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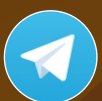


Amendments

CA VISHAL BHATTAD

**Applicable for
May 2021 Examination**

- All Circulars & Notifications upto 31st Oct. 2020
- All Statutory Updates of ICAI material



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GST

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CHARGE OF TAX & APPLICATION OF CGST & IGST LAWS

Change in Definition of "UNION TERRITORY" :-

Before Amendment :-

SEC 2(114) "UNION TERRITORY"

Means

the territory of -

- (a) the Andaman and Nicobar Islands
- (b) Lakshadweep
- (c) Dadra and Nagar haveli
- (d) Daman and Diu
- (e) Chandigarh and
- (f) Other territory

Explanation - For the purposes of this Act, each of the territories specified in clauses (a) to (f) shall be considered to be a separate Union territory

After Amendment :-

SEC 2(114) "UNION TERRITORY"

Means

the territory of -

- (a) the Andaman and Nicobar Islands
- (b) Lakshadweep
- (c) **Daman and Diu and Dadra and Nagar haveli**
- (d) **Ladakh**
- (e) Chandigarh
- (f) and Other territory

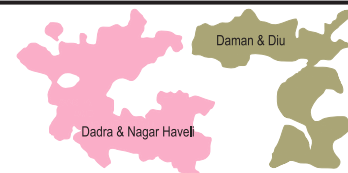
Amended by F.A. 2020

Explanation - For the purposes of this Act, each of the territories specified in clauses (a) to (f) shall be considered to be a separate Union territory

Before



Before



Now



Now



SCHEDULE- II [Sec 7(1A)]

Activities or Transactions to be treated as Supply of Goods or Supply of Services

4. Transfer of business assets

| Supply of Goods | | Supply of Service | |
|-----------------|--|-------------------|---|
| (a) | <p>where goods forming part of the assets of a business are</p> <ul style="list-style-type: none"> ⇒ transferred or disposed of ⇒ by or under the directions of the person carrying on the business ⇒ so as no longer to form part of those assets, <p>whether or not for a consideration, such transfer or disposal is a supply of goods by the person</p> <p>omitted by F.A. 2020 Restrospectively w.e.f. 01.07.2017 to remove ambiguity in the scope of the term supply] Note:- It is applicable from the date when notified by CG</p> | (b) | <p>where,</p> <ul style="list-style-type: none"> ⇒ by or under the direction of a person carrying on a business, ⇒ goods held or used for the purposes of the business <p>are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business,</p> <p>whether or not for a consideration, the usage or making available of such goods is a supply of services</p> |

Question 1 - Mr. X is registered supplier of various goods in Union Territory of Dadra and Nagar Haveli and has branch in Union Territory of Daman and Diu. All the purchases are made at the main branch of Dadra and Nagar Haveli and then the stock is transferred from Dadra and Nagar Haveli to branch in Daman and Diu. The stock is transferred without consideration, however on these supplies Mr. X paid GST to govt. as per provision of schedule I. State whether the action of Mr. X is correct as per the Amended provision of law.

Answer- As per Section 2(114) read with amendment by finance Act, 2020- '**Union Territories**' means the territory of

- a) Andaman & Nicobar Islands, b) Lakshadweep c) Daman and Diu and Dadra and Nagar Haveli,
d) Ladakh e) Chandigarh and f) other Territories.

For the purpose of this Act, each of the territories specified in clause (a) to (f) shall be considered to be a separate Union Territory.

As per para 2 of schedule I of CGST Act, 2017- supply of goods or services or both without consideration between related or distinct person as specified in section 25 when made in course or furtherance of business are supply and liable for tax. Therefore, Inter-state branch transfer is taxable and intra-state branch transfer is taxable subject to opting for separate registration of establishment in same state. If they fall under single registration then not subject to GST.

As per the amendment made by finance Act, 2020 the UT Daman and Diu and Dadra and Nagar Haveli are merged into one UT and therefore supply between Daman and Diu and Dadra and Nagar Haveli are not subject to GST.

Therefore considering the above provision Mr. X is not correct in charging GST.

Question 2 - M/s XYZ and co. a legal consultancy firm provides the services all across India. It has registered place of business in state of J&K and has a branch in Ladakh also. On some matters Firm of J&K provides consultancy services to its branch Ladakh and visa a versa. As J&K and Ladakh before amendment made by finance Act 2020, are in same state M/s XYZ & Co. has taken only one registration and not charging any GST as in same state. M/s XYZ and Co. is of view that as it's already registered in GST Act, therefore after amendment made by FA, 2020 in definition of UT, it's not required to take separate registration for both the branches under GST Act. State whether the contention of M/s XYZ and Co. is correct or not.

Answer- As per Section 2(114) read with amendment by finance Act, 2020- '**Union Territories**' means the territory of

- a) Andaman & Nicobar Islands, b) Lakshadweep c) Daman and Diu and Dadra and Nagar Haveli,
d) Ladakh e) Chandigarh and f) other Territories.

For the purpose of this Act, each of the territories specified in clause (a) to (f) shall be considered to be a separate Union Territory.

After the amendment made by Finance Act, 2020, the state of J& K is demerged into 2 UT- i.e. UT of J& K with legislature of state and UT Ladakh. supply of goods or services or both without consideration between related or distinct person as specified in section 25 when made in course or furtherance of business are supply and liable for tax. Therefore, Inter-state supply between deemed distinct person is taxable. Also both units to take separate registration.

Therefore considering the provisions of Act, M/s XYZ and co. is compulsorily required to take separate registration for both the branches after amendment made by finance Act, 2020 in definition of UT. (Assuming turnover exceeds the threshold limit)



REVERSE CHARGE

6 Services supplied

By

Director of a Company or Body Corporate

To

Said Company or Body Corporate

**Person liable to pay tax :
Company or Body Corporate
is liable**

Note 1

| | | |
|-----------------|----------------|---|
| Director | Company | Whole time/ Managing/ Executive director - Employee of the Company Non-Executive/part time director - Can't be called as employee of Company. Hence sitting fees, commission is taxable. |
|-----------------|----------------|---|



Clarification on levy of gst on Director's remuneration (circular no. 140/10/20202-gst dated 10/6/2020)

| Category of Director / Director's remuneration | GST Applicability (Clarification) |
|---|--|
| Remuneration paid by companies to the independent or those directors <u>who are not the employees of the said company</u> (TDS U/s 194J) | It is <u>Outside the scope of Schedule III of the CGST Act.</u> <u>Therefore taxable</u> The recipient of the said services i.e. the Company is liable to discharge the applicable GST <u>on it on reverse charge basis (RCM).</u> |
| The director <u>who is an employee in the company</u> and remunerations are declared as Salaries in the books of a company and subjected to TDS under Section 192 of the IT Act (TDS U/S 192) | <u>Covered under the scope of Schedule III</u> of the CGST Act and salaries paid to company directors will not attract GST |
| <u>Director's remuneration which is declared separately other than salaries</u> in the Company's accounts and subjected to TDS under Section 194J of the IT Act as Fees for professional or Technical Services (TDS U/s 194J) | Salary to Director:- <u>Covered under the scope of Schedule III</u> of the CGST Act and salaries paid to company directors will not attract GST Remuneration other than salary :- To be treated as consideration for providing the services which are <u>outside the scope of Schedule III of the CGST Act.</u> Therefore, the recipient of the said services i.e. the Company is liable to discharge the <u>applicable GST on reverse charge basis (RCM).</u> |

Question 1:- (ICAI Material)

Arpan Singhania is a director in Narayan Limited. The company paid him the sitting fee amounting to ₹ 25,000, for the month of January. Further, salary was paid to Arpan Singhania amounting to ₹ 1.5 lakh for the month of January on which TDS was also deducted as per applicable provisions under Income-tax law.

Tapasya & Associates, in which Arpan Singhania is a partner, supplied certain professional services to Narayan Limited in the month of January for an amount of ₹ 2 lakh. Discuss the person liable to pay tax in each of the supplies involved in the given case.

Answer:-

Sitting fee paid to director – As per reverse charge notification, tax on services supplied by a director of a company/ body corporate to the said company/ body corporate, located in the taxable territory, is payable under reverse charge.

Hence, in the present case, the sitting fee amounting to ₹ 25,000, payable to Arpan Singhania by Narayan Limited, is liable to GST under reverse charge and thus, recipient of service - Narayan Limited – is liable to pay GST on the same.

Salary paid to director - As per Circular No.140/10/2020 GST dated 10.06.2020, the part of director's remuneration which is declared as salary in the books of a company and subjected to TDS under section 192 of the Income-tax Act, *are not taxable being consideration for services by an employee to the employer in the course of or in relation to his employment in terms of Schedule III.*

Therefore, in the given case, the salary received by Arpan Singhania of ₹ 1.5 lakh is not liable to GST.

Services provided by Tapasya & Associates – Tapasya & Associates have rendered certain professional services to Narayan Limited. The fact that Arpan Singhania is a partner in Tapasya & Associates and a director in Narayan Limited does not have any impact on the taxability of the professional services supplied by Tapasya & Associates to Narayan Limited.

The professional services provided by Tapasya & Associates to Narayan Limited are liable to GST under forward charge and thus, supplier - Tapasya & Associates – is liable to pay GST on the same.

Question 2- Mr. X is accountant of TCS Pvt. Ltd. TCS Ltd. presented their salary sheet for the month of Oct, 2020. The accountant is of view that no GST is payable on salary payment as the same fall under Schedule III of Act. However you as the auditor of company required to analyze whether the view of accountant is correct under law and if not, the person liable for paying the tax and taxable value based on following information-

Salary sheet of TCS Pvt. Ltd.-

| Sl.No. | Particular | Amount(₹) |
|--------|--|-----------|
| i. | Remuneration paid to independent director of company and TDS deducted u/s 194J | 1,00,000 |
| ii. | Sitting fees paid to independent director | 30,000 |
| iii. | Remuneration paid to director of company on which TDS deducted u/s 192 | 1,50,000 |
| iv. | Remuneration paid to whole time and managing director | 20,000 |
| vi. | Salaries paid to non-executive director and part time director | 10,000 |
| vii. | Remuneration paid to director for rendering professional service and TDS deducted u/s 194J | 1,30,000 |
| viii. | Sitting Fees paid to whole time director | 30,000 |

Answer- As per schedule III- services by employee to employer in course of employment shall not be treated supply. However as per RCM provisions- Services supplied by director of company or body corporate to said company or body corporate then person liable to pay tax is such company or body corporate under RCM.

Therefore contention of accountant is not correct and supply of services by director of company which are not employees of company are taxable and company and body corporate are required to pay tax under RCM.

Calculation of value of supply on which tax is payable by company under RCM-

| Sl.No. | Particular | Amount(₹) |
|--------|--|-----------------|
| i. | Remuneration paid to independent director of company and TDS deducted u/s 194J | 1,00,000 |
| ii. | Sitting fees paid to independent director | 30,000 |
| iii. | Remuneration paid to director of company on which TDS deducted u/s 192 | - |
| iv. | Remuneration paid to whole time and managing director | - |
| vi. | Salaries paid to non-executive director and part time director | 10,000 |
| vii. | Remuneration paid to director for rendering professional service and TDS deducted u/s 194J | 1,30,000 |
| viii. | Sitting fees paid to whole time director | 25,000 |
| | Total Value of Supply | 2,95,000 |

Notes-

- As per circular no. 140/10/2020- GST date- 10/6/2020- Remuneration paid to independent director of company and TDS deducted u/s 194J, **setting fees paid to independent director and also to whole time director, Remuneration paid to Nominee director**, Salaries paid to non-executive director and part time director, Remuneration paid to director for rendering professional service and TDS deducted u/s 194J, is out of purview of schedule III of the CGST Act. The recipient of the said service i.e. the company is liable to discharge the applicable GST on it on Reverse charge basis.
- The director who is an employee in the company and remunerations are declared as Salaries in the books of a company and subjected to TDS under Section 192 of the IT Act (TDS U/S 192) Covered under the scope of Schedule III of the CGST Act and salaries paid to them will not attract GST.
- The whole time director, managing director are the employees of company and remuneration paid to them is not liable for GST. **However setting fees paid to them is liable for GST.**
- Nominee director and non-executive directors are not employees of company, therefore remuneration paid to them is liable for GST.



PAYMENT OF TAX

Sec 50: Interest on delayed payment of tax

- 1 Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, **but fails to pay the tax or any part thereof to the Government within the period prescribed**, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, **interest at such rate, not exceeding 18%**, as may be notified by the Government on the recommendations of the Council

Note : N/N.13/2017 CT dated 28.06.2017 has notified the rate of interest as 18% per annum.

Proviso

*“Provided that the **interest on tax payable** in respect of supplies made during a tax period and declared in the return for the said period furnished **after the due date** in accordance with the provisions of section 39,*

**Newly Inserted by
F.A. 2019**

except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period,

shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.”

Question 1: In the month of September, Mr. Sumit has to made outward supplies of ₹ 1000000 on which he has to pay tax @ 12% i.e. ₹ 1,20,000. The amount of input tax credit available as on date was ₹ 70,000. The last date to file GSTR1 is 10th of the next month i.e. 10th October. Ashok made the payment on 5th December. Calculation of interest payment of tax is as follows :

Answer : Tax payable ₹ 1,20,000 - ₹70,000 = ₹50,000

Interest shall be calculated from the next day of the due date of payment i.e. 21st October to the actual date of payment i.e. 5th December. Interest is $50,000 \times 18\% \times \frac{46}{365} = ₹ 1,134/-$

Question 2:- M/s ABC Ltd. have belatedly filed GST return (under section 39) for the month of January after 60 days from the due date for filing such return. Total tax paid in such return is as below:

| Particulars | IGST (₹) | CGST (₹) | SGST (₹) |
|---|----------|----------|----------|
| Output tax payable | 4,50,000 | 2,85,000 | 2,85,000 |
| Tax payable under reverse charge | 18,000 | 32,000 | 32,000 |
| Input tax available for utilisation | 2,50,000 | 55,000 | 55,000 |
| Tax paid through Electronic Cash Ledger | 2,18,000 | 2,62,000 | 2,62,000 |

Examine the interest payable as per the provisions of GST law.

What would be your answer, if entire tax for the month of January has to be paid through Electronic Credit Ledger except taxes to be paid on reverse charge basis?

Answer:-

Legal Provision :- Proviso to section 50 lays down that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of

the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.

In the given scenario, M/s ABC Ltd. have filed their return belatedly and as per the above provisions, interest is payable on the tax component paid through Electronic Cash Ledger only. A point relevant to note here is that tax payable on reverse charge basis also carries interest for the period of delay in remittance of tax and input tax credit cannot be used to pay the same (i.e. tax payable under reverse charge has to be paid in cash).

Accordingly, interest under section 50 payable for the tax paid through Electronic Cash Ledger is computed as below:

$$\text{IGST: } 218,000 * 18\% * 60/365 = 6,450$$

$$\text{CGST: } 262,000 * 18\% * 60/365 = 7,752$$

$$\text{SGST: } 262,000 * 18\% * 60/365 = 7,752$$

Further, if entire tax payable for January is paid through Electronic Credit ledger, except for the taxes to be paid under reverse charge basis, then interest under section 50 is applicable only on the remittance of tax under reverse charge basis and not for tax payable on forward charge basis. Interest payable is given as below:

$$\text{IGST: } 18,000 * 18\% * 60/365 = 532$$

$$\text{CGST: } 32,000 * 18\% * 60/365 = 946$$

$$\text{SGST: } 32,000 * 18\% * 60/365 = 946$$



EXEMPTION FROM GST

Exemption Related to Transport Sector

Sl. No. 19A
of notification

Services by way of transportation of goods by an aircraft from customs station of clearance in India to a place outside India.

Omitted

Note : Nothing contained in this serial number shall apply after the 30th day of September, ~~2020~~ 2021. Amended by N/N 04/20
-CT(R) dt 30/09/2020

Sl. No. 19B
of notification

Transportation of Goods by an Vessels (Heading 9965)

Services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India.

Omitted

Note : Nothing contained in this serial number shall apply after the 30th day of September, ~~2020~~ 2021. Amended by N/N 04/20
-CT(R) dt 30/09/2020

Sl.No. 19C
of notification

Satellite Launch Service

Satellite launch services supplied by Indian space research organisation, Antrix Corporation Limited or new space India Limited

Question 1 - XYZ line is engaged in providing service of transport of goods by aircraft and vessels. It collected the following sums (exclusive of taxes, if any) towards the service

| | | |
|---|---|------------|
| 1 | Air freight relating to goods imported into India | ₹ 16 lakhs |
| 2 | Freight relating to domestic transport of goods in India by Air | ₹ 42 lakhs |
| 3 | Air freight charged from M/s. XYZ Ltd., for transport of goods from its Dubai branch to Sydney branch | ₹ 23 lakhs |
| 4 | Vessels Freight relating to goods imported in to India | ₹ 10 lakhs |
| 5 | Freight for transportation of goods by an aircraft from customs station of clearance in India to a place outside India. | ₹ 12 lakhs |
| 6 | Freight for transportation of goods by a vessel from customs station of clearance in India to a place outside India. | ₹ 9 lakhs |

Answer: Following supply is exempt-

- i) As per Notification 12/2017 Central Tax (Rate) Sl. No. 19 under Heading 9965 states that Services by way of transportation of goods by an aircraft from a place outside India upto the customs station of clearance in India.
- ii) As per Notification 12/2017 Central Tax (Rate) Sl. No. 20 under Heading 9965 states that Services by way of transportation by rail or a vessel from one place in India to another of the following goods –
 - a) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap;

- b) defence or military equipments;
 c) newspaper or magazines registered with the Registrar of Newspapers;
 d) railway equipments or materials;
 e) agricultural produce;
 f) milk, salt and food grain including flours, pulses and rice; and
- iii) As per N/N 04/20 -CT(R) dt 30/09/2020- Services by way of transportation of goods by an aircraft from customs station of clearance in India to a place outside India.
- iv) As per N/N 04/20 -CT(R) dt 30/09/2020- Services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India.

| | |
|---|-------------------|
| Air freight relating to goods imported into India | — |
| Freight relating to domestic transport of goods in India by Air | ₹ 42 lakhs |
| Air freight charged from M/s. XYZ Ltd., for transport of goods from its Dubai branch to Sydney branch | — |
| Vessels Freight relating to goods imported in to India | ₹ 10 lakhs |
| Freight for transportation of goods by an aircraft from customs station of clearance in India to a place outside India. | — |
| Freight for transportation of goods by a vessel from customs station of clearance in India to a place outside India. | — |
| Value of taxable supply | ₹ 52 lakhs |

Notes:

- (1) Domestic transport is taxable service as not covered under Exemption
- (2) It is not treated as supply as per schedule III, hence not liable to pay GST.
- (3) Taxable as the goods do not pertain to those specified as per Sl. No. 20 as only specified category of goods are exempt for transport by rail, vessel and GTA.

Question 2

Calculate the taxable value of supply under GST under following cases-

| | |
|--|-----------|
| Satellite launch services supplied by Indian space research organisation | ₹ 1.30 Cr |
| Satellite launch services supplied by Antrix Corporation Limited | ₹ 42 Cr |
| Satellite launch services supplied by New space India Ltd. | ₹ 2.36 Cr |

Answer- Satellite launch services supplied by Indian space research organisation, Antrix Corporation Limited or new space India Limited are exempt from levy of tax.

Computation of taxable value of supply-

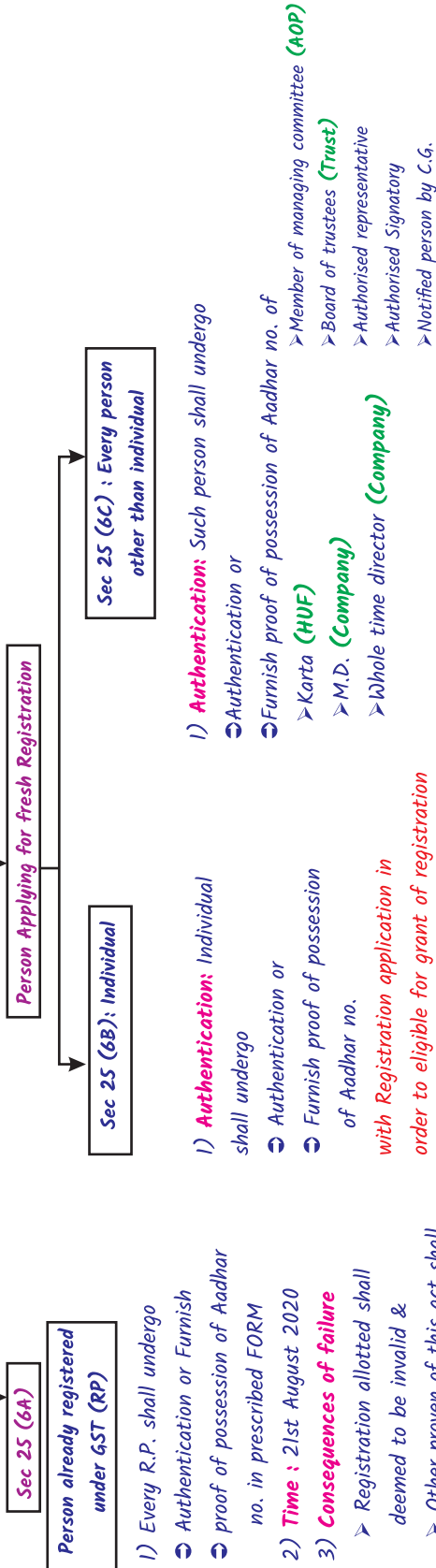
| | |
|--|----------|
| Satellite launch services supplied by Indian space research organisation | — |
| Satellite launch services supplied by Antrix Corporation Limited | — |
| Satellite launch services supplied by New space India Ltd. | — |
| Total Value of Supply | — |



REGISTRATION

Sec 25 - Authentication (Aadhar) Process under GST

Object To control fake invoices, dummy address registration & multiple registration at same place.



The consequences for failure to undergo authentication : Registration shall be granted only after physical verification of the place of business in presence of said person

- 1) If Aadhar No. is not assigned :** The person shall be offered alternate & viable means of identification as C.G. notify on recommendation of Council (normally physical verification of POB)
- 2) Sec 25(6D) : Non Applicability of authentication procedure**
The provision of Rule 25 (6A)/(6B)/(6C) shall not apply to
 - Such person or
 - Class of person or
 - Any state or UT or part thereof
 as the Government may, on recommendation of Council Specify by Notification
 - Authentication applicable to following category of person**
 - Individual
 - Authorised Signatories of all types
 - Managing or Authorised partners
 - Karta of HUF
 - Authentication not applicable to following category of person**
 - Person who is not citizen of India
 - All other class of person e.g.
 - M.D.
 - Whole time director
 - Member of managing Committee
 - Board of Trustees etc.

Substitution of Rule 8 (4A)

Where an applicant, other than a person notified under section 25(6D), opts for authentication of Aadhaar number, he shall,

while submitting the application undergo authentication of Aadhaar number and the date of submission of the application in such cases shall be the

➤ date of authentication of the Aadhaar number, or

➤ 15 days from the submission of the application in Part B of FORM GST REG-01 under subrule (4), whichever is

earlier

Substituted by N/N
62/2020-CT dt 20/08/2020

Procedure for Registration

Rule 9 - Verification of the application and approval.

| | |
|--------------------|--|
| (1) | <p>Verification and granting of registration :- The application shall be forwarded to the proper officer who shall examine the application and the accompanying documents and if the same are found to be in order,</p> <p style="text-align: center;"><i>approve the grant of registration to the applicant within a period of 3 working days from the date of submission of the application.</i></p> |
| Proviso | <p><i>“Provided that where a person, other than a person notified under section 25(6D), fails to undergo authentication of Aadhaar number as specified in rule 8(4A) or does not opt for authentication of Aadhaar number,</i></p> <p style="text-align: center;"><i>the registration shall be granted only after physical verification of the place of business in the presence of the said person, in the manner provided under rule 25:</i></p> |
| Proviso | <p><i>Provided further that the proper officer may, for reasons to be recorded in writing and with the approval of an officer not below the rank of Joint Commissioner, in lieu of the physical verification of the place of business, carry out the verification of such documents as he may deem fit.</i></p> |
| (2) | <p>Deficiency in Application :- Where the application submitted under rule 8 is found to be deficient, either in terms of any information or any document required to be furnished, or where the proper officer requires any clarification with regard to any information provided in the application or documents furnished therewith,</p> <p style="text-align: center;">he may issue a notice to the applicant electronically in FORM GST REG-03 within a period of 3 working days from the date of submission of the application and</p> <p style="text-align: center;">the applicant shall furnish such clarification, information or documents electronically, in FORM GST REG-04, within a period of 7 working days from the date of the receipt of such notice.</p> |
| Proviso | <p><i>Provided that where a person,</i></p> <p style="text-align: center;">➤ <i>other than a person notified under section 25(6D), fails to undergo authentication of Aadhaar number as specified in rule 8(4A) or</i></p> <p style="text-align: center;">➤ <i>does not opt for authentication of Aadhaar number,</i></p> <p style="text-align: center;"><i>the notice in FORM GST REG-03 may be issued not later than 21 days from the date of submission of the application</i></p> |
| Explanation | <p>For the purposes of this sub-rule, the expression - clarification includes modification or correction of particulars declared in the application for registration, other than Permanent Account Number, State, mobile number and e-mail address declared in Part A of FORM GST REG-01.</p> |
| (3) | <p>Grant of registration after Clarification:- Where the proper officer is satisfied with the clarification, information or documents furnished by the applicant, he may approve the grant of registration to the applicant within a period of 7 working days from the date of the receipt of such clarification or information or documents.</p> |

| | |
|-----|---|
| (4) | Where no reply is furnished by the applicant in response to the notice issued under sub-rule (2) or where the proper officer is not satisfied with the clarification, information or documents furnished, he shall may , for reasons to be recorded in writing reject such application and inform the applicant electronically in FORM GST REG-05. |
| (5) | If the proper officer fails to take any action, - |
| a) | within a period of 3 working days from the date of submission of the application in cases where a person successfully undergoes authentication of Aadhaar number or is notified under section 25(6D); or |
| b) | within the time period prescribed under the proviso to sub-rule (2), in cases where a person, other than a person notified under section 25(6D), fails to undergo authentication of Aadhaar number as specified in rule 8(4A); or |
| c) | within a period of 21 days from the date of submission of the application in cases where a person does not opt for authentication of Aadhaar number; or |
| d) | within a period of 7 working days from the date of the receipt of the clarification, information or documents furnished by the applicant under sub-rule (2), |
| | the application for grant of registration shall be deemed to have been approved.”. |

“Physical verification of business premises in certain cases[Rule 25].-

Amended by N/N
16/2020-CT dt 23/03/2020

Where the proper officer is satisfied that the physical verification of the place of business of a person is required due to failure of Aadhaar authentication or due to not opting for Aadhaar Authentication before the grant of registration, or due to any other reason after the grant of registration,

Newly Inserted by N/N
62/2020 CT dt 20/08/2020

he may get such verification of the place of business, in the presence of the said person, done and the verification report along with the other documents, including photographs, shall be uploaded in FORM GST REG-30 on the common portal within a period of 15 working days following the date of such verification.”

Question 1- Mr. X is already registered under GST. At the time of registration he had not gone through Aadhaar Authentication. However after introduction of new procedure for registration Aadhaar authentication is mandatory for specified persons. State whether Mr. X now required to get his Aadhaar authenticated or not?

Answer-

- 1) Every R.P. shall undergo Authentication or Furnish proof of possession of Aadhaar no. in prescribed FORM after 21st August 2020
- 2) **Consequences of failure:** - Registration allotted shall deemed to be invalid & Other proven of this act shall apply as if such person does not have Registration

Question 2- ABC Partnership firm has 2 managing partner, 1 authorized signatory, and 3 other partner. Specify who are required to go through Aadhaar Authentication procedure?

Answer- The Aadhaar Authentication is mandatory for Managing and authorised partner of partnership firm. Therefore in present case Aadhaar Authentication is mandatory for 2 managing partner and 1 authorized signatory. For 3 other partners Aadhaar Authentication is not mandatory.

Question 3- Mr. X applied for GST registration on 1st Apr, 2020. Mr. X successfully undergoes authentication of Aadhaar number, but the application found to be deficient. The proper officer fails to take action within a period of three working days from the date of submission of the application. State whether registration will be successful or not.

Answer- As per Rule 9(5) If the proper officer fails to take any action, within a period of 3 working days from the date of submission of the application in cases where a person successfully undergoes authentication of Aadhaar number then the application for grant of registration shall be deemed to have been approved.

As in present case proper officer fails to take action within 3 days, therefore the application of registration is successful.

Question 4-

Mr. X is member of HUF. He applied for registration of HUF on 20th May 2020. He had gone through the Aadhaar Authentication of Karta Mr. Y but not gone through the Aadhaar Authentication of his own Aadhaar. State whether Mr. X is compulsorily required to go through Aadhaar Authentication procedure. Also specify the person whom the Aadhaar Authentication is not required.

Answer- As per N/N 17/2020-CT Following persons are exempt from Aadhaar Authentication-

- ➔ Person not citizen of India
- ➔ Person other than
 - Individual
 - Managing partner, Authorized Signatory, Karta.

Therefore, as Mr. X is member of HUF, Aadhaar Authentication is not required for Mr. X as authentication is done for Karta Mr. Y.

Question 5- Specify the cases under which are deemed that the registration has been granted.

Answer- If the proper officer fails to take any action, -

- a. within a period of 3 working days from the date of submission of the application in cases where a person successfully undergoes authentication of Aadhaar number or is notified under section 25(6D); or
- b. within the time period prescribed under the proviso to sub-rule (2), in cases where a person, other than a person notified under section 25(6D), fails to undergo authentication of Aadhaar number as specified in rule 8(4A); or
- c. within a period of 21 days from the date of submission of the application in cases where a person does not opt for authentication of Aadhaar number; or
- d. within a period of 7 working days from the date of the receipt of the clarification, information or documents furnished by the applicant under sub-rule (2), the application for grant of registration shall be deemed to have been approved.”.



TAX INVOICE

Debit Note & Credit Note

HSN Code

Q. : What is HSN Code ? is it mandatory to state HSN in Invoice ?

Ans. : HSN is harmonised system of nomenclature based on International coding system.

HSN code is mandatorily to be stated in Invoice.

But board may, on the recommendations of the Council, by notification, specify-

- (i) the number of digits of Harmonised System of Nomenclature code for goods or services that a class of registered persons shall be required to mention; or
- (ii) a class of supply of goods or services for which specified number of digits of Harmonised System of Nomenclature code shall be required to be mentioned by all registered taxpayers; and
- (iii) the class of registered persons that would not be required to mention the Harmonised System of Nomenclature code for goods or services

Newly Inserted N/N 79/2020
CT dt 15/10/2020

Proviso *Provided that a registered person having aggregate turnover up to five crores rupees in the previous financial year may not mention the number of digits of HSN Code, in a tax invoice issued by him in respect of supplies made to unregistered persons.*

In this regard, Notification No.12/2017 CT dated 28.06.2017 Amendment by **N/N 78/2020 CT dt 15/10/2020** has notified the following :

| S.No. | Annual Turnover in the Preceding Financial Year | Number of Digits of HSN Code |
|-------|--|------------------------------|
| (1) | (2) | (3) |
| 1. | Upto rupees one crore fifty lakhs | Nil |
| 2. | more than rupees one crore fifty lakhs and upto rupees five crores | 2 |
| 3. | more than rupees five crores | 4 |



E-Invoice

Q.: Explain the manner of issuing Tax Invoice [Rule 48] ?

Ans. :

| (1) In case of taxable supply of goods | (2) In case of taxable supply of Service |
|--|---|
| Invoice shall be prepared in Triplicate | Invoice shall be prepared in Duplicate |
| <div style="display: flex; justify-content: space-around;"> <div style="text-align: center;"> <div style="background-color: #f4b084; padding: 5px; margin-bottom: 5px;">Original Copy</div> <div style="font-size: 2em; color: #0070c0;">➔</div> <div style="background-color: #f4cccc; padding: 5px; margin-bottom: 5px;">Original for Recipient</div> </div> <div style="text-align: center;"> <div style="background-color: #a6d854; padding: 5px; margin-bottom: 5px;">Duplicate Copy</div> <div style="font-size: 2em; color: #0070c0;">➔</div> <div style="background-color: #cfe2f3; padding: 5px; margin-bottom: 5px;">Duplicate for Transporter</div> </div> <div style="text-align: center;"> <div style="background-color: #d9ead3; padding: 5px; margin-bottom: 5px;">Triplicate Copy</div> <div style="font-size: 2em; color: #0070c0;">➔</div> <div style="background-color: #d9ead3; padding: 5px;">Triplicate for Supplier</div> </div> </div> | <div style="display: flex; justify-content: space-around;"> <div style="text-align: center;"> <div style="background-color: #f4b084; padding: 5px; margin-bottom: 5px;">Original Copy</div> <div style="font-size: 2em; color: #0070c0;">➔</div> <div style="background-color: #f4cccc; padding: 5px; margin-bottom: 5px;">Original for Recipient</div> </div> <div style="text-align: center;"> <div style="background-color: #a6d854; padding: 5px; margin-bottom: 5px;">Duplicate Copy</div> <div style="font-size: 2em; color: #0070c0;">➔</div> <div style="background-color: #cfe2f3; padding: 5px;">Duplicate for Supplier</div> </div> </div> |

(3) **Serial number to be furnished:-** The serial number of invoices issued during a tax period shall be furnished electronically through the common portal in FORM GSTR-I

(4) **E-Invoicing - Generation of invoice reference no. from GST portal:-** The invoice shall be prepared by such class of registered persons as may be notified by the Government, on the recommendations of the Council, by including such particulars contained in FORM GST INV-01 after obtaining an Invoice Reference Number by uploading information contained therein on the Common Goods and Services Tax Electronic Portal in such manner and subject to such conditions and restrictions as may be specified in the notification.

Provided that the Commissioner may, on the recommendations of the Council, by notification, exempt a person or a class of registered persons from issuance of invoice under this sub-rule for a specified period, subject to such conditions and restrictions as may be specified in the said notification

Newly Inserted N/N 72/2020
CT dt 30/09/2020

Rule 48(4) applies to registered persons having turnover exceeding ₹ 100 crore making supplies to registered persons [Notification no. 13/2020-C.T., dated 21-3-2020, w.e.f. 1-10-2020]

Newly Inserted N/N 61/2020
CT dt 30/07/2020

Newly Inserted N/N 70/2020
CT dt 30/09/2020

Suppliers to which rule 48(4) applies registered person, whose aggregate turnover in a financial year ~~any preceding financial year from 2017-18 onwards~~ exceeds ₹ ~~100~~ **500** crore (except special economic zone unit and banks, financial institutions, insurers, GTA and passenger transport service providers and multiplexes falling under rule 54(2)/(3)/(4)/(4A))

IRN required on invoice/other documents in respect of supply of goods or services or both to a registered person or for exports.

Newly Inserted N/N 70/2020
CT dt 30/09/2020

(5) **Invoice void if invoice reference no not coated :-** Every invoice issued by a person to whom sub-rule (4) applies in any manner other than the manner specified in the said sub-rule shall not be treated as an invoice.

(6) The provisions of sub-rules (1) and (2) shall not apply to an invoice prepared in the manner specified in sub-rule (4)."

E-Invoicing

E-Invoicing **Effective date:** With effect from 1st October, 2020, there is a switch from voluntary to mandatory e-invoicing for certain notified category of taxpayers

Applicability: All registered businesses with an aggregate turnover (based on PAN) in any preceding financial year from 2017-18 onwards greater than ₹ 500 crore (hereinafter referred to as 'notified persons') will be required to issue e-invoices.

Meaning: E-invoicing is not generation of invoice by a Government portal. Taxpayers will continue to create their GST invoices on their own Accounting/Billing/ERP Systems as per e-invoice schema. These invoices will then be reported to 'Invoice Registration Portal (IRP)'. On such reporting, IRP will generate a

| | |
|---|---|
| | <p>unique 'Invoice Reference Number (IRN)', digitally sign it and return the e-invoice to the supplier. A GST e-invoice will be valid only with a valid IRN.</p> <p>Presently, invoices, credit notes and debit notes, when issued by notified persons (to registered persons (B2B) or for the purpose of exports) are covered under e-invoice.</p> |
| Advantages of e-invoicing | <p>Advantages of e-invoicing E-invoice has many advantages for businesses.</p> <ul style="list-style-type: none"> ➤ auto-reporting of invoices into GST return and auto-generation of e-way bill (wherever required). ➤ substantial reduction in transcription errors as same data will get reported to tax department as well as to the buyer to prepare his inward supplies (purchase) register. ➤ it will facilitate standardisation and interoperability leading to reduction of disputes among transacting parties, improve payment cycles, reduction of processing costs and thereby greatly improving overall business efficiency. ➤ complete trail of B2B invoices is available with the Department, it will enable the system-level matching of input tax credit and output tax thereby reducing the tax evasion. ➤ e-invoicing will eliminate the fake invoices. |
| Non - requirement of E-Invoice | <p>Thus, presently, such notified persons are not required/allowed to report B2C invoices. Further, e-invoicing is also not applicable to invoices issued by Input Service Distributor (ISD). E-invoicing is also not applicable for import of goods (Bills of Entry).</p> |
| E-Invoice incase of Reverse Charge | <p>If the invoice issued by a notified person is in respect of supplies made by him tax on which is payable under reverse charge under section 9(3), e-invoicing is applicable.</p> <p>On the other hand, where specified category of supplies are received by notified person from unregistered persons [attracting reverse charge under section 9(4)] or through import of services, e-invoicing doesn't arise/not applicable.</p> <p>Example :- A taxpayer (say a firm of advocates) having aggregate turnover in a FY of more than ₹ 500 crore is supplying services to a company (who will be discharging tax liability as recipient under reverse charge mechanism), such invoices have to be reported by said tax payer (since it is a notified person) to IRP.</p> |
| Exemption from e-invoicing | <p>Following entities are exempt from the mandatory requirement of e-invoicing:</p> <ul style="list-style-type: none"> ➤ Special Economic Zone units** ➤ Insurer or banking company or financial institution including NBFC ➤ GTA supplying services in relation to transportation of goods by road in a goods carriage ➤ Supplier of passenger transportation service ➤ Person supplying services by way of admission to exhibition of cinematograph films in multiplex screens <p>Note: It is important to note here that only SEZ units and not SEZ developers are exempt from issuing e-invoices. Thus, SEZ developers whose turnover exceeds ₹ 500 crores in any preceding financial year from 2017-18 onwards are mandatorily required to issue e-invoices.</p> <p>Further, in case of supplies made by notified persons to SEZ units, e-invoices need to be issued.</p> <p>Example :- Maharaja Private Limited has an SEZ unit and a regular DTA unit (both having same PAN). The aggregate total turnover of Maharaja Private Limited is more than ₹ 500 crores (considering both the GSTINs). However, the turnover of DTA unit is below ₹ 100 crores for FY 2019-20.</p> <p>In this scenario, SEZ unit is exempt from e -invoicing. However, e-invoicing will be applicable to DTA Unit because the aggregate turnover of the legal entity in this case is > ₹ 500 crores. The eligibility is based on aggregate annual turnover on the common PAN.</p> |

Question 1- Speedy transport is a goods transport agency provides a service of goods transport by air, having aggregate turnover calculated on all India basis of ₹700cr in previous year 19-20. It provides the GTA service to other registered GTA only for fast delivery of their courier and does not provide any services to unregistered person. The accountant of GTA agency is of view that no need to prepared e-invoices as it falls under exception. You as a chartered accountant required to advice GTA regarding whether Speedy transport required to prepare E-invoice or not?

Answer- As per rule 48(4) read with N/N 61/2020 and N/N 70/2020- A registered person having aggregate turnover any the previous financial year from 2017-18 onwards exceeds ₹ 500 cr. except special economic zone unit and banks, financial institutions, insurers, GTA supplying services in relation to transportation of goods by road in a goods carriage and multiplexes falling under rule 54(2)/(3)/(4)/(4A)] are not required to prepare E-invoice.

In the present case GTA is providing services through air and exemption is there to GTA only if providing services through road, and also aggregate turnover exceeds ₹ 500 cr. in previous year, and also making supplies to registered person only, therefore GTA is required to prepare E-invoice. The view taken by accountant is not correct.

Question 2- Finolex Ltd. having its head office at Mumbai and also registered as ISD, makes all its purchases of input services at its head office and distribute the ITC of Input services to its various branches by preparing the ISD invoice. State whether E-invoice is required to be prepared by Finolex Ltd. or not for distribution of ITC?

Answer- E-invoicing is not applicable to invoices issued by Input Service Distributor (ISD). Therefore in present case Finolex Ltd. not required to prepare E-invoice.

Question 3- M/s XYZ Ltd. a business entity having aggregate turnover of ₹ 900 cr. availed the legal services for ongoing dispute on some matter related to his business. The turnover of legal entity during previous FY amounts to ₹ 1200 cr. Legal entity is of view that no E-invoice required to be prepare as the tax is required to be discharge by business entity under RCM. State whether the contention of Legal entity is correct or not. Also state whether e-invoice is required to be issue if services falls under 9(4) RCM and not 9(3) RCM.

Answer- *If the invoice issued by a notified person is in respect of supplies made by him tax on which is payable under reverse charge under section 9(3), e-invoicing is applicable.*

On the other hand, where specified category of supplies are received by notified person from unregistered persons [attracting reverse charge under section 9(4)] or through import of services, e-invoicing doesn't arise/ not applicable. Therefore in present case legal entity is required to prepare E-invoice even if services are falling under RCM of section 9(3).

However in case if services falls under RCM of section 9(4) then E-invoice is not required.

Question 4- Mr. X is engaged in various types of business. The turnover from various businesses is as under-

| Particulars | Amount in cr.(₹) |
|---|------------------|
| (i) Turnover from textile business and supplies only to registered person | 450 |
| (ii) Turnover from GTA business by road | 600 |
| (iii) Turnover from passenger transport business | 550 |
| (iv) Turnover from multiplex business | 730 |

State whether E-invoice is required to be prepared by Mr. X

Answer- Mr. X having various business units (having same PAN). The aggregate total turnover of Mr. X is more than ₹500 crores (considering all the GSTINs). However, the turnover of textile unit is below ₹ 500 crores.

In this scenario, GTA, passenger transport, multiplexes are exempt from e -invoicing. However, e-invoicing will be applicable to Textile Unit because the aggregate turnover of the all the business in this case is > ₹ 500 crores. The eligibility is based on aggregate annual turnover on the common PAN.

Question 5- Mr. X is registered supplier of goods having turnover of ₹ 700cr during year 17-18, 300cr. in 18-19 and 400 cr. in 19-20. During the year 19-20 he supplied goods to SEZ unit. State whether E-invoice is mandatory to Mr. X.

Answer- As per Rule 48(4)-All registered businesses with an aggregate turnover (based on PAN) in any preceding financial year from 2017-18 onwards greater than ₹500 crore (hereinafter referred to as 'notified persons') will be required to issue e-invoices.

Also exemption is there to outward supply by SEZ units and not in case supplies is made to SEZ unit.

Therefore, considering the above provisions aggregate turnover of Mr. X exceeds ₹ 500 cr. during year 17-18 and supplies is made to SEZ unit therefore E-invoicing is applicable to Mr. X.

Question 6- Mr. X generated the E-invoice; however later on he come to know that the detail filed about the vehicle number is not correct, i.e. he by mistakenly filled wrong vehicle number. Therefore he wants to modify the E-invoice. State whether modification of E-invoice is possible. Can he cancel E-invoice.

Answer- *Once the E-invoice is prepared modification of the same is not allowed.*

E-invoice can be canceled within 24 hrs. from the time of reporting invoice to IRP.

Therefore in present case, Mr. X cannot modify the E-invoice, however he can cancel it within 24 hrs. of reporting invoice to IRP.



RETURN

Rule 67A:- Manner of furnishing of return or details of outward supplies by short messaging service facility

Notwithstanding anything contained in this Chapter, for a registered person who is required to furnish

- a Nil return under section 39 in FORM GSTR-3B or
- a Nil details of outward supplies under section 37 in FORM GSTR-1 or
- a Nil statement in FORM GST CMP-08 [Quarterly statement for composition scheme]

Newly Inserted by N/N
79/2020 dt 15/10/2020

for a tax period,

any reference to electronic furnishing shall include furnishing of the said return or the details of outward supplies or statement through *a short messaging service using the registered mobile number* and the said return or the details of outward supplies or statement *shall be verified by a registered mobile number based One Time Password facility.*

Explanation:- For the purpose of this rule, a Nil return or Nil details of outward supplies or Nil statement shall mean a return under section 39 or details of outward supplies under section 37 or statement under rule 62, for a tax period that has nil or no entry in all the Tables in FORM GSTR-3B or FORM GSTR-1 or FORM GST CMP-08, as the case may be.

Question 1- Mr. X is registered person under GST. States the mode through which he can furnish GSTR-1 or GSTR-3B or FORM GST CMP-08 under following situation-

i) Tax Outward supply=₹90 lakhs, ITC Inward supply=₹ 70 lakhs, Tax payable= ₹20 lakhs.

ii) Tax Outward supply=₹90 lakhs, ITC Inward supply= ₹90 lakhs, Tax payable= Nil

iii) Tax Outward supply= Nil, ITC Inward supply= ₹70 lakhs, Tax payable= Nil

iv) Tax Outward supply= Nil, ITC Inward supply= Nil Tax payable= Nil

v) Composition tax payer =Outward tax supply= Nil, Tax payable= Nil

Answer-

Therefore considering the above provision Mr. X can furnish GSTR-1 or GSTR-3B or FORM GST CMP-08 under different situation as follows-

- i) Mr. X is required to pay tax of ₹20 lakhs, therefore he should furnish GSTR-1 and GSTR 3B **over portal.**
- ii) Tax payable by Mr. X Nil, However, there is outward supply of 90 lakhs and also ITC of ₹ 90 lakhs, therefore he should furnish GSTR-1 and GSTR 3B **over portal.**
- iii) Tax payable by Mr. X Nil, However, there is ITC of ₹90 lakhs, therefore he can furnish GSTR-1 over portal or through SMS facility and he should furnish GSTR 3B **over portal.**
- iv) Tax payable by Mr. X is Nil. Also the outward supply and ITC both are Nil, therefore he can furnish GSTR-1 and GSTR 3B **over portal or through SMS facility.**
- v) Tax payable by composition dealer is Nil. Therefore, a Nil statement in FORM GST CMP-08 can be furnished **over portal or through SMS facility.**



ACCOUNTS, RECORDS & E-Way Bill

Accounts and records

Q.: Write a short note on Audit of accounts [Section 35(5) read alongwith section 44(2) and rule 80]

Ans.: As per section 35(5) read alongwith section 44(2) and rule 80 of the CGST Rules, 2017 stipulates as follows:

A. Every registered person must get his accounts audited by a Chartered Accountant or a Cost Accountant if his **aggregate turnover during a FY exceeds ₹ 2 crores. However, for the financial year 18-19 and 19-20 the said threshold limit has been increased from ₹2 crores to ₹5 crores** **Amendment**

B. Such registered person is required to furnish electronically through the common portal along with Annual Return a copy of:

⇒ Audited annual accounts

⇒ A Reconciliation Statement, duly certified, in prescribed form

Reconciliation Statement will reconcile the value of supplies declared in the return furnished for the financial year with the audited annual financial statement and such other particulars, as may be prescribed.

E-Way Bill

Q. : Write a short note on - Invoice reference number

Ans:- In case, invoice is issued in the manner prescribed under rule 48(4), the Quick Reference (QR) code having an embedded Invoice Reference Number (IRN) in it, may be produced electronically, for verification by the proper officer in lieu of the physical copy of such tax invoice. **Substituted by N/N 72/2020 CT dt 30/09/2020**

Hence, IRN is a boon for transporters who transport multiple consignments, where otherwise the documentation would have been burdensome. IRN tries to ease the process of documentation to a great level. IRN also serves a dual purpose where on generating it, a taxpayer can get Part A of his E-way bill auto-populated.

Q.: Explain the restriction of furnishing of information in part A of FORM GST EWB-01?[N/N 74/2018-CT dt 31/12/2018]

Ans:- As per rule 138(E) of CGST rules:-

Notwithstanding anything rule 138(1), no person (including a consignor, consignee, transporter, an e-commerce operator or a courier agency) shall be allowed to furnish the information in PART A of FORM GST EWB-01 in respect of a registered person, whether as a supplier or a recipient, who,—

(a) being a person paying tax under section 10, has not furnished the returns for two consecutive tax periods; or

(b) being a person other than a person specified in clause (a), has not furnished the returns for a consecutive period of two months:

(c) being a person other than a person specified in clause (a), has not furnished the statement of outward supplies for any two months or quarters, as the case may be.

Provided that the Commissioner may, on sufficient cause being shown and for reasons to be recorded in writing, by order, allow furnishing of the said information in **PART A of FORM GST EWB 01**, subject to such conditions and restrictions as may be specified by him:

Provided further that no order rejecting the request of such person to furnish the information in **PART A of FORM GST EWB 01** under the first proviso shall be passed without affording the said person a reasonable opportunity of being heard

Provided also that the permission granted or rejected by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be granted or, as the case may be, rejected by the Commissioner.

Provided also that the said restriction shall not apply during the period from the 20th day of March, 2020 till the 15th day of October, 2020 in case where the return in FORM GSTR-3B or the statement of outward supplies in FORM GSTR-1 or the statement in FORM GST CMP08, as the case may be, has not been furnished for the period February, 2020 to August, 2020.”

Newly Inserted by N/N
79/2020 CT dt 15/10/2020

Explanation:– For the purposes of this rule, the expression –Commissioner shall mean the jurisdictional Commissioner in respect of the persons specified in clauses (a) and (b).

Note: The CBIC has issued N/N 22/2019 - CT-dt 23/04/2019 notifying 21/06/2019 as the date of applicability of rule 138E.

MCQ question-No person shall be allowed to furnish the information in **PART A of FORM GST EWB-01** in respect of a registered person, whether as a supplier or a recipient, under following circumstances—

- a) A person paying tax under section 10, has not furnished the returns for two consecutive tax periods
- b) A person other than a person specified in clause (a), has not furnished the returns for a consecutive period of two months
- c) A person other than a person specified in clause (a), has not furnished the statement of outward supplies for any two months or quarters.
- d) All of the above

Answer- (d) All of the above



Demand and Recovery

Rule 142:- Notice and order for demand of amounts payable under the Act

- 1A The proper officer shall, before service of notice to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74, as the case may be, ~~shall~~ **May** communicate the details of any tax, interest and penalty as ascertained by the said officer, in Part A of FORM GST DRC-01A

Proper officer shall intimate before issue of show cause notice for tax interest penalty payable

The proper officer shall, before serving of such a notice, communicate the details of any tax, interest and penalty as ascertained by him, in the prescribed form, to the person chargeable with tax, interest and penalty under section 73 or section 74.

Further, where such person has made partial payment of amount communicated to him or desires to file any submission against the proposed liability, he may make such submission in the prescribed form. *Taxpayer will be able to take advantage of nil or reduced penalty under sections 73(5) and 74(5) of the CGST Act.*

Where any person makes payment of tax, interest, penalty or any other amount due in accordance with the provisions of the Act **whether on his own ascertainment or, as communicated by the proper officer as mentioned above**, he shall inform the proper officer of such payment and the proper officer shall issue an acknowledgement, accepting the payment made by the said person. **[Notification No. 49/2019 CT dated 09.10.2019]**



APPEALS & REVISION

Q. : What is State Bench or Area Bench?

Ans. The Government, by notification, specify for each State or Union territory, a Bench of the Appellate Tribunal, exercising the powers of the Appellate Tribunal within the concerned State or Union territory. ~~Government shall, on receipt of a request from any State Government, constitute such number of Area Benches in that State, as may be recommended by the Council~~

Omitted by
F.A. 2020



MISCELLANEOUS PROVISIONS

Sec 168 : Power to Issue Instruction

Section 167 empowers the Board (CBIC) to issue orders, instructions or directions to the CGST officers for the purpose of uniformity in the implementation of the Act.

All officers and all other persons employed in the implementation of the Act shall observe and follow such orders, instructions or directions.

The binding nature of such orders, instructions and directions has been a matter of debate and scrutiny. The general understanding that prevails now is that a circular is binding on the officers, but not on the assessee. However, in case such circular states something contrary to the law, the law shall prevail over the circular.

The meaning of Commissioner for the purposes of following provisions is Commissioner or Joint Secretary posted in the Board and such Commissioner or Joint Secretary shall exercise the powers specified in these said sections with the approval of the Board:

| Section | Particulars |
|---|--|
| Section 2(91) | Meaning of 'proper officer' |
| Section 5(3) | Delegation of powers by Commissioner |
| Section 25(9)(b) | Notification of person or class of persons for grant of Unique Identity Number |
| Section 35(3) | Notification of class of taxable persons required to maintain additional accounts or documents |
| Section 35(4) | Notification of class of taxable persons permitted to maintain accounts in a prescribed manner where the Commissioner considers that such persons are not in a position to keep and maintain accounts in accordance with the general provisions |
| Section 37(1) | Details of outward supplies (extension of time limit) |
| Section 38(2) | Details of inward supplies (extension of time limit) |
| Section 39(6) | Return (extension of time limit) |
| Section 44(1) | Time limit for annual return |
| Section 52(4) | Monthly return in case of collection of tax at source |
| Section 52(5) | Annual return in case of tax collection of source |
| Section 66(5) | Determination of expenses of the examination and audit of records, including remuneration of the Chartered Accountant or Cost Accountant |
| Section 143(1) Except the second proviso thereof | Job-work procedure (Second proviso of Sec 143(1) - Provided further that the period of 1 year & 3 years may, on sufficient cause being shown, be extended by the commissioner for the further period not exceeding 1 year & 2 years respectively.) |
| | <small>substituted by Finance Act 2020</small> |
| Section 151(1) | Collection of statistics |
| Section 158(3)(l) | Exceptions to bar on disclosure of information by public servant |
| Section 167 | Delegation of powers |

Newly Inserted by F.A, 2019

Sec 172: Removal of Difficulties

- ⇒ Section 172 lays down the procedure that may be followed by the Government in case of any difficulty in giving effect to any provision of the Act. In such cases, the Central Government may, on the recommendations of the GST Council, by general or special order published in the Gazette, make such provisions not inconsistent with the provisions of the Act or the rules or regulations made thereunder, as may be necessary or expedient for the purpose of removing the said difficulty.

Amended by F.A. 2020

- ⇒ The time limit for making such order shall be 3 5 years from the date of commencement of the Act.
⇒ Every order so made shall be laid, as soon as may be, after it is made, before the Parliament.

Similar provisions relating to removal of difficulty have also been prescribed under section 25 of the IGST Act.

Corporate debtors undergoing insolvency resolution process under Insolvency and Bankruptcy Code, 2016- Special procedure [Notification No. 11/2020-C.T. dtd.21-3-2020]

| | |
|----|---|
| 1. | Applies to = Those registered persons who are corporate debtors under Insolvency and Bankruptcy Code, 2016 (“IBC”) undergoing corporate insolvency resolution process and management of whose affairs are being undertaken by interim resolution professionals (IRP) or resolution professionals (RP). |
| 2. | Period of applicability = The procedure under this notification shall apply from the date of the appointment of the IRP/RP, till the period they undergo the corporate insolvency resolution process. |
| 3. | Deemed separate person on appointment of IPR/PR - Separate registration required within 30 days of appointment of IRP/RP : <p>The said class of persons shall, with effect from the date of appointment of IRP / RP, be treated as a distinct person of the corporate debtor, and shall be liable to take a new registration (hereinafter referred to as the new registration) in each of the States or Union territories where the corporate debtor was registered earlier, within thirty days of the appointment of the IRP/RP or by 30th June, 2020, whichever is later. (N/N 39/2020 CT dt 05/05/2020).</p> <p>For already appointed IRP/RPs, registration can be taken within 30 days of appointment of the IRP/RP or by 30th June 2020, whichever is less than. (Circular No 138/08/2020 GST Dated 06/05/2020)</p> <p>Fresh registration not required, if all returns filed for period upto appointment of IRP/RP : IRP/RP would not be required to take a fresh registration in those cases where statements in FORM GST-1 u/s 37 and returns in FORM GSTR-3B u/s 39, for all the tax periods prior to the appointment of IRP/RP, have been furnished under the registration of Corporate Debtor (earlier GSTIN)- (N/N 39/2020 CT dt 05/05/2020) Circular No. 138/08/2020-GST, dated 6-5-2020</p> |
| 4. | First Return from date becoming liable to registration and date of actual registration : The said class of persons shall, after obtaining registration file the first return u/s 40, from the date on which he becomes liable to registration till the date on which registration has been granted. |
| 5. | Input tax credit : (a) In first return, claim ITC = invoices covering the supplies of goods or services or both received since his appointment as IRP/RP but bearing the old GSTIN of erstwhile registered person [but restrictions as to time-limit u/s 16[4] and 10% variation restriction under rule 36[4] would not apply]. (b) persons buying goods/services from company under CIRP can take credit of invoices issued with original/old registration [without applying rule 36(4) 10% variation criteria), during period from date of appointment of IRP/RP till the date of registration as required in this notification or thirty days from the date of this notification, whichever is earlier. |

(c) any *amount deposited in cash ledger* by the IRP/RP, in existing registration, from date of appointment of IRP/RP to date of registration in terms of this notification shall be available for refund to the erstwhile registration.

Companies under Insolvency- Clarification [Circular No.134/042020-GST,dated 23-3-2020]

GST dues under pre-CIRP will be 'operational debt' : No coercive action can be taken against the corporate debtor with respect to GST dues for period prior to insolvency commencement date.

Said dues will be treated as 'operational debt' and claims may be filed by proper officer before NCLT in accordance with provisions of IBC. The tax officers shall seek the details of supplies made/received and total tax dues pending from the corporate debtor to file the claim before the NCLT.

Old GST registration of company need not be cancelled; may be suspended : GST registration of company under CIRP should not be cancelled and may, if need be suspended. Already cancelled registration may be restored by revocation of cancellation of registration.

Change in IRP/ - Registration taken by old IRP/ RP would continue and mere amendment in registration is required to be filed : In case of any change in IRP/RP after initial appointment under IBC, it would be deemed to be change of authorized signatory and it would not be considered as a distinct person on every such change after initial appointment.

Accordingly, it is clarified that such a change would need only change of authorized signatory which can be done by the authorized signatory of the Company who can add IRP/RP as new authorized signatory or failing that it can be added by the concerned jurisdictional officer on request by IRP/RP.- Circular No. 138/08/2020-GST, dated 6-5-2020

IRP/RP is not required to file returns of pre-CIRP period : The IRP/RP has to comply with all legal requirements for period after the Insolvency Commencement Date. Accordingly, it is clarified that IRP/RP are not under an obligation to file returns of pre-CIRP period.

Question-XYZ Ltd. is registered person under GST. Due to COVID-19 pandemic it suffered some financial crisis and gone into insolvency resolution proceeding under IBS-2016. IRP/RP is appointed. State whether new registration required to be obtained under following situation-

i) XYZ Ltd. filled all the statement and return till date of appointment of IRP/RP.

ii) XYZ Ltd. not filled some statement and return till date of appointment of IRP/RP.

Answer- If corporate debtor has not made any default in GST compliance; there is no requirement of taking separate/ new registration.

If corporate debtor has made any default in GST compliance; Old management of company and management after appointment of IRP/RP is treated as deemed distinct and person and for new management required to take separate/ new GST registration.

Therefore in first case XYZ Ltd. filled all statement and returns till date of appointment of IRP/RP so new registration is not required.

In second case XYZ Ltd. not filled some statement and returns till date of appointment of IRP/RP so new registration is required.

Custom

Amendments Will Qualify?



Importation & Exportation Procedure

SECTION 51B :- LEDGER FOR DUTY CREDIT

- 1) The Central Government may, specify the manner in which issue duty credit
 - a) in lieu of **remission of any duty or tax or levy**, chargeable on any material used in the manufacture or processing goods or for carrying out any operation on such goods in India that are exported or
 - b) other financial benefit subject to such conditions and restriction as may be specified therein.
- 2) the **duty credit issued shall be maintained in the customs automated system** in the form of an electronic duty credit ledger of the person who is the recipient of such duty credit.
- 3) the duty credit available in the electronic duty credit ledger may be used
 - by the person to whom it is issued or
 - the person to whom it is transferred,towards making payment of duties payable under this act or under the Customs Tariff Act, 1975 in such manner and subject to such conditions and restrictions and within such time as may be prescribed.

SECTION 47 : CLEARANCE OF GOODS FOR HOME CONSUMPTION

Where the proper officer is satisfied that

- ▶ any goods entered for home consumption are not prohibited goods and
- ▶ the importer has paid the import duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance of the goods for home consumption.

Provided that such order may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria

Central Government has permitted the following class of importers to make deferred payment of import duty:-

- (i) Importers certified under Authorized Economic Operator programme as AEO (TierTwo) and AEO (Tier-Three)***
- (ii) Authorised Public Undertaking***

AEO means Authorised Economic Operator approved by the Directorate of International Customs under the CBIC. Authorised Public Undertaking means Authorised Public Undertaking approved by the Directorate of International Customs under the CBIC.

Date for Determination of Duty Rate & Tariff Value Exchange Rate Assessment

Summary of Faceless Assessment [Newly Inserted by ICAI Material]

| | |
|--|---|
| Introduction | <p>In order to achieve the aim of catalysing economic development through transparency, harmonization, predictability, & automation in trade & also to reduces time and cost for the EXIM community, & to help them to become more competitive internationally, CBIC has taken some initiatives. One of them is "Turant Customs", a mega reform for the ease of doing business. This initiative stands on the pillar of Faceless, Contactless and Paperless Customs, towards faster and cheaper Customs clearance of imported goods, & reduce interface between the Trade and Customs officers.</p> <p>A key enable in Turant Customs is Faceless Assessment, rolled out in phases and covered the entire country by 31st October 2020.</p> |
| Journey towards Faceless Assessment | <p>Decades ago, goods imported were assessed at the border by Customs officers on the basis of physical documents. After introduction of computers led to automation of assessment, followed by a robust digital risk management system (RMS) for Customs clearance with minimal checks.</p> <p>In 2012, the Customs Act 1962, was amended to introduce self-assessment by importers/ exporters themselves. Customs officials recognised a dire need to provide uniformity and certainty in assessment practices. Anonymity in assessment and load balancing of import documents ,for assesment, would bring about more efficiency and help improve the speed of Customs clearances across India. This was the trigger for the conceptualization and development of Faceless Assessment.</p> |
| What is Faceless Assessment? | <ul style="list-style-type: none"> ➔ Faceless Assessment is a major Customs Reforms where a Bill of Entry, identified for scrutiny (non-facilitated Bill of Entry) is assigned to an assessing officer, physically located at a Customs station, which is not the Port of Import in the Customs Automated System. ➔ It is a component of the "Turant Customs programme" ➔ It is a path breaking initiative aimed at introducing anonymity and uniformity in Customs assessments pan India. ➔ It separates the Customs assessment process from the physical location of Port of Import, using a technology platform. ➔ Also called virtual assessment or anonymised assessment. ➔ This is to ensure an objective, free, fair and just assessment. ➔ No changes to the process of filing a B/E. Importer can file his documentation including bill of entry and supporting documents on the ICEGATE portal |
| Key objectives of Faceless Assessment | <ol style="list-style-type: none"> i. Anonymity in assessment for reduced physical interface between trade and Customs ii. Speedier Customs clearances through efficient utilisation of manpower iii. Greater uniformity of assessment across locations iv. Promoting sector specific and functional specialisation in assessment |

Question 1- Mr. X imported machinery X at Mumbai Port. Importer Mr. X filed Bill of Entry (online) for clearance of goods from Mumbai Port. B/E is selected for scrutiny by the CAS (Custom automated System). However, CAS assigns assessment of this B/E to AO located at Chennai Port. State whether the assignment made is as per the provisions of law

Answer- Faceless Assessment is a major Customs Reforms where a Bill of Entry, identified for scrutiny (non-facilitated Bill of Entry) is assigned to an assessing officer, physically located at a Customs station, which is not the Port of Import in the Customs Automated System. Therefore the assessment made is faceless assessment.

In short, with the introduction of faceless assessment, the assessment of port of the customs clearance procedures would be delinked with the geographical location, where the goods are available for examination. Therefore, the assessment of B/E can be assigned to the AO located at Chennai Port.

Question 2- Define the journey towards faceless assessment.

Answer- Decades ago, goods imported were assessed at the border by Customs officers on the basis of physical documents. After introduction of computers led to automation of assessment, followed by a robust digital risk management system (RMS) for Customs clearance with minimal checks.

In 2012, the Customs Act 1962, was amended to introduce self-assessment by importers/ exporters themselves. Customs officials recognised a dire need to provide uniformity and certainty in assessment practices. Anonymity in assessment and load balancing of import documents, for assessment, would bring about more efficiency and help improve the speed of Customs clearances across India.

This was the trigger for the conceptualization and development of Faceless Assessment.

Question 3- What are the Key objectives of faceless assessment?

Answer- Key objectives of faceless assessment-

- i. Anonymity in assessment for reduced physical interface between trade and Customs
- ii. Speedier Customs clearances through efficient utilisation of manpower
- iii. Greater uniformity of assessment across locations
- iv. Promoting sector specific and functional specialisation in assessment.

Types of Duties

TYPES OF DUTIES

| PARTICULARS | SEC 8B SAFEGUARD DUTY | |
|-------------------------------------|--|--|
| | Old Provision | New Provision |
| | Substantially Amended by F.A. 2020 | |
| OBJECT / CONDITIONS FOR LEVY | <p>If the Central Government, after conducting such enquiry as it deems fit, is satisfied that any article is imported into India in such increased quantities and under such conditions so as to cause or threatening to cause serious injury to domestic industry, then, it may, by notification in the Official Gazette, impose a safeguard duty on that article.</p> <p>COMMENT:</p> <p>1) Domestic industry means the producers - as a whole of the like article or a directly competitive article in India; or whose collective output of the like article or a directly competitive article in India constitutes a major share of the total production of the said article in India.</p> <p>2) "Serious injury" means an injury causing significant overall impairment in the position of a domestic industry;</p> <p>3) "Threat of serious injury" means a clear and imminent danger of serious injury.</p> | <p>If the Central Government, after conducting such enquiry as it deems fit, is satisfied that any article is imported into India in such increased quantities and under such conditions so as to cause or threatening to cause serious injury to domestic industry, then, it may, by notification in the Official Gazette, apply such a safeguard measures on that article, as it deems appropriate</p> <p>COMMENT:</p> <p>1) Domestic industry means the producers - ⇒ <i>a directly competitive article in India; or</i> ⇒ <i>whose collective output of the like article or a directly competitive article in India constitutes a major share of the total production of the said article in India.</i></p> <p>2) "Serious injury" means an injury causing significant overall impairment in the position of a domestic industry;</p> <p>3) "Threat of serious injury" means a clear and imminent danger of serious injury.</p> |
| RATE | <p>Safeguard duty of customs of such amount as determined by Central Govt. which normally equal to Injury Margin.</p> | <p>The safeguard measures shall <i>include imposition of</i> ⇒ <i> safeguard duty,</i> ⇒ <i> application of tariff-rate quota or</i> ⇒ <i>such other measure,</i> as the Central Government may consider appropriate,</p> <p>to curb the increased quantity of imports of an article to prevent serious injury to domestic industry:</p> <p>Where tariff-rate quota is used as a safeguard measure, the Central Government shall <i>not fix such quota lower than the average level of imports in the last three representative years for which statistics are available,</i> unless a different level is deemed necessary to prevent or remedy serious injury.</p> <p>The Central Government may allocate such tariff-rate quota to supplying countries having a substantial interest in supplying the article concerned, in such manner as may be provided by rules.</p> |

Question 1 - In year 2020, the import of toys in increased in huge quantity. One survey shows that the increased quantity of imported toys will cause serious injury to trade in India. To prevent industries in India which type of measures government can apply to reduce the importation of toys in increased quantities?

Answer- If the Central Government, after conducting such enquiry as it deems fit, is satisfied that any article is imported into India in such increased quantities and under such conditions so as to cause or threatening to cause serious injury to domestic industry, then, it may, by notification in the Official Gazette, apply such a safeguard measures on that article, as it deems appropriate.

In this case government can levy the **SAFEGUARD MEASURES** under section 8B of customs act, 1962, to reduce the increased quantity of import of toys.

Safeguard Measures-

The safeguard measures shall include imposition of

- i) safeguard duty,
- ii) application of tariff-rate quota or
- iii) such other measure,

as the Central Government may consider appropriate, to curb the increased quantity of imports of an article to prevent serious injury to domestic industry.

Where tariff-rate quota is used as a safeguard measure, the Central Government shall not fix such quota lower than the average level of imports in the last three representative years for which statistics are available, unless a different level is deemed necessary to prevent or remedy serious injury.

The Central Government may allocate such tariff-rate quota to supplying countries having a substantial interest in supplying the article concerned, in such manner as may be provided by rules.