

Recent amendment in GST in October 2023

Notifications/Circular /Press Release / Instructions /

News and updated GSTN

Difference in ITC available in GSTR-2B & ITC claimed in the GSTR-R3B

Dated 14.11.2023

1. It is informed that GSTN has developed a functionality to generate automated intimation in Form GST DRC-01C which enables the taxpayer to explain the difference in Input tax credit available in GSTR-2B statement & ITC claimed in GSTR-3B return online as directed by the GST Council. This feature is now live on the GST portal.
2. This functionality compares the ITC declared in GSTR-3B/3BQ with the ITC available in GSTR-2B/2BQ for each return period. If the claimed ITC in GSTR 3B exceeds the available ITC in GSTR-2B by a predefined limit or the percentage difference exceeds the configurable threshold, taxpayer will receive an intimation in the form of DRC-01C.
3. Upon receiving an intimation, the taxpayer must file a response using Form DRC-01C Part B. The taxpayer has the option to either provide details of the payment made to settle the difference using Form DRC-03, or provide an explanation for the difference, or even choose a combination of both options.
4. In case, no response is filed by the impacted taxpayers in Form DRC-01C Part B, such taxpayers will not be able to file their subsequent period GSTR-1/IFF.

ITC Reversal on Account of Rule 37(A)

Dated 14.11.2023

1. Vide Rule 37A of CGST Rules, 2017 the taxpayers have to reverse the ITC availed on such invoice or debit note, the details of which have been furnished by their supplier in their GSTR-1/IFF but the return in GSTR-3B for the said period has not been furnished by their supplier till the 30th day of September following the end of FY in which the ITC in respect of such invoice or debit note had been availed.
2. The said amount of ITC is required to be reversed by such taxpayers, while furnishing a return in FORM GSTR-3B on or before the 30th day of November following the end of such financial year, as part of this legal obligation.
3. To facilitate the taxpayers, such amount of ITC required to be reversed on account of Rule 37A for the FY 2022-23 has been computed from system and has been communicated to the concerned recipient. The email communication to this effect has been sent on the registered email id of the taxpayer.
4. The taxpayers are advised to take note of it and to ensure that such ITC, if availed by them, is reversed as per rule 37A before 30.11.2023 in Table 4(B)(2) of GSTR-3B while filing the

Monetary limit for litigations

Instruction dated 2.11.2023

Subject: Reduction of Government litigation – providing monetary limits for filing appeals by the Department before CESTAT, High Courts and Supreme Court – regarding

In exercise of the powers conferred by Section 131BA of the Customs Act, 1962 and in partial modification of earlier instruction issued from F. No. 390/Misc./163/2010-JC dated 17.08.2011, the Central Board of Indirect Taxes & Customs (hereinafter referred to as the Board) fixes the following monetary limits below which appeal shall not be filed in the CESTAT, High Court and the Supreme Court

S.NO	Appellate Forum	Monetary limit
1	Supreme Court	Rs 2 Cr
2	High Court	Rs 1 Cr
3	CESTAT	Rs 50 Lakh

Monetary limit for litigations

2. Adverse judgments relating to the following should be contested irrespective of the amount involved:

- a) Where the constitutional validity of the provisions of an Act or Rule is under challenge;
- b) Where Notification/ Instruction/ Order or Circular has been held illegal or ultra vires;
- c) Classification and refund issues which are of legal and/ or recurring nature.

3. Withdrawal process in respect of pending cases in above forums, as per the above revised limits, will follow the current practice that is being followed for the withdrawal of cases from the Supreme Court, High Courts, and CESTAT

Amnesty Scheme for Appeal

In exercise of the powers conferred by section 148 of CGST Act, the Central Government, on the recommendations of the Council, hereby notifies Taxable persons who

- could not file an appeal against the order passed by the Proper officer on or before the 31st day of March, 2023 under section 73 or 74 of the said Act (hereinafter referred to as the said order), within the time period specified in sub-section (1) of section 107 read with sub-section (4) of section 107 of the said Act, and
- the Taxable persons whose appeal against the said order was rejected solely on the grounds that the said appeal was not filed within the time period specified in section 107, as the class of persons (hereinafter referred to as the said person) who shall follow the following special procedure for filing appeals in such cases:

Amnesty Scheme for Appeal

2. The said person shall file an appeal against the said order in FORM GST APL-01 in accordance with subsection (1) of Section 107 of the said Act, on or before 31st day of January 2024:

Provided that an appeal against the said order filed in accordance with the provisions of section 107 of the said Act, and pending before the Appellate Authority before the issuance of this notification, shall be deemed to have been filed in accordance with this notification, if it fulfills the condition specified at para 3 below.

Amnesty Scheme for Appeal

3. No appeal shall be filed under this notification, unless the appellant has paid-
- (a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and
 - (b) a sum equal to twelve and a half per cent. of the remaining amount of tax in dispute arising from the said order, subject to a maximum of twenty-five crore rupees, in relation to which the appeal has been filed, out of which at least twenty percent should have been paid by debiting from the Electronic cash ledger.

Amnesty Scheme for Appeal

4. No refund shall be granted on account of this notification till the disposal of the appeal, in respect of any amount paid by the appellant, either on their own or on the directions of any authority (or) court, in excess of the amount specified in para 3 of this notification before the issuance of this notification, for filing an appeal under sub-section (1) of Section 107 of the said Act.
5. No appeal under this notification shall be admissible in respect of a demand not involving tax.
6. The provisions of Chapter XIII of the Central Goods and Service Tax Rules, 2017 (12 of 2017), shall mutatis mutandis, apply to an appeal filed under this notification.

Advisory for Pilot Project of Biometric-Based Aadhaar Authentication

Advisory for Pilot Project of Biometric-Based Aadhaar Authentication and Document Verification for GST Registration Applicants of Gujarat and Puducherry

This is to inform taxpayers about recent developments concerning the application process for GST registration. It is advised to keep the following key points in mind during the registration process.

1. Rule 8 of the CGST Rules, 2017 has been amended to provide that an applicant can be identified on the Common portal, based on data analysis and risk parameters for Biometric-based Aadhaar Authentication and taking photograph of the applicant along with the verification of the original copy of the documents uploaded with the application.
2. The above-said functionality has been developed by GSTN. It was launched in Puducherry on 30th August 2023 and will be rolled out in Gujarat on 7th November 2023.

Advisory for Pilot Project of Biometric-Based Aadhaar Authentication

3. The said functionality now also provides for the document verification and appointment booking process. After the submission of the application in Form GST REG-01, the applicant will receive either of the following links in the e-mail,

(a) A Link for OTP-based Aadhaar Authentication OR

(b) A link for booking an appointment with a message to visit a GST Suvidha Kendra (GSK) along with the details of the GSK and jurisdiction, for Biometric-based Aadhaar Authentication and document verification (the intimation e-mail)

4. If the applicant receives the link for OTP-based Aadhaar Authentication as mentioned in point 3(a), she/he can proceed with the application as per the existing process.

5. However, if the applicant receives the link as mentioned in point 3(b), she/he will be required to book the appointment to visit the designated GSK, using the link provided in the e-mail. Once the applicant gets the confirmation of appointment through e-mail (the appointment confirmation e-mail), she/he will be able to visit the designated GSK as per the chosen schedule.

Advisory for Pilot Project of Biometric-Based Aadhaar Authentication

6. At the time of the visit of GSK, the applicant is required to carry the following details.

- (a) a copy (hard/soft) of the appointment confirmation e-mail
- (b) the details of jurisdiction as mentioned in the intimation e-mail
- (c) Aadhaar Number
- (d) the original documents that were uploaded with the application, as communicated by the intimation e-mail.

7. The biometric authentication and document verification will be done at the GSK, for all the required individuals as per the GST application Form REG-01.

8. The applicant is required to choose an appointment for the biometric verification during the maximum permissible period for the application as indicated in the intimation e-mail. In such cases, ARNs will be generated once the Biometric-based Aadhaar Authentication process and document verification are completed.

9. The feature of booking an appointment to visit a designated GSK is currently available for the applicants of the Gujarat State and it will be extended to the other notified States/UTs shortly.

Circular - 206/18/2023-GST dated 31st October, 2023

Q - Whether 'same line of business' in case of passenger transport service and renting of Motor vehicles includes leasing of Motor vehicles without operators.

2.1 Services of transport of passengers by any Motor vehicle (SAC 9964) and renting of Motor vehicle designed to carry passengers with operator (SAC 9966), where the cost of fuel is included in the consideration charged from the service recipient attract GST at the rate of 5% with Input tax credit of services in the same line of business.

2.2 Same line of business as stated in the notification No. 11/2017- Central Tax (Rate) means "service procured from another service provider of transporting passengers in a Motor vehicle or renting of a Motor vehicle".

2.3 It is hereby clarified that input services in the same line of business include transport of passengers (SAC 9964) or renting of Motor vehicle with operator (SAC 9966) and not leasing of Motor vehicles without operator (SAC 9973) which attracts GST and/or compensation cess at the same rate as supply of Motor vehicles by way of sale.

Circular - 206/18/2023-GST dated 31st October, 2023

3. Whether GST is applicable on reimbursement of electricity charges received by real estate companies, malls, airport operators etc. from their lessees/occupants.

3.2 It is clarified that whenever electricity is being supplied bundled with renting of immovable property and/or maintenance of premises, **it forms a part of Composite supply and shall be taxed accordingly.** The Principal supply is renting of immovable property and/or maintenance of premise, as the case may be, and the supply of electricity is an ancillary supply as the case may be. Even if electricity is billed separately, the supplies will constitute a Composite supply and therefore, the rate of the Principal supply i.e., GST rate on renting of immovable property and/or maintenance of premise, as the case may be, would be applicable.

3.3 However, where the electricity is supplied by the Real Estate Owners, Resident Welfare Associations (RWAs), Real Estate Developers etc., as a pure agent, it will not form part of value of their supply. Further, where they charge for electricity on actual basis that is, they charge the same amount for electricity from their lessees or occupants as charged by the State Electricity Boards or DISCOMs from them, they will be deemed to be acting as pure agent for this supply.

Circular - 206/18/2023-GST dated 31st October, 2023

4. Whether job work for processing of “Barley” into “Malted Barley” attracts GST @ 5% as applicable to "job work in relation to food and food products” or 18% as applicable on “job work in relation to manufacture of alcoholic liquor for human consumption

4.2 Malt is a food product. It can be directly consumed as part of food preparations or can be used as an ingredient in food products and also used for manufacture of beer and alcoholic liquor for human consumption. **However, irrespective of end-use, conversion of barley into malt amounts to job work in relation to food products.**

4.3 It is hereby clarified that job work services in relation to manufacture of malt are covered by the entry at Sl. No. 26 (i) (f) which covers “job work in relation to all food and food products falling under chapters 1 to 22 of the customs tariff” irrespective of the end use of that malt and attracts 5% GST.

Circular - 206/18/2023-GST dated 31st October, 2023

5. Whether District Mineral Foundations Trusts (DMFTs) set up by the State Governments are Governmental Authorities and thus eligible for the same exemptions from GST as available to any other Governmental Authority.

5.1 DMFTs work for the interest and benefit of persons and areas affected by mining related operations by regulating receipt and expenditure from the respective Mineral Development Funds created in the concerned district. They provide services related to drinking water supply, environment protection, health care facilities, education, welfare of women and children, supply of medical equipment etc.

5.2 These activities are similar to activities that are enlisted in Eleventh Schedule and Twelfth Schedule of the Constitution. The ultimate users of the various schemes under DMF are individuals, families, women and children, farmers/producer groups, SHGs of the mining affected areas etc. The services/supplies out of DMF fund are provided free of charge and no consideration is realized from the beneficiaries by DMF against such services.

5.3 Accordingly, it is clarified that DMFT set up by the State Governments are Governmental Authorities and thus eligible for the same exemptions from GST as available to any other

Circular - 206/18/2023-GST dated 31st October, 2023

6. Whether supply of pure services and composite supplies by way of horticulture/horticulture works (where the value of goods constitutes not more than 25 per cent of the total value of supply) made to CPWD are eligible for exemption from GST under Sr. No. 3 and 3A of Notification no 12/2017-CTR dated 28.06.2017.

6.1 Public parks in government residential colonies, government offices and other public areas are developed and maintained by CPWD.

6.2 Maintenance of community assets, urban forestry, protection of the environment and promotion of ecological aspects are functions entrusted to Panchayats and Municipalities under Article 243G and 243W read with Sr. No. 29 of 11th Schedule and Sr. No. 8 of 12th Schedule of the constitution.

Circular - 206/18/2023-GST dated 31st October, 2023

6. Whether supply of pure services and composite supplies by way of horticulture/horticulture works (where the value of goods constitutes not more than 25 per cent of the total value of supply) made to CPWD are eligible for exemption from GST under Sr. No. 3 and 3A of Notification no 12/2017-CTR dated 28.06.2017.

6.3 Sr. No. 3 and 3A of notification No. 12/2017-CTR exempt pure services and Composite supply of goods and services in which value of goods does not constitute more than 25%, that are provided to the Central Government, State Government or Union territory or Local authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.

6.4 Accordingly, it is clarified that supply of pure services and composite supplies by way of horticulture/horticulture works (where the value of goods constitutes not more than 25 per cent of the total value of supply) made to CPWD are eligible for exemption from GST under Sr. No. 3 and 3A of Notification no 12/2017-CTR dated 28.06.2017.

Advisory dated 27.10.2023 - Related to changes in GSTR-5A

Notification 51/2023 dated 29.09.2023 has introduced Table 5B in GSTR 5A w. e. f 01.10.2023. In this notification, Table 5B has been introduced to report supplies made to Registered GSTINs (B2B supplies). This would be implemented shortly at GSTN and till such time, OIDARs are advised to file the return in the existing GSTR 5A itself.

Circular - 204/16/2023-GST dated 27th October, 2023

Clarification on issues pertaining to taxability of personal guarantee and corporate guarantee in GST

Q1 -Whether the activity of providing personal guarantee by the Director of a company to the bank/ financial institutions for sanctioning of credit facilities to the said company without any consideration will be treated as a supply of service or not and whether the same will attract GST or not.

As per Explanation (a) to section 15 of CGST Act, the director and the company are to be treated as related persons. As per clause (c) of sub-section (1) of section 7 of the CGST Act, 2017, read with S. No. 2 of Schedule I of CGST Act, supply of goods or services or both between related persons, when made in the course or furtherance of business, shall be treated as supply even if made without consideration.

Accordingly, the activity of providing personal guarantee by the Director to the banks/ financial institutions for securing credit facilities for their companies is to be treated as a supply of service, even when made without consideration.

Rule 28 of CGST Rules, 2017 prescribes the method for determining the value of the supply of goods or services or both between related parties, other than where the supply is made through

Circular - 204/16/2023-GST dated 27th October, 2023

Clarification on issues pertaining to taxability of personal guarantee and corporate guarantee in GST

RBI has provided guidelines for obtaining personal guarantee of promoters, directors and other managerial personnel of the borrowing concerns vide Para 2.2.9 of its Circular No. RBI/2021-22/121 dated 9th November, 2021, which is reproduced below:

“2.2.9 Guidelines relating to obtaining of personal guarantees of promoters, directors, other managerial personnel, and shareholders of borrowing concerns

Banks should take personal guarantees of promoters, directors, other managerial personnel or major shareholders for the credit facilities granted to corporates, public or private, only when absolutely warranted after a careful examination of the circumstances of the case and not as a matter of course. In order to identify the circumstances under which the guarantee may or may not be considered necessary, banks should be guided by the following broad considerations:

Circular - 204/16/2023-GST dated 27th October, 2023

C. Worth of the guarantors, payment of guarantee commission, etc

Where personal guarantees of directors are warranted, they should bear reasonable proportion to the estimated worth of the person. The system of obtaining guarantees should not be used by the directors and other managerial personnel as a source of income from the company. Banks should obtain an undertaking from the borrowing company as well as the guarantors that no consideration whether by way of commission, brokerage fees or any other form, would be paid by the former or received by the latter, directly or indirectly. This requirement should be incorporated in the bank's terms and conditions for sanctioning of credit limits. During the periodic inspections, the bank's inspectors should verify that this stipulation has been complied with. There may, however, be exceptional cases where payment of remuneration may be permitted e.g. where assisted concerns are not doing well and the existing guarantors are no longer connected with the management but continuance of their guarantees is considered essential because the new management's guarantee is either not available or is found inadequate.

.....”

Circular - 204/16/2023-GST dated 27th October, 2023

Accordingly, as per **mandate provided by RBI** in terms of Para 2.2.9 (C) of RBI's Circular No. RBI/2021-22/121 dated 9th November, 2021, **no consideration by way of commission**, brokerage fees or any other form, can be paid to the director by the company, directly or indirectly, in lieu of providing personal guarantee to the bank for borrowing credit limits. As such, when no consideration can be paid for the said transaction by the company to the director in any form, directly or indirectly, as per RBI mandate, there is no question of such supply/ transaction having any open Market value. Accordingly, the open Market value of the said transaction/ supply may be treated as zero and therefore, taxable value of such supply may be treated as zero. In such a scenario, no tax is payable on such supply of service by the director to the company.

There may, however, be cases where the director, who had provided the guarantee, is no longer connected with the management but continuance of his guarantee is considered essential because the new management's guarantee is either not available or is found inadequate, or there may be other exceptional cases where the promoters, existing directors, other managerial personnel, and shareholders of borrowing concerns are paid remuneration/ consideration in any manner, directly or indirectly. In all these cases, the taxable value of such supply of service shall be the remuneration/ consideration provided to such a person/ guarantor by the company,

Circular - 204/16/2023-GST dated 27th October, 2023

Q2 - Whether the activity of providing corporate guarantee by a person on behalf of another related person, or by the holding company for sanction of credit facilities to its subsidiary company, to the bank/ financial institutions, even when made without any consideration will be treated as a Taxable supply of service or not, and if taxable, what would be the valuation of such supply of services

Where the corporate guarantee is provided by a company to the bank/financial institutions for providing credit facilities to the other company, where both the companies are related, the activity is to be treated as a supply of service between related parties as per provisions of Schedule I of CGST Act, even when made without any consideration.

Similarly, where the corporate guarantee is provided by a holding company, for its subsidiary company, those two entities also fall under the category of 'related persons'. Hence the activity of providing corporate guarantee by a holding company to the bank/financial institutions for securing credit facilities for its subsidiary company, even when made without any consideration, is also to be treated as a supply of service by holding company to the subsidiary company, being a related person, as per provisions of Schedule I of CGST Act.

Circular - 204/16/2023-GST dated 27th October, 2023

In respect of such supply of services by a person to another related person or by a holding company to a subsidiary company, in form of providing corporate guarantee on their behalf to a bank/ financial institution, the taxable value will be determined as per rule 28 of CGST Rules.

Considering different practices being followed by the field formations and taxpayers in determining such taxable value, in order to provide uniformity in practices and ease of implementation, sub-rule (2) has been inserted in rule 28 of CGST Rules vide Notification No. 52/2023 dated 26.10.2023, for determining the taxable value of such supply of services between related persons in respect of providing corporate guarantee. Accordingly, consequent to insertion of the said sub-rule in rule 28 of CGST Rules, in all such cases of supply of services by a related person to another person, or by a holding company to a subsidiary company, in the form of providing corporate guarantee on their behalf to a bank/ financial institution, the taxable value of such supply of services, will henceforth be determined as per the provisions of the sub-rule (2) of Rule 28 of CGST Rules, irrespective of whether full ITC is available to the recipient of services or not.

It is clarified that the sub-rule (2) of Rule 28 shall not apply in respect of the activity of providing personal guarantee by the Director to the banks/ financial institutions for securing credit facilities for their companies and the same shall be valued in the manner provided in S. No. (1) above.

Clarification on various issues related to Place of Supply:

The Council has recommended to issue a Circular to clarify the place of supply in respect of the following supply of services:

- (i) Supply of service of transportation of goods, including by mail or courier, in cases where the location of supplier or the location of recipient of services is outside India;
- (ii) Supply of advertising services;
- (iii) Supply of the co-location services.

Circular - 203/15/2023-GST dated 27th October, 2023

Subject: Clarification regarding determination of Place of supply in various cases-reg.

Place of supply in case of supply of service of transportation of goods, including through mail and courier

Section 13(9) of IGST Act has been omitted vide section 162 of Finance Act, 2023 which will come into effect from 01.10.2023. After the said amendment, **doubts have been raised as to whether the Place of supply in case of service of transportation of goods**, including through mail and courier, in cases where location of supplier of services or location of recipient of services is outside India, will be determined as per section 13(2) of IGST Act or as per section 13(3) of IGST Act.

Reply – POS of services where LOS or LOR is outside India is determined as per section 13 of the IGST Act. Section 13(9) of IGST Act provided that where one of the supplier of the services or the recipient of services is located outside India, the Place of supply of services of transportation of goods, **other than by way of mail or courier**, shall be the place of destination of such goods. The said sub-section has been omitted vide section 162 of Finance Act, 2023 which will come into effect from 01.10.2023.

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It is hereby clarified that after the said amendment comes into effect, the Place of supply of services of transportation of goods, other than through mail and courier, in cases where location of supplier of services or location of recipient of services is outside India, **will be determined by the default rule under section 13(2) of IGST Act** and not as performance based services under sub-section (3) of section 13 of IGST Act. Accordingly, in cases where location of recipient of services is available, the Place of supply of such services shall be the location of recipient of services and in cases where location of recipient of services is not available in the ordinary course of business, the Place of supply shall be the location of supplier of services.

1.2 Further, it is also mentioned that the Place of supply in case of service of **transportation of goods by mail or courier was not covered** under the provisions of section 13(9) before the said sub-section was amended/ omitted. Therefore, on the same principles as mentioned above, the Place of supply in case of service of transportation of goods by mail or courier will continue to be determined by the default rule under section 13(2) of IGST Act i.e. in cases where location of recipient of services is available, the Place of supply of such services shall be the location of recipient of services and in cases where location of recipient of services is not available in the ordinary course of business, the Place of supply shall be the location of supplier of services

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B. Place of supply in case of supply of services in respect of advertising sector

Advertising companies are often involved in procuring space on hoardings/ bill boards erected and mounted on buildings/land, in different States, from various suppliers (“vendors”) for providing advertisement services to its corporate clients. There may be variety of arrangements between the advertising company and its vendors as below:

(i) There may be a case wherein there is supply (sale) of space or supply (sale) of rights to use the space on the hoarding/ structure (immovable property) **belonging to vendor to the client/advertising company for display** of their advertisement on the said hoarding/ structure. What will be the Place of supply of services provided by the vendor to the advertising company in such case?

(ii) There may be another case where the advertising company wants to display its advertisement on hoardings/ bill boards **at a specific location availing the services of a vendor**. The responsibility of arranging the hoardings/ bill boards lies with the vendor **who may himself own such structure** or may be taking it on rent or rights to use basis from another person. The vendor is responsible for display of the advertisement of the advertising company at the said location. During this entire time of display of the advertisement, the vendor is in possession of the hoarding/structure at the said location on which advertisement is displayed and the

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2.1 It is clarified that the Place of supply in the case supply of services in respect of advertising sector, in the cases referred in (i) and (ii), shall be determined as below:

2.2 Place of supply in Case (i): **The hoarding/structure erected on the land should be considered as immovable structure or fixture as it has been embedded in earth.** Further, Place of supply of any service provided by way of supply (sale) of space on an immovable property or grant of rights to use an immovable property shall be governed by the provisions of section 12(3)(a) of IGST Act.

As per section 12(3)(a) of IGST Act, the Place of supply of services directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work shall be the location at which the immovable property is located. **Therefore, the Place of supply of service provided by way of supply of sale of space on hoarding/ structure for advertising or for grant of rights to use the hoarding/ structure for advertising in this case would be the location where such hoarding/ structure is located.**

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2.3 Place of supply in Case (ii):

In this case, as the service is being provided by the vendor to the advertising company and there is no supply (sale) of space/ supply (sale) of rights to use the space on hoarding/structure (immovable property) by the vendor to the advertising company for display of their advertisement on the said display board/structure, the said service does not amount to sale of advertising space or supply by way of grant of rights to use immovable property. Accordingly, the Place of supply of the same shall not be covered under section 12(3)(a) of IGST Act. Vendor is in fact providing advertisement services by providing visibility to an advertising company's advertisement for a specific period of time on his structure possessed/taken on rent by him at the specified location. Therefore, such services provided by the Vendor to advertising company are purely in the nature of advertisement services in respect of which Place of supply shall be determined in terms of section 12(2) of IGST Act

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C. Place of supply in case of co-location services”

Co-location is a data center facility in which a business/company can rent space for its own servers and other computing hardware along with various other bundled services related to Hosting and information technology (IT) infrastructure.

A business/company who avails the co-location services primarily seek security and upkeep of its server/s, storage and network hardware; operating systems, system software and may require to interact with the system through a web-based interface for the hosting of its websites or other applications and operation of the servers.

In this respect, various doubts have been raised as to

i. whether supply of co-location services are renting of immovable property service (as it involves renting of space for keeping/storing company's hardware/servers) and hence the Place of supply of such services is to be determined in terms of provision of clause (a) of sub-section (3) of section 12 of the IGST Act which is the location where the immovable property is located; or

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C. Place of supply in case of co-location services”

ii. whether the Place of supply of such services is to be determined by the default Place of supply provision under sub-section (2) of section 12 of the IGST Act as the supply of service is Hosting and Information Technology (IT) Infrastructure Provisioning services involving providing services of hosting the servers and related hardware, security of the said hardware, air conditioning, uninterrupted power supply, fire protection system, network connectivity, backup facility, firewall services, 24 hrs. monitoring and surveillance service for ensuring continuous operations of the servers and related hardware, etc

3.1 It is clarified that the Co-location services are in the nature of “Hosting and information technology (IT) infrastructure provisioning services” (S.No. 3 of Explanatory notes of SAC-998315). Such services do not appear to be limited to the passive activity of making immovable property available to a customer as the arrangement of the supply of colocation services not only involves providing of a physical space for server/network hardware along with air conditioning, security service, fire protection system and power supply but it also involves the supply of various services by the supplier related to hosting and information technology infrastructure services like network connectivity, backup facility, firewall services, and monitoring and surveillance service for ensuring continuous operations of the servers and related hardware etc, which are essential for the recipient business/company to interact with the

Circular - 203/15/2023-GST dated 27th October, 2023

3.2 In such cases, supply of colocation services cannot be considered as the services of supply of renting of immovable property. Therefore, the Place of supply of the colocation services shall not be determined by the provisions of clause (a) of sub-section (3) of section 12 of the IGST Act but the same shall be determined by the default Place of supply provision under sub-section (2) of section 12 of the IGST Act i.e. location of recipient of co-location service.

3.3 However, in cases where the agreement between the supplier and the recipient is restricted to providing physical space on rent along with basic infrastructure, without components of Hosting and Information Technology (IT) Infrastructure Provisioning services and the further responsibility of upkeep, running, monitoring and surveillance, etc. of the servers and related hardware is of recipient of services only, then the said supply of services shall be considered as the supply of the service of renting of immovable property. Accordingly, the Place of supply of these services shall be determined by the provisions of clause (a) of sub-section (3) of section 12 of the IGST Act which is the location where the immovable property is located

Circular - 202/14/2023-GST dated 27th October, 2023

Clarification relating to Export of services – sub-clause (iv) of the Section 2 (6) of the IGST Act 2017

Various representations have been received requesting for clarification regarding admissibility of export remittances received in **Special INR Vostro account, as permitted by RBI**, for the purpose of consideration of supply of services to qualify as Export of services as per the provisions of clause (6) of section 2 of the Integrated Goods & Services Tax Act, 2017 (herein after referred to as the 'IGST Act').

3.3 Reference is invited to RBI's A.P. (DIR Series) Circular No.10 dated 11th July, 2022 regarding International Trade Settlement in Indian Rupees (INR), vide which it has been clarified that to promote growth of global trade with emphasis on exports from India and to support the increasing interest of global trading community in INR, it has been decided to put in place an additional arrangement for invoicing, payment, and settlement of exports / imports in INR. Before putting in place this mechanism, AD banks shall require prior approval from the Foreign Exchange Department of Reserve Bank of India, Central Office at Mumbai. Para 3 of the Circular is reproduced below:

Circular - 202/14/2023-GST dated 27th October, 2023

“3. In terms of Regulation 7(1) of Foreign Exchange Management (Deposit) Regulations, 2016, AD banks in India have been **permitted to open Rupee Vostro Accounts**. Accordingly, for settlement of trade transactions with any country, AD bank in India may open Special Rupee Vostro Accounts of correspondent bank/s of the partner trading country. In order to allow settlement of international trade transactions through this arrangement, it has been decided that:

- (a) Indian importers undertaking imports through this mechanism shall make payment in INR which shall be credited into the Special Vostro account of the correspondent bank of the partner country, against the invoices for the supply of goods or services from the overseas seller /supplier.
- (b) Indian exporters, undertaking exports of goods and services through this mechanism, shall be paid the export proceeds in INR from the balances in the designated Special Vostro account of the correspondent bank of the partner country.”

3.4 Reference is also invited to Para 2.52 (d) of chapter related to General Provisions Regarding Imports and Exports of the Foreign Trade Policy (FTP) 2023, which has come into force from 01.04.2023, which specifies that:

Circular - 202/14/2023-GST dated 27th October, 2023

Para 2.52 (d) Invoicing, payment and settlement of exports and imports is also permissible in INR subject to compliances as under RBI's A.P. (DIR Series) Circular No.10 dated 11th July, 2022. Accordingly, settlement of trade transactions in INR shall take place through the Special Rupee Vostro Accounts opened by AD banks in India as permitted under Regulation 7(1) of Foreign Exchange Management (Deposit) Regulations, 2016, in accordance to the following procedures:

(i) Indian importers undertaking imports through this mechanism shall make payment in INR which shall be credited into the Special Vostro account of the correspondent bank of the partner country, against the invoices for the supply of goods or services from the overseas seller /supplier

(ii) Indian exporters, undertaking exports of goods and services through this mechanism, shall be paid the export proceeds in INR from the balances in the designated Special Vostro account of the correspondent bank of the partner country.

Circular - 202/14/2023-GST dated 27th October, 2023

3.5 On perusal of the above, it can be stated that the condition(s) of sub-clause (iv) of Section 2(6) of the IGST Act, 2017, can be considered to be fulfilled when the Indian exporters, undertaking exports of services, are paid the export proceeds in INR from the balances in the designated Special Vostro Account of the correspondent bank of the partner trading country in terms of Regulation 7(1) of Foreign Exchange Management (Deposit) Regulations, 2016, as mandated by RBI's A.P. (DIR Series) Circular No.10 dated 11th July, 2022 and reiterated further in Foreign Trade Policy, 2023.

4. Therefore, it is clarified that when the Indian exporters, undertaking Export of services, are paid the export proceeds in INR from the Special Rupee Vostro Accounts of correspondent bank(s) of the partner trading country, opened by AD banks, the same shall be considered to be fulfilling the conditions of sub-clause (iv) of clause (6) of section 2 of IGST Act, 2017, subject to the conditions/ restrictions mentioned in Foreign Trade Policy, 2023 & extant RBI Circulars and without prejudice to the permissions / approvals, if any, required under any other law

Notification No.52/2023-Central Tax] Dated: 26th October, 2023

Following sub-rule shall be inserted, namely:-

“Rule28(2) Notwithstanding anything contained in sub-rule (1), the value of supply of services by a supplier to a recipient who is a related person, by way of providing corporate guarantee to any Banking company or financial institution on behalf of the said recipient, shall be deemed to be one per cent of the amount of such guarantee offered, or the actual consideration, whichever is higher.”.

Notification No.52/2023-Central Tax] Dated: 26th October, 2023

3. In the said rules, in rule 142, in sub-rule (3), for the words "Proper officer shall issue an order", the words "Proper officer shall issue an intimation" shall be substituted.

Rule 142(3) Where the person chargeable with tax makes payment of tax and interest under sub-section (8) of Section 73 or, as the case may be, tax, interest and penalty under sub-section (8) of section 74 within thirty days of the service of a notice under sub-rule (1), or where the person concerned makes payment of the amount referred to in sub-section (1) of section 129 within 8[seven days of the notice issued under sub-section (3) of Section 129 but before the issuance of order under the said sub-section (3)], he shall intimate the Proper officer of such payment in FORM GST DRC-03 and the **Proper officer shall issue an intimation** in FORM GST DRC-05 concluding the proceedings in respect of the said notice.

Notification No.52/2023-Central Tax] Dated: 26th October, 2023

FORM GST DRC – 05

[See rule 142(3)].

Reference No:

Date:

To

_____ GSTIN/ID

----- Name

_____ Address

Tax Period -----

F.Y. -----

SCN -

Date -

ARN -

Date -

Intimation of conclusion of proceedings

This has reference to the show cause notice referred to above. As you have paid the amount of tax and other dues mentioned in the notice along with applicable interest and penalty in accordance with the provisions of section ---- , the proceedings initiated vide the said notice are hereby concluded.

Signature

Automatic restoration of provisionally attached property

iii) Provision for automatic restoration of provisionally attached property after completion of one year:

The Council has recommended an amendment in sub-rule (2) of Rule 159 of CGST Rules, 2017 and FORM GST DRC-22 to provide that the order for provisional attachment in FORM GST DRC-22 shall not be valid after expiry of one year from the date of the said order. This will facilitate release of provisionally attached properties after expiry of period of one year, without need for separate specific written order from the Commissioner.

Notification No.52/2023-Central Tax] Dated: 26th October, 2023

4. In the said rules, in rule 159, in sub-rule (2), after the words "Commissioner to that effect", the words "or on expiry of a period of one year from the date of issuance of order under sub-rule (1), whichever is earlier," shall be inserted.

Rule 159. Provisional attachment of property.-

(2) The Commissioner shall send a copy of the order of attachment ¹[in **FORM GST DRC-22**] to the concerned Revenue Authority or Transport Authority or any such Authority to place encumbrance on the said movable or immovable property, which shall be removed only on the written instructions from the Commissioner to that effect ⁶[] ¹[and a copy of such order shall also be sent to the person whose property is being attached under section 83

Rule 159. Provisional attachment of property.-

(2) The Commissioner shall send a copy of the order of attachment ¹[in **FORM GST DRC-22**] to the concerned Revenue Authority or Transport Authority or any such Authority to place encumbrance on the said movable or immovable property, which shall be removed only on the written instructions from the Commissioner to that effect ⁶[**or on expiry of a period of one year from the date of issuance of order under sub-rule (1), whichever is earlier,**] ¹[and a copy of such order shall also be sent to the person whose property is being attached under section 83]

Notification No.52/2023-Central Tax] Dated: 26th October, 2023

In the said rules, in FORM GST REG-01, in PART-B, in serial number 2, after clause (xiv), the following clause shall be inserted, namely:-

"(xiva) One Person Company".

Zero Rated Supply – On IGST Route

Allowing supplies to SEZ units/ developer for authorised operations for IGST refund route by amendment in Notification 01/2023-Integrated Tax dated 31.07.2023:

The Council has recommended to amend Notification No. 1/2023-Integrated Tax dated 31.07.2023 w.e.f. 01.10.2023 so as to allow the suppliers to a Special Economic Zone developer or a Special Economic Zone unit for authorised operations to make supply of goods or services (except the commodities like pan masala, tobacco, gutkha, etc. mentioned in the Notification No. 1/2023-Integrated Tax dated 31.07.2023) to the Special Economic Zone developer or the Special Economic Zone unit for authorised operations on payment of integrated tax and claim the refund of tax so paid.

Notification No. 05/2023- Integrated Tax dated: 26th October, 2023

In exercise of the powers conferred by section 16(4) of IGST Act, the Central Government, on the recommendations of the Council, hereby makes the following amendment in the notification No. 01/2023-Integrated Tax, dated the 31st July, 2023, namely:-

In the said notification, for the portion commencing with the words “all goods or services” and ending with the words “the refund of tax so paid:”, the following shall be substituted and shall be deemed to have been substituted with effect from the 1st day of October, 2023, namely:—

“(i) all goods or services (except the goods specified in column (3) of the TABLE below) as the class of goods or services which may be exported on payment of integrated tax and on which the supplier of such goods or services may claim the refund of tax so paid; and

(ii) all suppliers to a Developer or a unit in Special Economic Zone undertaking authorised operations as the class of persons who may make supply of goods or services (except the goods specified in column (3) of the TABLE below) to such Developer or a unit in Special Economic Zone for authorised operations on payment of integrated tax and on which the said suppliers may claim the refund of tax so paid:

Notification No. 05/2023- Integrated Tax dated: 26th October, 2023

Explanation,— For the purpose of this clause:—

- (i) the term “authorised operations” shall have the same meaning as defined in clause (c) of Section 2 of the Special Economic Zone Act, 2005 (28 of 2005),
- (ii) the term “Developer” shall have the same meaning as defined in clause (g) of Section 2 of the Special Economic Zone Act, 2005 (28 of 2005),
- (iii) the term “Special Economic Zone” shall have the same meaning as defined in clause (za) of Section 2 of the Special Economic Zone Act, 2005 (28 of 2005),
- (iv) the term “unit” shall have the same meaning as defined in clause (zc) of Section 2 of the Special Economic Zone Act, 2005 (28 of 2005).

Imitation zari thread or yarn made out of metallised polyester film

To clarify that imitation zari thread or yarn made out of metallised polyester film /plastic film, falling under HS 5605, are covered by the entry for imitation zari thread or yarn attracting 5% GST rate.

Circular - 205/17/2023-GST dated 31st October, 2023

However, no refund will be allowed on polyester film (metallised) /plastic film on account of inversion.

**(Notification No. 20/2023- Central Tax (Rate) dated: 19th October, 2023
Notification No. 23/2023- Integrated Tax (Rate) dated: 19th October, 2023)**

Circular - 205/17/2023-GST dated 31st October, 2023

Clarification regarding GST rate on imitation zari thread or yarn based on the recommendation of the GST Council in its 52nd meeting held on 7th October, 2023 –reg.

The GST Council in its 50th meeting had recommended reduction of GST rate to 5% on imitation zari thread or yarn known by any name in trade parlance, following which Sl. No. 218AA had been inserted in Schedule I of notification no. 1/2017- Central Tax (Rate) dated 28.6.2017.

2. Doubts have been raised whether metal coated plastic film converted to metallised yarn and twisted with nylon, cotton, polyester or any other yarn to make imitation zari thread is covered under SI No. 218AA of Schedule I covering imitation zari thread or yarn, and attracting 5% GST, or under SI No. 137 of Schedule III covering other metallised yarn attracting 12% GST. As per HS Explanatory Notes, the heading 5605 covers –

(1) yarn consisting of any textile material (including monofilament, strip and the like and paper yarn) combined with metal thread or strip, whether obtained by a process of twisting, cabling or by gimping, whatever the proportion of the metal present

Circular - 205/17/2023-GST dated 31st October, 2023

Clarification regarding GST rate on imitation zari thread or yarn based on the recommendation of the GST Council in its 52nd meeting held on 7th October, 2023 –reg.

(2) yarn of any textile material (including monofilament , strip and the like and paper yarn) covered with metal by any other process including yarn covered with metal by electro-deposition. The heading also covers products consisting of a core of metal foil (generally of aluminum) or of a core of plastic film coated with metal dust, sandwiched by means of an adhesive between two layers of plastic film.

3. In light of the above, the GST Council has recommended to clarify that imitation zari thread or yarn made from metallised polyester film/ plastic film falling under HS 5605 are covered by SI No. 218AA of Schedule I attracting 5% GST. The GST Council has also recommended that no refund will be permitted on polyester film (metallised)/plastic film on account of inversion of tax rate. Requisite changes have been made in notification no. 5/2017- Central Tax (Rate) vide Notification no 20/223-Central Tax (Rate) dated 19.10.2023.

16b Notification No. 20/2023- Central Tax (Rate) dated: 19th October, 2023
Notification No. 23/2023- Integrated Tax (Rate) dated: 19th October, 2023

G.S.R. 783(E).—In exercise of the powers conferred by clause (ii) of the proviso to sub-section (3) of section 54 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 5/2017-Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 677(E), dated the 28th June, 2017, namely :-

In the said notification, in the TABLE, after S. No. 6A and the entries relating thereto, following S.No. and the entries shall be inserted. namely:-

(1)	(2)	(3)
6AA	5605	Imitation zari thread or yarn made out of Metallised polyester film /plastic film; Explanation: This entry shall apply for refund of Input tax credit only on polyester film /plastic film";

Changes in supply by Indian Railways – RCM → FCM

Supply of all goods and services by Indian Railways shall be taxed under Forward Charge Mechanism to enable them to avail ITC. This will reduce the cost for Indian Railways

17

Notification No. 19/2023- Central Tax (Rate) dated: 19th October, 2023

Notification No. 22/2023- Integrated Tax (Rate) dated: 19th October, 2023

G.S.R. 780(E).—In exercise of the powers conferred by sub-section (3) of section 9 of the CGST Act, 2017, the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification No. 4/2017- Central Tax (Rate), dated the 28th June, 2017, namely:-

In the said notification, in the Table, against S. No. 6, in column 4, for the entry, the following entry may be substituted, namely: -

"Central Government [excluding Ministry of Railways (Indian Railways)], State Government, Union territory or a Local authority

¹ [6.	Any Chapter	Used vehicles, seized and confiscated goods, old and used goods, waste and scrap	⁶ [Central Government [excluding Ministry of Railways (Indian Railways)], State Government, Union territory or a Local authority.]	Any Registered person]
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18

Notification No. 14/2023- Central Tax (Rate) dated: 19th October, 2023
 Notification No. 17/2023- Integrated Tax (Rate) dated: 19th October, 2023

5.	<p>Services supplied by the Central Government, State Government, Union territory or <u>Local authority</u> to a business entity excluding, -</p> <p>(1) renting of immovable property, and</p> <p>(2) services specified below-</p> <p>(i) services by the Department of Posts ⁹[by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Government or Union territory or <u>Local authority</u>] ¹⁴[and the Ministry of Railways (Indian Railways)];</p> <p>(ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;</p> <p>(iii) transport of goods or passengers.</p>	<p>Central Government, State Government, Union territory or local</p>	<p>Any business entity located in the <u>Taxable territory</u>. authority</p>
³ [5A.	<p>¹⁴[[excluding the Ministry of Railways (Indian Railways)]]], State Government, Union territory or <u>Local authority</u> by way of renting of immovable property to a person registered under the Central Goods and Services Tax Act, 2017 (12 of 2017).</p>	<p>Central Government, State Government, Union territory or local authority</p>	<p>Any person registered under the Central Goods and Services Tax Act, 2017.]</p>

19

Notification No. 13/2023- Central Tax (Rate) dated: 19th October, 2023
Notification No. 16/2023- Integrated Tax (Rate) dated: 19th October, 2023

(2.) against serial number 6, in column (3), in item (a), after the words "Department of Posts", the words and brackets "and the Ministry of Railways (Indian Railways)" shall be inserted;

(3.) against serial number 7, in column (3), in the Explanation, in item (a), in sub-item(i), after the words "Department of Posts", the words and brackets "and the Ministry of Railways (Indian Railways)" shall be inserted;

(4.) against serial number 8, in column (3) in the proviso, in item (i), after the words "Department of Posts", the words and brackets "and the Ministry of Railways (Indian Railways)" shall be inserted;

(5.) against serial number 9, in column (3), in the first proviso, in item (i), after the words "Department of Posts", the words and brackets "and the Ministry of Railways (Indian Railways)" shall be inserted;

Notification No. 13/2023- Central Tax (Rate) dated: 19th October, 2023
 Notification No. 16/2023- Integrated Tax (Rate) dated: 19th October, 2023

6	Chapter 99	<p>Services by the Central Government, State Government, Union territory or Local authority excluding the following services</p> <p>—</p> <p>(a) services by the Department of Posts ¹[by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory] ²[and the Ministry of Railways (Indian Railways)];</p> <p>(b) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;</p> <p>(c) transport of goods or passengers; or</p> <p>(d) any service, other than services covered under entries (a) to (c) above, provided to business entities.</p>	Nil	Nil
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Notification No. 13/2023- Central Tax (Rate) dated: 19th October, 2023
 Notification No. 16/2023- Integrated Tax (Rate) dated: 19th October, 2023

7	Chapter 99	<p>Services provided by the Central Government, State Government, Union territory or <u>Local authority</u> to a <u>Business entity</u> with an <u>Aggregate turnover</u> of up to ¹[such amount in the preceding financial year as makes it eligible for exemption from registration under the Central Goods and Services Tax Act, 2017 (12 of 2017)].</p> <p><i>Explanation.</i>—For the purposes of this entry, it is hereby clarified that the provisions of this entry shall not be applicable to—</p> <p>(a) services,—</p> <p>(i) by the Department of Posts ²[by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory] ³[and the Ministry of Railways (Indian Railways)];</p> <p>(ii) in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;</p> <p>(iii) of transport of goods or passengers;</p>	Nil	Nil
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Notification No. 13/2023- Central Tax (Rate) dated: 19th October, 2023
 Notification No. 16/2023- Integrated Tax (Rate) dated: 19th October, 2023

8	Chapter 99	<p>Services provided by the Central Government, State Government, Union territory or <u>Local authority</u> to another Central Government, State Government, Union territory or <u>Local authority</u>:</p> <p>Provided that nothing contained in this entry shall apply to services—</p> <p>(i) by the Department of Posts ¹[by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory] ²[and the Ministry of Railways (Indian Railways)];</p> <p>(ii) in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;</p> <p>(iii) of transport of goods or passengers.</p>	Nil	Nil
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Notification No. 13/2023- Central Tax (Rate) dated: 19th October, 2023
 Notification No. 16/2023- Integrated Tax (Rate) dated: 19th October, 2023

9	Chapter 99	<p>Services provided by Central Government, State Government, Union territory or a <u>Local authority</u> where the consideration for such services does not exceed five thousand rupees:</p> <p>Provided that nothing contained in this entry shall apply to—</p> <p>(i) services by the Department of Posts ¹[by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory] ²[and the Ministry of Railways (Indian Railways)];</p> <p>(ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;</p> <p>(iii) transport of goods or passengers:</p> <p>Provided further that in case where continuous supply of service, as defined in <u>sub-section (33) of section 2</u> of the Central Goods and Services Tax Act, 2017, is provided by the Central Government, State Government, Union territory or a <u>Local authority</u> the</p>	Nil	Nil
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21

Notification No. 18/2023- Central Tax (Rate) dated: 19th October, 2023
Notification No. 21/2023- Integrated Tax (Rate) dated: 19th October, 2023

Changes in GST rates of goods

1. GST rates on "Food preparation of millet flour in powder form, containing at least 70% millets by weight", falling under HS 1901, with effect from date of notification, have been prescribed as:

- I. 0% if sold in other than pre-packaged and labelled form
- II. 5% if sold in pre-packaged and labelled form

21 Notification No. 18/2023- Central Tax (Rate) dated: 19th October, 2023
Notification No. 21/2023- Integrated Tax (Rate) dated: 19th October, 2023

G.S.R. 777(E).—In exercise of the powers conferred by section 11(1) of CGST Act, 2017, the Central Government, hereby makes the following further amendments in the **notification No.2/2017-Central Tax (Rate)**, dated the 28th June, 2017, namely:-

In the said notification, in the Schedule, after S. No. 94 and the entries relating thereto, the following S. No. and entries shall be inserted, namely

(1)	(2)	(3)
"94A.	1901	Food preparation of millet flour, in powder form, containing at least 70% millets by weight, other than pre-packaged and labelled".

22

Notification No. 17/2023- Central Tax Rate dated: 19th October, 2023
Notification No. 20/2023- Integrated Tax Rate dated: 19th October, 2023

In the said notification, -

(A) in Schedule I – 2.5%, -

(ii) after S. No. 96 and the entries relating thereto, the following S. No. and entries shall be inserted, namely:

(1)	(2)	(3)
"96A.	1901	Food preparation of millet flour, in powder form, containing at least 70% millets by weight, pre-packaged and labelled";

GST Applicability on Extra Neutral Alcohol (ENA)

1. GST Council recommended to keep Extra Neutral Alcohol (ENA) used for manufacture of alcoholic liquor for human consumption outside GST. Law Committee will examine suitable amendment in law to exclude ENA for use in manufacture of alcoholic liquors for human consumption from ambit of GST.
2. To reduce GST on molasses from 28% to 5%. This step will increase liquidity with mills and enable faster clearance of cane dues to sugarcane farmers. This will also lead to reduction in cost for manufacture of cattle feed as molasses is also an ingredient in its manufacture.
3. A separate tariff HS code has been created at 8 digit level in the Customs Tariff Act to cover rectified spirit for industrial use.
4. The GST rate notification will be amended to create an entry for ENA for industrial use attracting 18% GST.

22 Notification No. 17/2023- Central Tax Rate dated: 19th October, 2023
Notification No. 20/2023- Integrated Tax Rate dated: 19th October, 2023

(B) in Schedule III – 9%,

(i) against S. No. 13, in column (3), for the words and figures "of heading 1905", the words and figures "of heading 1905; food preparation of millet flour, in powder form, containing at least 70% millets by weight, pre-packaged and labelled" shall be substituted;

(ii) after S. No. 25 and the entries relating thereto, the following S. No. and entries shall be inserted, namely

(1)	(2)	(3)
"25A.	2207 10 12	Spirits for industrial use";

(C) in Schedule IV – 14%, S. No. 1 and the entries relating thereto shall be omitted.

¹ [†.	1703	Molasses]
Footnote for Sl. No. 1		
1. Omitted by Noti. No. 17/2023 -Central Tax (Rate) dated 19.10.2023 w.e.f. 20.10.2023		

22

Notification No. 17/2023- Central Tax Rate dated: 19th October, 2023
Notification No. 20/2023- Integrated Tax Rate dated: 19th October, 2023

In the said notification, -

(A) in Schedule I – 2.5%, -

(i) after S. No. 92 and the entries relating thereto, the following S. No. and entries shall be inserted, namely

(1)	(2)	(3)
"92A.	1703	Molasses";

Changes in 9(5) – bus operators organised as companies

With effect from 1st January 2022, liability to pay GST on bus transportation services supplied through Electronic Commerce Operators (ECOs) has been placed on the ECO under section 9(5) of CGST Act, 2017. This trade facilitation measure was taken on the representation of industry association that most of the bus operators supplying service through ECO owned one or two buses and were not in a position to take registration and meet GST compliances.

To arrive at a balance between the need of small operators for ease of doing business and the need of large organized players to take ITC, GST Council has recommended that bus operators organised as companies may be excluded from the purview of section 9(5) of CGST Act, 2017. This would enable them to pay GST on their supplies using their ITC.

Notification No. 16/2023- Central Tax (Rate) dated: 19th October, 2023
Notification No. 19/2023- Integrated Tax (Rate) dated: 19th October, 2023

In exercise of the powers conferred by sub-section (5) of section 9, the Central Government, amendments in the notification No.17/2017- Central Tax (Rate), dated the 28th June, 2017 –

In the said notification,

- (i) in clause (i), for the words "omnibus or any other Motor vehicle", the words "or any other Motor vehicle except omnibus" shall be substituted;
- (ii) after clause (i), the following clause shall be inserted, namely:-
"(ia) services by way of transportation of passengers by an omnibus except where the person supplying such service through Electronic commerce operator is a company.";
- (iii) in the Explanation, after item (c), the following item shall be inserted, namely, -
"(d) "Company" has the same meaning as assigned to it in clause (20) of section 2 of the Companies Act, 2013(18 of 2013).".

Updated Notification 17/2017 CT (R), dt 28.06.2017 – For reference only

Updated Notification

(i) services by way of transportation of passengers by a radio-taxi, motorcab, maxicab, motor cycle, 5[or any other Motor vehicleT except omnibus;

(ia) services by way of transportation of passengers by an omnibus except where the person supplying such service through Electronic commerce operator is a company.

(ii) services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, except where the person supplying such service through electronic commerce operator is liable for registration under clause (vi) of section 21 of the Union Territory Goods and Services Tax Act, 2017 read with sec 22(1)

(iii) services by way of house-keeping, such as plumbing, carpentering etc, except where the person supplying such service through Electronic commerce operator is liable for registration u/s 22(1)

(iv) supply of restaurant service other than the services supplied by restaurant, eating joints etc.

24 Notification No. 15/2023- Central Tax (Rate) dated: 19th October, 2023
Notification No. 18/2023- Integrated Tax (Rate) dated: 19th October, 2023

G.S.R. 768(E).—In exercise of the powers conferred by section 54(3) of the CGST Act, 2017, the Central Government, hereby makes the following amendments in the notification No. 15/2017-Central Tax (Rate), dated the 28th June, 2017, namely:-

In the said notification, in opening paragraph, for the words, brackets, letters and figures "specified in sub-item (b) of item 5 of Schedule II of the CGST Act", the words, "of construction of a complex, building or a part thereof, intended for sale to a buyer, wholly or partly, where the amount charged from the recipient of service includes the value of land or undivided share of land, as the case may be, except where the entire consideration has been received after issuance of completion certificate, where required, by the Competent authority or after its first occupation, whichever is earlier", shall be substituted

24 Notification No. 14/2023- Central Tax (Rate) dated: 19th October, 2023
Notification No. 17/2023- Integrated Tax (Rate) dated: 19th October, 2023

G.S.R. 765(E).—In exercise of the powers conferred by section 9(3) of CGTS Act, 2017, the Central Government, hereby makes the following further amendments in the notification No. 13/2017-Central Tax (Rate), dated the 28th June, 2017, namely:-

In the said notification, in the Table, -

(i) against serial number 5, in column (2), in item (2), in sub-item (i), after the words "Department of Posts", the words and brackets "and the Ministry of Railways (Indian Railways)" shall be inserted;

(ii) against serial number 5A, in column (2), after the words "Services supplied by the Central Government", the words and brackets "[excluding the Ministry of Railways (Indian Railways)]" shall be inserted

Supply to Govt Authorities – Exempted

Further, the GST Council has also recommended to exempt services of water supply, public health, sanitation conservancy, solid waste management and slum improvement and upgradation supplied to Governmental Authorities.

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Notification No. 13/2023- Central Tax (Rate) dated: 19th October, 2023
 Notification No. 16/2023- Integrated Tax (Rate) dated: 19th October, 2023

G.S.R. 762(E).—In exercise of the powers conferred by sub-sections (3) and (4) of section 9, sub-section (1) of section 11, sub-section (5) of section 15 and section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied hereby makes the following amendment in the Notification No.12/2017-Central Tax (Rate), dated the 28th June, 2017, namely:—

In the said notification, in the Table, -
 (1.) after serial number 3A and the entries relating thereto, the following serial number and entries shall be inserted, namely

(1)	(2)	(3)	(4)	(5)
"3B	Chapter 99	Services provided to a <u>Governmental Authority</u> by way of – (a) water supply; (b) public health; (c) sanitation conservancy; (d) solid waste management; and (e) slum improvement and upgradation.	Nil	Nil";

26

Notification No. 12/2023- Central Tax (Rate) dated: 19th October, 2023
Notification No. 15/2023- Integrated Tax (Rate) dated: 19th October, 2023

G.S.R. 759(E).—In exercise of the powers conferred by sub-section (1), sub-section (3) and sub-section (4) of section 9, sub-section (1) of section 11, sub-section (5) of section 15, sub-section (1) of section 16 and section 148, the Central Government, hereby makes the following further amendments in the notification No. 11/2017-Central Tax (Rate), dated the 28th June, 2017, namely:-

In the said notification, -

(A) in the Table,

(i) against serial number 8, in column (3), in item (vi), after the condition in column (5) against the rate of 2.5 percent, the following condition shall be inserted, namely:-

"Provided further that where the supplier of input service in the same line of business charges central tax at a rate higher than 2.5%, credit of input tax charged on the input service in the same line of business in excess of the tax paid or payable at the rate of 2.5%, shall not be taken.

Illustration: `A` engages `B` for transport from New Delhi to Jaipur in a motor cab for Rs. 1000. `B`, for supplying the said service, hires a motor cab with operator from `C` for Rs. 800. `C` charges `B` central tax at the rate of 6% (Rs. 48). If `B` charges `A` central tax at the rate of 2.5%, he shall be entitled to take Input tax credit on the input service in the same line of business supplied by `C`

Notification No. 12/2023- Central Tax (Rate) dated: 19th October, 2023
Notification No. 15/2023- Integrated Tax (Rate) dated: 19th October, 2023

(ii) against serial number 10, in column (3), in item (i), after the condition in column (5) against the rate of 2.5 percent, , the following condition shall be inserted, namely:-

"Provided further that where the supplier of input service in the same line of business charges central tax at a rate higher than 2.5%, credit of input tax charged on the input service in the same line of business in excess of the tax paid or payable at the rate of 2.5%, shall not be taken.

Illustration: `A` engages `B` for transport from New Delhi to Jaipur in a motor cab for Rs. 1000. `B`, for supplying the said service, hires a motor cab with operator from `C` for Rs. 800. `C` charges `B` central tax at the rate of 6% (Rs. 48). If `B` charges `A` central tax at the rate of 2.5%, he shall be entitled to take Input tax credit on the input service in the same line of business supplied by `C` only to the extent of Rs. 20 (2.5% of Rs. 800) and not Rs. 48."

26 Notification No. 12/2023- Central Tax (Rate) dated: 19th October, 2023
 Notification No. 15/2023- Integrated Tax (Rate) dated: 19th October, 2023

(iii) against serial number 34, -

(a) in column (3), in item (iv), for the words "totalisator or a license to" , the words "licensing a" shall be substituted;

(b) in column (3), item (v) and the entries relating thereto shall be omitted;

(iv) Services provided by a race club by way of ¹ [licensing a] to bookmaker in such club.	14	-
Footnote for SL No. 34(iv)		
1. Subs. by Noti. No. <u>12/2023-Central Tax (Rate)</u> dated 19.10.2023 w.e.f. 20.10.2023 for "totalisator or a license to"		
¹ [(v) Gambling:	14	-]
Footnote for SL No. 34(v)		
1. Omitted Noti. No. <u>12/2023-Central Tax (Rate)</u> dated 19.10.2023 w.e.f. 20.10.2023		

(B) in the Annexure: Scheme of Classification of Services,-

(i) serial number 696 and the entries relating thereto shall be omitted;

³ [696	999692	Gambling and betting services including similar online services]
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(ii) serial number 698 and the entries relating thereto shall be omitted.

³ [698	999694	Lottery services]
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Instruction F. No. CBIC- 20006/15/2023-GST Dated: 18th October, 2023

Action in respect of non-issuance of e-invoices by notified class of taxpayers who are mandatorily required to issue e-invoice as per legal provisions-reg.

i. The tax authorities may find the reasons for non-issuance of B2B and export invoices through e-invoicing by such taxpayers. If it is reported by the taxpayers that they have not exceeded the prescribed threshold limit under sub-rule (4) of Rule 48 of the CGST Rules or are exempted from issuance of e-invoice under relevant legal provisions/notifications, they may be advised to declare their exempted category on the functionality on the portal by using the functionality recently provided by GSTN. If the reasons are not in accordance with the provisions of the Rules and the relevant notifications, the taxpayers may be nudged and advised to immediately start issuing invoices through e-invoicing.

ii. The tax authorities may also inform the taxpayers (who have exceeded annual Aggregate turnover and are mandatorily required to issue invoices through e-invoicing) about the provisions of sub-rule (5) of Rule 48 of CGST Rules providing that any invoice issued by such taxpayers, in the manner other than the manner prescribed under sub-rule (4) of Rule 48 of the CGST Rules, i.e. other than e-invoicing, shall not be treated as valid invoice. They may also be informed that they will be liable to penalty under **Clause (c)** of sub-section (3) of Section 122 of CGST Act, in

Instruction F. No. CBIC- 20006/15/2023-GST] Dated: 18th October, 2023

Action in respect of non-issuance of e-invoices by notified class of taxpayers who are mandatorily required to issue e-invoice as per legal provisions-reg.

iii. In case of continuous non-compliance of the provisions of Rule 48(4) of CGST Rules by the taxpayers, who are otherwise required to issue invoices for B2B and export transactions through e-invoicing, appropriate penal action, as mentioned in sub-para (ii) above, may be initiated under the CGST Act and Rules made thereunder. To begin with, emphasis should be laid on the taxpayers who have exceeded Aggregate turnover of more than Rupees Fifty Crore, as sufficient time has elapsed since e-invoicing has been made mandatory for these taxpayers from April, 2021.

iv. Any systemic issues, faced by such taxpayers for issuance of e-invoices, may be brought to the notice of GSTN/NIC for subsequent remedial action.

C. Other measures pertaining to law and procedures:

Alignment of provisions of the CGST Act, 2017 with the provisions of the Tribunal Reforms Act, 2021 in respect of Appointment of President and Member of the proposed GST Appellate Tribunals: The Council has recommended amendments in section 110 of the CGST Act, 2017 to provide that:

- i) an advocate for **ten years** with **substantial experience** in litigation under indirect tax laws in the Appellate Tribunal, Central Excise and Service Tax Tribunal, State VAT Tribunals, by whatever name called, High Court or Supreme Court to be eligible for the appointment as judicial member;
- ii) the minimum age for eligibility for appointment as President and Member to be 50 years;
- iii) President and Members shall have tenure up to a maximum age of 70 years and 67 years respectively.

C. Other measures pertaining to law and procedures:

Law amendment with respect to ISD as recommended by the GST Council in its 50th meeting:

GST Council in its 50th meeting had recommended that ISD (Input Service Distributor) procedure as laid down in Section 20 of the CGST Act, 2017 **may be made mandatory prospectively** for distribution of ITC in respect of input services procured by Head Office (HO) from a third party but attributable to both HO and Branch Office (BO) or exclusively to one or more BOs. The Council has now recommended amendments in Section 2(61) and section 20 of CGST Act, 2017 as well amendment in rule 39 of CGST Rules, 2017 in respect of the same.



**Thank
You**