

**JSA Annual Indirect Tax Compendium
January – December 2023**

Indirect Tax



Notifications and Circulars

Customs Tariff ("CT") (Determination of Origin of Goods under the India-Australia Economic Cooperation and Trade Agreement) Rules, 2022¹

1. With signing of the India-Australia Economic Cooperation and Trade Agreement ("ECTA") on April 2, 2022, Central Board of Indirect Taxes and Customs ("CBIC") has notified the CT (Determination of Origin of Goods under the India-Australia Economic Cooperation and Trade Agreement) Rules, 2022 ("CT Rules"). Both the ECTA and the CT Rules came into effect from December 29, 2022.
2. The CT Rules provide for eligibility requirement and procedure to be followed for claiming preferential customs duty on trade in goods under the ECTA.

New functionality along with suitable clarifications issued for filing refund of tax borne by unregistered persons²

CBIC has prescribed the following procedure for unregistered buyers/ recipients to claim refund of tax borne by them in the event of cancellation of contract/ agreement for supply of services by way of construction of flat/ building, or on termination of

long-term insurance policy, where the time limit for issuance of credit note has expired:

1. New functionality has been introduced on the Goods and Services Tax ("GST") common portal, which allows the unregistered persons to take temporary registration (using PAN) in the registered supplier's state and apply for refund under the category 'Refund for Unregistered person';
2. Refund claim will be filed in Form GST RFD - 01 on the common portal, the amount of which cannot exceed the amount of GST charged on the invoice. The unregistered buyers/ recipients need to upload requisite documents along with certificate issued by the supplier and documentary evidence to establish that he has borne the tax incidence and has not passed on the same to any other person;
3. Separate applications for refund must be filed in respect of invoices issued by different suppliers. Further, in case where the suppliers, in respect of whose invoices refund is to be claimed, are registered in different States, the applicant will obtain temporary registration in the each of the concerned States where the said supplier are registered;
4. Further, in case where the time limit for issue of credit note has not expired at the time of cancellation/ termination of agreement, the concerned suppliers can issue credit notes and pass on the benefit to the unregistered buyers/ recipients;
5. Refund application could be filed within 2 (two) years from the 'relevant date', where 'relevant date' for such circumstances has been clarified to be the date of cancellation of the contract/ agreement for supply by the supplier;
6. Such refunds will be scrutinized and processed by the proper officer in a similar manner as other refund claims; and,
7. No refund will be claimed if the amount is less than INR 1,000 (Indian Rupees one thousand). In cases where the amount paid back by the supplier to the unregistered person on cancellation/ termination of agreement/ contract for supply of services is less than amount paid by such unregistered person

¹ Notification No. 112/2022-Customs (N.T.) dated December 22, 2022

² Circular No. 188/20/2022-GST dated December 27, 2022

to the supplier, only the proportionate amount of tax involved in such amount paid back will be refunded to the unregistered person.

CBIC implements e-invoicing for taxpayers having aggregate turnover exceeding INR 5,00,00,000 (Indian Rupees five crore)³

CBIC has issued a notification for revising the limit of aggregate turnover to issue e-invoice(s). As per the notification, with effect from August 1, 2023, e-invoicing is mandatory for every taxpayer with annual aggregate turnover exceeding INR 5,00,00,000 (Indian Rupees five crore) in any financial year.

Service Tax on liquidated damages, compensation and penalty arising out of breach of contract, forfeiture of notice pay, bond, etc.⁴



CBIC⁵ clarified on the levy of service tax on the declared service of "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act" as provided under clause (e) of section 66E of the Service Tax Law. Relying on Circular No. 178/10/2022-GST dated August 3, 2022, CBIC clarified that activities contemplated under Section 66E(e) of the Service Tax Laws, are activities conceived in an independent contractual agreement which specifically refer to such an activity, where one person agrees to an obligation to refrain from an act or to tolerate an act or

to do an act and the other person agrees to pay consideration to the first party for this activity. The Circular also highlights various decisions of CESTAT⁶ which have not been challenged by the Government.

Phased implementation of electronic cash ledger ("ECL") in Customs to be operational with effect from April 1, 2023⁷

In terms of Section 51A of the Customs Act⁸, an importer, exporter or any other person liable to pay duty, fees, etc. under the Customs Act, is required to make a non-interest-bearing deposit with the Government for the purpose of payment. In this regard, phased implementation of ECL⁹ has been prescribed.

CBIC exempts LPG¹⁰ imports from AIDC^{11,12}

The CBIC has issued a notification to exempt imports of LPG, liquified propane and liquified butane from 15% AIDC with effect from September 1, 2023.

Clarification on admissibility of export remittances received in Special INR Vostro Account¹³

CBIC has clarified that the condition of sub-clause (iv) of Section 2(6) of the Integrated Goods and Services Tax ("IGST") Act (i.e., payment for export of service should be in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India ("RBI") is considered to be fulfilled when the Indian exporters, undertaking export of services, are paid the export proceeds in INR from the Special Rupee Vostro Accounts of corresponding banks of the partner trading country, opened by Authorised Dealer banks in India, subject to the conditions/ restrictions mentioned in Foreign Trade Policy 2023 and extant RBI Circulars.

³ Notification No. 10/2023 – Central Tax dated May 10, 2023

⁴ Circular No. 214/1/2023-Service Tax dated February 28, 2023

⁵ Central Board of Indirect Taxes and Customs

⁶ Customs Excise and Service Tax Appellate Tribunal

⁷ Circular No. 09/2023 dated March 30, 2023

⁸ Customs Act, 1962

⁹ The Customs (Electronic Cash Ledger) Regulations, 2022 (ECLR) notified vide Notification No. 20/2022-Customs (N.T.)

dated March 30, 2022 provide the manner of operationalization of ECL and related aspects.

¹⁰ Liquefied Petroleum Gas

¹¹ Agriculture Infrastructure Development Cess

¹² Notification No. 51/2023-Customs dated August 31, 2023

¹³ Circular No. 204/16/2023-GST, dated October 27, 2023

Clarification on determination of place of supply in various cases¹⁴

CBIC has clarified on determination of place of supply for co-location services, services in respect of advertising sectors and service of transportation of goods (through mail and courier):

1. Place of supply of service by way of transportation of goods, including by mail or courier

Sub-section (9) of Section 13 of IGST Act provided that where either the supplier or the recipient of services is located outside India, the place of supply of services of transportation of goods, other than by way of mail or courier, will be the place of destination of such goods. The said sub-section has, however, been omitted with effect from October 1, 2023. It is clarified that the place of supply of services of transportation of goods in such cases will be determined by the default rule under Section 13(2) of IGST Act and not as performance based services under Section 13(3) of IGST Act. Accordingly, in cases where location of recipient of services is available, the place of supply of such services will be the location of recipient of services and in cases where location of recipient of services is not available in the ordinary course of business, the place of supply will be the location of supplier of services. The same principle will be applicable for transportation of goods through mail or courier.

2. Place of supply of services in respect of advertising sector

Case 1 – Supply (sale) of space or supply (sale) of rights to use the space on the hoarding/ structure belonging to vendor to the advertising company for display of their advertisement on the said hoarding/ structure

The hoarding/ structure erected on the land should be considered as an immovable structure or fixture as it has been embedded in the earth. Accordingly, the place of supply of said activity will be governed by Section 12(3)(a) of IGST Act, per which place of supply will be location where such immovable property, i.e., hoarding/structure is located.

Case 2 – Where the advertising company wants to display its advertisement on hoardings/ billboards

at a specific location availing the services of a vendor. The vendor is responsible for display of the advertisement of the advertising company at the said location. During this entire time of display of the advertisement, the vendor is in possession of the hoarding/ structure at the said location on which advertisement is displayed and the advertising company is not occupying the space or the structure.

Such services provided by the vendor to advertising company are purely in the nature of advertisement services provided by the vendor to the advertising company, in respect of which place of supply will be determined in terms of Section 12(2) of IGST Act, i.e., (a) location of a registered recipient, or (b) location of unregistered recipient (if unregistered recipient's record exists)/ location of supplier (if unregistered recipient's record does not exist).

3. Place of supply of services in respect of co-location services

Co-location is a data center facility in which a business/ company can rent space for its own servers and other computing hardware along with various other bundled services related to "Hosting and information technology (IT) infrastructure provision services". A business/ company who avails the co-location services primarily seek security and upkeep of its servers, storage and network hardware, operating systems, system software and may require interacting with the system through a web-based interface for the hosting of its websites or other applications.

In such cases, supply of co-location services cannot be considered as the supply of services by way of renting of immovable property. Therefore, the place of supply of co-location services will not be determined by the provisions of clause (a) of sub-section (3) of Section 12 of the IGST Act but the same will be determined by the default place of supply provision under sub-section (2) of Section 12 of the IGST Act i.e., (a) location of a registered recipient, or (b) location of unregistered recipient (if unregistered recipient's record exists)/ location of supplier (if unregistered recipient's record does not exist),

¹⁴ Circular No. 203/15/2023-GST dated October 27, 2023

However, if the supplier is merely providing physical space on rent along with basic infrastructure, without components of “Hosting and information technology (IT) infrastructure provision services”, then the place of supply will be determined as per clause (a) of sub-section (3) of Section 12 of the IGST Act, i.e., location of the said immovable property.

Action to be initiated by the tax authorities for non-issuance of e-invoices by notified taxpayers who are mandatorily required to issue e-invoice¹⁵

CBIC has issued the Instruction indicating that a list of taxpayers who are mandatorily required to issue e-invoices through electronic invoicing under sub-rule (4) of Rule 48 of the Central Goods and Services Tax (“CGST”) Rules but are not issuing the same will be shared by the GSTN. The Instruction further suggests the actions that can be initiated by the tax authorities against the defaulters.

Clarification on mismatch in input tax credit (“ITC”) availed in FORM GSTR-3B vis-à-vis FORM GSTR-2A for FY 2017-18 and FY 2018-19¹⁶

CBIC noted that during the initial period of implementation of GST, i.e., financial year (“FY”) 2017-18 and FY 2018-19, many suppliers had failed to furnish correct details in Form GSTR-1, which led to deficiencies or discrepancies in Form GSTR-2A of the recipients. However, it has been observed that the concerned recipients had availed ITC on the said supplies in the respective Form GSTR-3B. It was highlighted that Form GSTR-2A could not be made available to the taxpayers on the common portal the initial stages of implementation. Considering the same, in order to address the disputes, inquiries and notices issued by tax officers seeking reversal of ineligible ITC based on mismatch of ITC claimed in Form GSTR-3B vis-à-vis as appearing in Form GSTR-2A for FY 2017-18 and FY 2018-19, CBIC has clarified the following:

1. The proper officer will observe the following procedure in relation to above:

- (a) Seek details from registered persons regarding all invoices on which ITC has been availed in Form GSTR-3B but not reflecting in Form GSTR-2A;
- (b) Proper officer to ascertain if the following conditions as prescribed under Section 16 of CGST Act have been fulfilled:
 - (i) the registered person is in possession of a tax invoice or debit note issued by the supplier or such other tax paying documents;
 - (ii) he has received the goods or services or both;
 - (iii) he has made payment for the amount towards the value of supply, along with tax payable thereon, to the supplier.
- (c) Proper officer to verify whether any reversal of ITC is required to be made in accordance with Section 17 or Section 18 of CGST Act and whether the said ITC has been availed within the time period specified under section 16(4) of the CGST Act;
- (d) Proper officer to verify whether tax on the supply has been paid by the supplier, by adopting the following course of action:
 - (i) For cases where the mismatch between ITC claimed exceeds INR 5,00,000 (Indian Rupees five lakh), then the registered recipient must produce a certificate (containing UDIN) for the concerned supplier from a chartered accountant or a cost accountant, certifying that supplies have been actually made by the supplier to the said registered person and the tax on such supplies has been paid by the supplier in his return in FORM GSTR-3B;
 - (ii) For cases where the mismatch between ITC claimed is up to INR 5,00,000 (Indian Rupees five lakh), then the registered recipient must produce a certificate from the concerned supplier to the effect that said supplies have actually been made by the supplier to the said registered recipient and the tax on the said supplies has been paid by the supplier in his return

¹⁵ Instruction No. CBIC- 20006/15/2023-GST dated October 18, 2023 (“Instruction”)

¹⁶ Circular No. 183/15/2022-GST dated December 27, 2022

in FORM GSTR-3B. No certificate from a chartered accountant or a cost accountant is required.

2. It may be noted that for FY 2017-18, the above relaxations will not be applicable to the claim of ITC made in the FORM GSTR-3B filed after the due date of furnishing return for the month of September, 2018 till the due date of furnishing return for March, 2019, if supplier had not furnished details of the said supply in his FORM GSTR-1 till the due date of furnishing FORM GSTR-1 for the month of March, 2019.
3. These instructions will apply only to the ongoing proceedings of scrutiny/ audit/ investigation, etc. for FY 2017-18 and 2018-19 and not to completed proceedings. However, these instructions will apply in those cases for FY 2017-18 and 2018-19 where any adjudication or appeal proceedings are still pending.

ITC allowed for supply of services by way of transportation of goods to outside India ¹⁷

For supply of services by way of transportation of goods, including by mail or courier, from within India to a place outside India, where both the supplier and the recipient of said services are within India, CBIC has clarified the following:

1. Place of supply of said services will be the destination of goods in accordance with the proviso to Section 12(8) of the IGST Act, 2017 ("IGST Act");
2. As the location of the supplier is in India and the place of supply is outside India, the said supply will be considered as inter-State supply subject to the levy of IGST;
3. The provisions contained under Section 16 and 17 of the CGST Act with regard to availment and apportionment of ITC do not restrict availment of ITC to the recipient of said supply. Accordingly, the recipient of said supply will be eligible to avail ITC of IGST paid in respect of such supply provided other prescribed conditions are fulfilled; and,

Further, the supplier must report the place of supply of said supply in its Form GSTR-1 by selecting State Code '96- Foreign Country'.

Online functionality for dealing with ITC mismatch in Form GSTR-2B vis-à-vis Form GSTR-3B



In accordance with the newly inserted Rule 88D of the CGST Rules, the GSTN¹⁸ has developed a functionality to compare ITC claimed in Form GSTR-3B with ITC available in Form GSTR-2B for each return period. If the claimed ITC in Form GSTR-3B exceeds the available ITC in Form GSTR-2B by a predefined limit or the percentage difference exceeds the configurable threshold, taxpayer will receive an automated intimation in Form DRC-01C. Upon receipt of said intimation, taxpayer will be required to pay to settle the difference through Form DRC-03, or explain the difference within 7 (seven) days. If the taxpayer does not submit its response, then the taxpayer will not be able to file Form GSTR-1 for subsequent period.

Key Highlights of the 48th GST Council Meeting¹⁹

In addition to the issues clarified by the aforesaid circulars, there are certain other key points discussed in the 48th GST Council Meeting, as follows:

1. The Council has recommended insertion of a new rule in the CGST Rules, 2017 ("CGST Rules") to provide the mechanism for the reversal of the ITC where the supplier has not paid the tax within a specified time, along with provision for re-claiming the ITC where the supplier subsequently pays the tax.
2. Amendments proposed to enable unregistered suppliers and composition taxpayers to make intra-state supply of goods through E-Commerce

¹⁷ Circular No. 184/16/2022-GST dated December 27, 2022

¹⁸ Goods and Services Tax Network

¹⁹ Press Release on Goods and Services Tax Council ("the Council") meeting held on December 17, 2022

Operators (recommendation to implement the scheme with effect from October 1, 2023).

3. Recommendation to amend CGST Rules and provide the facility for cancelling registrations of persons required to collect tax at source or deduct tax at source under CGST Act.
4. Merchant trading, in-bond sales and high-sea sales that are now covered under Schedule III to the CGST Act (effective from February 1, 2019), recommended to be covered under said Schedule III retrospectively from July 1, 2017, so as to remove the ambiguity for the intervening period. However, GST refund is not available in cases where tax in respect of such transactions/activities was paid during the period July 1, 2017, to January 31, 2019.
5. Amended proposed in definition of “non-taxable online recipient” and “Online Information and Database Access or Retrieval Services (“OIDAR”)” under IGST Act, respectively, to reduce interpretational issues and litigation on taxation of OIDAR services
6. Recommendation to retrospectively amend CGST Rules (with effect from October 1, 2022) to provide for reversal of ITC only proportionate to the amount not paid to the supplier vis-a-vis the value of the supply.
7. The Council has recommended following amendments relating to offences under GST laws:
 - a) Decriminalization of certain offences, *namely*;
 - i) obstruction or preventing any officer in the discharge of duties; ii) deliberate tempering of material evidence; and iii) failure to supply the required information.
 - b) Minimum threshold of tax amount for initiating prosecution proposed to be raised from INR 1,00,00,000 (Indian Rupees one crore) to INR 2,00,00,000 (Indian Rupees two crore), except for the offences relating to issuance of fake invoices; and,
 - c) Amount payable by the taxpayers for compounding of offences proposed to be reduced from present range of 50% - 150% of tax amount, to 25% - 100%.
8. The GST Council has further proposed that goods falling in lower rate category of 5% under Schedule I of notification No. 1/2017-Central Tax (Rate),

imported for petroleum operations will attract lower rate of 5%, and the rate of 12% shall be applicable only if the general rate is more than 12%.

9. Following clarifications issued with respect to applicable rate of GST:
 - a) Applicable rate of GST on Fryums manufactured using the process of extrusion and falling under CTH 19059030 is 18%.
 - b) Higher rate of compensation cess of 22% is applicable to motor vehicles fulfilling all four conditions, *namely*, i) popularly known as SUV; ii) engine capacity exceeding 1500 (one thousand five hundred) cc; iii) length exceeding 4000 (four thousand) mm; and, iv) ground clearance of 170 (one hundred seventy) mm or above.
 - c) GST on husk of pulses including chilka and concentrates including chuni/churi, khanda proposed to be reduced from 5% to Nil.
 - d) GST on Ethyl alcohol supplied to refineries for blending with motor spirit (petrol) proposed to be reduced from 18% to 5%.

Decisions in the 49th GST Council Meeting dated February 18, 2023



1. The GST Council has adopted the report of Group of Ministers (“GoM”) on constitution of GST Appellate Tribunal (“GSTAT”) with certain modifications. The final draft amendments to the GST Laws is to be circulated to its members for comments.
2. Acceptance of certain recommendations of the GoM have been accepted with a view to plug tax leakage and improve revenue collection for products such as chewing tobacco, gutkha, pan masala, etc.
3. Dispensation on payment of GST under reverse charge to be extended to courts and tribunals in

respect of taxable services supplied by them such as renting of premises to telecommunication companies for installation of towers, renting of chambers to lawyers etc. Earlier, such exemption was available only to Central Government, State Governments, Parliament and State Legislatures.

4. Extension of time limit and introduction of one-time amnesty scheme in respect of following:

a) Time limit for making an application for revocation of cancellation of registration increased from 30 (thirty) days to 90 (ninety) days, extendable by another 180 (one hundred eighty) days thereof. A one-time amnesty

scheme may be provided for past cases where application for revocation of cancellation could not be filed within the specified time limit.

b) Time period for filing returns for deemed withdrawal of best judgment assessment orders increased from 30 (thirty) to 60 (sixty) days, extendable by another 60 (sixty) days thereof. A one-time amnesty would be available for past cases where returns could not be filed within 30 (thirty) days of the assessment order.

c) Revised late fee on delayed filing of annual returns for FY 2022-23 onwards as follows:

S. No.	Aggregate Turnover	Current Late Fee	Revised Late Fee
1.	Up to INR 5,00,00,000 (Indian Rupees five crore)	INR 200 (Indian Rupees two hundred) per day, subject to the maximum of 0.5% of turnover in the State	INR 50 (Indian Rupees fifty) per day, subject to the maximum of 0.04% of turnover in the State
2.	From INR 5,00,00,000 (Indian Rupees five crore) to INR 20,00,00,000 (Indian Rupees twenty crore)		INR 100 (Indian Rupees one hundred) per day, subject to the maximum of 0.04% of turnover in the State
3.	Above INR 20,00,00,000 (Indian Rupees twenty crore)	INR 200 (Indian Rupees two hundred) per day, subject to the maximum of 0.5% of turnover in the State	

d) Section 13(9) of the IGST Act²⁰ is proposed to be deleted to provide that the place of supply of services of transportation of goods, in cases where the location of the supplier or the recipient is outside India, to be the location of the recipient of such services.

rates, along with various measures towards trade facilitation and streamlining compliances. [Read more](#)

Government of India notifies State-Benches of GSTAT ²¹

The Ministry of Finance has notified 31 (thirty-one) State Benches of the GSTAT, with effect from September 14, 2023.

Key Highlights of the 52nd GST Council Meeting

The 52nd GST Council meeting, chaired by the Union Minister for Finance and Corporate Affairs, Smt. Nirmala Sitharaman was held on October 7, 2023. The GST Council recommended certain changes in the GST

Taxability of Personal and Corporate Guarantee: Insights from the GST Council

In its 52nd meeting held on October 7, 2023, the GST Council clarified the position on taxability of: (a) personal guarantees offered by directors to banks for credit limits and loans sanctioned to a company; and (b) corporate guarantees extended to related persons, including those provided by a holding company to its subsidiary.

In relation to the above the GST Council has made the following recommendations:

“(a) issue a circular clarifying that when no consideration is paid by the company to the director in any form, directly or indirectly, for providing personal guarantee to the bank/ financial institutes on their

²⁰ IGST Act, 2017.

²¹ Notification No. S.O.4073(E) dated September 14, 2023

behalf, the open market value of the said transaction/supply may be treated as zero and hence, no tax to be payable in respect of such supply of services.

(b) insert sub-rule (2) in Rule 28 of CGST Rules, to provide for taxable value of supply of corporate guarantee provided between related parties as one per cent of the amount of such guarantee offered, or the actual consideration, whichever is higher.

(c) clarify through the circular that after the insertion of the said sub-rule, the value of such supply of services of corporate guarantee provided between related parties would be governed by the proposed sub-rule (2) of rule 28 of CGST Rules, 2017, irrespective of whether full ITC is available to the recipient of services or not.” [Read more](#)

Clarifications on taxability of ‘no claim bonus’ (“NCB”) offered by insurance companies, and applicability of e-invoicing under GST laws²²

Taxability of NCB offered by insurance companies

When no claim is made by the insured person during the previous insurance period, the insurance companies deduct NCB from the gross insurance premium amount. The insured person is not under any contractual obligation not to claim during any period covered under the insurance policy, in lieu of NCB. With respect to taxability of the NCB, CBIC has clarified the following:

1. There is no supply provided by the insured person to the insurance company in the form of agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year, and NCB cannot be regarded as consideration for any supply provided by the insured person to the insurance company.
2. For supply of insurance services by the insurance company to the insured person, NCB is pre-disclosed in the policy documents and is specifically mentioned as discount upon the invoice issued by the insurance companies to the insured person. Therefore, NCB is a permissible deduction under Section 15(3)(a) of the CGST Act for the purpose of calculation of value of supply. Thus, GST will be leviable on actual insurance premium amount payable by the insured person to

the insurance company, i.e., after deduction of NCB mentioned in the invoice.

Exemption from mandatory generation of e-invoicing under GST laws

With respect to applicability of e-invoicing under GST laws, CBIC has clarified that exemption from mandatory generation of e-invoices provided under Notification No. 13/2020-Central Tax dated March 21, 2020, is applicable to the entity as a whole and is not restricted by the nature of supplies being made by the entity.

Clarification on the treatment of statutory dues under GST laws in respect of taxpayers for whom proceedings have been finalized under Insolvency and Bankruptcy Code, 2016 (“IBC”)²³



CBIC has clarified regarding the treatment of statutory dues under the GST laws in respect of the taxpayers for whom the proceedings have been finalised under the IBC:

1. The proceedings conducted under IBC also adjudicate the government dues pending under the CGST Act or under existing laws against the corporate debtor, the same appear to be covered under the term “other proceedings” as provided under Section 84 of the CGST Act;
2. Accordingly, as provided under Section 84 of the CGST Act, in cases where a confirmed demand for recovery has been issued in FORM GST DRC-07/07A against the corporate debtor, and where the proceedings have also been finalised under IBC resulting into reduction of the amount of statutory dues, then the jurisdictional Commissioner will be required to issue an intimation regarding the

²² Circular No. 186/18/2022-GST dated December 27, 2022

²³ Circular No. 187/19/2022-GST dated December 27, 2022

reduction of the said demand in FORM GST DRC-25 to the corporate debtor as well as the appropriate authority with whom recovery proceedings are pending.

Services received from Courts and Tribunals subject to GST under RCM^{24 25}

Courts and Tribunals are considered at par with Central Government and State Governments. Accordingly, services received from Courts and Tribunals will be subject to GST under RCM such as renting of immovable property to a registered person.

Extension of time limit and introduction of one-time amnesty scheme²⁶

As per recommendations of the 49th GST Council Meeting held on February 18, 2023, following amendments are notified in the CGST Act regarding extension of time limit and introduction of one-time amnesty scheme in respect of the following:

1. Where, in response to registration cancelled on or before December 31, 2022, for specified defaults²⁷, a registered person failed to apply for revocation of cancellation within the time limit specified in Section 30 of the CGST Act, such person can apply for revocation of cancellation of registration up to June 30, 2023.
2. Waiver of late fee prescribed under Section 47 of CGST Act for failure to file return in FORM GSTR-4 (Composition Dealers) within prescribed due date, in excess of INR 250 and fully waived where total amount of central tax payable is 'nil', for the following periods:
 - a) for quarters July, 2017 to March 2019, or
 - b) for FY 2019-20 to 2021-22.
3. Rule 8(4A) of CGST Rules suitably amended regarding procedure for authentication of Aadhaar number followed by biometric-based Aadhar authentication.

4. Special procedure for filing return by classes of person who have failed to file valid return within 30 (thirty) days from the service of the assessment order issued on or before February 28, 2023 has been notified. Such persons can file return up to June 30, 2023 accompanied by payment of interest due under Section 50 of the CGST Act and the late fee payable under Section 47 of the CGST Act. The provision is made irrespective of whether or not an appeal has been filed against such assessment order or whether or not the appeal, if any, filed against the said assessment order has been decided.
5. Partial waiver of late fees in respect of delayed filing of annual return for FY 2022-23 onwards is notified. The Notification prescribes waiver of INR 25 (Indian Rupees twenty-five) per day for a registered person having aggregate turnover of up to INR 500,00,00,000 (Indian Rupees five hundred crore), and INR 50 (Indian Rupees fifty) per day in cases of turnover of more than INR 500,00,00,000 (Indian Rupees five hundred crore). The amount of said late fee will be subject to a maximum limit of an amount calculated at 0.02 % of turnover in the State or Union territory for both the categories of registered persons.
6. Waiver of amount of late fee which is in excess of INR 500 (Indian Rupees five hundred) for a registered person who failed to furnish return in FORM GSTR-10 (Final Return) by the due date but furnishes the said return between period April 1, 2023 to June 30, 2023.

GST e-invoicing portal mandates taxpayers to report 6-digit HSN code

In compliance with Notification No. 78/2020 – Central Tax dated October 15, 2020, GST e-invoicing portal requires taxpayers having aggregate annual turnover of more than INR 5,00,00,000 (Indian Rupees five crore) to report 6-digit HSN codes for outward supplies. The system will block 4-digit HSN codes (from a date to be notified).

²⁴ Reverse Charge Mechanism

²⁵ Notification 02/2023 - Central Tax (Rate) dated February 28, 2023

²⁶ Notification Nos. 2, 3, 4, 6, 7 and 8/2023-Central Tax, dated March 31, 2023

²⁷ (i) a Composition Dealer who has not furnished the return for a financial year beyond 3 (three) months from the due date of furnishing the said return; or
(ii) any registered person, other than above, who has not furnished returns for such continuous tax period as may be prescribed.

Requirement of mandatory registration for persons supplying goods through ECO²⁸ waived off²⁹

Persons supplying goods through an ECO, with an aggregate turnover not exceeding the threshold limit³⁰ (in the preceding financial year and in the current financial year), are exempted from obtaining GST registration, subject to fulfilment of the following conditions:

1. such persons should not make any inter-State supply of goods;
2. such persons should not make supply of goods through ECO in more than one State or Union territory;
3. such persons should have a PAN;
4. such persons should, before making any supply of goods through ECO, declare on the common portal their PAN, address of their place of business and the State or Union territory in which such persons seek to make such supply, which shall be subjected to validation on the common portal;
5. such persons have been granted an enrolment number on the common portal on successful validation of the PAN;
6. such persons shall not be granted more than one enrolment number in a State or Union territory; and,
7. no supply of goods shall be made by such persons through ECO unless such persons have been granted an enrolment number on the common portal.

Government authorizes GSTN³¹ to seek information under PMLA^{32,33}

The Government has authorized Director, Financial Intelligence or any other authorized person to share information with the GSTN, obtained by such authority, for performing its functions under the PMLA.

Assam Government mandates furnishing valid rent agreement/ lease deed for seeking GST registration³⁴

Assam Government has mandated furnishing of valid rent agreement/ lease deed duly registered with sub-registrar or competent authority, for obtaining registration under the GST laws. This is to prevent fake/ bogus registration, considering that many unscrupulous persons/entities were obtaining GST registration basis forged documents like electricity bills, rental agreement, etc.

ISA Comment – In practice, this requirement of furnishing valid rent agreement/ lease deed was already insisted upon by the authorities. This will cause undue hardships to assesseees in obtaining registrations leading to delays, especially in co-working environment, where there are no lease deeds/ agreements.

Circulars issued to implement recommendations made during 50th GST Council meeting

CBIC³⁵ has issued suitable circulars on July 17, 2023, and August 1, 2023, implemented various recommendations made during the 50th GST Council Meeting held on July 11, 2023. Aspects clarified in key circulars are provided below:

Circular No. and subject	Key aspects of the clarifications issued
192/04/2023-GST Charging of interest under Section 50(3) of CGST Act for wrong	<ul style="list-style-type: none"> Interest on wrongly availed ITC of IGST will become payable only when wrongly availed and utilized IGST credit exceeds the cumulative balance of IGST, CGST and SGST in the ECL³⁶.

²⁸ Electronic Commerce Operator

²⁹ Notification No. 34/2023- Central Tax dated July 31, 2023

³⁰ Aggregate turnover above which a supplier is liable to be registered in the State in accordance with Section 22(1) of the CGST Act i.e., Indian rupees twenty lakh rupees (general category states) and Indian rupees ten lakh rupees (special category states).

³¹ Goods and Services Tax Network

³² Prevention of Money-Laundering Act, 2002

³³ G.S.R. 491(E) dated July 7, 2023

³⁴ Circular No. 01/2023 dated July 07, 2023

³⁵ Central Board of Indirect Taxes and Customs

³⁶ Electronic Credit Ledger

Circular No. and subject	Key aspects of the clarifications issued
availment of IGST credit and reversal thereof	<ul style="list-style-type: none"> Balance of Compensation Cess available in ECL will not be considered for calculation of interest in respect of wrongly availed and utilized IGST, CGST or SGST ITC.
194/04/2023-GST TCS³⁷ liability under Section 52 of CGST Act in case of multiple ECO³⁸ in one transaction	<ul style="list-style-type: none"> Collection of TCS along with other compliances are required to be undertaken by the supplier side ECO, who finally releases the payment to the supplier for a particular supply made by him. In a transaction involving multiple ECOs, the buyer side ECO will neither be required to collect TCS nor will be required to undertake other compliances in accordance with Section 52 of the CGST Act. However, when the supplier side ECO is himself the supplier, TCS is to be collected by the buyer side ECO while making payment.
195/04/2023-GST Availability of ITC in respect of warranty replacement of parts and repair services during warranty period	<ul style="list-style-type: none"> In case of free supply of replacement of parts and/or repair services to a customer during warranty period, no GST is payable. Further, OEM³⁹ and distributor are not required to reverse any ITC. However, GST is payable if additional consideration is charged. GST is payable if the distributor provides parts (from its own stock or procured from third parties)/ services to customers and charges the same to the OEM. OEM can avail ITC of such GST paid. Where the distributor replaces the part to the customer out of the supply already received by him from the OEM, OEM can issue GST credit note and adjust its output tax liability subject to reversal of ITC by the distributor. If an extended warranty is supplied at the time of original supply of goods, it becomes a part of composite supply and GST is payable on extended warranty charges as per principal supply. However, if an extended warranty is supplied after the original supply of goods, it becomes a separate supply and GST is payable accordingly.
196/04/2023-GST Taxability of shares held in a subsidiary company by the holding company	<ul style="list-style-type: none"> 'Shares' are a part of 'securities' and are excluded from the definition of 'goods' and 'services' for the purposes of GST laws. Accordingly, sale or purchase of shares in itself is neither a supply of goods nor of services. Such transactions cannot be taxed merely because of the existence of SAC Code which covers services of holding securities of companies for the purpose of controlling interest.
197/04/2023-GST Refund related issues	<ul style="list-style-type: none"> With effect from January 1, 2022, an assessee can claim ITC only to the extent of invoices appearing in Form GSTR-2B. It has been clarified that availability of refund of accumulated ITC under Section 54(3) of CGST Act will be restricted to ITC as per invoices which are reflected in Form GSTR-2B. This will be applicable for refund filed for period beginning January 2022 onwards. Suitable amendments have been made in the undertaking in Form GST RFD-01 pursuant to deletion of Section 42 of the CGST Act and amendment in Section 41 of the CGST Act pertaining to deletion of Form GSTR-2 and Form GSTR-3 as well as the concept of provisionally ITC acceptance. Value of goods exported out of India will be included while calculating "adjusted total turnover" for the purpose of Rule 89(4) of CGST Rules.

³⁷ Tax Collected at Source³⁸ E-commerce operator³⁹ Original equipment manufacturer

Circular No. and subject	Key aspects of the clarifications issued
	<ul style="list-style-type: none"> Where the goods are not exported or payment against export of services is not received within the prescribed time under Rule 96A(1) of CGST Rules, then on actual export of goods or on realization of payment for export of services, the following will apply: <ul style="list-style-type: none"> Exporters will be entitled to refund of unutilized ITC in terms of Section 54(3) of the CGST Act; Exporters can also claim a refund of IGST paid in compliance of Rule 96A(1) of CGST Rules. However, refund of interest will not be allowed.
<p>199/04/2023-GST <i>Taxability of services provided by an office of an organization in one State to the office of that organization in another State, both being distinct persons</i></p>	<ul style="list-style-type: none"> Under the present law, Head Office (“HO”) has an option to distribute ITC in respect of common input services by following ISD mechanism. Alternatively, HO can opt to raise tax invoice on Branch Office (“BO”) for cross charging common input services. In respect of internally generated services from HO to BO for which full ITC is available, value declared on the invoice will be deemed as Open Market Value (“OMV”) in terms of Proviso to Rule 28 of the CGST Rules, irrespective of whether cost of any component such as salary cost is included or not in the value of service. In case a tax invoice is not issued for any specific service rendered by HO to BO, the value of such service can be deemed as NIL by the HO to BO which may be deemed as OMV in terms of Proviso to Rule 28 of the CGST Rules. In respect of internally generated services from HO to BO for which full ITC is not available, cost of employee salary is not required to be included in the value of service by the HO to BO.
<p>200/13/2023-GST <i>Clarification regarding applicability of GST on certain goods</i></p>	<ul style="list-style-type: none"> Supply of raw cotton, including kala cotton, from agriculturists to cooperatives is a taxable supply and such supply of raw cotton by agriculturist to the cooperatives attracts 5% GST on reverse charge basis
<p>201/13/2023- GST <i>Clarifications regarding applicability of GST on certain services</i></p>	<ul style="list-style-type: none"> Services supplied by a director of a company to the company in his private or personal capacity (such a services by way of renting immovable property to the company) are not taxable under RCM. Only those services supplied by the director of company which are supplied by him as or in the capacity of director of that company will be taxable under RCM in the hands of the company. Supply of food or beverages in a cinema hall is taxable as ‘restaurant service’ and attracts GST at the rate of 5%, provided the following 2 (two) conditions are met: <ul style="list-style-type: none"> the food or beverages are supplied by way of or as part of a service, and, supplied independent of the cinema exhibition service <p>However, where the sale of cinema ticket and supply of food and beverages are clubbed together, and such bundled supply satisfies the test of composite supply, the entire supply will attract GST at the rate of 18% as applicable to service of exhibition of cinema, being the principal supply.</p>

E-invoice exemption declaration functionality made live

The e-invoice exemption declaration functionality has been made live on the e-invoice portal. This functionality is voluntary and applicable to taxpayers who are exempted from e-invoicing provisions under GST laws but by default are enabled for e-invoicing on the portal. It may be noted that any declaration made using this functionality will not change the e-invoice enablement status of the taxpayer.

Time limit for reporting documents on IRP^{40 41}

As per GSTN Advisory dated April 12, 2023, time limit of 7 (seven) days for reporting invoices, credit notes and debit notes on IRP for taxpayers having aggregate annual turnover of INR 100,00,00,000 (Indian Rupees one hundred crore) is made effective from November 1, 2023 (which was earlier deferred⁴²).

Amendment to the IGST Act^{43 44}

To implement the recommendations of the GST Council in the 50th GST Council Meeting and the ruling of the Hon'ble Supreme Court of India ("**Supreme Court**") in **Union of India & Anr. vs. Mohit Minerals Pvt. Ltd.**⁴⁵, the Government of India has amended the IGST Act to clarify the taxability of ocean freight in case of CIF⁴⁶ imports, through the aforementioned notifications to give the following effect:

- 1) Services received from a provider of services located in a non-taxable territory have been exempted.
- 2) To give effect to the above, Entry No. 10 of Notification No. 10/2017 – Integrated Tax (Rate) dated June 28, 2017, and Entry No. 9 of Notification No. 8/2017 – Integrated Tax (Rate) dated June 28, 2017 have been deleted.

The aforementioned amendments came into effect on October 1, 2023.

⁴⁰ Invoice Reporting Portal

⁴¹ GSTN Advisory dated September 13, 2023

⁴² GSTN Advisory dated May 06, 2023

⁴³ IGST Act, 2017

⁴⁴ Notification Nos. 11/2023, 12/2023 and 13/2023 dated September 26, 2023

⁴⁵ 2022 (5) TMI 968

⁴⁶ Cost Insurance Freight

GST Appellate Tribunal (Appointment and Conditions of Service of President and Members) Rules, 2023⁴⁷

CBIC⁴⁸ notified GST Appellate Tribunal (Appointment and Conditions of Service of President and Members) Rules, 2023 which *inter alia*, provide the manner of selection of President and Members, powers of President and Vice President, salaries and allowances to be received by them, etc.

Bio-metric based Aadhar Authentication for GST registration in the State of Andhra Pradesh⁴⁹



In terms of Rule 8(4A) read with Rule 8(4B) of the CGST Rules, the State of Andhra Pradesh has been notified for biometric-based Aadhaar authentication and risk-based physical verification along with verification of documents uploaded with application to obtain registration. Notably, the said procedure has already been implemented on pilot test basis in the State of Gujarat and Union Territory of Puducherry. For all other States/ Union Territories, the existing procedure of processing the registration application would continue to follow.

GSTN⁵⁰ introduced 'Enrolment Facility' for supply through ECOs⁵¹ by un-registered suppliers

In furtherance of Notification No. 34/2023 dated July 31, 2023, wherein a person supplying goods through e-commerce operators were exempted from mandatory registration under GST, GSTN now has introduced

⁴⁷ Notification No. G.S.R. 793(E) - Central GST dated October 25, 2023

⁴⁸ Central Board of Indirect Taxes and Customs

⁴⁹ Notification No. 54/2023-Central Tax dated November 17, 2023

⁵⁰ Goods and Services Tax Network

⁵¹ Electronic commerce operator

enrolment facility for supply of goods through e-commerce operators by GST unregistered suppliers.

Himachal Pradesh Government notifies the Himachal Pradesh Sadhbhawana Legacy Cases Resolution Scheme, 2023 (3rd Phase) ("Scheme") ⁵²

The Government of Himachal Pradesh has notified the Scheme, which will be in effect from October 1, 2023, to December 31, 2023. The key features of the Scheme are highlighted below:

1. The Scheme will be applicable on (a) settlement of any additional demand⁵³ under the subsumed enactment⁵⁴ pending for recovery, and (b) settlement of pending assessment⁵⁵ and any demand that may accrue as a result of determination of tax liability of such pending assessment under a subsumed enactment.
2. In order to avail the Scheme, the Applicant is required to file a declaration in the prescribed manner along with the proof of payment of settlement fee.
3. A person will not be eligible to make a declaration under the Scheme in the following circumstances:
 - a) if the declarant has filed an appeal before the appellate forum and such appeal has not been withdrawn on or before the day of submission of declaration under the Scheme;
 - b) if criminal proceedings have been initiated against the person for any reasons including tax fraud;
 - c) if a notice has been issued to the person under subsumed enactment for an erroneous refund or refunds;
 - d) if all the statutory forms required to be produced for applicability of concessional rate of tax under the subsumed enactment have not been produced either at the time of assessment or have not been filed along with the declaration under the Scheme and the tax due as per returns and settlement fee of the Scheme have not been paid.
4. Calculation of the settlement fee will be as follow:

Scenario	Amount of settlement fee to be paid
I. Where no statutory forms were required to be produced or all the all the statutory forms required to be produced for applicability of concessional rate of were produced	
(i) Periodical returns filed within stipulated time along with payment of tax	No settlement fee
(ii) Periodical returns not filed within stipulated time, but payment of tax due were made as per such return	10% of tax paid after due date of filing the return or payment of tax
(iii) Tax returns not filed and tax due not paid	110% of the tax amount applicable on taxable turnover
II. Where all the statutory forms required to be produced for applicability of concessional rate of tax were not produced and the tax due as per returns has been paid	
Settlement fee will be calculated as below:	
(i) 100% of the tax paid against the turnover of transactions involved in such statutory forms as if the forms were available; or,	
(ii) 1% of the value of the turnover of transactions involved in such statutory forms, whichever is higher.	

⁵² Notification No. EXN-F-(10)-17/2022 dated September 30, 2023

⁵³ 'Additional demand' means the amount of tax, penalty and interest as assessed by the assessing authority under the subsumed enactment for a financial year or any return period for which declaration under the Scheme has been made.

⁵⁴ 'Subsumed enactment' means any Act repealed under Section 173 of the Himachal Pradesh Goods and Services Tax Act, 2017 and Section 64 of the Himachal Pradesh Value Added Tax Act, 2005.

⁵⁵ 'Pending assessment' means determination of tax liability for a particular financial year or any return period which is pending for determination under the subsumed enactment.

5. Certain restrictions with regard to payment of settlement fee are also provided such as payment cannot be done through input tax credit, settlement fee will be non-refundable (except paid in excess or application gets rejected) and is not creditable, etc.

Settlement fee can be paid by adjustment of pre-deposit paid at any stage of appellate proceedings under the subsumed enactment or deposited voluntarily or as part of recovery proceedings against the additional demand for that financial year or any return period, subject to prescribed conditions.

6. A discharge certificate will be issued post which the declarant will not be liable for any further tax, penalty and interest, or for prosecution with respect to the matter and period covered in the declaration. Further, all matters and time period covered by the declaration will not be re-opened in any other proceeding under the subsumed enactment.

Punjab Government notifies the Punjab One Time Settlement Scheme for Recovery of Outstanding Dues, 2023 ("Punjab Scheme") ⁵⁶

The Government of Punjab has notified the Punjab Scheme, which will be in effect from November 15, 2023 to March 15, 2024. The key features of the Scheme are highlighted below:

1. The scheme is applicable to cases where assessments under Punjab General Sales Tax Act, 1948, Central Sales Tax Act, 1956, Punjab Infrastructure (Development and Regulation) Act, 2002, and Punjab Value Added Tax Act, 2005, were made until March 31, 2023, with outstanding total demand (includes additional demand of tax, interest, penalty) up to INR 1,00,00,000 (Indian Rupees one crore).
2. Eligible individuals can submit an application in the prescribed form (separate application for each assessment year), accompanied by proof of full payment of self-assessed determined amount. The application undergoes scrutiny, and deficiencies, if any, must be rectified within 15 (fifteen) working

days. The settlement order is issued upon satisfactory application review, and rejection occurs if deficiencies persist.

3. Any person, whether or not in appeal before any of the Appellate Authorities i.e., the Deputy Excise and Taxation Commissioner (Appeals) or the Punjab Value Added Tax Tribunal or the Punjab and Haryana High Court or the Supreme Court, will be eligible to apply and avail settlement under this Scheme. Applicants in appeal must declare that they will withdraw the said appeal within 15 (fifteen) working days from the date of communication of order of settlement and will submit the proof thereof.
4. Where the applicant has deposited certain percentage of additional demand as prerequisite for the filing of an appeal under the relevant Acts, the amount so deposited will be adjusted towards the payment of determined amount. No amount will be refunded where the amount already deposited is in excess of the determined amount.
5. No appeal against an order of settlement will lie before any of the Appellate Authorities. Settlement orders can be revoked in case of false information or suppression of facts.
6. The scheme offers waivers based on specified slabs of total demand, including 100% waiver of tax, interest and penalty for total demand up to INR 1,00,000 (Indian Rupees one lakh) and 50% waiver of tax, 100% of interest and penalty, for total demand ranging from INR 1,00,001 (Indian Rupees one lakh one) to INR 1,00,00,000 (Indian Rupees one crore).

Clarification on applicability of GST on certain services ⁵⁷



⁵⁶ Notification No. G.S.R.85/P.A.8/2005/S.29 A/ CA.74/ 1956/ S5/ PA.8/ 2002/ S.25/P.A.5/2017/S.174Z2023 dated November 9, 2023

⁵⁷ Circular No. 206/18/2023-GST dated October 31, 2023

Based on the recommendations of the 52nd GST Council Meeting, following clarifications have been provided with respect to applicability of GST on certain services:

1. Services by way of passenger transportation and renting of motor vehicles with operator, where cost of fuel is included in consideration charged, are exigible to GST at 5%, subject to eligibility of ITC on input services in respect of 'same line of business'. 'Same line of business' means services procured from another supplier of passenger transportation services or renting of motor vehicles services with operator and does not include leasing of motor vehicles without operator (which attracts GST at the same rate as supply of motor vehicles by way of sale).
2. Supply of electricity by real estate companies, malls, airport operators, etc. to lessee/ occupants, as part of bundled supply of service by way of renting of immovable property will be considered as a 'composite supply', wherein principal supply will be renting of immovable property with supply of electricity as ancillary to it. This will apply even when electricity charges are billed separately. Therefore, the rate of GST applicable on principal supply, i.e., renting of immovable property will be applicable to electricity charges recovered from the lessee/ occupants.

However, if electricity charges is collected by real estate owners or developers, RWAs, on actual basis from the lessee/ occupants (i.e., charging the same amount from lessee/ occupants which is being charged by the State Electricity Boards/ DISCOMs to the real estate owners, etc.), the same will not be added to the value of supply of service by way of renting of immovable property, since the real estate owners will be deemed to be acting as pure agent in such cases.

Clarification with respect to applicability of provisions of Section 75(2) of the CGST Act⁵⁸

Section 75(2) of the CGST Act provides that where the Appellate Authority/ Appellate Tribunal/ Court concludes that the notice issued by the proper officer under Section 74(1) of the CGST Act is not sustainable for reason that the charges of fraud or any wilful-

misstatement or suppression of facts to evade tax have not been established against the notice, then the proper officer is directed to re-determine the tax payable by the noticee, deeming as if the notice was issued under Section 73(1) of the CGST Act. In this regard, CBIC has clarified:

1. As provided under Section 75(3) of the CGST Act, the proper officer is required to issue an order for re-determination of tax, penalty and interest within 2 (two) years from the date of communication of the said direction by the Appellate Authority/ Appellate Tribunal/ Court;
2. The aforesaid re-determination can be made for so much amount of tax short paid/ not paid, or ITC wrongly availed/ utilized, or erroneous refund disbursed, along with applicable interest and penalty;
3. Such re-determination can only be undertaken for show cause notice issued within the normal time limit prescribed for issuance of show cause notice under Section 73(1) of the CGST Act, i.e., within 2 (two) years and 9 (nine) months from the date of furnishing of relevant annual return (for amount of tax short paid/ not paid, or ITC wrongly availed/ utilized), or within 2 (two) years and 9 (nine) months from the date of erroneous refund (for amount of erroneous refund disbursed);
4. Where the show cause notice was issued beyond the normal time limit prescribed above, the entire proceedings will be dropped; and,
5. Where the show cause notice was issued for multiple financial years, then the re-determination will take place only for those financial years for which show cause notice was issued within the normal time limit prescribed above.

CGST (Second Amendment) Rules, 2023⁵⁹

The Government has notified the following amendments to the CGST Rules⁶⁰, which came into effect from August 4, 2023 (except expressly provided below):

1. **Requirement to furnish details of bank account at the time of registration:** Taxpayers are

⁵⁸ Circular No. 185/17/2022-GST dated December 27, 2022

⁵⁹ Notification No. 38/2023 dated August 4, 2023

⁶⁰ Central Goods and Services Tax Rules, 2023

required to furnish information of bank account on GST portal within 30 (thirty) days from the date of registration or before filing of first GSTR-1, whichever is earlier. Contravention of this provision may lead to suspension of registration.

2. Extension of period for filing an application for revocation of cancellation of registration:

Taxpayers can file an application for revocation of cancellation of registration within a period of 90 (ninety) days (earlier, the period was 30 (thirty) days), from the date of the service of order of cancellation of registration.

- 3. Changes related to Returns:** Rule 88D has been inserted to provide for manner of dealing with difference in ITC availed in GSTR-3B and ITC reflecting in GSTR-2B. As per the said provision, the GST Council will recommend amount and percentage of difference beyond which taxpayer will be intimated in Part A of DRC-01C to pay amount equivalent to excess ITC availed or furnish explanation in respect thereof within 7 (seven) days. If the taxpayer fails to furnish any satisfactory response or pay amount equivalent to differential ITC, proceedings under Section 73 or Section 74 of the CGST Act will be initiated. In furtherance of this, Rule 59 is also amended to bar filing of GSTR-1 for subsequent tax period where (a) requisite payment or explanation is not furnished, as per Rule 88D; or (b) taxpayer has not furnished details of bank account.

- 4. Particular of tax invoices issued by e-commerce operator or supplier of OIDAR services:** Rule 46 is amended to provide that tax invoice for supplies made by e-commerce operator or supplier of OIDAR services to an unregistered person only needs to contain name of State of recipient and same will be deemed as address on record of the recipient.

- 5. Value of exempt supply to include supplies from Duty Free Shops to inbound passengers:** Clause (b) of Explanation to Section 17(3) of the CGST Act, allows the Government to prescribe value of such activities or transaction under Para 8(a) of Schedule III of the CGST Act viz. supply of warehoused goods, that would be included in 'value of exempt supply' for reversal of ITC. In furtherance of the same, Explanation is added to

Rule 43 of the CGST Rules to provide that value of supply of goods from Duty Free Shops at arrival terminal in international airports to incoming passengers will be included in value of exempt supply. This amendment will be effective from October 1, 2023.

- 6. Interest on delayed refund:** Rule 94 is amended to exclude following period for calculating interest on delayed refund under Section 56 of the CGST Act:

- Period beyond 15 (fifteen) days of receipt of notice in RFD-08 taken by taxpayer to furnish reply or for submitting additional documents;
- Period taken by taxpayer to correctly furnish or validate details of bank account.

- 7. Manual filing of appeal before the Appellate Authority:** The taxpayer has been given an option of manually filing an appeal to the Appellate authority in FORM GST APL-01 along with relevant documents if;

- The Commissioner has so notified, or,
- The same cannot be filed electronically due to non-availability of the decision or order to be appealed against on the common portal.

In such cases, a provisional acknowledgment will be issued to the appellant immediately.

The CGST (Amendment) Act, 2023 and the IGST (Amendment) Act, 2023 ⁶¹

Pursuant to the recommendations of the GST Council recently, Parliament has passed 2 (two) GST Amendment Bills *inter alia* clarifying the taxation of online gaming, casinos and horse racing, which received assent of the President on August 18, 2023. The GST Council, in its 50th Meeting held on July 11, 2023, recommended that GST be levied at 28% on the entire value of bets placed for online gaming. **Position as per the recommendations of the GST Council** - As per the recommendations of the GST Council, GST is to be levied at a flat rate of 28% on all online games, including games of skill. Therefore, "prize money" and "platform fees", will both be subject to GST at the rate of 28% (i.e., INR 1,100 (Indian Rupees one thousand one hundred) x 28 % = INR 308 (Indian Rupees three

⁶¹ Act No. 30/ 2023 and Act No. 31/ 2023 dated August 18, 2023

hundred eight), in the above illustration), thereby clearly increasing GST collections by the government. The recommendations do not seem to apply to “games of skill” when played through offline mode (i.e., in clubs, etc.) and, therefore, the same will likely remain outside the ambit of GST. However, the taxability of the same can be ascertained only once the amendments to the law are made. The above recommendations, if enforced, will effectively render the ruling (*supra*) otiose. [Read more](#)

For further information [click here](#)

Taxability and valuation of corporate guarantee and personal guarantee⁶²



CBIC has issued Circular No. 204/16/2023-GST dated October 27, 2023 (“**Circular**”), to clarify taxability and valuation of corporate guarantee and personal guarantee under the GST laws.

As per the Circular, the activity of extending corporate guarantee by one company to bank/ financial institutions, for provision of credit facility to the other company, where both the companies are related, or extended by a holding company for its subsidiary company, even if made without consideration, to be treated as supply of service as per Schedule I of CGST Act. The taxable value of extending such corporate guarantee will be determined in terms of newly inserted sub-rule (2) of Rule 28 of CGST Rules only, irrespective of whether full ITC of the GST paid to the supplier, is available to the recipient of services.

Sub-rule (2) of Rule 28 of CGST Rules provide that the value of services involving a corporate guarantee provided by a supplier to any banking company or financial institution on behalf of the related recipient is

considered as 1% of the guarantee amount or actual consideration, whichever is higher.

Further, the Circular also clarifies on the taxability of the activity of providing personal guarantee by the director of a company to the bank/ financial institutions for sanctioning of credit facilities to the said company without any consideration. As per the Circular, as the director and the company are ‘related persons’ under the GST laws, the activity of providing personal guarantee would be treated as a supply of service under Schedule I of the CGST Act. The value of said supply will be determined as per Rule 28 of the CGST Rules, per which it will be the open market value. However, since the RBI mandates that no consideration can be paid for extending such personal guarantees (except in certain exceptional circumstances), there is no question of said supply having any open market value. Accordingly, the taxable value of said supply can be considered as zero and hence, no GST will be payable on the same. However, if such personal guarantee has been extended by the director, who is no longer connected with the management of the company, but continuance of his guarantee is considered essential for the company, or where the Directors are paid remuneration/ consideration, directly or indirectly, then the taxable value of said supply of service will be the amount of said remuneration/ consideration. Sub-rule (2) of Rule 28 of CGST Rules will not be applicable in this case.

Amnesty Scheme for filing appeals before Appellate Authority⁶³

The Central Government has introduced an amnesty scheme for taxpayers who could not file an appeal against orders passed on or before March 31, 2023, under Section 73 and 74 of the CGST Act in the following circumstances:

1. An appeal was not filed by the taxpayer; and,
2. Appeal was dismissed as being time barred (i.e., beyond 3 (three) months from the date on which the decision or order is communicated to the taxpayer).

The last date for filing appeals in such cases is January 31, 2024. The taxpayers are required to pay in full the

⁶² Notification No. 52/2023 – Central Tax dated October 26, 2023, and Circular No. 204/16/2023-GST, dated October 27, 2023

⁶³ Notification No. 53/2023-Central Tax dated November 2, 2023

amount of admitted tax liability (including interest, penalty, etc.) and/ or 12.5% of the amount of disputed tax, out of which minimum 20% needs to be debited from electronic cash edger.

In the above regard, following points are relevant:

3. If a taxpayer has already filed an appeal and desires, it to be covered by the benefit of the Amnesty Scheme would need to make differential payment as per above.
4. Taxpayers who have previously filed an appeal, but it was rejected as time barred, then the taxpayer would be able to refile the appeal.
5. No refund of amount paid by the taxpayer in excess of above before issuance of this Notification, either voluntarily or pursuant to directions of authority or court, will be granted till the disposal of the appeal.
6. No appeal will be admissible in respect of a demand not involving tax.

Advisory issued by GSTN on November 28, 2023, may be referred to for detailed procedures and other provisions with regard to above.

Inclusion of additional export items for the Remission of Duties and Taxes on Export Products ("RoDTEP") scheme⁶⁴

Director General of Foreign Trade has notified that export sectors/ items under chapter 28 (Inorganic chemicals, organic or inorganic compounds of precious metals, of rare-earth metals, of radioactive elements or of isotopes), chapter 29 (Organic chemicals), chapter 30 (Pharmaceutical products) and chapter 73 (Articles of iron or steel) are being added in Appendix 4R under RoDTEP scheme for exports made from December 15, 2022 till September 30, 2023.

Amendments under Finance Act, 2023

Finance Bill has received the assent of the President and has been enacted with effect from April 1, 2023⁶⁵. Please [click here](#) to read in detail the key amendments

made to the Finance Bill that was presented during the Budget Speech of the Hon'ble Finance Minister, Mrs. Nirmala Sitharaman on February 1, 2023.

Extension of date for mandatory electronic filing of Non-Preferential Certificate of Origin (CoO) to December 31, 2023⁶⁶

DGFT⁶⁷ has further extended the date for mandatory electronic filing of Non-preferential CoO through common digital portal to December 31, 2023. In the interim, the exporters and the Non-preferential CoO issuing agencies have the option to use the online system or process applications in manual/ paper mode form.

HS⁶⁸ Code (2007 version) mentioned in CoO⁶⁹ to be correlated with HS Code (2022 version) mentioned in BE^{70,71}

India Japan Comprehensive Economic Partnership Agreement (CEPA) was negotiated and operationalized on the basis of HS 2007. The CoO, required to be obtained for complying under CEPA, must contain six-digit tariff classification as per HS 2007. However, with transposition to HS 2022, there were instances having mismatch between HS Code mentioned in CoO and that mentioned in BE. In this regard, it is clarified that for the purpose of Customs clearance, the HS Code (2007 version) mentioned in the CoO must be co-related with HS Code (2022 version) mentioned in the BE at the time of clearance.

Extension of RoDTEP⁷² scheme for exports made on or after October 1, 2023⁷³

The Government of India has extended the RoDTEP scheme for exports, from October 1, 2023, to June 30, 2024.

⁶⁴ Notification:47/2015-2020 dated 07 December 2022

⁶⁵ Lok Sabha passed the Finance Bill, on March 24, 2023, which received the Presential assent on March 31, 2023

⁶⁶ Trade Notice No. 27/2022-2023 dated March 28, 2023

⁶⁷ Directorate General of Foreign Trade

⁶⁸ Harmonized System of Nomenclature

⁶⁹ Certificate of Origin

⁷⁰ Bill of Entry

⁷¹ Instruction No. 19/2023 – Customs dated July 04, 2023

⁷² Remission of Duties and Taxes on Export Products

⁷³ Notification No. 33/2023, dated September 26, 2023

Additional conditions introduced for import of laptops, etc.⁷⁴

The DGFT issued Notification No. 23/2023 dated August 3, 2023, amending the import policy for items covered under HSN 8471 of Schedule-I (Import Policy) of ITC (HS), 2022 to restrict import of specified goods (such as laptops, computers, etc.) with effect from November 1, 2023⁷⁵. In this regard, Policy Condition No. 4 was also introduced in Chapter 84 to provide for conditions to be fulfilled for import of said goods, which *inter-alia* included that import is allowed only subject to a valid import license.

DGFT *vide* the said notification has introduced additional conditions as below:

1. No import license will be required where restricted goods manufactured in SEZ⁷⁶ are imported in DTA⁷⁷. The said exemption will be subject to payment of applicable duties (if any). Further, the activities of re-packing, labelling, refurbishing, testing, and calibration alone within the SEZ will not be considered as manufactured in SEZ.
2. No import license will be required where restricted goods are imported by private entities for supply to (a) Central Government or agencies, undertakings owned and controlled by the Central Government, for defence or security purposes, (b) State Government for security purposes. These private entities will be required to provide to the customs authorities at the time of import a valid end-user certificate issued by the concerned Government entity.
3. No import license is required for import for repair and/ or return and/ or replacement of restricted goods sold earlier as well as re-import of such items repaired abroad on self-certification basis.

Further, the Policy Circular clarifies the below:

4. SEZ units and EOUs/EHTP/STPI/BTP units are not required to obtain import license for import of restricted goods, provided the goods are used for only captive consumption of the concerned importing unit(s).

5. No import license is required for import of spares, parts, assemblies, sub-assemblies, components, and other inputs necessary for the restricted goods.
6. No import license is required for import of restricted goods forming an essential part of capital goods (such as MRI machines, CNC machines, Unmanned Aerial Vehicles (UAVs), etc.). However, if servers or laptops etc. themselves are the primary capital goods, this exemption does not apply.
7. Importers are allowed to apply for multiple import licenses, which will be valid upto September 30, 2024.

Supplies to SEZ unit/developer eligible for refund of IGST paid⁷⁸

Notification No. 1/2023 -Integrated Tax dated July 31, 2023, notified supplies that can be made on payment of IGST for which refund can be claimed. The said Notification provided benefit only to export of goods or services (except for goods such as tobacco, pan masala, etc.). The same has now been amended to provide that supplies made to SEZ units and developers for authorized operations on payment of IGST, will also be eligible for refund of IGST paid.

Rule 43A of SEZ Rules amended to provide for 'Hybrid Working' for employees of an SEZ Unit⁷⁹

The Ministry of Commerce and Industry has notified Special Economic Zones (Fourth Amendment) Rules, 2023, per which Rule 43A of the SEZ Rules (earlier, work from home provision) has been amended to provide for 'hybrid working' to work from any place outside the SEZ. 'Hybrid working' has been defined to mean a flexible work model whereby an employer may permit its employees to work from the office or from any location outside the employer's office from time to time. Key points of the amended provision are provided below:

⁷⁴ Notification No. 38/2023 and Policy Circular No. 6/2023-24 dated October 19, 2023

⁷⁵ Notification no. 26/ 2023 dated August 4, 2023

⁷⁶ Special Economic Zone

⁷⁷ Domestic Tariff Area

⁷⁸ Notification No. 05/2023 -Integrated Tax dated October 26, 2023

⁷⁹ Notification F. No. K-43013(12)/1/2021-SEZ dated November 7, 2023

1. The following categories of employees can be permitted by their units to work from any place outside the SEZ until **December 31, 2024**:
 - a) employees of Information Technology ("IT")/IT enabled services employees;
 - b) employees, who are temporarily incapacitated;
 - c) employees, who are travelling;
 - d) employees, who are working offsite.
2. In case of hybrid working granted to any employee, the same has to be intimated to the Development Commissioner by the Unit on or before the date on which the facility has been permitted.
3. Hybrid work facility will be admissible if the Unit continues to operate from the premises as per their letter of approval.
4. The Unit will have to ensure export revenue of the resultant products or services to be accounted for by the Unit to which the employee is permitted for hybrid work.
5. The Unit may provide to an employee duty-free goods, including laptop, desktop, and other electronic equipment needed by the employee for hybrid work and the same will be allowed to be taken outside the SEZ without payment of duty or IGST, on temporary basis (allowed for a period commensurate with the validity of the facility for hybrid work).

Introduction of Automatic System based issuance of Status Holder Certificate ("e-SHC") ⁸⁰

In furtherance of e-Governance initiatives taken by DGFT⁸¹, a new IT module to recognize and certify the export performance of individual companies has been developed. The e-SHC will be electronically generated based on export data available in DGCI&S⁸² database. Issuance of e-SHC will eliminate the earlier process of submission of an online application with supporting export performance certificate from a Chartered

Accountant and will also do away with the file examination required at the DGFT Regional Offices.

Validity of deeming-fiction presuming 1/3rd of total amount towards cost of land before Supreme Court



The Supreme Court has listed the SLP⁸³ filed by Revenue against Gujarat High Court order⁸⁴ reading down deeming fiction presuming 1/3rd of total amount charged towards cost of land in construction contracts when land cost is ascertainable, for hearing in January 2024. Notably, the Gujarat High Court had found the deeming fiction to be arbitrary "in as much as the same is uniformly applied irrespective of the size of the plot of land and construction therein".

Introduction of online facility of requesting appointment for virtual/ personal meeting to the exporters ⁸⁵

DGFT⁸⁶ has introduced an online facility of requesting appointment for virtual/ personal hearing to the exporters with effect from June 1, 2023. This change was brought in to facilitate trade and extend proactive handholding and support to the exporting community. Through this facility, the exporters would be able to request an online personal hearing and the concerned officers at regional authorities of DGFT would provide them with a link and a suitable time to attend the hearing. Manuals for suitable guidance are also made available on the DGFT website.

⁸⁰ Public Notice No. 32/2023 and Trade Notice No. 28/2023-24 dated October 9, 2023

⁸¹ Directorate General of Foreign Trade

⁸² Directorate General of Commercial Intelligence and Statistics

⁸³ Special Leave Petition

⁸⁴ Munjaal Manishbhai Bhatt v. Union of India, TS-214-HC(GUJ)-2022-GST

⁸⁵ Trade Notice No. 06/2023-24 dated May 31, 2023

⁸⁶ Directorate General of Foreign Trade

Amnesty Scheme for filing appeal against orders passed under Sections 73 and 74 of the CGST Act⁸⁷

The CBIC has notified Form GST APL-01 for taxable persons who could not file an appeal against the order, passed under Sections 73 and/ or Section 74 of the CGST Act, passed on or before the March 31, 2023, within the specified timeframe. The taxable persons can file an appeal in the aforementioned Form, if the appeal filed earlier was rejected solely on the grounds that the appeal was not filed within the specified time period. It is pertinent to note that an appeal under Form GST APL-01 can be filed on or before January 31, 2024.

Extension of time for issuing order(s) under Sections 73 and 74 of the CGST Act⁸⁸

The CBIC has extended the time limit for issuing order(s) under Sections 73 and 74 of the CGST Act, for FY 2018-19 and FY 2019-20. The extended timelines are provided below:

- (a) For FY 2018-19: April 30, 2024
- (b) FY 2019-20: August 31, 2024

IT/ ITeS DTA business allowed in SEZ unit⁸⁹

The Ministry of Commerce and Industry has permitted DTA businesses to operate from unoccupied space in an SEZ unit/ area, subject to the following key conditions.

- (a) DTA business shall only be allowed from a non-processing area
- (b) Board of Approval may permit demarcation of a portion of built-up area of IT/ ITeS SEZ as a non-processing area.
- (c) Such non-processing area shall be a complete floor and not a part of a floor.
- (d) An area shall be demarcated as non-processing area subject to the repayment of proportionate duties and taxes saved by the developer on the non-processing area.
- (e) IT/ ITeS businesses in non-processing area cannot avail benefits/ rights/ facilities available to SEZ unit.

⁸⁷ Notification No. 53/2023 -Central Tax, dated November 2, 2023

⁸⁸ Notification No. 56/2023 -Central Tax, dated December 28, 2023

⁸⁹ Notification No. G.S.R. 881(E), dated December 06, 2023

Tax Practice

JSA offers a broad range of tax services, both direct and indirect, in which it combines insight and innovation with industry knowledge to help businesses remain compliant as well as competitive. The Tax practice offers the entire range of services to multinationals, domestic corporations, and individuals in designing, implementing and defending their overall tax strategy. Indirect Tax services include services such as (a) advisory services under the Goods and Services Tax laws and other indirect taxes laws (VAT/ CST/ Excise duty etc.), and includes review of the business model and supply chain, providing tax implications on various transactions, determination of tax benefits/exemptions, analysis of applicability of schemes under the Foreign Trade Policy (b) transaction support such as tax diligence (c) assistance in tax proceedings and investigations and (d) litigation and representation support before the concerned authorities, the Appellate Tribunals, various High Courts and Supreme Court of India. The team has the experience in handling multitude of assignments in the manufacturing, pharma, FMCG, e-commerce, banking, construction & engineering, and various other sectors and have dealt with issues pertaining to valuation, GST implementation, technology, processes and related functions, litigation, GST, DRI investigations etc. for large corporates. Direct Tax services include (a) structuring of foreign investment in India, grant of stock options to employees, structuring of domestic and cross-border transactions, advising on off-shore structures for India focused funds and advise on contentious tax issues under domestic tax laws such as succession planning for individuals and family settlements, (b) review of transfer pricing issues in intra-group services and various agreements, risk assessment and mitigation of exposure in existing structures and compliances and review of Advance Pricing Agreements and (c) litigation and representation support before the concerned authorities and before the Income Tax Appellate Tribunal, various High Courts and Supreme Court of India.









**This compendium has been prepared by the JSA Indirect Tax Team,
under the guidance of their Partners:**



Manish Mishra
Partner



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Partner

		
<p>18 Practices and 25 Ranked Lawyers</p>	<p>13 Practices and 38 Ranked Lawyers</p>	<p>19 Practices and 19 Ranked Lawyers</p>
		
<p>12 Practices and 42 Ranked Partners IFLR1000 APAC Rankings 2023</p> <p>-----</p> <p>Banking & Finance Team of the Year</p> <p>-----</p> <p>Fintech Team of the Year</p> <p>-----</p> <p>Restructuring & Insolvency Team of the Year</p>	<p>Among Top 7 Best Overall Law Firms in India and 9 Ranked Practices</p> <p>-----</p> <p>11 winning Deals in IBLJ Deals of the Year</p> <p>-----</p> <p>12 A List Lawyers in IBLJ Top 100 Lawyer List</p>	<p>Innovative Technologies Law Firm of the Year 2023</p> <p>-----</p> <p>Banking & Financial Services Law Firm of the Year 2022</p> <p>-----</p> <p>Dispute Resolution Law Firm of the Year 2022</p> <p>-----</p> <p>Equity Market Deal of the Year (Premium) 2022</p> <p>-----</p> <p>Energy Law Firm of the Year 2021</p> <p>-----</p> <p>Employer of Choice 2021</p>
		
<p>7 Practices and 2 Ranked Lawyers</p>	<p>Ranked #1 The Vahura Best Law Firms to Work Report, 2022</p> <p>-----</p> <p>Top 10 Best Law Firms for Women in 2022</p>	

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