

February, 2022

TAX Bulletin

★ ★ VOLUME - 106 ★ ★



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

Statutory Body under an Act of Parliament

www.icmai.in

Headquarters: CMA Bhawan, 12 Sudder Street, Kolkata - 700016

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Delhi Office: CMA Bhawan, 3 Institutional Area, Lodhi Road, New Delhi - 110003

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“The CMA Professionals would ethically drive enterprises globally by creating value to stakeholders in the socio-economic context through competencies drawn from the integration of strategy, management and accounting.”

VISION STATEMENT

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

Objectives of Taxation Committees:

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

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Certificate Courses Offered by the Tax Research Department

1. Certificate Course on GST (CCGST)
2. Advanced Certificate Course on GST (ACCGST)
3. Advanced Certificate Course on GST Audit and Assessment Procedure (ACGAA)
4. Certificate Course on TDS (CCTDS)
5. Certificate Course on Filing of Returns (CCFOF)
6. Advanced Course on Income Tax Assessment and Appeals (ACIAA)
7. Certificate Course on International Trade (CCIT)

Admission Link - <https://eicmai.in/advsc/DelegatesApplicationForm-new.aspx>

Modalities

Description	Course Name						
	CCGST	ACCGST	ACGAA	CCTDS	CCFOF	ACIAA	CCIT
Hours	72	40	30	30	30	30	50
Mode of Class	Offline/ Online	Online					
Course Fee* (₹)	10,000	14,000	12,000	10,000	10,000	12,000	10,000
Exam Fee* (₹)	1,000 per attempt						
Discounts	20% Discount for CMA Members, CMA Qualified and CMA Final Pursuing Students						

*18% GST is applicable on both Course fee and Exam fee

Eligibility Criteria for Admission

- ▲ Members of the Institute of Cost Accountants of India
- ▲ Other Professionals (CA, CS, MBA, M.Com, Lawyers)
- ▲ Executives from Industries and Tax Practitioners
- ▲ Students including CMA Qualified and CMA Pursuing

On passing the examination with 50% marks a Certificate would be awarded to the participant with the signature of the President of the Institute

Course Details

<https://icmai.in/TaxationPortal/OnlineCourses/index.php>

Courses for Colleges & Universities by the Tax Research Department

Modalities

Eligibility

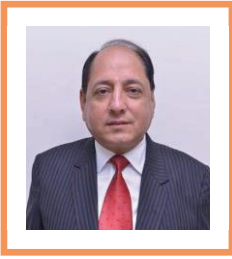
- ▲ B.Com/ BBA pursuing or completed
- ▲ M.Com/ MBA pursuing or completed

Description	Courses for Colleges and Universities	
	GST Course	Income Tax
Batch Size	Minimum 50 Students per Batch per course	
Course Fee* (₹)	1,000	1,500
Exam Fee* (₹)	200	500
Duration (Hrs)	32	32

For enquiry about courses, mail at: trd@icmai.in

*18% GST is applicable on both Course fee and Exam fee

Behind every successful business decision, there is always a **CMA**



CMA Rakesh Bhalla
Chairman, Direct Taxation Committee



CMA Chittaranjan Chattopadhyay
Chairman, Indirect Taxation Committee

FROM THE DESK OF CHAIRMAN

Dear Friends and Professional Colleagues,

Greetings from the Tax Research Department...!!!

The Economic Survey 2021 projects a growth in the economy at the rate of 8 to 8.5% for Financial Year (FY) 2022-2023. The economic activity of the country has recovered after the pandemic, to almost pre-pandemic levels. As per the Economic Survey 2021-2022, there is a strong rebound in government revenues in comparison with the gone-by year. The Survey reflects buoyancy in tax collections for both direct and indirect taxes and shows scope for the economy to take up new challenges of FY 2022-2023.

The Union Budget 2022 sets the roadmap to achieve Hon'ble Prime Minister Narendra Modi's vision of India, in its 100th Year of Independence, which has been christened, as Amrit Kaal. The Hon'ble Finance Minister Madam Nirmala Sitharaman introduced Amrit Kaal in her Budget Speech as "marking Azadi Ka Amrit Mahotsav and have entered into the 25-year-long lead up to India@100". Providing impetus on four major focal points-inclusive developments; PM Gati Shakti, Productivity enhancement, Climate Action, and Energy; and funding public and private investments, Budget Proposals envision a holistic development path for the coming 25 years of the country.

In the last 15 days CBIC had made the following announcements:

- On 4th Feb 2022, GSTN has deployed new module-wise functionalities for GST stakeholders and taxpayers. The new functionalities are related to Returns, Registration, Advance Ruling, Payment, Refund and Other Miscellaneous topics.
- The gross GST revenue has collected till 31st January 2022 is Rs 1,38,394 crore of which CGST is Rs 24,674 crore, SGST is Rs 32,016 crore, IGST is Rs 72,030 crore (including Rs 35,181 crore collected on import of goods) and CESS is Rs 9,674 crore (including Rs 517 crore collected on import of goods).
- The revenues for the month of January 2022 are 15% higher than the GST revenues in the same month last year and 25% higher than the GST revenues in January 2020.
- During the month, revenues from import of goods were 26% higher and the revenues from the domestic transactions (including import of services) are 12% higher than the revenues from these sources during the same month last year.

From CBDT, the announcements were:

- Around 6.17 crores Income Tax Returns (ITRs) & about 19 lakh major Tax Audit Reports (TARs) have filed on the new e-Filing portal of Income Tax Department till 6th Feb, 2022. Two new email ids: tar.helpdesk@incometax.gov.in & itr.helpdesk@incometax.gov.in have also been provided to assist filers for resolution of grievances related to e-filing.
- The Income-tax department has uploaded the PDF guide on uploading manually submitted 15CA and 15CB forms.
- The CBDT has recently revised the UDIN due date for income tax forms till 30th April 2022. Firm Registration Number (FRN) has been a compulsory field for UDIN Generation.
- The CBDT department has allocated the press release about the Pension Adalat that will be held on the 3rd week of March 2022 via video conferencing.
- The Finance Bill, 2022 has provided for Separate income tax deduction for Covid-19 treatment.

The department has also organized a grand seminar on 7th February, 2022 on “Demystifying Union Budget 2022-23”. Shri Kalyan Nath, Commissioner, Income Tax Appeals, Guwahati graced the occasion as Chief Guest. The session also had enriching deliberations from Dr. Biswajit Mandal, Faculty, Economics, Viswa Bharati University, Santiniketan, CMA B B Goyal, Former Addl Chief Advisor (Cost), Ministry of Finance, Govt of India & Head, Indian Cost Accounts Service and CMA B M Gupta, vCFO, GST & Management Consultant.

The departmental activities are being carried on seamlessly. We are thankful to all our resource-contributors for their guidance. We highly appreciate efforts of Tax Research Department for furtherance of the objectives. We seek any further suggestions/observations from the esteemed readers.

Jai Hind.

Warm Regards



(Rakesh Bhalla)

CMA Rakesh Bhalla

17th February 2022



CMA Chittaranjan Chattopadhyay

17th February 2022



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Articles on the Topics of Direct and Indirect Taxation are invited from readers and authors. Along with the article please share a recent passport-sized photograph, a brief profile and the contact details. The articles should be the author's own original.

Please send the articles to

trd@icmai.in /trd.ad1@icmai.in

Input Tax Credit Management in GST

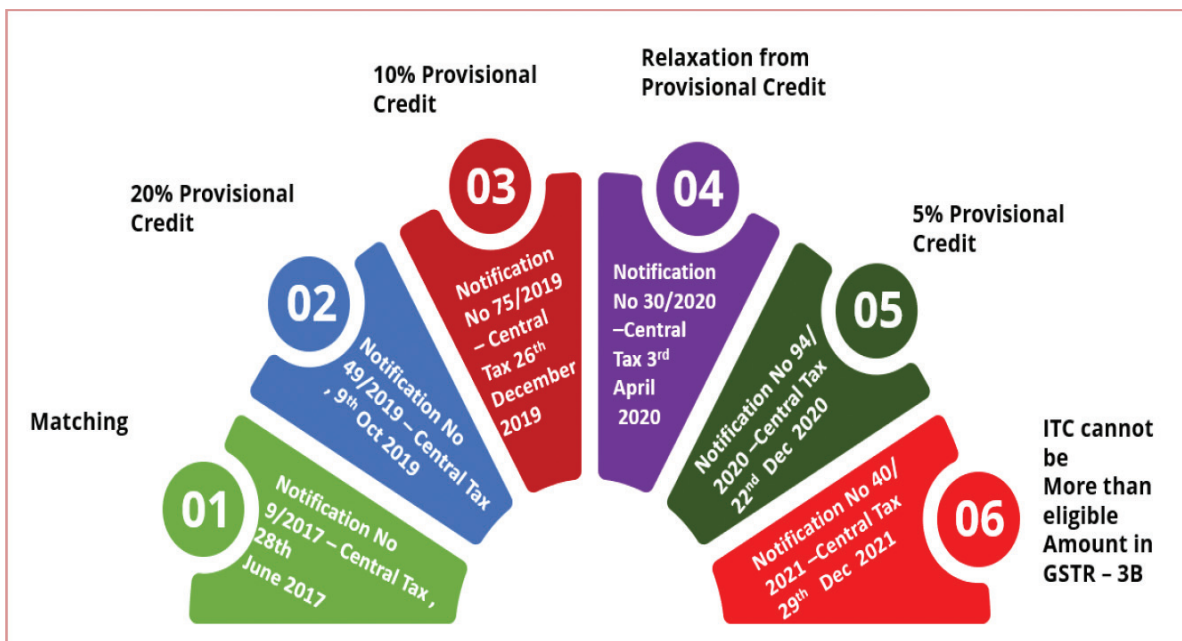


CMA B Mallikarjuna Gupta
CFO, GST, Product & Management Consultant

Goods and Service Tax has seen a lot of changes after its rollout from 1st July 2017. Some of the changes are made on account of the past experiences, recommendations from the trade and industry or based on the current fragile economic conditions on account of the pandemic. Whatever may be the reason for the change, the professionals and taxpayers have to be attentive always and be on their toes to understand and make necessary changes to the business process to make it GST compliant and safeguard

from the hefty and harsh provisions in the law.

Availability of Input Tax Credit seamlessly across the supply chain cycle is one of the major benefits of GST. Unlike in the erstwhile tax regimes, the input tax credit availment process has changed and it has undergone changes in GST from time to time. More restrictions have been placed for availing input tax credit from 1st Jan 2022. To implement these restrictions, there is a necessity to change the business process and accounting process in the organization to be GST compliant.





The above are some of the important notifications on the input tax credit from the inception of GST in India. Matching is mandatory for availing input tax credit in India from 1st July 2017 but the necessary infrastructure was provided from Oct 2018. There are couple of press releases which discussed about the matching and stated that it is not mandatory for the first two years. We cannot rely on press releases as they cannot overwrite the provisions of the law.

Denying ITC to a buyer of goods or services for default of the supplier of goods or services would amount to shifting the incidence of tax from the supplier to the buyer, where the buyer does not have any control. This can be violative of the Article 14, Article 19(1)(g) and Article 300A of the Constitution of India. The Hon'ble Madras High Court in case of M/s. D. Y. Beathel Enterprises vs. The State Tax Officer (Data Cell) Non-Payment of GST – ITC availed by Buyer- HC Quashes notice to Buyer as seller not questioned Section 16 of CGST Act, 2017 provides that Input Tax Credit (ITC) could be availed by the buyer if GST is paid by the seller. Thus, in case of non-payment of GST, who should be questioned, the seller or the buyer? It can be seen therefrom that the assesses must have received the goods and the tax charged in respect of its supply, must have been actually paid to the Government either in cash., It has been mentioned that recovery action has to be first initiated against the seller and if we see the notices issued by the department for reversal of Input Tax Credit on account of supplier not filing or depositing the tax amount for the FY 2017-18 and 2018-19 and 2019-20 is not in the direction of the High Cour observations. Off late only the action on errant taxpayers who are not filing GSTR – 1 and GSTR -3B has been introduced.

Even the Honorable Delhi, Rajasthan and Orissa High Courts have issued Notices to the Centre questioning the validity of Section 16(2)(c) and Section 16(2)(d) of the CGST Act, 2017 with respect to the provision of ITC denial to the recipient on account of supplier's default. Now the matter is pending with the judiciary but if we take a clue from the recent judgement of the Honorable Supreme Court of India in the Case of Bharti Airtel it clearly says that provisions of the Act cannot be questioned once the law is passed. Keeping aside all the judgements and legal stand it is recommend for the taxpayers to make certation change in the business process to avoid payment of interest and reversal of input tax credit and also to avoid litigation.

GST is being defined as business process reform apart from being it called as a tax reform. This was echoed clearly by the CBIC Board Member Shri D.P. Nagendra Kumar. In his address to our members has a advised the trade and industry to do business transactions with only GST

Compliant taxpayers as it will avoid hassles of reversal of input tax credit or payment of interest and reply to notices.

Going forward the taxpayers are required to do the compliance check for GST also while evaluating the suppliers along with the other parameters like price, quality, timely delivery, post supply service, consistency in supplies etc., if they are not doing it. Many of the large taxpayers have started doing this and they are not facing such challenges.

Apart from the above points, the taxpayers are also advised to change their business process of releasing the payment to suppliers with either of the approaches

- a) Release the GST Amount immediately on receipt of the goods or services as it will provide funds for the supplier to make timely GST Payments and filing of returns.
- b) Release the GST amount only after reflecting in the GSTR – 2B, this will ensure that the recipient does not have any challenges of cash flows and reversals.

In either of the cases, there will be an increase in the work load and payment process procedures.

Changes in Accounting is also highly recommended as it will ensure that there is no wrong availing of input tax credit and also proper internal controls are in place for the senior management.

The accounting change recommend is to park the input tax credit till matching is done in an interim account and then transfer to input tax credit availed account after matching. This will ensure that input tax credit is availed only after matching.

To address this, the taxpayers have to create new ledger or incorporate new accounts in the Chart of Accounts

- ITC Interim Recovery Account – CGST A/c
- ITC Interim Recovery Account) – SGST A/c
- ITC Interim Recovery Account – IGSTA/c
- ITC Interim Recovery Account – UTGSTA/c
- ITC Interim Recovery Account – GST Cess A/c

These accounts hve to be create shate wise and if the taxpayer has a system of accounting ITC for the following account separately

- Inputs



- Services
- Capital Goods
- Imported Capital Goods
- Imported Inputs
- Import of Services

These additional accounts will ensure that there is no challenge in filling of Table 6 of GSTR – 9, as on date filling this information is not mandatory but in future it may be made mandatory.

This account can be updated when the input tax credit is reflected in the Electronic Credit Ledger Account and for this accounting or ERP being used should be supporting it.

- ITC Recovery – CGST A/c
- ITC Recovery – SGST A/c
- ITC Recovery – IGSTA/c
- ITC Recovery – UTGSTA/c
- ITC Recovery – GST Cess A/c

Corresponding recovery accounts are also to be created as per the requirements for Table 6 of GSTR – 9.

Under GST, there is legal requirement to reverse the input tax credit if the supplier of the goods and services or both is not paid within 180 days, in such cases when the input tax credit account is reversed, it will be parked in this recovery account. The same will be reversed when the supplier is paid at a subsequent date.

- ITC Reversal – CGST A/c
- ITC Reversal – SGST A/c
- ITC Reversal – IGSTA/c
- ITC Reversal – UTGSTA/c
- ITC Reversal – GST Cess A/c

Corresponding Reversal accounts are also to be created as per the requirements for Table 6 of GSTR – 9.

Separate ledger accounts are also recommended to be created for availing the input tax credit if the supplier is paid after 180 days post reversal of input tax credit.

- ITC Re-availed – CGST A/c

- ITC Re-availed – SGST A/c
- ITC Re-availed – IGSTA/c
- ITC Re-availed – UTGSTA/c
- ITC Re-availed – GST Cess A/c

Accounting entry to be passed at the time of purchase invoice entry or creation of Goods Receipt Note or Material Receipt Note.

Purchase within in the state

Accounting Entry	Debit/Credit
Inputs/Capital Goods/Services – A/c	Dr
ITC Interim Recovery – CGST A/c	Dr
ITC Interim Recovery – SGST A/c	Dr
Creditors – A/c	Cr

Purchase from suppliers outside the state

Accounting Entry	Debit/Credit
Inputs/Capital Goods/Services/ Imported Inputs/Imported Capital Goods – A/c	Dr
ITC Interim Recovery – IGST A/c	Dr
Creditors – A/c	Cr

After matching, availing Input Tax Credit for purchases within in the state

Accounting Entry	Debit/Credit
ITC Recovery – CGST A/c	Dr
ITC Recovery – SGST A/c	Dr
ITC Interim Recovery – CGST A/c	Cr
ITC Interim Recovery – SGST A/c	Cr

After matching, availing Input Tax Credit for purchases outside the state

Accounting Entry	Debit/Credit
ITC Recovery – IGST A/c	Dr
ITC Interim Recovery – IGST A/c	Cr



Accounting Entry for Reversal of Input Tax Credit is supplier within the state not paid within 180 days

Accounting Entry	Debit/Credit
ITC Reversed – CGST A/c	Dr
ITC Reversed – SGST A/c	Dr
ITC Recovery – CGST A/c	Cr
ITC Recovery – SGST A/c	Cr
Interest – A/c	Dr
ITC Reversal Interest Payable – CGST A/c	Cr
ITC Reversal Interest Payable – SGST A/c	Cr

Accounting Entry for Reversal of Input Tax Credit is supplier outside the state not paid within 180 days

Accounting Entry	Debit/Credit
ITC Reversed – IGST A/c	Dr
ITC Recovery – IGST A/c	Cr
Interest – A/c	Dr
ITC Reversal Interest Payable – IGST A/c	Cr

Accounting Entry for availing Input Tax Credit is supplier within the state is paid after 180 days

Accounting Entry	Debit/Credit
ITC Re-availed – CGST A/c	Dr
ITC Re-availed – SGST A/c	Dr
ITC Reversed – CGST A/c	Cr
ITC Reversed – SGST A/c	Cr

Accounting Entry for availing Input Tax Credit is supplier outside the state is paid after 180 days

Accounting Entry	Debit/Credit
ITC Re-availed – IGST A/c	Dr
ITC Reversed – IGST A/c	Cr

If the scheme of above accounting entries is followed there will be a complete control for the management and they can come to know which suppliers have not filed the returns on time or for which suppliers input tax credit has been reversed.

Ideally at the month end the balances in the Interim Recovery accounts should be zero in case if the supplier has not filed his GST Returns the amount will not be knocked off and the user have to take action on such suppliers accordingly.

If the above ledgers are created and accounting is modified from 1st of April 2022, it will ensure that the taxpayer will have complete control on his GST Input Tax Credit Management and at the same time ensure that there is no room for reversal of input tax credit along with interest for the non-filing of supplier return. The trail balance can be used for filing of the GST Returns and also helps in having proper internal controls across the organization. Though it is a time consuming and lengthy process but the above scheme of accounting entries is highly recommended. For the supplier payments, most of the large taxpayers will be using a scheduler for processing the payments based on the due date and the scheduler can be customized or the parameters can be changed to meet the requirements if the standard ERP supports it.

Disclaimer

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DENIAL OF CREDIT/DEBIT OF ELECTRONIC CREDIT LEDGER UNDER RULE 86A OF CGST RULES



CMA Sai Chandra Kasam
Practicing Cost Accountant

The GST policy wing has issued instructions 20/16/05/2021-GST dated 2nd November 2021. Following are the guidelines disallowing debit of Electronic Credit Ledger under Rule 86A of CGST Rules 2017:

“86A. Conditions of use of amount available in electronic credit ledger. -

- (1) The Commissioner or an officer authorized by him in this behalf, not below the rank of an Assistant Commissioner, having reasons to believe that credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible in as much as
- a) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36-
 - i. issued by a registered person who has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or
 - ii. without receipt of goods or services or both; or
 - b) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36 in respect of any supply, the tax charged in respect of which has not been paid to the Government; or
 - c) the registered person availing the credit of input tax

has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or

- d) the registered person availing any credit of input tax is not in possession of a tax invoice or debit note or any other document prescribed under rule 36,

may, for reasons to be recorded in writing, not allow debit of an amount equivalent to such credit in electronic credit ledger for discharge of any liability under section 19 or for claim of any refund of any unutilized amount.

- (2) The Commissioner, or the officer authorized by him under sub-rule (1) may, upon being satisfied that conditions for disallowing debit of electronic credit ledger as above, no longer exist, allow such debit.
- (3) Such restriction shall cease to have effect after the expiry of a period of one year from the date of imposing such restriction

Commissioner, or an officer authorized by him, not below the rank of Assistant Commissioner, must have “reasons to believe” that credit of input tax available in the electronic credit ledger is either ineligible or has been fraudulently availed by the registered person, before disallowing the debit of amount from electronic credit ledger of the said registered person under rule 86A. The reasons for such belief must be based only on one or more of the following grounds:

The credit is availed by registered person on the invoices

or debit notes issued by a supplier, who is found to be non-existent or is found not to be conducting any business from the place declared in registration.

The credit is availed by the registered person on invoices or debit notes, without actually receiving any goods or services or both.

The credit is availed by the registered person on invoices or debit notes, the tax in respect of which has not been paid to the government.

The registered person claiming the credit is found to be non-existent or is found not to be conducting any business from the place declared in registration.

The credit is availed by the registered person without having any invoice or debit note or any other valid document for it.

The Commissioner or an officer authorized by him, not below the rank of Assistant Commissioner, must form an opinion for disallowing debit of an amount from electronic credit ledger in respect of a registered person only after proper application of mind considering all the facts of the case, including the nature of prima facie fraudulently availed or ineligible input tax credit and whether the same is covered under the grounds mentioned in sub-rule (1) of rule 86A; the amount of input tax credit involved; and whether disallowing such debit of electronic credit ledger of a person is necessary for restricting him from utilizing/passing on fraudulently availed or ineligible input tax credit to protect the interests of revenue.

Proper Authority For The Purpose Of Rule 86a

The Commissioner is the proper officer for the purpose of exercising powers for dis-allowing the debit of amount from electronic credit ledger of a registered person under rule 86A. However, Commissioner/ Principal Commissioner / ADG can also authorize any officer subordinate to him, not below the rank of Assistant Commissioner to be the proper officer for exercising such power under rule 86A.

Suggested Proper Authority

1. Upto Rupees One Crore – Deputy Commissioner/ Assistant Commissioner/Deputy Director/Addl. Director.
2. Above Rupees One Crore but below Rupees Five Crore – Addl. Commissioner/Joint Commissioner/ Addl. Deputy Director/Joint Director.
3. Above Rupees Five Crore – Principal Commissioner/

Commissioner/Addl. Director General.

Fraudulent ITC Noticed During Audit

If during the course of Audit under section 65 or 66 of CGST Act, 2017 it is noticed that any input tax credit has been fraudulently availed or is ineligible as per the grounds mentioned in sub-rule (1) of rule 86A, which may require disallowing debit of electronic credit ledger under rule 86A, the concerned Commissioner/ Principal Commissioner of CGST Audit Commissionerate may refer the same to the jurisdictional CGST Commissioner for examination of the matter for exercise of power under rule 86A. If the jurisdictional Commissioner forms an opinion that the credit availed or taken is fraudulent in nature, then he may exercise power under Rule 86A and disallow the credit. The amount disallowed for debit from electronic credit ledger should not be more than the amount of input tax credit which is believed to have been fraudulently availed or is ineligible.

Procedure for disallowing debit of electronic credit ledger/blocking credit under Rule 86(A):

The amount of fraudulently availed or ineligible input tax credit availed by the registered person, as per the grounds mentioned in sub-rule (1) of rule 86.4, shall be prima facie ascertained based on material evidence available or gathered on record. It is advised that the powers under rule 86A to disallow debit of the amount from electronic credit ledger of the registered person may be exercised by the Commissioner or the officer authorized by him, as per the monetary limits detailed in this. The officer should apply his mind as to whether there are reasons to believe that the input tax credit availed by the registered person has either been fraudulently availed or is ineligible, as per conditions/ grounds mentioned in sub-rule (1) of rule 86A and whether disallowing such debit of electronic credit ledger of the said person is necessary for restricting him from utilizing/passing on fraudulently availed or ineligible input tax credit to protect the interests of revenue. Such “Reasons to believe” shall be duly recorded by the concerned officer in writing on file, before he proceeds to disallow debit of amount from electronic credit ledger of the said person.

The amount disallowed for debit from electronic credit ledger should not be more than the amount of input tax credit which is believed to have been fraudulently availed or is ineligible, as per the conditions/ grounds mentioned in sub-rule (1) of 86A

The action by the commissioner or the authorized officer, as the case may be, to disallow debit from electronic credit ledger of a registered person, is informed on the portal to

the concerned registered person, along with the details of the officer who has disallowed such debit

Allowing Debit Of Disallowed/Restrictd Credit Under Sub-Rule (2) Of Rule 86(A)

The commissioner or the authorized officer, as the case may be, either on his own or based on the submissions made by the taxpayer with material evidence thereof, may examine the matter afresh and on being satisfied that the input tax credit, initially considered to be fraudulently availed or ineligible as per conditions of sub-rule (I) of rule 86A, is no more ineligible or wrongly availed, either partially or fully, may allow the use of the credit so disallowed/restricted, up to the extent of eligibility, as per powers granted under sub-rule (2) of rule 86A. Reasons for allowing the debit of electronic credit ledger, which had been earlier disallowed, shall be duly recorded on file in writing, before allowing such debit of electronic credit ledger.

The restriction imposed as per sub-rule (I) of rule 86A shall cease to have effect after the expiry of a period of one year from the date of imposing such restriction. In other words, upon expiry of one year from the date of restriction, the registered person would be able to debit input tax credit so disallowed, subject to any other action that may be taken against the registered person. It should be noted that in all such cases the investigation and adjudication are completed at the earliest, well within the period of restriction, so that the due liability arising out of the same can be recovered from the said taxable person and the purpose of disallowing debit from electronic

credit ledger is achieved.

Personal Suggestion

The power of disallowing debit of amount from electronic credit ledger must not be exercised in a mechanical manner and careful examination of all the facts of the case is important to determine case(s) fit for exercising power under rule 86A. The reasons are to be on the basis of material evidence available or gathered in relation to fraudulent availment of input tax credit or in eligible input tax credit availed as per the conditions/grounds under sub-rule(I) of rule 86A.

Memorandum

The conclusions reached and views expressed in the memorandum are matters of opinion. My opinion is based on the understanding of the law and regulations prevailing as of the date of this memorandum and my past experience with the revenue authorities. However, there can be no assurance that the tax authorities or regulators may not take a position contrary to my views. Legislation, its judicial interpretation and the policies of the regulatory authorities are also subject to change from time to time, and these may have a bearing on the advice that I have given. Accordingly, any change or amendment in the law or relevant regulations would necessitate a review of my comments and recommendations contained in this memorandum. My conclusions are based on the completeness and further, this memorandum may not be used or quoted in whole or in part or otherwise referred to in any document or delivered to any other person or entity without my prior written consent.

ADVANCE RULING IN GST (August 2021-December 2021)

TEAM TRD

Name of Applicant	Industry	Order No. & Date	Case History
M/s. Petronet LNG Ltd	Petroleum Industry	Advance Ruling No. GUJ/GAAR/R/40/2021 Dated-11.08.2021	<ul style="list-style-type: none"> ● The applicant, M/s. Petronet LNG Ltd. (PLL), submitted that it provides regasification services to its customers on the LNG owned by the customers, referred to as 'Tolling'. ● In the 'Tolling Model', the Applicant receives the LNG belonging to the customers at its plant, stores it, re-gasifies it and supplies RLNG to the customers. ● The Appellant enters into Re-Gasification Agreements (RAs) with the customers. <p>The following questions were raised</p> <p>1. Whether the applicant's activity of providing service of regasification of LNG owned by its customers to convert to RLNG, from its Plant at Dahej, Gujarat would amount to rendering of service by way of Job Work within the meaning of Section 2(68) of the CGST, 2017 and the GGST Act, 2017</p> <p>Answer: Petronet's activity of re-gasification of LNG owned by its GST registered customers amounts to rendering of service by way of Job Work</p> <p>2. If yes, then whether the said service of re-gasification by way of job work be classifiable under entry (id) of Heading No. 9988 at Sl. No. 26 of Notification No. 11/2017-CT (rate) dated 28.06.2017, as amended vide Notification No. 20/2019-CT (Rate) dated 30-09-2019 w.e.f. 01.12.2019 and be chargeable to CGST at the rate of 6%.</p> <p>Answer: Petronet's activity merits to be covered at entry 'id' of Heading 9988 at Sl. No. 26 of Notification No. 11/2017-CT (rate) dated 28.06.2017, as amended, liable to CGST at 6% .</p>
M/s. Willmart Enterprise	Chemical Industry	Advance Ruling No. GUJ/GAAR/R/41/2021 Dated-11.08.2021	<ul style="list-style-type: none"> ● The applicant, M/s. Willmart Enterprise, supplies Ammonium Sulphate. ● According to applicant the product has agricultural as well as non-agricultural <p>The following questions were raised</p> <p>1. Whether the classification of product under HSN 3102 is correct? Answer: 'Ammonium Sulphate' is classifiable at HSN 310221</p> <p>2. Whether the applicant is eligible to avail the benefit of charging concessional rate of GST of 5% on outward supply of its product for the purpose of agriculture? Answer: GST of 5% is leviable on Ammonium Sulphate supplied for direct use as fertilizers or used in the manufacturing of complex fertilizers for agricultural use (soil or crop fertilizers).</p> <p>3. Rate of GST on outward supply of product for the purpose of non-agricultural should be charged @ 18%? Answer: GST of 18% is leviable on Ammonium Sulphate supply for other than fertilizer use.</p>

Name of Applicant	Industry	Order No. & Date	Case History
M/s. Gujarat State Road Development Corporation	PPP Model	Advance Ruling No. GUJ/GAAR/R/42/2021 Dated-11.08.2021	<ul style="list-style-type: none"> ● Govt. of Gujarat had formulated a Road Policy to enable private participation in the development, construction, repair, upgradation, management, operation and maintenance of roads within the State of Gujarat. ● In this regard, Gujarat Government established and set up Gujarat Infrastructure Development Board (“GIDB”) and Gujarat State Road Development Corporation (GSRDC) in consonance with Gujarat Infrastructure. ● GSRDC is a 100% Govt. of Gujarat Undertaking <p><u>The following questions were raised</u></p> <p>1. Whether the service of construction and development of state highway roads provided by GSRDC would qualify as an activity in relation to function entrusted to Panchayat or Municipality under Article 243G or 243 W respectively, of the constitution of India.</p> <p>Answer: Being a Government Entity, GSRDC shall also be a Government Authority, in such cases when it constructs</p> <ul style="list-style-type: none"> i. Municipal Roads/ bridges; ii. Village Roads/bridges. <p>2. Whether applicant would fall under the definition of Governmental authority or Government Entity.</p> <p>Answer: GSRDC is a Government Entity.</p>
M/s. Kababhai Popatbhai Savalia (Shreeji EarthMovers)	Works Contract Service	Advance Ruling No. GUJ/GAAR/R/43/2021 Dated-11.08.2021	<ul style="list-style-type: none"> ● The applicant M/s. Shreeji Earth Movers is engaged in providing works contract service directly to sub-contractors who execute the contract with the main contractor for original contract work with the irrigation department (State of Gujarat). ● The applicant submits that JSIW Infrastructure pvt. ltd. has received the original contract from the irrigation department. ● The applicant further submits that JSIW Infrastructure has executed the same contract with Radhe Construction who executed the agreement with the present applicant qua to the original work. <p><u>The following questions were raised</u></p> <p>a) At what rate of tax the liability should be determined on services provided by us (sub-contractors) to the main contractor pertaining to the irrigation, construction and maintenance works to the irrigation department, State of Gujarat?</p> <p>Answer: GST rate on subject supply is 18% for services supplied by the sub-contractor to sub-contractor M/s Radhe Construction.</p> <p>b) Under which head we should classify our services to execute irrigation, construction and maintenance work supplied to the irrigation department, State of Gujarat?</p> <p>Answer: In this case, supply merits entry at Heading 9954, Entry No 3(ii) of Notification No.11/2017- CT(R) dated 28-6-17</p> <p>c) Whether to charge a tax rate of 12% GST or 18% GST?</p> <p>Answer: 18%</p>



Name of Applicant	Industry	Order No. & Date	Case History
M/s. Adama India Private Limited	Insecticides Supplier	Advance Ruling No. GUJ/GAAR/R/44/2021 Dated-11.08.2021	<ul style="list-style-type: none"> ● M/s. Adama India private limited, supplies insecticides, fungicides and herbicides ● The applicant submits that as per Section 135 of the Companies Act, 2013, it has been spending the mandatory amount on CSR activities in the form of donations to the Government relief funds/ educational societies, civil works or installation of plant and machinery items in schools or hospitals, distribution of food kits etc. ● The vendors that supply goods/services to the applicant for the purpose of undertaking the CSR activities charge GST on their output supplies ● The applicant intends to avail the Input Tax Credit(ITC) of the inputs and input services being procured for the purpose of undertaking the CSR activities <p><u>The following questions were raised</u></p> <p>1. Whether the inputs and input services procured by the applicant, in order to undertake the mandatory CSR activities as required under the Companies Act, 2013, qualify as being in the course and furtherance of business and therefore will be counted as eligible ITC in terms of Section 16 of the Central Goods and Services Tax Act, 2017 ('CGST Act')?</p> <p>2. Also, if the answer to the above question is in the affirmative, whether the categories of the following inputs and input services being procured by the applicant for the purpose of undertaking CSR activities will constitute as eligible ITC in terms of section 17(5) of the CGST Act:</p> <p>Answer: CSR activities, as per Companies (CSR Policy) Rules, 2014 are those activities excluded from normal course of business of the applicant and therefore not eligible for ITC, as per Section 16(1) of the CGST Act.</p>
M/s. Supercoat India	Supplier of Fabric	Advance Ruling No. GUJ/GAAR/R/45/2021 Dated-27.08.2021	<ul style="list-style-type: none"> ● M/s. Supercoat India supplies partially coated Polyester fabric (knitted or woven) or any other kind of partially coated ((with scattered micro-dot print)) ● The goods supplied are further be used as interlining fabric in products like shirt, suits, coats, Gowns etc. <p><u>The following question was raised</u></p> <p>Whether the Partially Coated Polyester Fabric (Knitted or Woven) or any other partially coated Fabric will be covered under relevant chapter headings (50 to 55, 58 or 60) or under Tariff Heading 5903?</p> <p>Answer: The subject goods are classified at HSN 5903</p>

Name of Applicant	Industry	Order No. & Date	Case History
M/s. Airport Authority of India	Govt. Company	Advance Ruling No. GUJ/GAAR/R/46/2021 Dated-27.08.2021	<ul style="list-style-type: none"> ● M/s. Airport Authority of India is an authority created under the Airport Authority of India Act, 1994 (hereinafter referred to as the AAI Act) to provide for the constitution of the AAI for the better administration and cohesive management of the airports. ● In 2019, Airports Authority of India conducted PPP (Public Private Partnership) bidding process in which M/s. Adani Enterprises Limited (the “Concessionaire”), an Ahmedabad-based business conglomerate had won the bid of the airport quoting highest bid among all. <p>The following question were raised</p> <p>1. Whether the transfer of business by the AAI to the M/s. Adani Ahmedabad International Airport Limited be treated as Supply u/s. 7 of the Central Goods and Service Tax Act, 2017 (“CGST”) viz-a-viz Gujarat State Goods and Service Tax Act, 2017 (“GSGST”)?</p> <p>Answer: The Subject Supply of ‘Transfer of Going Concern service’ is Supply under Section 7 CGST Act.</p> <p>2. Whether the transfer of business by AAI to M/s. Adani Ahmedabad International Airport Limited is treated as supply as going concern and covered in clause 4 of schedule II of CGST Act viz-a-viz GSGST?</p> <p>Answer:</p> <p>i. The subject Supply is ‘Transfer of Going Concern Service’. ii. Schedule II (4) CGST Act refers to activities or transactions relating to Transfer of business assets to be treated as supply of goods or supply of services. Therefore, in present case, there arises no need to examine Schedule II(4) CGST Act.</p> <p>3. Whether the transfer of business by AAI to M/s. Adani Ahmedabad International Airport Limited is covered under the Entry No. 2of the exemption notification No 12/2017 – Central Tax (Rate) dated 28-06-2017 issued u/s Section 11 of CGST Act 2017?</p> <p>Answer: The subject Supply is covered at Entry No. 2 of Notification 12/2017-CT(R)</p> <p>4. If the answer is negative, then whether GST is leviable on the transfer of Existing assets (“RAB”), Aeronautical Assets, non-aeronautical assets and Capital work in progress by AAI to the M/s. Adani Ahmedabad International Airport Limited?</p> <p>Answer: Ruling not required, in pursuance to Ruling at serial no 3.</p> <p>5. Whether the aforesaid transfer of asset be treated as services and the classification for the same?</p> <p>Answer: Ruling not required, in pursuance to Rulings at serial no 2 & 3.</p> <p>6. Whether the concession fees paid by M/s. Adani Ahmedabad International Airport Limited to AAI be treated as consideration for transfer of business?</p> <p>Answer: Concession Fee is a part of the Consideration paid by SPV to AAI in subject matter.</p> <p>7. Whether GST is applicable on Monthly/Annual concession fees charged by the AAI on the M/s. Adani Ahmedabad International Airport Limited?</p> <p>Answer: The consideration for the subject Supply is exempt from GST vide Entry No. 2 of Notification 12/2017-CT(R) dated 28-6-2017.</p> <p>8. Whether GST is leviable on the invoice raised by AAI for reimbursement of the salary/ staff cost on M/s. Adani Ahmedabad International Airport Limited? If yes at what rate?</p> <p>Answer: Ruling same as at Sr no 7. Further, the issue of reimbursement of staff cost has arisen in pursuance to the terms of subject Contract dated 14-2-20 wherein the ‘the Supply of Transfer of Going concern Service’ is exempt from GST. The contract is for ‘transfer of going concern service’, therefore the consideration / reimbursement of cost is exempt from GST.</p>



Name of Applicant	Industry	Order No. & Date	Case History
			<p>9. Whether GST is applicable on the reimbursement claimed of Municipal tax, Property Tax and Water Charges by the AAI from M/s. Adani Ahmedabad International Airport Limited? If yes at what rate Answer: Ruling same as at Sr. No 7. Further, the issue of reimbursement has arisen in pursuance to the terms of subject Contract dated 14-2-20 wherein the 'Supply of Transfer of Going concern Service' is exempt from GST. The contract is for 'transfer of going concern service', therefore the consideration / re-imbusement of cost is exempt from GST</p> <p>10. Whether GST is applicable on transfer of spares and consumables for consideration by the AAI to M/s. Adani Ahmedabad International Airport Limited? If yes at what rate? Answer: GST on proposed supply of spares and consumables by AAI to SPV, these supplies being outside the scope of subject contract, is leviable to tax as per law, as discussed at paragraph 27.3 of this Ruling.</p>
M/s. Gensol Ventures pvt. ltd	Online CAB Service	Advance Ruling No. GUJ/GAAR/R/48/2021 Dated-27.08.2021	<ul style="list-style-type: none"> ● M/s. Gensol Ventures pvt. Ltd. intends to own, develop an electronic/digital platform for booking of cabs. ● The mentioned company as a business measure, offers discounts to the customers for the passenger transportation service provided by the drivers and the consideration charged and collected by Gensol from the customer is after deducting such discount amount <p>The following question were raised</p> <p>1. M/s Gensol is an e-commerce operator and shall be liable to be registered. Answer: M/s Gensol is an e-commerce operator and shall be liable to be registered.</p> <p>2. M/s Gensol is liable to pay GST as per Section 9(5) CGST Act. Answer: M/s Gensol is liable to pay GST as per Section 9(5) CGST Act</p> <p>3. The value of supply for passenger transportation service shall be the net amount arrived after the deduction of discount (to be provided by M/s Gensol to the customer) from the gross value. Answer: The value of supply for passenger transportation service shall be the net amount arrived after the deduction of discount (to be provided by M/s Gensol to the customer) from the gross value.</p> <p>4. The SAC for subject supply is 996412. The GST shall be leviable @ 5% (2.5% CGST + 2.5% SGST) subject to the fulfilment of the condition at Entry No.8 (ii) of cited Notification 11/2017-CT(R) dated 28-6-2017. Answer: The SAC for subject supply is 996412. The GST shall be leviable @ 5% (2.5% CGST + 2.5% SGST) subject to the fulfilment of the condition at Entry No.8 (ii) of cited Notification 11/2017-CT(R) dated 28-6-2017</p>

Name of Applicant	Industry	Order No. & Date	Case History
M/s Chikkaveeranna Sweet Stall	Sweet Business	Advance Ruling No. KAR/ADRG 79/2021 Dated- 31.12.2021	<ul style="list-style-type: none"> ● M/s. Chikkaveeranna is a Proprietorship concern ● The Applicant is running sweet stall and is engaged in manufacturing of sweets and doing counter sale on retail basis. <p><u>The following question was raised</u></p> <p>For composition tax payers what is the applicable rate of GST for the manufacturing of sweet and namkins and selling the goods over the counter not having any facility of restaurant or hotel or not a part thereof and not giving for human consumption at the place of shop</p> <p>Answer: Rate of GST applicable for a Composition tax payer who are engaged in the manufacture of sweet and namkins and who is doing only the counter sales, is one percent (0.5% CGST and 0.5% SGST) subjected to the condition mentioned in the Notification No. 8/2017-Central Tax dated: 27.06.2017 and further amended notifications.</p>
M/s. The Leprosy Mission Trust India	NGO	TN/30/ARA/2021 Dated 10.08.2021	<p>M/s. The Leprosy Mission Trust India, Vocational Training Center is engaged in the business of imparting vocational skills to young adolescents coming from families affected with leprosy and individuals with disabilities.</p> <p><u>The following question was raised</u></p> <p>Whether services provided under vocational training courses recognized by National Council for Vocational Training (NCVT) or State Council of Vocational Training (SCVT) is exempt either under Entry No. 66 of exemption list of Goods and Service Tax Act 2017 or under Educational Institution defined under Notification 12/2017 Central Tax (Rate)</p> <p>Answer: The services provided by the Leprosy Mission Trust India, Regional Industrial Training Institute, Vadathorasalur under Vocational Training Courses pertaining to Mechanic (Motor Vehicle), Electrician, Sewing Technology' recognized by National Council for Vocational Training (NCVT) are exempt under Serial Number 66 of Notification I2/2017 Central Tax (Rate) as education as part of an approved vocational education course.</p> <p>Services provided by the applicant under Vocational training courses pertaining to Mechanic Refrigeration & Air Condition and Central Plant, Electrical Technician and Automobile Mechanic recognized by State Council of Vocational Training (SCVT) is exempt under Serial Number 66 Notification I2/2017 Central Tax (Rate) as education as part of an approved vocational education course subject to re-affiliation pending being granted by the Department of Employment and Training of Government of Tamil Nadu</p>
M/s Padmavathi Hospitality & Facilities Management Service	Housekeeping Service		<p>M/s. Padmavathi Hospitality & Facilities Management Services is engaged in providing Mechanized and Manual Housekeeping services/Cleaning services including Pest Control services; Security services, non-medical Man Power supply to support Medical and paramedical services in hospital projects; Bio Waste Management for all Hospitals under DME as bundled services to Directorate of Medical Education (DME) that includes Government Medical College Hospitals, Government Medical Colleges and Government Nursing Colleges</p> <p><u>The following questions were raised</u></p> <ol style="list-style-type: none"> 1. Whether services provided by Padmavathi Hospitality & Facilities Management Services (PHFMS) to DME are classifiable as a function entrusted to a Panchayat or a Municipality under the constitution? If not then can we conclude that no exemption is available to PHFMS? 2. Whether services provided by PHFMS to DME is exempted under Sl.No.3 of Notification 12/2017 Central Tax dated 28.06.2017 read along with amendment dated 25.01.2018?



Name of Applicant	Industry	Order No. & Date	Case History
			<p>3. Whether Services provided by PHFMS to DME including institutions of Government Hospitals and colleges are liable for GST or not? If yes, what is the rate of GST applicable to these services</p> <p>4. Whether services rendered by PHFMS to DME can be classified as pure services or Composite Supplies?</p> <p>Answer:</p> <p>1. The proposed supply as per the Tender for housekeeping, Security Services and Assistance in Electrical, Plumbing, laundering, Cooking, Catering, Gardening & Carpentry Services in 93 Government Hospitals under the Control of Directorate of Medical & Rural Health Services, -86 Institutions, Directorate Medical & Rural Health Services (ESI)-7 Institutions is exempt under Entry No.3 of Notification No.1212017-C.T.(Rate) dated 28.06.2017 read with trntry No. 3 of Notification No.II(2)/CTR/532(d-14)12017 vide G.O. (Ms) No. 73 dated 29.06.2017 as brought out in para 8 above.</p> <p>2. The applicant's question on the supply tendered for Medical Hospitals, Medical Colleges and Nursing Colleges under Directorate of Medical Education (DME) is not answered as not admitted, under sub-section (2) of Section 98 of the CGST Act and TNGST Act read with Section 95(a) of the CGST/TNGST Act 2017.</p>
Thiru Neelakanta Realtors Limited Liability	Works Contract	TN/32/ARA/2021 Dated 17.08.2021	<ul style="list-style-type: none"> ● The applicant is engaged in the business of providing works contract and construction services ● They had entered into a Joint development agreement ("JDA" for short) with K. Alamelu and N. Rama (Hereinafter referred as "owners") who are the owners of the property measuring 2860 sq.ft situated for construction of apartments. ● The applicant has stated that the owners approached them for developing the property and entered into an agreement for this purpose on 17th day of April 2019. ● The applicant has stated that as on date, pending minor works, the construction work for the owner's portion is substantially completed in all aspects. The transaction will be complete in all aspects, in terms of the JDA, once the key is handed over to the landowners <p>The following questions were raised</p> <p>1. Whether paragraph 2A of Notification No. 03/2019-Central Tax (Rate) dated 29th March, 2019, is applicable to those agreements entered on or before 29th September 2019 with unregistered persons?</p> <p>2. If the answer to question (1) is affirmative, whether Notification no 03/2019-Central Tax (Rate) dated 29th March, 2019 is applicable, when the actual cost of construction of services are known?</p> <p>3. If the answer to the question (1) or (2) is negative, which valuation rule is applicable for identifying the value of supply for construction services rendered?</p> <p>4. What will be the value of supply, in case, Applicant adopts Rule 30 of CGST Rule, 2017?</p> <p>5. What will be the value of supply, in case, Applicant adopts Rule 31, instead of Rule 30 of CGST Rule, 2017 in terms of proviso to Rule 31 of CGST Rules?</p> <p>6. Whether paragraph 2A of Notification no 03/2019-Central Tax (Rate) dated 29th March, 2019, is ultravires Section 15(5) of CGST Act, 2017 and hence is inapplicable until there is prescription of rules in terms of Section 15(5) read with Section 2(87) of CGST Act, 2017?</p> <p>Answer:</p> <p>1. Paragraph 2A the Notification no.3/2019-Central Tax (Rate) dt.29.03.2019 is applicable to the agreement entered into between the</p>

Name of Applicant	Industry	Order No. & Date	Case History
			<p>applicant and the owners of the land in as much as the levy is imposable on the date of completion of the construction as per Notification No. 0612019 -Central Tax (Rate) dated 29. 03.2019.</p> <p>2.Notification no.3/2019-Central Tax (Rate) dt.29.03.2019 is applicable to this transaction even if the actual cost of construction is available.</p>
Joshna Chandresh Shah	Retailer of Soft Toys	TN/35/ARA/2021 Dated 30.09.2021	<ul style="list-style-type: none"> ● The applicant has stated that they are regular importers and traders of toys from various countries, they sell these goods in India, in retail as well as through It Commerce platforms. ● They also intend to manufacture these toys in India in future. ● The toys imported include both electronically operated toys as well as manually operated toys in which electronic parts were fitted for providing light, music and horn etc. <p>The following question was raised</p> <p>When Physical force is the primary action of a toy and if the light and the music are ancillary to it then whether it is to be classified under “Electronic Toys” or “other than Electronic Toys”</p> <p>Answer:</p> <p>The products Children Scooter, Activity Ride-on, Smart Tri-cycle and Kick Scooter, in which physical force is the primary action and contains an in built electronic circuit, are ‘Electronic Toys’ and the applicable GST Rate is CGST @9% as per Sl.No. 440 of Schedule-III of Notification No. 01/2017 C.T.(Rate) dated 28.06.2017 and SGST @- 9% as per Sl.No. 440 of Schedule III to Notification No. II(2)/CTR/532(d-4)/2017 vide G.O. (Ms) No. 62 dated 29.06.2017.</p>
Grb Dairy Foods Pvt.ltd	Manufacturer of Dairy Product	TN/36/ARA/2021 Dated 30.09.2021	<ul style="list-style-type: none"> ● The applicant was engaged in the business of manufacture and supply of ghee and other products. It launched sales promotional offer ‘Buy n Fly’ scheme for retailers to enhance sales of its products. ● It filed an application for advance ruling to determine whether GST paid on inputs/input services such as Trip to Dubai, Gold Vouchers, Television and Air-coolers procured to implement the promotional scheme under the name ‘Buy n Fly’ would be eligible for Input Tax Credit (ITC). <p>The following question was raised</p> <p>Whether the GST paid on inputs/input services procured by the applicant to implement the promotional scheme under the name ‘Buy n Fly’ is eligible for Input Tax Credit under the GST law in terms of Section 16 read with Section 17 of the CGST Act, 2017 and TNGST Act, 2017?</p> <p>Answer:</p> <p>The Authority for Advance Ruling observed that the promotional rewards were extended by the applicant at its own will voluntarily without any consideration in money or money’s worth on achievement of set target to the retailers. The rewards were not in the nature of discounts to the products but were in the nature of personal consumables and therefore, they would qualify to be termed as gifts.</p> <p>Moreover, Section 17(5) (h) of GST Act, 2017 expressly restricts ITC on such gifts, even if they are procured in the course of furtherance of business. Therefore, it was clear that the tax paid on the goods/services procured for distribution as rewards extended by the applicant in the ‘Buy n Fly’ scheme would not be available as ITC.</p>

Name of Applicant	Industry	Order No. & Date	Case History
Rasi Nutri Foods	Nutrition Food Manufacturer and Supplier	TN/39/ARA/2021 Dated 21.10.2021	<p>The Rasi Nutri Foods engaged in the business of manufacture and supply of nutrition products including FRK, has been awarded the contract for the supply of FRK by the government of Tamil Nadu.</p> <p>The following question was raised</p> <p>Whether Notification 39/2017-CT(R) dated 18.10.2017 read with G.O.Ms.No.140 dated 17.10.2017 issued by the Commercial Taxes and Registration Department, would be applicable to the Applicant's activity of manufacture and supply of Fortified Rice Kernels to the Tamil Nadu Civil Supplies Corporation pursuant to the Pilot Scheme on "Fortification of Rice & its Distribution under the Public Distribution System" project launched by the Central Government.</p> <p>Answer:</p> <p>Notification No.39/2017 CT(R) dated 18.10.2017 read with G.O.Ms. No. 140 dated 17.10.2017 issued by the Commercial Taxes and Registration Department, is not applicable to the Applicant's activity of manufacture and supply of Fortified Rice Kernels to the rice mills designated by Tamil Nadu Civil Supplies Corporation pursuant to the Pilot Scheme on "Fortification of Rice & its Distribution under the Public Distribution System" project launched by the Central Government for the period upto 30.09.2021 for the reasons stated in para 9 above.</p> <p>Notification 39/2017 CT(R) dated 18.10.2017 read with G.O.Ms.No. 140 dated 17.10.2017 issued by the Commercial Taxes and Registration Department, as amended by Notification No. 11/2021 C.T.(Rate) dated 30.09.2021 is applicable to the supply of Fortified Rice Kernels (Pre mix), by the applicant., for the Pilot Scheme on "Fortification of Rice & its Distribution under the Public Distribution System" project launched by the Central Government, from 01.10.2021 onwards, under Sl.No. (b) of Column (3) of the said Notification subject to fulfillment of the conditions stipulated under Column (4) of the said Notification.</p>
M/S Coral Coil India Limited	Electric Manufacturing Company	TN/40/ARA/2021 Dated 30.11.2021	<p>The applicant used to supply of STATOR COILS for manufacturing of wind operated electricity generation to CORAL Manufacturing Works India Pvt Ltd.</p> <p>The following question was raised</p> <p>Whether the supply of Stator Coil by the Applicant to M/s. Coral Manufacturing Works India Private Ltd., will be eligible for the levy of 2.5% CGST in terms of Sl. No. 234 in the notification 1-CTR dated 28 June 2017 and 2.5% SGST in terms of the corresponding SGST notification</p> <p>Answer:</p> <p>It was ruled that GST Rate would be 12% subject to self-assessment of the applicant that all such supplies are for the manufacture of generations for renewable energy based on the purchase orders / supply contracts for each of such supply</p>
New Pandian Travels Private Limited	Passenger Transport Service	TN/43/ARA/2021 Dated 30.11.2021	<ul style="list-style-type: none"> ● The applicant is engaged in Passenger transportation services by motorized taxi within or between urban and suburban areas; chauffeur-driven car-hire services; passenger transportation services by non-scheduled vehicles with Driver; ● Rental of Cars with operators for a period of time depending on distance. ● The applicant provides also transportation of passenger service to SEZ under LUT as 'Zero rated 'supply. <p>The following questions were raised</p> <p>1. Whether the GST paid on the Motor cars of seating capacity not exceeding 13 (including Driver) leased or rented to customers will be available to it as INPUT TAX CREDIR (ITC) in terms of Section</p>



Name of Applicant	Industry	Order No. & Date	Case History
			<p>17(5)(a)(A) of Central Goods and Service Tax Act, 2017?</p> <p>Answer: GST paid on the Motor cars of seating capacity not exceeding 13 (including Driver) leased or rented with Operators to the Vendors is not available to the applicant as INPUT TAX CREDIT(ITC) in terms of Section 17(5)(a)(A) of Central Goods and Service Tax Act, 2017 for the reasons specified at Para 8.2 above</p> <p>2. Whether the GST paid on the Motor cars of seating capacity not exceeding 13 (including Driver) registered as public vehicle with RTO to transport passengers, provided to their different customers on lease or rental or hire will be available to it as INPUT TAX CREDIT (ITC) in terms of Section 17(5)(a)(B) of Central Goods and Service Tax Act, 2017.</p> <p>Answer: GST paid on the Motor cars of seating capacity not exceeding 13 (including Driver) registered as public vehicle with RTO to transport passengers, provided to their different customers on lease or rental or hire will NOT be available to as INPUT TAX CREDIT (ITC) for the reasons stated at Para 8.3 above</p> <p>3. Whether the supply of services by way of Renting or Leasing or Hiring Motor Vehicles to SEZ to transport the employees of the customers without payment of IGST under LUT is deemed as taxable supply and whether ITC is admissible on Motor Vehicles procured and used commonly for such supply to SEZ and other than SEZ supplies?</p> <p>Answer: Supply of services by way of Renting or Leasing or Hiring Motor Vehicles to SEZ to transport the employees of the customers without payment of IGST under LUT is deemed as taxable supply: ITC is not admissible on Motor Vehicles procured as the same is restricted at S.17(5)(a)(n) of the Act</p>

Contd. in next Tax Bulletin...



TAX UPDATES, NOTIFICATIONS AND CIRCULARS

INDIRECT TAX NOTIFICATION

Customs Tariff Notification

Notification No. 02/2022-Customs

Date – 1.02.2022

Seeks to further amend notification No. 50/2017-Customs dated 30th June, 2017 so as to prescribe effective rate of Basic Customs Duty (BCD)

CBIC has made further amendments in the Notification No. 50/2017-Customs, dated the 30th June, 2017

In the said notification, -

I. in the Table, -

- (1) S. No. 3A and the entries relating thereto shall be omitted with effect from the 1st day of May, 2022;
- (2) S. No. 4 and the entries relating thereto shall be omitted.

For more details , please follow -

<file:///D:/TRD-Deba/Downloads/cs02-2022.pdf>

Notification No. 03/2022-Customs

Date – 1.02.2022

Seeks to further amend notification No. 11/2018-Customs dated 2 nd February, 2018 so as to exempt certain goods from Social Welfare Surcharge (SWS) and to withdraw SWS exemption on certain textile items.

CBIC has made amendments in the notification No. 11/2018-Customs, dated the 2nd February, 2018.

For more details , please follow -

<file:///D:/TRD-Deba/Downloads/cs03-2022.pdf>

Notification No. 04/2022-Customs

Date – 1.02.2022

Seeks to rescind notification Nos. 190/1978-Customs and 191/1978-Customs both dated 22th September, 1978 prescribing additional duty of customs on imports of transformer oil equivalent to such portion of the excise duty leviable on the raw

material commonly known as transformer oil base stock or transformer oil feedstock.

CBIC has rescinded the notifications of the Government of India in the Ministry of Finance (Department of Revenue), as specified in column (2) of the Table below, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide corresponding numbers G.S.R. as specified in column (3) of the said Table, except as respects things done or omitted to be done before such rescission, namely:

SI No	Notification Number	G.S.R. No
1	2	3
1.	Notification No. 190/1978-Customs, dated the 22nd September, 1978.	468(E), dated the 22nd September, 1978.
2.	Notification No. 191/1978-Customs, dated the 22nd September, 1978.	469(E), dated the 22nd September, 1978

This notification has been effective from 2nd day of February, 2022.

Notification No. 05/2022-Customs

Date – 1.02.2022

Seeks to rescind Notification Nos. 10/95-Customs, 26/99-Customs, 27/2004-Customs, 14/2006-Customs, 48/2006-Customs, 90/2007-Customs, 8/2011-Customs, 24/2011-Customs, 49/2013-Customs, 23/2014-Customs, 37/2015-Customs, 11/2016-Customs, 20/2020-Customs, 40/2020-Customs which have become redundant.

CBIC has rescinded the notifications of the Government of India in the Ministry of Finance (Department of Revenue) except as respects things done or omitted to be done before such rescission.

For more details, please follow -

<https://taxinformation.cbic.gov.in/content-page/explore-notification>

Notification No. 06/2022-Customs

Date – 1.02.2022

Seeks to further amend Notification Nos. 52/2017-Customs dated 30.06.2017 and 37/2017-Customs dated 30.06.2017 to remove entries which are being operated from the First Schedule to the Customs Tariff Act and certain redundant entries.

CBIC has amended notifications of the Government of India in the Ministry of Finance (Department of Revenue), specified in column (2) of the Table below, to the extent specified in the corresponding entry in column (3) of the said Table, namely: -

Sl No	Notification number	Amendment
1	2	3
1.	Notification No. 37/2017- Customs, dated the 30th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 772(E), dated the 30th June, 2017.	In the said notification, in the TABLE, S. Nos. 6, 7 and the entries relating thereto shall be omitted with effect from the 2nd February, 2022.
2.	Notification No. 52/2017- Customs, dated the 30th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 787(E), dated the 30th June, 2017	In the said notification, in the TABLE, S. Nos. 1A, 2, 3, 4, 5, 11 and the entries relating thereto shall be omitted with effect from the 1st May, 2022.

Notification No. 07/2022-Customs

Date – 1.02.2022

Seeks to further amend Notification No. 82/2017-Customs dated 27.10.2017 to prescribe effective rate on certain Textile items upto 30.04.2022

CBIC has made amendments in the notification No. 82/2017-Customs, dated the 27th October, 2017.

For more details, please follow -
<file:///D:/TRD-Deba/Downloads/cs07-2022.pdf>

Notification No. 09/2022-Customs

Date – 1.02.2022

Seeks to amend notification Nos. 146/94-Customs, 147/94-Customs, 39/96-Customs, 50/96-Customs, 30/2004-Customs, 81/2005-Customs,

5/2017-Customs, 16/2017-Customs, 32/2017-Customs to prescribe end-dates as per Section 25(4A) of Customs Act, 1962

CBIC has amended notifications as mentioned below –

S. No.	Notification number	Amendments
1	2	3
1.	Notification No. 146/94- Customs, dated the 13th July, 1994 vide number G.S.R. 575(E), dated the 13th July, 1994.	In the said notification, after the TABLE, the following Explanation shall be inserted, namely: - “Explanation. – For the removal of doubts, it is hereby clarified that under the provisions of subsection (4A) of section 25 of the Customs Act, 1962, this conditional exemption shall, unless varied or rescinded, be valid upto the 31st March, 2023.”;
2.	Notification No. 147/94- Customs, dated the 13th July, 1994 vide number G.S.R. 576(E), dated the 13th July, 1994.	In the said notification, after the TABLE, the following Explanation shall be inserted, namely: - “Explanation. – For the removal of doubts, it is hereby clarified that under the provisions of subsection (4A) of section 25 of the Customs Act, 1962, this conditional exemption shall, unless varied or rescinded, be valid upto the 31st March, 2023.”;

For more details , please follow -
<file:///D:/TRD-Deba/Downloads/cs09-2022.pdf>

Notification No. 10/2022-Customs

Date – 1.02.2022

Seeks to amend notification No. 27/2011-Customs dated 01.03.2011 to omit redundant entries and reduce export duty raw hides and skins of buffalo.

CBIC has made amendments in the notification No. 27/2011- Customs dated the 1st March, 2011, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 153(E), dated the 1st March, 2011, namely: -

In the said notification, in the Table,



S. No. 20B and the entries relating thereto shall be omitted;

after S. No. 38A and the entries relating thereto, the following S. No. and the entries shall be inserted, namely: -

1	2	3	4
“38B.	4101	Raw hides and skins of buffalo	30%”;

S. Nos. 63, 64 and the entries relating thereto shall be omitted.

This notification has been effective from 2nd day of February, 2022.

Notification No. 11/2022-Customs
Date – 1.02.2022

Seeks to implement a graded BCD structure for wearable devices and its parts, sub-parts and sub-assembly.

CBIC has exempted the goods falling within the Chapter or heading or sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) from so much of the duty of customs leviable thereon under the said First Schedule as is in excess of the amount calculated at the standard rate

For more details, please follow -
<file:///D:/TRD-Deba/Downloads/cs11-2022.pdf>

Notification No. 12/2022-Customs
Date – 1.02.2022

Seeks to implement a graded BCD structure for hearable devices and its parts, sub-parts and sub-assembly.

CBIC has exempted the goods falling within the Chapter or heading or sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) when imported into India, from so much of the duty of customs leviable thereon under the said First Schedule as is in excess of the amount calculated at the standard rate subject to any of the conditions as specified in the Annexure to this notification.

For more details , please follow -
<https://taxinformation.cbic.gov.in/content-page/explore-notification>

Notification No. 13/2022-Customs
Date – 1.02.2022

Seeks to implement a graded BCD structure for smart meters and its parts, sub-parts and sub-assembly.

CBIC has exempted the goods falling within the Chapter or heading or sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India, from so much of the duty of customs leviable thereon under the said First Schedule as is in excess of the amount calculated at the standard rate subject to any of the conditions as specified in the Annexure to this notification.

For more details , please follow -
<file:///D:/TRD-Deba/Downloads/cs13-2022.pdf>

Notification No. 14/2022-Customs
Date – 1.02.2022

Seeks to amend notification No. 25/1999-Customs dated 28.02.1999 to omit redundant and obsolete entries.

CBIC has made amendments in the notification No. 25/1999- Customs, dated the 28th February, 1999.

For more details , please follow -
<file:///D:/TRD-Deba/Downloads/cs14-2022.pdf>

Notification No. 15/2022-Customs
Date – 1.02.2022

Seeks to amend various notifications giving exemption to electronic items and medical devices.

CBIC has made amendments in several notifications.

For more details , please follow -
<file:///D:/TRD-Deba/Downloads/cs15-2022.pdf>

Notification No. 16/2022-Customs
Date – 12.02.2022

Seeks to amend notification No. 48/2021-Customs and No. 49/2021 - Customs, both dated 13.10.2021, in order to rationalise the Agriculture Infrastructure and Development Cess [AIDC] on Crude Palm Oil and Lentils (Mosur), and extend the validity of the said notifications up to and inclusive of the 30th September, 2022.

CBIC has made amendments in several notifications.

For more details , please follow -
<file:///D:/TRD-Deba/Downloads/cs16-2022.pdf>

Customs Non-Tariff Notification

Notification No. 6/2022-Customs (N.T)

Date – 31.01.2022

Fixation of Tariff Value of Edible Oils, Brass Scrap, Areca Nut, Gold and Silver- Reg

CBIC has made amendments in the Notification No. 36/2001-Customs (N.T.), dated the 3rd August, 2001.

For more details , please follow -
<file:///D:/TRD-Deba/Downloads/csnt06-2022.pdf>

Notification No. 7/2022-Customs (N.T)

Date – 1.02.2022

Seeks to further amend Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 so as to simplify and automate the procedures.

CBIC has made amendments in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017, namely: -

1. Short title and commencement. –

(1) These rules may be called the Customs (Import of Goods at Concessional Rate of Duty) Amendment Rules, 2022.

(2) They shall come into force on the 1st day of March, 2022.

2. In the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 (hereinafter referred to as the said rules), in rule 3, after clause (aa), the following clauses shall be inserted, namely: –

“(ab) ‘common portal’ means the common customs electronic portal as referred to in section 154C of the Act;

(ac) ‘customs automated system’ means the Indian Customs Electronic Data Interchange System; (ad) ‘date of import’ means the date of the order made under section 47 of the Act permitting clearance of such goods;”

For more details, please follow - <file:///D:/TRD-Deba/Downloads/csnt07-2022.pdf>

Notification No. 8/2022-Customs (N.T)

Date – 3.02.2022

Exchange rate Notification No.08/2022-Cus (NT) dated 03.02.2022-reg [Effective from 04th January, 2022]

In supersession of the Notification No.04/2022-Customs(N.T.), dated 20th January, 2022 except as

respects things done or omitted to be done before such supersession, CBIC has determined the rate of exchange of conversion of each of the foreign currencies into Indian currency or vice versa, shall, with effect from 4th February, 2022, for the purpose of the said section, relating to imported and export goods.

For more details, please follow -
<file:///D:/TRD-Deba/Downloads/csnt08-2022.pdf>

Customs Anti-Dumping Duty Notification

Notification No. 5/2022-Customs (ADD)

Date – 1.02.2022

seeks to rescind the anti-dumping duty imposed on imports of “Straight Length Bars and Rods of alloy-steel” originating in or exported from China PR vide Notification No. 54/2018-Cus (ADD) dated 18.10.2018.

CBIC has rescinded the notification No. 54/2018-Customs (ADD), dated the 18th October, 2018, except as respect things done or omitted to be done before such rescission.

For more details, please follow -
<file:///D:/TRD-Deba/Downloads/csadd05-2022.pdf>

Notification No. 6/2022-Customs (ADD)

Date – 1.02.2022

seeks to rescind the anti-dumping duty imposed on imports of “High Speed Steel of Non-Cobalt Grade” originating in or exported from Brazil, China PR and Germany vide Notification No. 38/2019-Cus (ADD) dated 25.09.2019.

CBIC has rescinded the notification No. 38/2019- Customs (ADD), dated the 25th September, 2019 except as respect things done or omitted to be done before such rescission.

For more details, please follow -
<file:///D:/TRD-Deba/Downloads/csadd06-2022.pdf>

Notification No. 7/2022-Customs (ADD)

Date – 1.02.2022

seeks to rescind the anti-dumping duty imposed on imports of “Flat rolled product of steel, plated or coated with alloy of Aluminum or Zinc” originating in or exported from China PR, Vietnam and Korea RP vide Notification No. 16/2020-Cus (ADD) dated 23.06.2020.

CBIC has rescinded the notification No. 16/2020- Customs

(ADD), dated the 23rd June, 2020, except as respect things done or omitted to be done before such rescission.

For more details, please follow -
<file:///D:/TRD-Deba/Downloads/csadd07-2022.pdf>

Notification No. 8/2022-Customs (ADD)
Date – 14.02.2022

Seeks to extend the Anti-Dumping Duty (ADD) on imports of “Aluminium foil of thickness ranging from 5.5 micron to 80 micron” originating in or exported from People’s Republic of China, imposed vide Notification No. 23/2017-Customs (ADD), dated 16th May, 2017, till 15th June, 2022.

The designated authority vide notification No. 7/27/2021-DGTR, dated the 16th September 2021 has initiated review in terms of sub-section (5) of section 9A of the Customs Tariff Act, 1975 (51 of 1975) read with rule 23 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, in the matter of continuation of anti-dumping duty on imports of ‘Aluminium Foil’, falling under heading 7607 of the First Schedule to the Customs Tariff Act, originating in or exported from China PR, imposed vide Notification No. 23/2017-Customs (ADD), dated the 16th May, 2017, and has requested for extension of the said anti-dumping duty in terms of sub-section (5) of section 9A of the Customs Tariff Act.

For more details, please follow -
<file:///D:/TRD-Deba/Downloads/csadd08-2022.pdf>

Notification No. 1/2022-Customs (ADD)
Date – 1.02.2022

seeks to rescind the countervailing duty imposed on imports of “Certain Hot Rolled and Cold Rolled Stainless Steel Flat Products” originating in or exported from China PR vide Notification No. 1/2017-Cus (CVD) dated 07.09.2017.

CBIC has rescinded the Notification No. 01/2017-Customs (CVD), dated the 7th September, 2017, except as respect things done or omitted to be done before such rescission.

For more details, please follow -
<file:///D:/TRD-Deba/Downloads/csot01-2022.pdf>

Customs Circulars

Circular No. 3/2022
Date – 1.02.2022

Clarification regarding applicability of Social Welfare

Surcharge on goods exempted from basic and other customs duties/cesses

References have been received seeking clarification on the issue of applicability of Social Welfare Surcharge (SWS) on goods that are exempted from basic customs duty or taxes or cesses which are levied as a duty of customs. In absence of any specific exemption on Social Welfare Surcharge, certain field formations have taken a view that Social Welfare Surcharge shall be payable on notional customs duty as determined on Tariff rate.

The matter has been examined. Social Welfare Surcharge (SWS) is levied and collected, as a duty of customs, vide Section 110 of the Finance Act, 2018 (13 of 2018) and is calculated at the rate of 10 per cent. on the aggregate of duties, taxes and cesses which are levied and collected by the Central Government as a duty of customs on goods imported into India.

In this regard, it may be noted that at present SWS applies at the rate of 10% of the aggregate of customs duties payable on import of goods and not on the value of imported goods. If aggregate customs duty payable is zero on account of an exemption, the SWS shall be computed as 10% of value equal to ‘Nil’ (as aggregate amount of customs duties payable is zero). Law does not require computation of SWS on a notional customs duty calculated at tariff rate where applicable aggregate of duties of customs is zero.

Thus, it is clarified that the amount of Social Welfare Surcharge payable would be ‘Nil’ in cases where the aggregate of customs duties (which form the base for computation of SWS) is zero even though SWS has not been exempted.

DIRECT TAX NOTIFICATION

Notification No. 13/2022
Date – 10.02.2022
CORRIGENDUM

In the Notification No.11/2022 F.No.300196/1/2022-ITA-I dated 27.01.2022, published in Part-II, Section 3, Sub-section (ii) of the Gazette of India vide number S.O.357(E)-Notification No. 11/2022 may be read as Notification No.12/2022.

For more details , please follow -
<https://incometaxindia.gov.in/communications/notification/notification-no-13-2022.pdf>

DIRECT TAX CIRCULAR

Circular No. 3/2022

Date – 3.02.2022

Clarification regarding the Most-Favoured-Nation (MFN) clause in the Protocol to India's DTAA's with certain countries

The Protocol to India's Double Taxation Avoidance Agreements (DTAAs) with some of the countries, especially European States and OECD members (The Netherlands, France, the Swiss Confederation, Sweden, Spain and Hungary) contains a provision, referred to as the Most-Favoured-Nation (MFN) clause. Though each MFN clause in these DTAA's has a different formulation, the general underlying provision is that if after the signature/ entry into force (depending upon the language of the MFN clause) of the DTAA with the first State, India enters into a DTAA with another OECD Member State, wherein India limits its source taxation rights in relation to certain items of income (such

as dividends, interest income, royalties, Fees for Technical Services, etc.) to a rate lower or a scope more restricted than the scope provided for those items of income in the DTAA with the first State, such beneficial treatment should also be extended to the first State.

The Central Board of Direct Taxes (CBDT) has received representations seeking clarity on the applicability of the MFN clause (particularly to dividend withholding rates) available in the Protocol to some of the DTAA's with OECD member States. India's DTAA's with countries, namely Slovenia, Colombia and Lithuania, provide for lower rate of source taxation with respect to certain items of income. However, these States were not members of the OECD at the time of the conclusion of their DTAA's with India and have become members of the OECD thereafter.

For more details , please follow -

<https://www.incometaxindia.gov.in/communications/circular/circular-3-2022.pdf>

JUDGEMENTS OF INDIRECT TAX

No GST payable on Comprehensive Architectural Services: The AAR, Maharashtra

Fact of the Case

The Applicant, Sir JJ College of Architecture Consultancy Cell, was formed as per the guidelines of the Council of Architecture, a statutory body under the Act of Parliament and University of Mumbai and the Government of Maharashtra has permitted the applicant to render comprehensive architectural services.

The Applicant provides services to Government bodies, State corporations and Public Sector Undertakings (PSUs) in relation to comprehensive architecture including architectural design, structural design, MEP design, HVAC design, preparation of drawings, etc.

The Applicant has entered into an agreement with the Municipal Corporation of Greater Mumbai, (MCGM), the service receiver in the subject case, to provide comprehensive architectural services for repairs/restoration, reconstruction for development of recreation ground cum textile museum, located at India United Mills Nos., 2 & 3 at Kala Chowky, 'E' Ward, Mumbai.

The applicant has sought for advance ruling on the issue

- applicability of GST exemption on Comprehensive architectural services that includes architectural design, structural design, MEP design, HVAC services design, preparation of drawings etc. for repairs/restoration, reconstruction for development of recreation ground cum textile museum at United India Mills 2 & 3 at Kala chowky provided by the Applicant to Municipal Corporation of Greater Mumbai (MCGM).

Decision of the Case

The Coram of Rajiv Magoo and T.R. Ramnani has held that GST exemption vide Sr. No. 3 of Notification No. 12/2017 – Central Tax (Rate) dated 28th June 2017, is applicable on Comprehensive architectural services that includes architectural design, structural design, MEP design, HVAC services design, preparation of drawings etc for repairs/restoration, reconstruction for development of recreation ground cum textile museum at United India Mills 2 & 3 at Kala chowky provided by the Applicant to Municipal Corporation of Greater Mumbai (MCGM).

The Maharashtra Authority of Advance Ruling (AAR)

has held that no Goods and Service Tax is payable on Comprehensive architectural services.

12% GST payable on Composite Supply of Works Contract for Construction of Tunnel: The AAR, Maharashtra

Fact of the Case

The petitioner is the owner of Kapil Sons, is registered under the GST regime and has an operation of drilling and blasting works at various sites using Industrial explosives and other materials.

The petitioner seeks for the advance ruling on the problem that the operations performed by the petitioner would come under the goods or services or the composite supply of works contract and whether the activity is counted as the Composite Supply of works contract for Construction of tunnel under Entry 3(iv) of Notification No. 11/2017-CT (Rate) dated 28.06.2017 taxable at the rate of 12%.

Decision of the Case

The two judges consist of Rajiv Magoo and T.R. Ramnani mentioned that the impugned activity or supply performed through the petitioner according to the subject work order obtained from M/s NECL is “drilling and blasting including all tools, materials, explosive vans, and others. complete for approach roads and Tunnel Works”.

AAR also mentioned that the impugned activity performed through the means of the petitioner is the composite supply of works contract towards the tunnel construction and undergoes beneath Entry 3(iv) of Notification No. 11/2017-CT (Rate) on 28.06.2017. The concerning things about the choices and the compliances furnished through the petitioner along with the council are acknowledged to conclude on the decision.

The Maharashtra Authority of Advance Ruling (AAR) ruled that 12% GST was subjected to pay on the composite supply of works contract for the tunnel construction.

ITC available on GST paid under RCM on Hiring of Buses for Transportation of Employees: The AAR, Maharashtra

Fact of the Case

In context to the input credit on the rent for the cab



service, the petitioner Maanicare System India Private Limited is furnishing the services to the customers indirectly the service charges accumulated through it depends on the percentage of the salary liable to pay to the employees when the employee reaches late his or her salary would be deducted as per that and the applicable service charge is to be diminished.

The applicant is filing the RCM @12% on the bus service claimed through it having the capacity exceeding 13 seating and are subject to apply for claiming the input credit of that.

The applicant has sought the advance ruling for the problem of

- whether the applicant (Maanicare System India Private Limited) is qualified for the ITC on furnished GST beneath the Reverse Charge Mechanism @ 5% for the hiring of buses for transportation of employees.

Decision of the Case

The two judges Rajiv Mango and T.R.Ramnani secure that Section 17 (5) had clearly debarred Input Tax Credit on motor vehicles or conveyances utilized in the transport of passengers till the revision date 01.02.2019. ITC permitted on leasing, renting, or hiring of motor vehicles, for transportation of persons, containing authorized seating capacity exceeding 13 persons (along with the driver).

In the quicker case, the bus service claimed by the applicant is 49 seaters that exceeds 13 seaters.

As per that this does not come beneath the block credit as given beneath section 17(5) of CGST Act 2017 and, hence in the instant case as the petitioner uses the services of renting of the motor vehicle for the business. For applicants, ITC is not blocked beneath referred Section 17(5) of CGST Act 2017. Hence the applicant is qualified for the Input tax credit effected from the date 01/02/2019 only, as per the above legal provisions.

The Maharashtra Authority of Advance Ruling (AAR) has ruled that Input Tax Credit (ITC) is available on GST paid under RCM on hiring of buses for transportation of employees.

18% GST on Supply of Reverse Osmosis Plant/system (RO Plant/system) to Indian Navy/Indian Coast Guard in Normal Course: The AAR, Maharashtra

Fact of the Case

The applicant, M/s Rochem Separation Systems India Private Limited is engaged in supply of Reverse Osmosis Plant (RO Plant/System) classified under Chapter Heading

8421 as per GST Tariff. The applicant has been supplying the subject goods to various buyers by charging GST @ 18% and has been informed by the Indian Naval Department that, GST should be charged @ 5% in respect of supply of RO Plant/system to be installed in warship, in view of Notification No.01/2017 dated 28.06.2017.

The applicant has sought the advance ruling on the issue

- as to the applicable rate of GST on supply of Reverse Osmosis Plant/system (RO Plant/system) to Indian Navy/Indian Coast Guard in normal course and the applicable rate of GST on supply of RO Plant/system (Reverse Osmosis Plant) to the Indian Navy/Coast Guard which would be installed in/on a warship.

Decision of the Case

The Coram noted that the R.O. Plant/system is to be installed on warship for the purpose of purifying water. It does not contribute in functionality of the warship. Merely because RO Plant is installed in the warship, it does not become part of it. As per the applicant, the goods (i.e., RO Plant/system) supplied by it falls under S. No. 322 of Schedule III of Notification No.01/2017-CTR dated 28.06.2017 attracting 18% CGST, which the applicant has already been charging accordingly.

The AAR ruled that 18% GST is applicable on supply of Reverse Osmosis Plant/system (RO Plant/system) to Indian Navy/Indian Coast Guard in normal course and on supply of RO Plant/system (Reverse Osmosis Plant) to the Indian Navy/Coast Guard which would be installed in/on a warship.

The Maharashtra Authority of Advance Ruling (AAR) has ruled that the 18% GST on supply of Reverse Osmosis Plant/system (RO Plant/system) to Indian Navy/Indian Coast Guard in normal course.

No GST is leviable on Cash Discounts received from Supplier: The AAR, Madhya Pradesh

Fact of the Case

The applicant is having a dealership of the famous rice brand "India Gate Basmati Rice" for the last 15 years. The supplier (India Gate) offers the incentive for early payment of invoices by offering a cash discount if payment is made before the due date or within certain days from the invoice. The supplier issues the Receipt cum credit note for cash discount without considering GST on such cash discount.

Similarly, the supplier offers a target incentive to the applicant on achieving the target of sales. The credit note is issued for this target incentive by the supplier without considering the GST in the form of the commercial credit



note. The supplier does not reverse its output tax liability of GST and likewise, the applicant does not reverse its tax credit on such commercial credit notes issued by the supplier to the applicant without considering GST.

This discount arrangement or target scheme is not part of the purchase contracts or the invoices as it is not known at that point of time whether the supply against those invoices will be considered for the discount and also whether the applicant will take the benefit of cash discount or not. Similarly, the rate/ quantum of purchase by the applicant is also not known. It is a case of offering discount post supply falling under “Cash Discount not agreed before or at the time of supply”.

The applicant has sought the advance ruling on the issue

1. Whether the applicant can avail the ITC of the full GST charged on the invoice of the supply or a proportionate reversal of the same is required in case of: -
 - Post-purchase cash discount for early payment of supply invoices given by the supplier of goods to the applicant without adjustment of GST
 - Incentives/ Schemes provided through credit note without adjustment of GST by the supplier to the applicant
2. Whether GST is leviable on cash discount offered by the supplier to the applicant through credit note without adjustment of GST for making the early payment from the date stipulated for payment of such supply as output supply?
 - If yes, what are the applicable HSN and the rate of GST, and whether GST is leviable on incentives/

schemes provided through credit note without adjustment of GST by the supplier to the applicant as output supply?

- If yes, then what are the applicable HSN and the rate of GST?

Decision of the Case

The Coram held that as per Circular No. 92/11/2019-GST dated 07.03.2019, it is further clarified that secondary discounts which is not known at the time of supply shall not be excluded while determining the value of supply as such discounts are not known at the time of supply and the conditions laid down in clause (b) of sub-section (3) of section 15 of the said Act are not satisfied. In other words, the value of supply shall not include any discount by way of issuance of credit note except in cases where the provisions contained in clause (b) of sub-section (3) of section 15 of the said Act are satisfied. There is no impact on the availability or otherwise of ITC in the hands of the supplier in this case.

As per the submission of the Applicant, we observe that the commercial credit notes issued by the supplier do not satisfy the conditions prescribed in section 15(3) of the CGST Act; the supplier is not eligible to reduce the original tax liability. As the supplier of goods is not reducing the original tax liability, the applicant will be eligible to avail the credit of the tax paid as per the invoice of the supplier subject to payment of the value of supply as reduced by the commercial credit notes plus the amount of original tax charged by the supplier. In other words, the applicant will not be required to reverse the proportionate ITC.

The Madhya Pradesh Authority of Advance Ruling (AAR) has ruled that no GST is leviable on Cash discounts received from the supplier.

JUDGEMENTS OF DIRECT TAX

R&D Activity in Biotechnology Services would be treated as 'Computer Software: ITAT

Fact of the Case

1. The assessee is engaged in the business of undertaking R&D activity in biotechnology. The Principal CIT, while invoking the revisional jurisdiction under section 263 of the Income Tax Act, 1961, examined the assessment orders and took the view that the deduction allowed to the assessee by the AO u/s 10B of the Act should not have been allowed. He was of the view that the R&D activity carried out by the assessee in biotechnology services would not qualify as 'computer software' within the meaning given in sec. 10B of the Act.
2. The assessee submitted that he has started claiming deduction under section 10B of the Act from assessment year 2005-06 onwards and it has been allowed up to assessment year 2010-11 and also in the subsequent assessment years.
3. The assessee argued that the eligibility for deduction under section 10B of the Act was required to be considered only in the first year of claim and once it is accepted in the first year, the benefit should be given in the succeeding years also, but the CIT has raked up this issue only during the year under consideration.

Decision of the Case

1. The Tribunal bench relied on the decision of the Bombay High Court in the case of CIT vs. Western Outdoor Interactive Pvt. Ltd., whether a benefit of deduction is available for a particular number of years on satisfaction of certain conditions and under the provision of Act, then without withdrawing or setting aside the relief granted for the first assessment year in which claim was made and accepted, the AO cannot withdraw the relief for subsequent assessment years.
3. "This ratio was laid down in the context of section 10A and the same, in our view, can be applied to sec.10B also. Accordingly, once there is no change in the facts and circumstances of the case from the earlier years from the initial year when the claim has been accepted, then the deduction cannot be disallowed or denied in the subsequent years of claim. The eligibility of the assessee to claim deduction u/s 10B of the Act would have been examined in the first year, i.e., in AY 2005-06 and the deduction was allowed. The deduction so

allowed in assessment year 2005-06 has not been withdrawn. In that case, the PCIT was not justified in directing the AO to deny deduction in the intervening year. Hence, the second reasoning given by CIT also would fail," the Tribunal said.

The Income Tax Appellate Tribunal (ITAT), Bangalore has held that the R&D activity in biotechnology services shall be treated as "computer software" for the purpose of allowing benefit of section 10B of the Income Tax Act, 1961.

No Liability arises for Payment of Income Tax by the Non-Resident receiving payment for Time Charter: ITAT

Fact of the Case

1. The assessee, M/s. Terapanth Foods Limited is engaged in the business of manufacturing refined free flow iodized salt and in trading of salt and iron ore etc. and filed its ITR declaring of total income 'nil'. The gross total income which reduced to nil after claim of set off of brought forward losses of A.Ys. 1999-2000 and 2000-2001.
2. The return of income was processed under Section 143(1) of the Income Tax Act, 1961 on 24.08.2006. Subsequently, the case was selected for scrutiny assessment and statutory notice under Section 143(2) of the Act was issued.
3. In response to the statutory notice, the assessee attended the proceeding and furnished the details. The Assessing Officer observed that the assessee has shown turnover of Rs.38,26,34,257/- and Net Profit of Rs.83,89,524/- as per Companies Act. The assessee got its books of accounts audited as required under Section 44AB of the Act.
4. The AO further observed that the assessee had paid ship hiring charges to non-resident and no TDS was paid. A show-cause notice was issued to the assessee and in this response the assessee furnished a reply. The AO made disallowance of ship hiring expenses towards on time chartered basis to non-resident under Section 40(a)(i) of the Act amounting to Rs. Rs.2,16,09,181. The Assessing Officer further made disallowance of Rs.15,583/- in respect of weather report expenses which was provided by a British Company to the assessee.

Decision of the Case

1. The Coram has noted that the CIT(A) has categorically mentioned that Section 195 of the Act would apply only if payment is made which is chargeable under Income Tax Act 1961. The AO has not given any reason as to why the chargeability of tax under Section 172 of the Act does not cover time charter of ships for which payment is made to non-resident.
2. The AO totally ignored the NOCs issued by the Department allowing the ship for sailing in Indian Port as the payment is for time charter. The provisions of Section 172 of the Act has not at all indicated that there is any liability to pay tax on such receipts by the non-resident recipients. In this case, the charter ship for which payment was made to non-resident. As per the charging Section 172, no liability arises for payment of tax by the non-resident receiving payment for time charter. The Id. D.R. could not point out any discrepancy in the order of CIT(A).

The Rajkot Bench of Income Tax Appellate Tribunal (ITAT) has ruled that no liability arises for payment of Income Tax by the non-resident receiving payment for time charter.

Income from Unsold Flats shall be treated as Business Income of the Developer: ITAT

Fact of the Case

1. The assessee is a company that works as a developer and promoter. The AO discovered that the assessee had 12 unsold flats/shops as closing stock, which were regarded as stock-in-trade, after looking into the specifics. The assessee, owns more than two home properties and is entitled to pay Income Tax on deemed rent. In light of this, the AO requested that the assessee explain why the considered rent for 12 unsold flats should not be imposed.
2. The assessee relied on the decision in the case of M/s. Mangal Murti Developers Ganesham and argued that the issue therein is similar to the issue raised in the present case, and the Tribunal, relying on the case of Cosmopolis construction in ITA Nos. 230 & 231/PUN/2018 and also considering the amendment made to Subsection (5) of Section 23 of the Act w.e.f. 01-04-2018, held that the income from unsold flats.

Decision of the Case

The Tribunal bench of Judicial observed that the CIT(A) did not contest the assessee's treatment of 12 unsold flats as stock-in-trade and subsequent offering of the same as business revenue.

"In Kumar Construction and Properties Private Limited, the ITAT upheld the decision of this Tribunal in M/s. Mangal Murti Developers Ganesham (supra), holding that no addition for presumed rent on unsold flats could be made." As a result, we hold that the change made by Finance Act, 2017 w.e.f. 01-04-2018 is not relevant and that no addition is maintainable on account of deemed rent on 12 unsold units that the assessee treats as stock-in-trade. As a result, the CIT(A) order is unjustified and is overturned," the Tribunal stated.

The Pune bench of the Income Tax Appellate Tribunal (ITAT) has held that the income from the unsold flats shall be taxable as the business income of the developer and not as rental income.

Assessee cannot be held to be 'Assessee in Default', No Interest leviable u/s. 201(1A) for Non-Deduction of TDS: ITAT

Fact of the Case

1. The present appeal has been filed by assessee against interest levied u/s. 201(1) of the Act. In the present facts of the case, the provision created at the end of the accounting year has not been credited to the relevant parties to whom the payments have to be made for the reason that it was unquantifiable. Further, assessee has suo moto disallowed the said sum under section 40(a)(ia) for non-deduction of TDS.
2. Therefore, there is a sufficient and reasonable cause for not deducting TDS on the year-end provision. It is also observed that assessee consistently follows this kind of accounting system for year-end provisions which is subsequently reversed in the subsequent year, as and when the bills are received, and the payment is made to the payee by deducting TDS.
3. The assessee has paid interest under section 201(1A) which further demonstrates there was no mala fide intention. In our considered view, the provisions of TDS are not applicable where there is no claim of expenditure made by assessee and the assessee has made suo moto disallowance u/s 40(a)(ia) of the Act.
4. The petition was filed by assessee seeking rectification of typographic mistakes in order passed by this Tribunal in the above referred appeals.

Decision of the Case

1. The Coram said, "assessee already made suo moto disallowance at the time of filing of return of income on which taxes are paid without any expenditure being

claimed and also that has paid interest u/s. 201(1A), then assessee cannot be held to be “assessee in default”. Once assessee is treated to be “assessee in default” u/s. 201(1A), no interest is leviable for non-deduction of TDS.”

2. “The facts for A.Y. 2014-15 are identical and interest u/s. 201(1A) has been levied by the AO. The applied mutatis mutandis for A.Y. 2014-15 and hold that assessee cannot be held to be “assessee in default” and no interest is leviable u/s. 201(1A) of the Act for non-deduction of TDS,” the tribunal added.

The Bangalore Bench of Income Tax Appellate Tribunal (ITAT) has held that Assessee cannot be held to be “assessee in default”, no interest leviable under section 201(1A) for non-deduction of TDS.

No Deduction under 80P only the basic exemption of Rs 50,000 on income for Society: ITAT

Fact of the Case

1. The assessee was a cooperative credit society carrying on banking and providing credit facilities to its members. During the year under consideration, the assessee, apart from interest income earned from credit facilities provided to its member, also earned interest from the fixed deposit made with the State Bank of India (SBI).
2. The surplus fund was deposited with the Bank to generate the interest income and maintain the liquidity to repay the deposits accepted from the members. As per the Assessing Officer (AO), the interest income was

not arising to the assessee from providing credit facility to the members. Thus he held that said interest income was not eligible for deduction under section 80P(2)(a) (i). Accordingly, he added interest income from SBI as income from other sources under section 56.

Decision of the Case

1. The Tribunal held that the provisions of section 80P(2) (a)(i) provide the deduction to a cooperative society engaged in the business of banking or providing credit facilities to its members. The provisions of the section are without any ambiguity, thus, if there is any income arising to the cooperative society from the non-members, that will not be subject to deduction.
2. The provisions of section 80P(2)(c) provide that a cooperative society engaged in activities other than those specified in clause (a) clause (b) of section 80P(2), the following deduction shall be allowed from its profits and gains attributable to such activities:-
 - i. Rs. 1,00,000 in the case of consumer cooperative society.
 - ii. Rs. 50,000 in any other case.
3. The expression ‘profits and gains’ as contained under section 80P(2)(c) is not confined to ‘Profits and gains of business’. Thus, in the case of a cooperative credit society, income to which benefit of section 80P(2)(a) (i) is not allowed, i.e. rental income, interest income from surplus funds kept in FDs of banks, etc. basic exemption of Rs. 50,000 under section 80P(2)(c)(ii) must be granted.



Direct Tax Calendar – February, 2022

DESCRIPTION	DUE DATE
Due date for deposit of Tax deducted/collected for the month of January, 2022. However, all the sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan	7th February, 2022
<ol style="list-style-type: none"> 1. Due date for issue of TDS Certificate for tax deducted under section 194-IA in the month of December, 2021 2. Due date for issue of TDS Certificate for tax deducted under section 194-IB in the month of December, 2021 3. Due date for issue of TDS Certificate for tax deducted under section 194M in the month of December, 2021 	14th February, 2022
<ol style="list-style-type: none"> 1. Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of January, 2022 has been paid without the production of a challan 2. Quarterly TDS certificate (in respect of tax deducted for payments other than salary) for the quarter ending December 31, 2021. 3. Due date for filing of audit report under section 44AB for the assessment year 2021-22 in the case of a corporate-assessee or non-corporate assessee (who was required to submit his/its return of income on October 31, 2021) 4. Audit report under section 44AB for the assessment year 2021-22 in the case of an assessee who is also required to submit a report pertaining to international or specified domestic transactions under section 92E 	15th February, 2022

IMPORTANT RETURN DUE DATE – GST FEBRUARY 2022

GSTR 1		
	For the period	Due Date
Turnover More than INR 1.5 Crore	January 2022 (Monthly)	11th Feb 2022
Turnover Upto INR 1.5 Crore	Jan – Mar 2022 (Quarterly)	13th Apr 2022
IFF (Optional)	January 2022 (Monthly)	13th Feb 2022

GSTR 3B		
	For the period	Due Date
Annual Turnover upto INR 5 Crore in Previous FY	January 2022	20th Feb 2022
Annual Turnover more than INR 5 Crore in Previous FY	January 2022	20th Feb 2022
Turnover Upto INR 5 Crore (for Andaman and Nicobar Islands, Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Chhattisgarh, Dadra and Nagar Haveli and Daman and Diu, Goa, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Lakshadweep, Madhya Pradesh, Maharashtra, Manipur, Meghalaya, Mizoram, Nagaland, Odisha, Puducherry, Sikkim.)	Jan – Mar 2022 (Quarterly)	24th Apr 2022
Turnover Upto INR 5 Crore (for Chandigarh, Delhi, Gujarat, Haryana, Jammu and Kashmir, Ladakh, Punjab, Rajasthan, Tamil Nadu, Uttarakhand.)	Jan – Mar 2022 (Quarterly)	22nd Apr 2022

COMPOSITION DEALER		
	For the period	Due Date
GST CMP-08	Jan – Mar 2022 (Quarterly)	18th Apr 2022
GSTR 4	Financial Year 2021-22	30th Apr 2022

	For the period	Due Date
GSTR 9-Annual Return (Annual Turnover More than 2 crore)	Financial Year 2020-21	28th Feb 2022
GSTR 9C- Audit Form (Annual Turnover More than 5 crore)	Financial Year 2020-21	28th Feb 2022

	For the period	Due Date
GSTR 5 (Non- Resident Foreign Taxpayer)	January 2022 (Monthly)	20th Feb 2022
GSTR 5A (NRI OIDAR Service Provider)	January 2022 (Monthly)	20th Feb 2022
GSTR 6 (Input Service Distributor)	January 2022 (Monthly)	13th Feb 2022
GSTR 7 (TDS Deductor)	January 2022 (Monthly)	10th Feb 2022
GSTR 8 (TCS Collector)	January 2022 (Monthly)	10th Feb 2022



E-PUBLICATIONS OF TAX RESEARCH DEPARTMENT

Impact of GST on Real Estate	Handbook on GST on Service Sector
Insight into Customs - Procedure & Practice	Handbook on Works Contract
Input Tax Credit & In depth Discussion	Handbook on Impact of GST on MSME Sector
Exemptions under the Income Tax Act, 1961	Insight into Assessment including E-Assessment
Taxation on Co-operative Sector	Impact on GST on Education Sector
Guidance Note on GST Annual Return & Audit	Addendum_Guidance Note on GST Annual Return & Audit
Sabka Vishwas-Legacy Dispute Resolution Scheme 2019	An insight to the Direct Tax- Vivad se Vishwas Scheme 2020
Guidance Note on Anti Profiteering	International Taxation and Transfer Pricing
Advance Rulings in GST	Handbook on E-Way Bill
Handbook on Special Economic Zone and Export Oriented Units	Taxation on Works Contract

For E-Publications, Please visit Taxation Portal -
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TAXATION COMMITTEES - PLAN OF ACTION

Proposed Action Plan:

1. Successful conduct of Certificate Course on GST.
2. Publication and Circulation of Tax bulletin (both in electronic and printed formats) for the awareness and knowledge updation of stakeholders, members, traders, Chambers of Commerce, Universities.
3. Publication of Handbooks on Taxation related topics helping stakeholders in their job deliberations.
4. Carry out webinars for the Capacity building of Members - Trainers in the locality to facilitate the traders/ registered dealers.
5. Conducting Seminars and workshops on industry specific issues, in association with the Trade associations/ Traders/ Chamber of commerce in different location on practical issues/aspects associated with GST.
6. Tendering representation to the Government on practical difficulties faced by the stakeholders in Taxation related matters.
7. Updating Government about the steps taken by the Institute in removing the practical difficulties in implementing various Tax Laws including GST.
8. Facilitating general public other than members through GST Help-Desk opened at Head quarter of the Institute and other places of country.
9. Introducing advance level courses for the professionals on GST and Income Tax.
10. Extending Crash Courses on Taxation to Corporates, Universities, Trade Associations etc.

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