

SYNOPSIS OF NOTIFICATIONS, CIRCULARS & LETTERS

- ❖ **CBIC vide Notification No. 09/2022-CT dated 5th July, 2022** had appointed 5th day of July, 2022 as date on which following provision of Finance Act, 2022 shall come into force.

- **SECTION 110 (C) OF FINANCE ACT, 2022**

SECTION 49(10) of CGST Act, 2017 – PAYMENT OF TAX, INTEREST, PENALTY & OTHER AMOUNTS

Section 49(10) is amended whereby a registered person can transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under CGST Act to the electronic cash ledger of:

- a) IGST, CGST, SGST, UGST or Cess; or
- b) IGST or CGST of a distinct person as specified in section 25(4) & 25(5) (i.e. other registered branches/vertical of same assessee).

Provided, that no such transfer under clause (b) shall be allowed if the said registered person has any unpaid liability in his electronic liability register.

Transfer of balance in electronic cash ledger shall be deemed to be a refund from electronic cash ledger.

- **SECTION 111 OF FINANCE ACT, 2022**

SECTION 50(3) – INTEREST ON EXCESS CLAIM OF INPUT TAX CREDIT (AMENDED RETROSPECTIIVELY WITH EFFECT FROM 1st JULY 2017)

Presently, section 50(3) provides for Interest at the rate of 24% for undue or excess claim of ITC

Section 50(3) is amended to provide that Interest would be leviable at the rate not exceeding 24% on ITC only when such credit is wrongly availed and utilized. Thus, there will not be levy/recovery of interest on excess claim of ITC to the tune not utilised. This amendment is retrospectively inserted w.e.f. 1st July, 2017

- ❖ **CBIC vide Notification No. 10/2022-CT dated 5th July, 2022** has exempted registered person whose aggregate turnover is up to 2 crores in the financial year 2021-22 from filing annual return for said financial year.
- ❖ **CBIC vide Notification No. 11/2022-CT dated 5th July, 2022** has extended due date of furnishing FORM GST CMP 08 (Payment cum statement to be furnished by composition dealer declaring outward supplies along with self-assessed tax liability) for quarter ended June, 2022 till 31st July, 2022
- ❖ **CBIC vide Notification No. 12/2022-CT dated 5th July, 2022** has waived the late fees payable for delay in furnishing of FORM GSTR-4 (Annual Return) for the Financial Year 2021-22 provided return is filed between 1st day of May, 2022 till the 28th day of July, 2022. Before, this amendment the late fees was waived if said return is filed between 1st May, 2022 till 30th June, 2022.
- ❖ **CBIC vide Notification No. 13/2022-CT dated 5th July, 2022** has extended dates for following compliances in exercise of power under section 168A of CGST Act
 - Extends the time limit specified under Section 73(10) for issuance of order under section 73(9) in respect of SCN for recovery of tax not paid or short paid or input tax credit wrongly availed or utilized, in respect of a tax period for the financial year 2017-18, up to the 30th day of September, 2023.
 - Excludes the period from the 1st March, 2020 to 28th February, 2022 for computation of period of limitation under section 73(10) for issuance of order under section 73(9) , for recovery of erroneous refund granted.

- Excludes the period from the 1st March, 2020 to 28th February, 2022 for computation of period of limitation for filing refund application under section 54 or section 55 of the said Act

This notification shall be deemed to have come into force with effect from the 1st day of March, 2020.

❖ **CBIC vide Notification No. 14/2022-CT dated 5th July, 2022** has amended CGST Rules, 2017 w.e.f. 5th July, 2022 (unless otherwise specified in particular rule) as follows:

- **Rule 21A (4)** – New Proviso has been inserted which provide that where the registration has been suspended under sub-rule (2A) for contravention of the provisions contained in section 29 (2) (b) or clause (c) and the registration has not already been cancelled by the proper officer under rule 22, the suspension of registration shall be deemed to be revoked upon furnishing of all the pending returns
- **Explanation 1 to Rule 43** – Clause (d) inserted which provide that for the purposes of rule 42 and 43, it is hereby clarified that the aggregate value of exempt supplies shall exclude

*(d) the value of supply of **Duty Credit Scrips** specified in the notification 35/2017-Central Tax (Rate), dated the 13th October, 2017*

- **Rule 46** – New clause (s) inserted which provide that a tax invoice referred to in section 31 shall be issued by the registered person containing a declaration given hereunder, in all cases where an invoice is issued, other than in the manner so specified under Rule 48 (4), by the taxpayer having aggregate turnover in any preceding financial year from 2017-18 onwards, more than the aggregate turnover as notified under the said Rule 48(4)

“I/We hereby declare that though our aggregate turnover in any preceding financial year from 2017-18 onwards is more than the aggregate turnover notified under sub-rule (4) of rule 48, we are not required to prepare an invoice in terms of the provisions of the said sub-rule.”

To summarise, the said amendment makes it mandatory, for those special category of taxpayers who are exempted from generating IRN even after passing the threshold limit, to make a specific declaration in the invoice indicating the specific exclusion.

- **Rule 86 (4B)** – New sub rule has been inserted which provide that where a registered person deposits the amount of erroneous refund sanctioned to him, –

(a) under sub-section (3) of section 54 of the Act, or

(b) under sub-rule (3) of rule 96, in contravention of sub-rule (10) of rule 96,

along with interest and penalty, wherever applicable, through FORM GST DRC-03, by debiting the electronic cash ledger, on his own or on being pointed out, an amount equivalent to the amount of erroneous refund deposited by the registered person shall be re-credited to the electronic credit ledger by the proper officer by an order made in FORM GST PMT-03A.

- Rule 87 (3) - The deposit under electronic cash account can also be made through

“(ia) Unified Payment Interface (UPI) from any bank;

(ib) Immediate Payment Services (IMPS) from any bank;

- Rule 87 (14) – New sub rule has been inserted which provide that a registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under the Act to the electronic cash ledger for central tax or integrated tax of a distinct person as specified in sub-section (4) or, as the case may be, sub-section (5) of section 25, in FORM GST PMT- 09:

Provided that no such transfer shall be allowed if the said registered person has any unpaid liability in his electronic liability register.”;

- **Rule 88B** – New Rule has been inserted which provide as follows:

“88B. Manner of calculating interest on delayed payment of tax.-

- (1) In case, where the supplies made during a tax period are declared by the registered person in the return for the said period and the said return is furnished after the due date in accordance with 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, the interest on tax payable in respect of such supplies shall be calculated on the portion of tax which is paid by debiting the electronic cash ledger, for the period of delay in filing the said return beyond the due date, at such rate as may be notified under sub-section (1) of section 50.
- (2) In all other cases, where interest is payable in accordance with sub section (1) of section 50, the interest shall be calculated on the amount of tax which remains unpaid, for the period starting from the date on which such tax was due to be paid till the date such tax is paid, at such rate as may be notified under sub-section (1) of section 50.
- (3) In case, where interest is payable on the amount of input tax credit wrongly availed and utilised in accordance with sub-section (3) of section 50, the interest shall be calculated on the amount of input tax credit wrongly availed and utilised, for the period starting from the date of utilisation of such wrongly availed input tax credit till the date of reversal of such credit or payment of tax in respect of such amount, at such rate as may be notified under said sub-section (3) of section 50.

Explanation. -For the purposes of this sub-rule, -

- (1) ITC wrongly availed shall be construed to have been utilised, when the balance in the electronic credit ledger falls below the amount of ITC wrongly availed, and the extent of such utilisation of ITC shall be the amount by which the balance in the electronic credit ledger falls below the amount of ITC wrongly availed.
 - (2) the date of utilisation of such ITC shall be taken to be, -
 - (a) the date, on which the return is due to be furnished under section 39 or the actual date of filing of the said return, whichever is earlier, if the balance in the electronic credit ledger falls below the amount of ITC wrongly availed, on account of payment of tax through the said return; or
 - (b) the date of debit in the electronic credit ledger when the balance in the electronic credit ledger falls below the amount of ITC wrongly availed, in all other cases.”;
- **Rule 89** – Explanation has been inserted after 4th proviso to subrule (1) which provide that for the purposes of this sub-rule, “specified officer” means a “specified officer” or an “authorised officer” as defined under rule 2 of the Special Economic Zone Rules, 2006.

For Electricity Exports a separate refund application has been prescribed and accordingly the relevant rule is amended as under:

- **Rule 89(2)(ba)** – New sub rule has been inserted which provide that a statement containing the number and date of the export invoices, details of energy exported, tariff per unit for export of electricity as per agreement, along with the copy of statement of scheduled energy for exported electricity by Generation Plants issued by the Regional Power Committee Secretariat as a part of the Regional Energy Account (REA) under clause (nnn) of sub-regulation 1 of Regulation 2 of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 and the copy of agreement detailing the tariff per unit, in case where refund is on account of export of electricity;”
- **Rule 89(4)** – Explanation has been inserted which provide that for the purposes of this sub-rule, the value of goods exported out of India shall be taken as –
 - (i) the Free on Board (FOB) value declared in the Shipping Bill or Bill of Export form, as the case may be, as per the Shipping Bill and Bill of Export (Forms) Regulations, 2017; or

(ii) the value declared in tax invoice or bill of supply,
whichever is less.”;

- **Rule 89(5)** - The said rule has been substituted to provide that in the case of refund on account of inverted duty structure, refund of ITC shall be granted as per the following formula:-

Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} - {tax payable on such inverted rated supply of goods and services x (Net ITC ÷ ITC availed on inputs and input services)}

- **Rule 95A** – Refund of taxes to the retail outlets established in departure area of an international Airport beyond immigration counters making tax free supply to an outgoing international tourist shall be omitted w.e.f. 1st July, 2019.

- **Rule 96 (1)** – Clause (b) has been substituted & deemed to be substituted w.e.f. 1st July, 2017 to provide that (b) the applicant has furnished a valid return in FORM GSTR-3B:

Provided that if there is any mismatch between the data furnished by the exporter of goods in Shipping Bill and those furnished in statement of outward supplies in FORM GSTR-1, such application for refund of integrated tax paid on the goods exported out of India shall be deemed to have been filed on such date when such mismatch in respect of the said shipping bill is rectified by the exporter;”;

- Procedural aspects in respect of withholding of refund of Integrated tax paid on goods exported out of India as prescribed in Rule 96 (5), 96(6) & 96 (7) shall deemed to be omitted w.e.f. 1st July, 2017 and corresponding insertion is made in sub-rule (5A), (5B) and (5C) as under.

- **Rule 96(5A)** shall be deemed to be inserted w.e.f. 1st July, 2017

(5A) Where refund is withheld in accordance with the provisions of clause (a) or clause (c) of sub-rule (4), such claim shall be transmitted to the proper officer of Central tax, State tax or Union territory tax, as the case may be, electronically through the common portal in a system generated FORM GST RFD-01 and the intimation of such transmission shall also be sent to the exporter electronically through the common portal, and notwithstanding anything to the contrary contained in any other rule, the said system generated form shall be deemed to be the application for refund in such cases and shall be deemed to have been filed on the date of such transmission.

(5B) Where refund is withheld in accordance with the provisions of clause (b) of sub-rule (4) and the proper officer of the Customs passes an order that the goods have been exported in violation of the provisions of the Customs Act, 1962 (52 of 1962), then, such claim shall be transmitted to the proper officer of Central tax, State tax or Union territory tax, as the case may be, electronically through the common portal in a system generated FORM GST RFD-01 and the intimation of such transmission shall also be sent to the exporter electronically through the common portal, and notwithstanding anything to the contrary contained in any other rule, the said system generated form shall be deemed to be the application for refund in such cases and shall be deemed to have been filed on the date of such transmission.

(5C) The application for refund in FORM GST RFD-01 transmitted electronically through the common portal in terms of sub-rules (5A) and (5B) shall be dealt in accordance with the provisions of rule 89.”;

- Various amendments in Form GSTR 3B has been made wherein columns were added for disclosing turnover and tax liability related to E commerce operator, etc.
- Notified Optional reporting requirement in Form GSTR 9 and Form GSTR 9C for F.Y 2021-22
- New FORM GST PMT-03A being “Order for re-credit of the amount to electronic credit ledger” in terms of Rule 86(4B) has been notified.

- ❖ CBIC vide Notification No. 15/2022-CT dated 13th July, 2022 has amended notification 10/2019-CT dated 7th March, 2019 and 03/2022-CT dated 31st March,2022,thereby person, who is engaged in exclusive supply of “Fly ash bricks, Fly ash aggregates, Fly ash blocks” covered under chapter 6815 required to obtain registration irrespective of the turnover criteria i.e. the limit of 40 lakhs is not applicable . Earlier, the said entry read as “Fly ash bricks or fly ash aggregate with 90 per cent or more fly ash content; Fly ash Blocks”.
- ❖ CBIC vide Notification No. 16/2022-CT dated 13th July, 2022 has amended notification 14/2019-CT dated 7th March, 2019 and 04/2022-CT dated 31st March,2022, thereby person dealing in Fly ash bricks; Fly ash aggregates; Fly ash blocks will not be eligible to opt for composition levy under section 10(1) irrespective of the turnover criteria.
- ❖ CBIC vide Notification No. 03/2022-CT(Rate) dated 13th July, 2022 has made following amendment w.e.f. 18th July, 2022 to principal notification 11/2017-CT (Rate) dated 28th July, 2017 (i.e. Rate of GST on various services) as follows: - Notification 3 is taken after 4 & 5

A) CONSTRUCTION SERVICE

The following specific entries are omitted, thereby rate of GST on said service is increased from 12% to 18% under residual entry 3(xii).

➤ **Entry 3(iii)**

Composite supply of works contracts as defined in section 2 (119) of The CGST Act, 2017, supplied to the Central Government, State Government, Union territory or a local authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of, -

- historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);
- canal, dam or other irrigation works;
- pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal.

➤ **Entry 3(iv)**

Composite supply of works contract as defined in section 2 (119) The CGST Act, 2017 other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if), supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-

- (a) a road, bridge, tunnel, or terminal for road transportation for use by general public;
- (b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;
- (c) a civil structure or any other original works pertaining to the “In-situ redevelopment of existing slums using land as a resource, under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban);
- (d) a civil structure or any other original works pertaining to the “Beneficiary led individual house construction / enhancement” under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;
- (da) a civil structure or any other original works pertaining to the “Economically Weaker Section (EWS) houses” constructed under the Affordable Housing in partnership by State or Union territory or local authority or urban development authority under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban);

- (db) a civil structure or any other original works pertaining to the “houses constructed or acquired under the Credit Linked Subsidy Scheme for Economically Weaker Section (EWS)/ Lower Income Group (LIG)/ Middle Income Group-1 (MIG-1)/ Middle Income Group-2 (MIG-2)” under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban);
- (e) a pollution control or effluent treatment plant, except located as a part of a factory; or
- (f) a structure meant for funeral, burial or cremation of deceased.
- (g) a building owned by an entity registered under section 12AA or 12AB of the Income Tax Act, 1961 (43 of 1961), which is used for carrying out the activities of providing, centralised cooking or distribution, for mid-day meals under the mid-day meal scheme sponsored by the Central Government, State Government, Union territory or local authorities

➤ **Entry 3(v)**

Composite supply of works contract as defined in section 2 (119) of The CGST Act, 2017 [other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above], supplied by way of construction, erection, commissioning, or installation of original works pertaining to,-

- (a) railways, including monorail and metro;
- (b) a single residential unit otherwise than as a part of a residential complex;
- (c) low-cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the ‘Scheme of Affordable Housing in Partnership’ framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;
- (d) low-cost houses up to a carpet area of 60 square metres per house in a housing project approved by the competent authority under-
 - (1) the “Affordable Housing in Partnership” component of the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;
 - (2) any housing scheme of a State Government;
- (da) low-cost houses up to a carpet area of 60 square metres per house in an affordable housing project which has been given infrastructure status vide notification of Government of India, in Ministry of Finance, Department of Economic Affairs vide F. No. 13/6/2009-INF, dated the 30th March,2017;
- (e) post-harvest storage infrastructure for agricultural produce including a cold storage for such purposes; or
- (f) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages.

➤ **Entry 3(va)**

Composite supply of works contract as defined in section 2 (119) The CGST Act, 2017, (other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if)), supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of affordable residential apartments covered by sub- clause (a) of clause (xvi) of paragraph 4, in a project which commences on or after 1st April, 2019, or in an ongoing project in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if), as the case may be, in the manner prescribed therein

➤ **Entry 3(vi)**

Composite supply of works contract as defined in section 2 (119) of The CGST Act, 2017, (other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if)) provided to the Central Government, State

Government, Union territory or a local authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of –

- (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;
- (b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or
- (c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the CGST Act, 2017.

➤ **Entry 3(ix)**

Composite supply of works contracts defined in section 2 (119) of The CGST Act, 2017 provided by a sub-contractor to the main contractor providing services specified in item (iii) or item (vi) above to the Central Government, State Government, Union territory or a local authority.

❖ GST rate of following service is increased from 5% to 12%.

➤ **Entry 3(vii)**

Composite supply of works contract defined in section 2 (119) of The CGST Act, 2017, involving predominantly earth work (that is, constituting more than 75 percent of the value of the works contract) provided to the Central Government, State Government, Union territory or a local authority

➤ **Entry 3(x)**

Composite supply of works contracts defined in section 2 (119) of The CGST Act, 2017 provided by a sub-contractor to the main contractor providing services specified in item (vii) above to the Central Government, State Government, Union territory or a local authority

B) ACCOMMODATION SERVICE

Earlier, Supply of 'hotel accommodation' having value of supply of a unit of accommodation up to Rs. 1,000/- was exempted.

The said Exemption is withdrawn, thereby the rate of GST on said hotel accommodation having value of supply of a unit of accommodation up to Rs. 7,500/- will attract GST at the rate of 12%.

C) ROPEWAY SERVICE

New Entry 8(via) has been inserted whereby Transport of passengers, with or without accompanied belongings, by ropeways will attract GST at rate of 5% and the credit of input tax charged on goods used in supplying the service should not be taken

New Entry 9(via) has been inserted whereby Transport of goods by ropeways will attract GST at rate of 5% and the credit of input tax charged on goods used in supplying the service should not be taken

D) GTA SERVICE

Entry 9(iii) has been substituted, whereby Goods transport agency shall have option in each financial year to pay GST at rate of 2.5% under forward charge without availing ITC or at the rate 12% with ITC under forward charge. The said option shall be exercised by GTA by filling a declaration in Annexure V on or before the 15th March of the preceding Financial Year. However, for F.Y 2022-23, the said option can be exercised by GTA by filling declaration in Annexure V on or before 16th August, 2022.

Further, if GTA does not exercise the option to itself pay GST on the services supplied by it, same shall be paid by service recipient under RCM at rate of 5%, simultaneously the GTA shall not take the credit of input tax charged on goods and services used in supplying the service.

Furthermore, if the GTA has opted to pay GST itself (under forward charge), then it has to make a declaration on the invoice as under (as per Notification No. 5/2022-Central Tax (Rate), dated 13th July, 2022 –

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

New Entry 10(ia) has been inserted wherein Renting of goods carriage where the cost of fuel is included in the consideration charged from the service recipient shall attract GST at the rate of 12%.

Entry no. 11(i) and (ii) [Heading 9967] has been substituted for "supporting services in transport". Further, the said entry does not include goods transport service involving Goods Transport Agency (GTA) service, which falls under Heading 9965.

E) FINANCIAL RELATED SERVICE

Entry 15(i) has been omitted thereby Services provided by a foreman of a chit fund in relation to chit will attract GST at rate of 18% as against erstwhile rate of 12%

F) JOB WORK

Entry 26(i)(e), (ea) & (h) has been omitted thereby Services by way of job work in relation to

(e) Processing of hides, skins and leather falling under Chapter 41 in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975);

(ea) manufacture of leather goods or foot wear falling under Chapter 42 or 64 in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) respectively;

(h) manufacture of clay bricks falling under tariff item 69010010 in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975);"

Will attract GST at rate of 12% as against erstwhile rate of 5%.

G) HOSPITAL SERVICE

New Entry 31A has been inserted wherein GST at rate of 5% shall be levied on Services provided by a clinical establishment by way of providing room [other than Intensive Care Unit (ICU)/Critical Care Unit (CCU)/Intensive Cardiac Care Unit (ICCU)/Neo natal Intensive Care Unit (NICU)] having room charges exceeding Rs. 5,000 per day to a person receiving health care services, provided the credit of input tax charged on goods and services used in supplying the service has not been taken.

H) BIO DEGRADABLE WASTE

New entry 32(ia) has been inserted whereby GST at rate of 12% shall be levied on Services by way of treatment or disposal of biomedical waste or the processes incidental thereto by a common bio-medical waste treatment facility to a clinical establishment.

Following definition are inserted

➤ 'Print media' means, -

(i) 'book' as defined in section 1 (1) of The Press and Registration of Books Act, 1867 (25 of 1867), but does not include business directories, yellow pages and trade catalogues which are primarily meant for commercial purposes;

(ii) 'newspaper' as defined in section 1 (1) of The Press and Registration of Books Act, 1867 (25 of 1867);

➤ "Clinical establishment' means a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in

India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases;

- **"Health care services'** means, -any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma;
- **"Goods Transport Agency'** means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called

- ❖ **CBIC vide Notification No. 04/2022-CT(Rate) dated 13th July, 2022** has made following amendment w.e.f. 18th July, 2022 to principal notification 12/2017-CT(Rate) dated 28th July, 2017 (i.e. Exemption on various services) as follows:

A) SERVICE BY DEPARTMENT OF POST

Earlier, Services by the Central Government, State Government, Union territory or local authority excluding the services by the Department of Posts **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** were exempted

Now, the word "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" are omitted thereby all the service provided by department of posts are made taxable.

However, a new entry 24C has been inserted whereby Services by the Department of Posts by way of post card, inland letter, book post and ordinary post (envelopes weighing less than 10 grams) will be exempted.

B) RESIDENTIAL DWELLING

Earlier, Services by way of renting of residential dwelling for use as residence was exempted from payment of GST. Now, the said entry is amended to provide that Services by way of renting of residential dwelling for use as residence except where the residential dwelling is rented to a registered person

Thus, an exception has been carved out, thereby renting of residential dwelling to registered person will be taxable.

C) ACCOMMODATION SERVICE

Entry 14 has been omitted, thereby Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having "value of supply" of a unit of accommodation below or equal to Rs. 1,000 per day or equivalent will be liable to GST at the rate of 12%.

D) TRANSPORTATION OF PASSENGER

Earlier, Transport of passengers, with or without accompanied belongings, by air, embarking from or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal was exempted.

Now, the said entry is substituted to provide that Transport of passengers, with or without accompanied belongings, by air **in economy class**, embarking from or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal is exempt.

Thus, Transport of passengers by Air to and from North-East States & Bagdogra located in West Bengal in other than economy class will be taxable.

E) TRANSPORTATION BY RAIL/VESSEL

Earlier, Services by way of transportation of railway equipment's or materials by rail or a vessel from one place in India to another was exempted.

Now, the said exemption is withdrawn thereby transportation of railway equipment's or materials by rail or a vessel from one place in India to another will be taxable.

F) GOODS TRANSPORT AGENCY

Services provided by a goods transport agency, by way of transport in a goods carriage of

b) goods, where consideration charged for the transportation of goods on a consignment transported in a single carriage does not exceed Rs. 1,500/-

(c) goods, where consideration charged for transportation of all such goods for a single consignee does not exceed Rs. 750

was currently exempted.

The said exemption is withdrawn thereby Services provided by a goods transport agency, by way of transport in a goods carriage will be liable to tax without any threshold limit.

G) STORAGE SERVICE

The Services by way of storage or warehousing of cereals, pulses, fruits, nuts and vegetables, spices, copra, sugarcane, jaggery, raw vegetable fibres such as cotton, flax, jute etc., indigo, unmanufactured tobacco, betel leaves, tendu leaves, coffee and tea was currently exempted.

Now the said entry is substituted to provide that Services by way of storage or warehousing of cereals, pulses, fruits and vegetables will be exempted.

Thus, Services by way of storage or warehousing of nuts, spices, copra, sugarcane, jaggery, raw vegetable fibres such as cotton, flax, jute etc., indigo, unmanufactured tobacco, betel leaves, tendu leaves, coffee and tea will be taxable.

H) SERVICE BY RBI

Entry 26 exempted Services by the Reserve Bank of India.

The said entry is omitted thereby Services by the Reserve Bank of India will be taxable.

I) SERVICE BY IRDA

Entry 32 exempted Services provided by the Insurance Regulatory and Development Authority of India to insurers under The Insurance Regulatory and Development Authority of India Act, 1999

The said entry is omitted thereby Services provided by the IRDA to insurers under the IRDA Act, 1999 will be taxable.

J) SERVICE BY SEBI

Entry 33 exempted Services provided by the SEBI set up under The Securities and Exchange Board of India Act, 1992 (15 of 1992) by way of protecting the interests of investors in securities and to promote the development of, and to regulate, the securities market

The said entry is omitted. Thus, Service provided by SEBI by way of protecting the interests of investors in securities and to promote the development of, and to regulate, the securities market will be taxable.

K) SERVICE BY FSSAI

Entry 47A exempted Services by way of licensing, registration and analysis or testing of food samples supplied by The Food Safety and Standards Authority of India (FSSAI) to Food Business Operators.

The said entry is omitted. Thereby Services by way of licensing, registration and analysis or testing of food samples supplied by the FSSAI to Food Business Operators will be taxable

L) SERVICE BY GSTN

Entry 51 exempted Services provided by the Goods and Services Tax Network to the Central Government or State Governments or Union territories for implementation of Goods and Services Tax

The said entry is omitted. Thereby Service provided by GSTN to CG, SG or UT for implementation of GST will be taxable.

M) TOUR OPERATOR SERVICE

New entry 52A has been inserted which provide that Tour operator service, which is performed partly in India and partly outside India, supplied by a tour operator to a foreign tourist, to the extent of the value of the tour operator service which is performed outside India will be exempted

Provided that value of the tour operator service performed outside India shall be such proportion of the total consideration charged for the entire tour which is equal to the proportion which the number of days for which the tour is performed outside India has to the total number of days comprising the tour, or 50% of the total consideration charged for the entire tour, whichever is less:

Provided further that in making the above calculations, any duration of time equal to or exceeding 12 hours shall be considered as one full day and any duration of time less than 12 hours shall be taken as half a day.

Explanation. - "foreign tourist" means a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purposes.

Illustrations:

A tour operator provides a tour operator service to a foreign tourist as follows: -

(a) 3 days in India, 2 days in Nepal; Consideration Charged for the entire tour: Rs. 1,00,000

Exemption: Rs.40,000/- (=Rs.1,00,000/- x 2/5) or, Rs.50,000/- (= 50% of Rs.1,00,000/-) whichever is less, i.e., Rs.40,000/- (i.e., Taxable value: Rs.60,000/-);

(b) 2 days in India, 3 nights in Nepal; Consideration Charged for the entire tour: Rs. 1,00,000

Exemption: Rs.60,000(=Rs.1,00,000/- x 3/5) or, Rs.50,000/- (= 50% of Rs.1,00,000/-) whichever is less, i.e., Rs.50,000/- (i.e., Taxable value: Rs.50,000/-);

(c) 2.5 days in India, 3 days in Nepal; Consideration charged for the entire tour: Rs.1,00,000

Exemption: Rs.54,545 (=Rs.1,00,000/- x 3/5.5) or, Rs.50,000/- (= 50% of Rs.1,00,000) whichever is less, i.e., Rs.50,000/- (i.e., Taxable value: Rs.50,000/-)

N) FUMIGATION SERVICE

Entry 53A exempted Services by way of fumigation in a warehouse of agricultural produce.

The said entry is omitted. Thereby Services by way of fumigation in a warehouse of agricultural produce will be taxable. Simultaneously, the said service is also omitted from entry 54.

O) SLAUGHTERING OF ANIMALS

Entry 56 exempted Services by way of slaughtering of animals.

The said entry is omitted, thereby Services by way of slaughtering of animals will be taxable.

P) CORD BLOOD BANKS

Entry 73 exempted Services provided by the cord blood banks by way of preservation of stem cells or any other service in relation to such preservation.

The said entry is omitted, thereby Services provided by the cord blood banks by way of preservation of stem cells or any other service in relation to such preservation will be taxable.

Q) BIO-MEDICAL WASTE

Entry 75 exempted Services provided by operators of the common bio-medical waste treatment facility to a clinical establishment by way of treatment or disposal of bio-medical waste or the processes incidental thereto.

The said entry is omitted. Thereby Services provided by operators of the common bio-medical waste treatment facility to a clinical establishment by way of treatment or disposal of bio-medical waste or the processes incidental thereto will be taxable.

R) TRAINING & COACHING RELATED TO ART OR CULTURE

Entry 80 exempted Services by way of training or coaching in recreational activities relating to-

- (a) arts or culture, or
- (b) sports by charitable entities registered under section 12AA or 12AB of the Income-tax Act

The said entry is substituted to provide that Services by way of training or coaching in-

- (a) recreational activities relating to arts or culture, **by an individual**, or
- (b) sports by charitable entities registered under Section 12AA or 12AB of the Income Tax Act

Thus, Services by way of training or coaching in recreational activities relating to arts & culture will become taxable except when provided by an individual.

- ❖ **CBIC vide Notification No. 05/2022-CT(Rate) dated 13th July, 2022** has made following amendment w.e.f. 18th July, 2022 to principal notification 13/2017-CT (Rate) dated 28th July, 2017 (i.e. RCM on various services) as follows

A) SERVICE BY DEPARTMENT OF POST

Services by the Central Government, State Government, Union territory or local authority to business entity excluding the services by the Department of Posts **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** was required to be paid under RCM by business entity located in taxable territory.

The word "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" are omitted thereby the service provided by department of posts are required by paid under Forward charge by department of POST.

B) RENTING OF RESIDENTIAL DWELLING

New entry 5AA has been inserted which provide that Service by way of renting of residential dwelling to a registered person shall be paid under RCM by said registered person (i.e. lessee)

- ❖ **CBIC vide Notification No. 06/2022-CT(Rate) & 07/2022-CT (Rate) dated 13th July, 2022** has made various amendment w.e.f. 18th July, 2022 to principal notification 1/2017-CT (Rate) dated 28th July, 2017 (i.e. GST rate on goods & exemption) in respect of rate of goods

Supply of specified food items, grains etc. are currently exempted if such goods are not branded, or w.r.t. goods for which right on the brand has been forgone. However, in 47th GST council meeting, it was proposed to withdraw these exemption entries and introduce new exemptions for goods which are supplied in pre-packaged and pre-labelled retail pack per Legal Metrology Act. Accordingly, the said notifications are issued to give effect to the recommendations of the GST Council.

The expression 'pre-packaged and labelled' means a 'pre-packaged commodity' as defined in clauses (l) of section 2 of the Legal Metrology Act, 2009 (1 of 2010) where, the package in which the commodity is pre-

packed or a label securely affixed thereto is required to bear the declarations under the provisions of the Legal Metrology Act, 2009 (1 of 2010) and the rules made thereunder

Also, there were few changes in GST rates for various goods (i.e., 5% to 12%/18% and 12% to 18%/5%). This was done mainly to remove the inverted duty structure in present the GST rates. Further, a new schedule has been added (0.75% GST rate).

- ❖ **CBIC vide Notification No. 08/2022-CT- Rate dated 13th July, 2022** has amended Principal notification 3/2017-CT (rate) to increase the rate of GST from 5% to 12% on

Goods specified in the List annexed to notification 3/2017-CT (rate) required in connection with:

- (1) Petroleum operations undertaken under petroleum exploration licenses or mining leases, granted by the Government of India or any State Government to the Oil and Natural Gas Corporation or Oil India Limited on nomination basis, or
- (2) Petroleum operations undertaken under specified contracts, or
- (3) Petroleum operations undertaken under specified contracts under the New Exploration Licensing Policy, or
- (4) Petroleum operations undertaken under specified contracts under the Marginal Field Policy (MFP), or
- (5) Coal bed methane operations undertaken under specified contracts under the Coal Bed Methane Policy.
- (6) Petroleum operations or coal bed methane operations undertaken under specified contracts under the Hydrocarbon Exploration Licensing Policy (HELP) or Open Acreage Licensing Policy (OALP)

- ❖ **CBIC vide Notification No. 09/2022-CT- Rate dated 13th July, 2022** has amended notification 5/2017-CT (Rate) dated 28th July, 2017 to including following goods on which no refund of unutilized ITC on account of inverted duty structure shall be granted w.e.f. 18th July, 202

Entry Number	HSN	Description
1A.	1507	Soya-bean oil and its fractions, whether or not refined, but not chemically modified
1B.	1508	Ground-nut oil and its fractions, whether or not refined, but not chemically modified.
1C.	1509	Olive oil and its fractions, whether or not refined, but not chemically modified.
1D.	1510	Other oils and their fractions, obtained solely from olives, whether or not refined, but not chemically modified, including blends of these oils or fractions with oils or fractions of heading 1509
1E.	1511	Palm oil and its fractions, whether or not refined, but not chemically modified.
1F.	1512	Sunflower-seed, safflower or cotton-seed oil and fractions thereof, whether or not

		refined, but not chemically modified.
1G.	1513	Coconut (copra), palm kernel or babassu oil and fractions thereof, whether or not refined, but not chemically modified.
1H.	1514	Rape, colza or mustard oil and fractions thereof, whether or not refined, but not chemically modified.
1I.	1515	Other fixed vegetable or microbial fats and oils (including jojoba oil) and their fractions, whether or not refined, but not chemically modified.
1J.	1516	Vegetable fats and oils and their fractions, partly or wholly hydrogenated, inter-esterified, re-esterified or elaidinised, whether or not refined, but not further prepared.
1K.	1517	Edible mixtures or preparations of vegetable fats or vegetable oils or of fractions of different vegetable fats or vegetable oils of this Chapter, other than edible fats or oils or their fractions of heading 1516
1L.	1518	Vegetable fats and oils and their fractions, boiled, oxidised, dehydrated, sulphurised, blown, polymerised by heat in vacuum or in inert gas or otherwise chemically modified, excluding those of heading 1516
1M.	2701	Coal; briquettes, ovoids and similar solid fuels manufactured from coal
1N.	2702	Lignite, whether or not agglomerated, excluding jet
1O.	2703	Peat (including peat litter), whether or not agglomerated"

- ❖ **CBIC vide Notification No. 10/2022-CT(Rate) dated 13th July, 2022** has amended entry 1 of notification 2/2022 –CT (rate) dated 31st march, 2022 which provided that 3% (Concessional rate of GST) on Fly ash bricks or fly ash aggregate with 90 % or more fly ash content; Fly ash blocks was applicable

The said entry is amended to provide 3% rate of GST on Fly ash bricks; Fly ash aggregates; Fly ash blocks. Thus, all fly ash aggregates whether with 90% or less fly ash content will attract concessional GST rate

Consequent amendment is made in notification 10/2019- CT dated 7th march, 2019 (Exemption from registration in case of aggregate turnover is less than 40 lakhs) and notification 14/2019-CT dated 7th March, 2019 (limit of threshold of aggregate turnover for availing composition scheme u/s 10 of CGST Act, 2017)

- ❖ **CBIC vide Notification No. 11/2022-CT(Rate) dated 13th July, 2022** has rescinded the notification No. 45/2017-Central Tax (Rate),dated the 14th November, 2017 which provided concessional rate of 2.5% on scientific & technical equipment and other accessories / parts supplied to public funded research institution and various other institutions / organisations as specified therein.
- ❖ **CBIC vide circular no. 170/02/2022-GST dated 6th July, 2022** has clarified that it is mandatory to furnish correct and proper information of inter-State supplies made to unregistered person, composite taxable person and UIN holder in return in statement in FORM GSTR-1 and FORM GSTR-3B.. It is clarified in said circular that registered person making interstate supply:

- To unregistered person, shall report details of such supplies, place of supply wise in table 3.2 of Form GSTR3B and table 7B or Table 5 or Table 9/10 of Form GSTR1 as the case may be.
- To registered person (composition taxable person) or UIN holder, shall report the details of such supplies including Place of supply wise in table 3.2 of Form GSTR3B and table 4A or 4C or 9 of Form GSTR1 as the case may be

It is also clarified that amount of ineligible/blocked Input Tax Credit and reversal thereof in return in statement in FORM GSTR-1 and FORM GSTR-3B. It is clarified in said circular that registered person making interstate supply:

- The Total ITC should be reflected in Table 4A of GSTR 3B
- Reversal of ITC which is absolute and not reclaimable as per section 17(5) , Rule 42, 43 and 38 be reflected in Table 4B (1)
- Reversal of ITC which is not permanent and reclaimable as per Rule 37 be reported in Table 4B (2)
- Net ITC be reflected under Table 4C.

- ❖ **CBIC vide circular no. 171/03/2022-GST dated 6th July, 2022** has clarified various issues relating to applicability of demand and penalty provisions under The CGST Act, 2017 in respect of transactions involving fake invoices as follows:

- **Case 1 :** In case where a registered person "A" has issued tax invoice to another registered person "B" without any underlying supply of goods or services or both, whether such transaction will be covered as "supply" under section 7 of CGST Act and whether any demand and recovery can be made from 'A' in respect of the said transaction under the provisions of section 73 or section 74 of CGST Act.

Also, whether any penal action can be taken against registered person 'A' in such cases.

Clarification : Since there is only been an issuance of tax invoice by the registered person 'A' to registered person 'B' without underlying supply of goods or services or both, therefore, such an activity does not satisfy the criteria of "supply", as defined under section 7 of The CGST Act. As there is no supply by 'A' to 'B' in respect of such tax invoice in terms of the provisions of section 7 of CGST Act, no tax liability arises against 'A' for the said transaction, and accordingly, no demand and recovery is required to be made against 'A' under the provisions of section 73 or section 74 of CGST Act in respect of the same. Besides, no penal action under the provisions of section 73 or section 74 is required to be taken against 'A' in respect of the said transaction.

The registered person 'A' shall, however, be liable for penal action under section 122 (1)(ii) of the CGST Act for issuing tax invoices without actual supply of goods or services or both.

- **Case 2 :** A registered person "A" has issued tax invoice to another registered person "B" without any underlying supply of goods or services or both. 'B' avails ITC on the basis of said tax invoice. B further issues invoice along with underlying supply of goods or services or both to his buyers and utilizes ITC availed on the basis of the above-mentioned invoices issued by 'A', for payment of his tax liability in respect of his said outward supplies. Whether 'B' will be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 73 or section 74 or any other provisions of the CGST Act

Clarification : Since the registered person 'B' has availed and utilized fraudulent ITC on the basis of the said tax invoice, without receiving the goods or services or both, in contravention of the provisions of section 16(2)(b) of CGST Act, he shall be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 74 of the CGST Act, along with applicable interest under provisions of section 50 of the said Act.

Further, as per provisions of section 75(13) of CGST Act, if penal action for fraudulent availment or utilization of ITC is taken against 'B' under section 74 of CGST Act, no penalty for the same act, i.e. for the said fraudulent availment or utilization of ITC, can be imposed on 'B' under any other provisions of CGST Act, including under section 122.

- **Case 3:** A registered person 'A' has issued tax invoice to another registered person 'B' without any underlying supply of goods or services or both. 'B' avails ITC on the basis of the said tax invoice and further passes on the said ITC to another registered person 'C' by issuing invoices without underlying supply of goods or services or both. Whether 'B' will be liable for the demand and recovery and penal action, under the provisions of section 73 or section 74 or any other provisions of the CGST Act.

Clarification: In this case, the ITC availed by 'B' in his electronic credit ledger on the basis of tax invoice issued by 'A', without actual receipt of goods or services or both, has been utilized by 'B' for passing on of ITC by issuing tax invoice to 'C' without any underlying supply of goods or services or both. As there was no supply of goods or services or both by 'B' to 'C' in respect of the said transaction, no tax was required to be paid by 'B' in respect of the same. The ITC availed by 'B' in his electronic credit ledger on the basis of tax invoice issued by 'A', without actual receipt of goods or services or both, is ineligible in terms of section 16 (2)(b) of the CGST Act. In this case, there was no supply of goods or services or both by 'B' to 'C' in respect of the said transaction and also no tax was required to be paid in respect of the said transaction. Therefore, in these specific cases, no demand and recovery of either ITC wrongly/ fraudulently availed by 'B' in such case or tax liability in respect of the said outward transaction by 'B' to 'C' is required to be made from 'B' under the provisions of section 73 or section 74 of CGST Act.

However, in such cases, 'B' shall be liable for penal action both under section 122(1)(ii) and section 122(1)(vii) of the CGST Act, for issuing invoices without any actual supply of goods and/or services as also for taking/ utilizing ITC without actual receipt of goods and/or services.

❖ **CBIC vide circular no. 172/04/2022-GST dated 6th July, 2022** has issued following clarification

➤ Refund claimed by the recipients of supplies regarded as deemed export

- **Question 1 :** Whether the ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports would be subjected to provisions of Section 17 of the CGST Act, 2017.

- **Clarification:** The refund in respect of deemed export supplies is the refund of tax paid on such supplies. However, the recipients of deemed export supplies were facing difficulties on the portal to claim refund of tax paid due to requirement of the portal to debit the amount so claimed from their electronic credit ledger. Considering this difficulty, the tax paid on such supplies, has been made available as ITC to the recipients vide Circular No. 147/03/2021-GST dated 12.03.2021 only for enabling them to claim such refunds on the portal. The ITC of tax paid on deemed export supplies, allowed to the recipients for claiming refund of such

tax paid, is not ITC in terms of the provisions of Chapter V of the CGST Act, 2017. Therefore, the ITC so availed by the recipient of deemed export supplies would not be subjected to provisions of Section 17 of the CGST Act, 2017.

- **Question 2 :** Whether the ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is to be included in the "Net ITC" for computation of refund of unutilised ITC under rule 89(4) & rule 89 (5) of the CGST Rules, 2017
 - **Clarification :** The ITC of tax paid on deemed export supplies, allowed to the recipients for claiming refund of such tax paid, is not ITC in terms of the provisions of Chapter V of the CGST Act, 2017. Therefore, such ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is not to be included in the "Net ITC" for computation of refund of unutilised ITC on account of zero-rated supplies under rule 89(4) or on account of inverted rated structure under rule 89(5) of the CGST Rules, 2017.
- Clarification on various issues of section 17(5) of The CGST Act
- **Question 1:** Whether the proviso at the end of section 17 (5) (b) of the CGST Act is applicable to the entire clause (b) or the said proviso is applicable only to sub-clause (iii) of clause (b)?
 - **Clarification:** 1. Vide the CGST (Amendment Act) 2018, clause 17(5)(b) of the CGST Act was substituted with effect from 01.02.2019. After the said substitution, the proviso after 17(5)(b) (iii) of the CGST Act provides as under:

"Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force."
 - The said amendment in Section 17(5) of the CGST Act was made based on the recommendations of GST Council in its 28th meeting. The intent of the said amendment in 17(5), as recommended by the GST Council in its 28th meeting, was made known to the trade and industry through the Press Note on Recommendations made during the 28th meeting of the GST Council, dated 21.07.2018. It had been clarified "that scope of input tax credit is being widened, and it would now be made available in respect of Goods or services which are obligatory for an employer to provide to its employees, under any law for the time being in force."
 - Accordingly, it is clarified that the proviso after Section 17(5)(b)(iii) of the CGST Act is applicable to the whole of Section 17(5)(b) of the CGST Act.
 - **Question 2 :** Whether the provisions of Section 17(5)(b)(i) of the CGST Act bar availment of ITC on input services by way of "leasing of motor vehicles, vessels or aircraft" or ITC on input services by way of any type of leasing is barred under the said provisions?

Clarification:

- 1. Section 17(5)(b)(i) of the CGST Act provides that ITC shall not be available in respect of following supply of goods or services or both-

"(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:

Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply"

- 2. It is clarified that “leasing” referred in section 17(5)(b)(i) **refers to leasing of motor vehicles, vessels and aircrafts only and not to leasing of any other items.** Accordingly, availment of ITC is not barred under section 17(5)(b)(i) of the CGST Act in case of leasing, other than leasing of motor vehicles, vessels and aircrafts.

➤ **Perquisites provided by employer to the employees as per contractual agreement**

- **Question 1 :** Whether various perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are liable for GST?
- **Clarification :** Schedule III to the CGST Act provides that “services by employee to the employer in the course of or in relation to his employment” will not be considered as supply of goods or services and hence GST is not applicable on services rendered by employee to employer provided they are in the course of or in relation to employment.
- Any perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are in lieu of the services provided by employee to the employer in relation to his employment. It follows therefrom that perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST when the same are provided in terms of the contract between the employer and employee.

➤ **Utilisation of the amounts available in the electronic credit ledger and the electronic cash ledger for payment of tax and other liabilities**

- **Question 1 :** Whether the amount available in the electronic credit ledger can be used for making payment of any tax under the GST Laws?
- **Clarification:**

In terms of Section 49(4) of CGST Act, the amount available in the electronic credit ledger may be used for making any payment towards output tax under the CGST Act or the IGST Act, subject to the provisions relating to the order of utilisation of input tax credit as laid down in section 49B of the CGST Act read with rule 88A of the CGST Rules.

Rule 86 (2) of the CGST Rules provides for debiting of the electronic credit ledger to the extent of discharge of any liability in accordance with the provisions of section 49 or section 49A or section 49B of the CGST Act.

Further, output tax in relation to a taxable person (i.e. a person who is registered or liable to be registered under section 22 or section 24 of the CGST Act) is defined in clause (82) of section 2 of the CGST Act as the tax chargeable on taxable supply of goods or services or both but excludes tax payable on reverse charge mechanism.

Accordingly, it is clarified that any payment towards output tax, whether self-assessed in the return or payable as a consequence of any proceeding instituted under the provisions of GST Laws, can be made by utilization of the amount available in the electronic credit ledger of a registered person.

It is further reiterated that as output tax does not include tax payable under reverse charge mechanism, implying thereby that the electronic credit ledger cannot be used for making payment of any tax which is payable under reverse charge mechanism.

- **Question 2:** Whether the amount available in the electronic credit ledger can be used for making payment of any liability other than tax under the GST Laws?
- **Clarification:** As per Section 49(4), the electronic credit ledger can be used for making payment of output tax only under the CGST Act or the IGST Act. It cannot be used for making payment of any interest, penalty, fees or any other amount payable under the said acts. Similarly, electronic credit ledger

cannot be used for payment of erroneous refund sanctioned to the taxpayer, where such refund was sanctioned in cash

- **Question 3:** Whether the amount available in the electronic cash ledger can be used for making payment of any liability under the GST Laws?
 - **Clarification:** As per section 49(3) of the CGST Act, the amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of the GST Laws.
- ❖ **CBIC vide circular 173/05/2022 –GST dated 6th July, 2022** has clarified that there may be cases where though inputs and output goods are same, but the output supplies are made under a concessional notification due to which the rate of Tax on output supplies is less than the rate of tax on inputs.
- In such cases, as the rate of Tax of output supply is less than the rate of tax on inputs at the same point of time due to supply of goods by the supplier under such concessional notification, the credit accumulated on account of the same is admissible under inverted rated duty structure, other than the cases where output supply is either Nil rated or fully exempted, etc.
 - Thus, the said Circular clarifies the availability of refund on accumulation of ITC due to supply made under concessional rate notification even when the input and output goods are same.
- ❖ **CBIC vide circular 174/06/2022 –GST dated 6th July, 2022** has clarified that In case where erroneous refund amount is sanctioned to a taxpayer and such amount is deposited with interest and penalty by taxpayer then ITC pertaining to such refund will be recredited through Form GST PMT-03A. The same shall be available on account of:
- ✓ Accumulated ITC
 - ✓ IGST paid on export of goods, in contravention of 96(10)
- The procedure for re-credit has been provided in the circular as follows:
- Deposit erroneous refund in Form DRC-03 (along with reasons).
 - Forward written letter to Jurisdictional officer in Annexure-A
 - Mention in the letter to recredit in ECL of erroneous refund deposited
 - The Proper Officer will verify the deposit of erroneous refund vide DRC 03.
 - On being satisfied, the proper officer will issue order preferably within 30 days in Form PMT-03A.
- ❖ **CBIC Vide Circular 175/07/2022-GST dated 6th July, 2022** has clarified on various aspects related refund claim by electricity exporters as under –
- Filing of refund shall be electronically in Form GST RFD-01 and under the category “Any Other”.
 - The refund application should be filed within the time period of 2 years from the last date of the month, in which the electricity has been exported as per monthly Regional Energy Account (REA) issued by the Regional Power Committee Secretariat.
 - The processing mechanism of the refund claim by the Proper Officer.
- ❖ **CBIC vide Circular 176/08/2022-GST dated 6th July, 2022** has clarified since rule 95A has been omitted, retrospectively w.e.f. 01st July, 2019, vide notification No. 14/2022-Central Tax, dated 5th July, 2022, the Board, withdraws, ab-initio, Circular No 106/25/2019-GST dated 29th June, 2019.