED BY EMPLOYER TO THE EMPLOYEES AS PER CONTRACTUAL AGREEMENT.

- Services provided by employee to his employer in relation to his employment is an exempted supply under Schedule III of CGST Act.
- Accordingly **perquisite provided by the employer to his employee in terms of contractual agreement** between the employer and employee is **not subject to GST**.
- **Impact:** Earlier clarification vide Press Release on 10th July, 2017, now validated by way of Circular

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4. UTILISATION OF THE AMOUNTS AVAILABLE IN THE ELECTRONIC CREDIT LEDGER AND CASH LEDGER FOR PAYMENT OF TAX AND OTHER LIABILITIES.

Electronic Credit Ledger:

- Any payment towards output tax, whether self-assessed in the return or payable as a consequence of any proceeding instituted under the provisions of GST Laws, can be made by utilization of the amount available in the electronic credit ledger of a registered person.
- For this **the output tax does not include tax paid under RCM**.

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- As per sub-section (4) of section 49, the electronic credit ledger can be used for making payment of output tax only under the CGST act or the IGST act. It **cannot be used for making payment of any interest, penalty, fees or any other amount payable under the said acts**. Similarly, electronic credit ledger cannot be used for payment of erroneous refund sanctioned to the taxpayer, where such refund was sanctioned in cash.

ELECTRONIC CASH LEDGER:

u/s 49(3) of the CGST act, the amount available in the electronic cash ledger may be used for making any payment towards **tax, interest, penalty, fees or any other amount payable under the provisions of the GST laws**.

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CIRCULAR NO. 173/05/2022-GST

- Clarification on issue of claiming refund under inverted duty structure where the supplier is supplying goods under some concessional notification. Clarification with regard to applicability of para 3.2 of the circular no. 135/05/2020-GST dated 31.03.2020."

Accordingly, para 3.2 of the circular no. 135/05/2020-GST dt. 31.03.2020 stands substituted as under: "3.2 it may be noted that refund of accumulated ITC in terms of clause (ii) of first proviso to sub-section (3) of section 54 of the CGST act is available where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. It is noteworthy that, **the input and output being the same in such cases, though attracting different tax rates at different points in time, do not get covered u/s 54(3)(ii) (thereby not entitled to refund)**

Para 3.2 of Circular no. 135/05/2020-GST stands modified to include the following exception:

3.3 There may however, be cases where though inputs and output goods are same but the output supplies are made under a concessional notification due to which the rate of tax on output supplies is less than the rate of tax on inputs. In such cases, the credit accumulated on account of the same is admissible for refund **u/s 54(3)(ii)**, other than the cases where output supply is either nil rated or fully exempted, and also provided that supply of such goods or services are not notified by the government for their exclusion from refund of accumulated ITC under the said clause."

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CIRCULAR NO. 174/06/2022-GST:

The board has prescribing FORM GST PMT-03A in taking re-credit of the amount in the electronic credit ledger in cases where any excess or erroneous refund had been paid back by them either on their own or on being pointed by the tax officer.

CIRCULAR NO. 175/07/2022-GST

Manner of filing refund of unutilized ITC on account of export of electricity.

- FORM GST RFD-01 can be filed for refund of unutilized ITC on export supplies of electricity within time limit as prescribed under Sec 54 of the CGST Act.

CIRCULAR NO. 183 to 188

Circular No.	English	हिन्दी	Date of issue	Subject
188/20/2022-GST	View  (158 KB)		27-12-2022	Prescribing manner of filing an application for refund by unregistered persons
187/19/2022-GST	View  (203 KB)		27-12-2022	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
186/18/2022-GST	View  (123 KB)		27-12-2022	Clarification on various issue pertaining to GST
185/17/2022-GST	View  (144 KB)		27-12-2022	Clarification with regard to applicability of provisions of section 75(2) of Central Goods and Services Tax Act, 2017 and its effect on limitation
184/16/2022-GST	View  (215 KB)		27-12-2022	Clarification on the entitlement of input tax credit where the place of supply is determined in terms of the proviso to sub-section (8) of section 12 of the Integrated Goods and Services Tax Act, 2017
183/15/2022-GST	View  (179 KB)		27-12-2022	Clarification to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for FY 2017-18 and 2018-19
182/14/2022-GST	View  (244 KB)		10-11-2022	Guidelines for verifying the Transitional Credit in light of the order of the Hon'ble Supreme Court in the Union of India vs. Filco Trade Centre Pvt. Ltd.,

CIRCULAR NO. 176/08/2022-GST

The rule 95A has been omitted, retrospectively w.e.f. 01.07.2019, vide notification No. 14/2022-Central Tax, dated 05.07.2022. Accordingly, the Board, in exercise of its powers conferred by section 168(1) of the Central Goods and Services Tax Act, 2017, hereby withdraws, ab-initio, Circular No 106/25/2019-GST dated 29th June, 2019.

RULE 95A. Refund of taxes to the retail outlets established in departure area of an international Airport beyond immigration counters making tax free supply to an outgoing international tourist [Duty Free Shops]

Supplies from Duty Free Shops (DFS) at international terminal to outgoing international passengers to be treated as exports by DFS and consequential refund benefit to be available to them on such supplies. Rule 95A of the CGST Rules, Circular No. 106/25/2019-GST dated 29.06.2019 and related notifications to be rescinded accordingly.

PART 2 –RATE AMENDMENTS

RATE / EXEMPTION / RCM NOTIFICATIONS

CHANGES IN GST RATES – RATIONALISATION TO REMOVE INVERTED DUTY STRUCTURE

S. No.	Description	From	To
GOODS			
1.	Printing, writing or drawing ink	12%	18%
2.	Knives with cutting blades, Paper knives, Pencil sharpeners and blades therefor, Spoons, forks, ladles, skimmers, cake-servers etc	12%	18%
3.	Power driven pumps primarily designed for handling water such as centrifugal pumps, deep tube-well turbine pumps, submersible pumps; Bicycle pumps	12%	18%
4.	Machines for cleaning, sorting or grading, seed, grain pulses; Machinery used in milling industry or for the working of cereals etc; Pawan Chakki that is Air Based Atta Chakki; Wet grinder;	5%	18%
5.	Machines for cleaning, sorting or grading eggs, fruit or other agricultural produce and its parts, Milking machines and dairy machinery	12%	18%
6.	LED Lamps, lights and fixture, their metal printed circuits board;	12%	18%

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CHANGES IN GST RATES

7.	Drawing and marking out instruments	12%	18%
8.	Solar Water Heater and system;	5%	12%
9.	Prepared/finished leather/chamois leather / composition leathers;	5%	12%
10.	Refund of accumulated ITC not to be allowed on flowing goods: (i) Edible oils (ii) Coal		
Services			
11.	Services supplied by foreman to chit fund	12%	18%
12.	Job work in relation to processing of hides, skins and leather	5%	12%
13.	Job work in relation to manufacture of leather goods and footwear	5%	12%
14.	Job work in relation to manufacture of clay bricks	5%	12%

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CHANGES IN GST RATES

15.	Works contract for roads, bridges, railways, metro, effluent treatment plant, crematorium etc.	12%	18%
16.	Works contract supplied to central and state governments, local authorities for historical monuments, canals, dams, pipelines, plants for water supply, educational institutions, hospitals etc. & sub-contractor thereof	12%	18%
17.	Works contract supplied to central and state governments, union territories & local authorities involving predominantly earthwork and sub-contracts thereof	5%	12%

Other Changes in GST Rates - Services

1.	Transport of goods and passengers by ropeways.	18%	5% (with ITC of services)
2	Renting of truck/goods carriage where cost of fuel is included	18%	12%

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OTHER CHANGES IN GST RATES - GOODS

1.	Ostomy Appliances	12%	5%
2.	Orthopedic appliance- Splints and other fracture appliances; artificial parts of the body; other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; intraocular lens	12%	5%
3.	Tetra Pak (Aseptic Packaging Paper)	12%	18%
4.	Tar (whether from coal, coal gasification plants, producer Gas plants and Coke Oven Plants.	5%/18%	18%
5.	IGST on import of Diethylcarbamazine (DEC) tablets supplied free of cost for National Filariasis Elimination Programme	5%	Nil
6.	Cut and Polished diamonds	0.25%	1.5%
7.	IGST on specified defence items imported by private entities/vendors, when end-user is the Defence forces.	Applicable rate	Nil

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NEW EXEMPTION REGIME FOR GRAINS AND FOOD ITEMS

Hitherto, GST was exempted on specified food items, grains etc when not branded, or right on the brand has been foregone. It has been recommended to revise the scope of exemption to exclude from it prepackaged and pre-labelled retail pack in terms of Legal Metrology Act, including pre-packed, pre-labelled curd, lassi and butter milk.

Exemption Regime for Grains and Food items

From	To	Tax Treatment
1.7.2017	22.09.2017	Branded (and Registered) Items – 5%, Others – Exempt
23.09.2017	17.07.2022	Branded Items (whether Regd. Or Not) – 5%, Branded where right “Foregone” and Unbranded – Exempt
17.07.2022	Till date	“Prepackaged” – 5%, Others – Exempt

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NEW EXEMPTION REGIME FOR GRAINS AND FOOD ITEMS

- The expression ‘pre-packaged and labelled’ means a ‘pre-packaged commodity’ as defined in clause (l) of section 2 of the Legal Metrology Act, 2009 (1 of 2010) where, the package in which the commodity is pre-packed or a label securely affixed thereto is required to bear the declarations under the provisions of the Legal Metrology Act, 2009 and rules made thereunder
- Legal Metrology Act 2009: Pre-Packed Commodity means a Commodity / Article placed in a package without purchaser being present, so that quantity of the product contained therein has a pre-determined quantity. Pre-Packed Commodity includes articles / goods whose value, quantity, nature will not change by merely opening its package.
- This means that if the following conditions are satisfied, the goods will be liable to GST :
 - a. If the goods are packed in a package of a pre-determined quantity,
 - b. It should be a package which is required to bear declaration under LMA, 2009 and rules thereunder
 - c. The package can be sealed / not
 - d. Presence of Brand name is not relevant

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NEW EXEMPTION REGIME FOR GRAINS AND FOOD ITEMS

- **Exemption from Declarations and therefore GST Also:**
 - Packages of commodities containing quantity of **more than 25 kilogram or 25 litre;**
 - Cement, fertilizer and agricultural farm produce sold in bags **more than 50 kilogram;**
 - Packaged commodities meant for **industrial consumers or institutional consumers.**
 - Net weight or measure of the commodity is **10g or 10 ml or less [Rule 26]**
 - **Industrial and Institutional Consumers are exempt**
 - **However, Wholesale packages do not seem to exempt**

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Industrial and Institutional Consumers

- “institutional consumer” means the institution which buys packaged commodities bearing a declaration ‘not for retail sale’, directly from the manufacturer or from an importer or from wholesale dealer for use by that institution and not for commercial or trade purposes
- "industrial consumer" means the consumer who buys packaged commodities directly from the manufacturer or from an importer or from wholesale dealer for use by that industry and the package shall have declaration 'not for retail sale'

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Wholesale Packages

Legal Metrology (Packaged Commodities) Rules 2011 - Rule 2(q)

"Wholesale Package" means a package containing-

- (i) a number of retail packages, where such first mentioned package is intended for sale, distribution or delivery to an intermediary and is not intended for sale direct to a single consumer; or
(taxable if it is for eventual retail sale to a consumer)
- (ii) a commodity sold to an intermediary in bulk to enable such intermediary to sell, distribute or deliver such commodity to the consumer in smaller quantities;
(Exempt if it is more than 25 kg even though it requires declaration in LMR)
- (iii) Ten or more than ten retail packages provided that the retail packages are labelled as required under the rules.
(Taxable)

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Goods covered

HSN	Description	Rate
0202, 0203, 0204, 0205, 0206, 0207, 0208, 0209, 0210	Meat and edible meat offal	5%
0303, 0304, 0305, 0306, 0307, 0308, 0309	Fish and crustaceans, molluscs and other aquatic invertebrates	5%
0403	Curd; Lassi; Butter milk	5%
0406	Chena or paneer	5%
0409	Natural honey	5%
0504	Guts, Bladders And Stomachs Of Animals (Other Than Fish), Whole And Pieces Thereof, Fresh, Chilled, Frozen, Salted, In Brine, Dried Or Smoked	5%
0713	Dried leguminous vegetables, shelled, whether or not skinned or split	5%
0714	Manioc, arrowroot, salep, Jerusalem artichokes, sweet potatoes and similar roots and tubers with high starch or inulin content, frozen, whether or not sliced or in the form of Pellets	5%
08	Dried makhana, whether or not shelled or peeled	5%
1001	Wheat and meslin	5%
1002	Rye	5%
1003	Barley	5%
1004	Oats	5%
1005	Maize Corn	5%
1006	Rice	5%
1007	Grain sorghum	5%
1008	Buckwheat, millet and canary seed; [other cereals such as Jawar, Bajra, Ragi]	5%

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Other Rate Changes

S. No.	Description of goods	From	To
1.	Cheques, loose or in book form	Nil	18%
2.	Maps and hydrographic or similar charts of all kinds, including atlases, wall maps, topographical plans and globes, printed	Nil	12%
3.	Parts of goods of heading 8801	Nil	18%
Concessional Rates Withdrawn			
1.	Petroleum/ Coal bed methane	5%	12%
2.	Scientific and technical instruments supplied to public funded research institutes	5%	Applicable rate
3.	E-waste	5%	18%

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Removal of Exemptions

S. No.	Description
1.	Exemption on transport of passengers by air to and from NE states & Bagdogra is being restricted to economy class
2.	Exemption on following services is being withdrawn. (a) Transportation by rail or a vessel of railway equipment and material. (b) storage or warehousing of commodities which attract tax (nuts, spices, copra, jaggery, cotton etc.) (c) Fumigation in a warehouse of agricultural produce. (d) Services by RBI, IRDA, SEBI, FSSAI, GSTN. (e) Renting of residential dwelling to business entities (registered persons). (f) Services provided by the cord blood banks by way of preservation of stem cells
3.	Like CETPs, common bio-medical waste treatment facilities for treatment or disposal of biomedical waste shall be taxed at 12% so as to allow them ITC
4.	Hotel accommodation priced upto Rs. 1000/day shall be taxed at 12%
5.	Room rent (excluding ICU) exceeding Rs 5000 per day per patient charged by a hospital shall be taxed to the extent of amount charged for the room at 5% without ITC.
6.	Tax exemption on training or coaching in recreational activities relating to arts or culture, or sports is being restricted to such services when supplied by an individual.

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Renting of Residential Dwelling

Changes in Exemption Notification 12/2017 CTR w.e.f. 18.07.2022

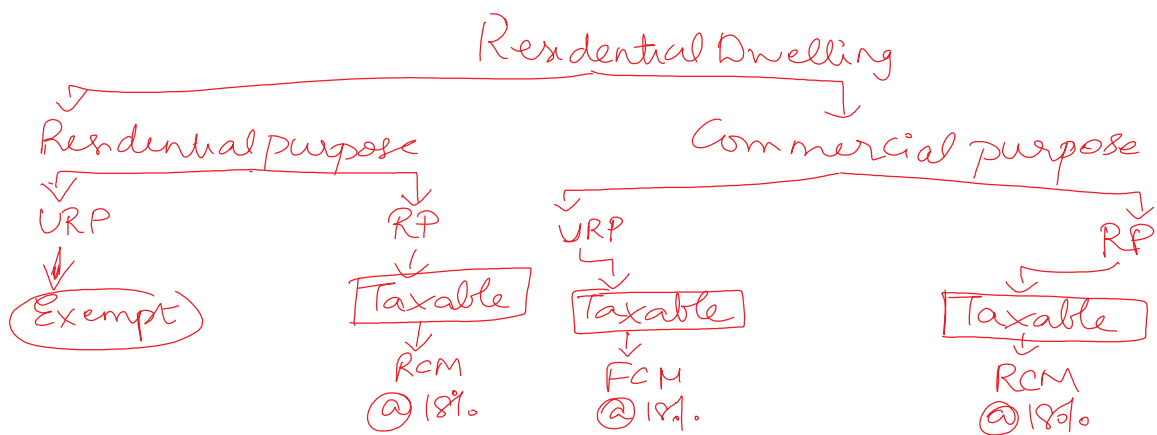
12	Heading 9963 or Heading 9972	Services by way of renting of residential dwelling for use as residence [except where the residential dwelling is rented to a registered person].	Rate - Nil	Conditions - Nil
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Changes in Reverse Charge Notification 13/2017 CTR w.e.f. 18.07.2022

5AA	Service by way of renting of residential dwelling to a registered person.	Supplier - Any person	Recipient - Any registered person
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Summary



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Goods Transport Agency

Entry	Rate	Conditions
(a) GTA does not exercise the option to itself pay GST on the services supplied by it;	5%	The credit of input tax charged on goods and services used in supplying the service has not been taken.
(b) GTA exercises the option to itself pay GST on services supplied by it.	5% OR 12%	(1) In respect of supplies on which GTA pays tax at the rate of 2.5%, GTA shall not take credit of input tax charged on goods and services used in supplying the service. [Please refer to Explanation no. (iv)]

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Goods Transport Agency

➤ The option by GTA to itself pay GST on the services supplied by it during a Financial Year shall be exercised by making a declaration in **Annexure V on or before the 15th March of the preceding Financial Year:**

➤ Option for the **Financial Year 2022-2023** shall be exercised **on or before the 16th August, 2022**. For 18th July 2022 to 16th August 2022, they would continue paying under Forward Charge

➤ No option exercised – deemed to be under reverse charge

➤ Declaration on tax invoice (if supply under forward charge)

I/we have taken registration under the CGST Act, 2017 and have exercised the option to pay tax on services of GTA in relation to transport of goods supplied by us during the Financial Year ____ under forward charge.

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Goods Transport Agency

➤ **Exemption withdrawn** for Small Consignments:

- (a) where consideration charged for the transportation of goods on a consignment transported in a single carriage **does not exceed Rs. 1500**
- (b) where consideration charged for transportation of all such goods for a single consignee **does not exceed Rs. 750**

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THANK YOU

TO DISCUSS ANY QUERIES ON THIS PLEASE REACH OUT @

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