



Rohini CPE Study Circle

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GST

A Study of  
Latest  
Developments

RAKESH GARG, LLB, FCA

# GSTR-9 and 9C

# Form GSTR-9 and 9C

## Vide Press Release by CBIC dated 3 July 2019 – Para (i)

- The aggregate turnover, i.e., the turnover of all the registrations having the same PAN is to be used for determining the requirement of filing of reconciliation statement.
- Therefore, if there are two registrations in two different States on the same PAN, say State A (with turnover of INR 1.2 Crore) and State B (with turnover of INR 1 Crore) they are both required to file reconciliation statements individually for their registrations since their aggregate turnover is greater than INR 2 Crore.
- The aggregate turnover for this purpose shall be reckoned for the period July, 2017 to March, 2018.

# Form GSTR-9 and 9C

## Vide Press Release by CBIC dated 3 July 2019– Para (h)

- There are apprehensions that the chartered accountant or cost accountant may go beyond the books of account in their recommendations under Form GSTR-9C. GST Act is clear in this regard.

*With respect to the reconciliation statement, their role is limited to reconciling the values declared in annual return (Form GSTR-9) with the audited annual accounts of the taxpayer.*

## Notification no. 56 dated 14.11.2019:

For the years 2017-18 and 2018-19, Forms GSTR-9 and GSTR-9C have been simplified significantly. At 31 times in the notification, the word “option” has been used.

# Form GSTR-9

Table	Existing	Amendment
4I, 4J, 4K & 4L	Details of Debit Notes, Credit Notes and amendments made w.r.t. B2B supplies, Zero Rated Supplies and Deemed Exports require to report separately in the given table.	For FY 2017-18 & 2018-19, taxpayers have an <b>option</b> to report the details of debit Notes, credit Notes and amendments made w.r.t. B2B supplies, Zero Rated Supplies and Deemed Exports by netting off with B2B supplies, etc. instead to report separately.
5D, 5E & 5F	Details of exempted, nil rated and Non-GST supplies requires to report separately in the given table number.	Taxpayers have an <b>option</b> to report all these supplies under one head “Exempted” (Table Number 5D)
5H, 5I, 5J & 5K	Details of Debit Notes, Credit Notes and amendments made w.r.t. Zero Rated Supplies, exempted, nil rated etc. require to report separately in the given table.	For FY 2017-18 & 2018-19, taxpayers have an <b>option</b> to report the details of debit Notes, credit Notes and amendments made w.r.t. Zero Rated Supplies, exempted, nil rated etc. by netting off with zero rated supplies, etc. instead to report separately.

# Form GSTR-9

Table	Existing	Amendment
6B-6E	Input, Input Services and Capital goods require to report separately for inward supplies.	Taxpayers have an <b>option</b> to report all inward supplies under the head “Inputs”
6C & 6D	Inward supplies received from unregistered or registered person liable to RCM require to report separately.	Taxpayers have an <b>option</b> to report all inward supplies under the table 6D, namely inward supplies received from regd. person.
7A-7H	Detail of ITC Reversal as per rule 37, 39, 42, 43 & 17(5) and other reversal are require to report separately under respective table.	Taxpayers have an <b>option</b> to report all such reversal in the table number 7H, namely other reversals.
8A	GSTR 2A generated as on 01.05.2019 shall be auto-populated	GSTR 2A generated as on 01.11.2019 shall be auto-populated. Further, taxpayers have an <b>option</b> to upload the details for entries in Table 8A to 8D duly signed in PDF format in Form GSTR 9C (without CA certification).

# Form GSTR-9

Table	Existing	Amendment
8B, 8D	-	For F.Y 2017-18 & 2018-19, the registered person shall have an <b>option</b> to upload the details for the entries in Table 8A to 8D duly signed, in PDF format in FORM GSTR-9C (without the CA certification).
8C	-	For F.Y 2018-19, Aggregate value of input tax credit availed on all inward supplies (except those on which tax is payable on reverse charge basis but includes supply of services received from SEZs) received during April 2018 to March 2019 but credit on which was availed between April 2019 to Sept 2019 shall be declared here. For F.Y 2017-18 and 2018-19, the registered person shall have an <b>option</b> to upload the details for the entries in Table 8A to Table 8D duly signed, in PDF format in FORM GSTR-9C (without the CA certification).
10 & 11	-	There is an insertion in the instruction- F.Y 2018-19, Details of additions or amendments to any of the supplies already declared in the returns of the previous financial year but such amendments were furnished in Table 9A, Table 9B and Table 9C of FORM GSTR-1 of April 2019 to Sept 2019 shall be declared here.

# Form GSTR-9

Table	Existing	Amendment
12 & 13	Declare the details of ITC reversed or availed for the previous financial year.	For FY 2017-18 & 2018-19, taxpayers have an <b>option</b> to not fill this table.
15	Provide the details of Demand & Refund	For FY 2017-18 & 2018-19, taxpayers have an <b>option</b> to not fill this table.
16	Information on supplies received from Composition taxpayers, deemed supply u/s 143 and goods sent on approval basis	For FY 2017-18 & 2018-19, taxpayers have an <b>option</b> to not fill this table.
17 & 18	HSN wise summary of outward & inward supplies.	For FY 2017-18 & 2018-19, taxpayers have an <b>option</b> to not fill this table.

# Form GSTR- 9C

Table	Existing	Amendment
5B to 5F	Unbilled Revenue at beginning of FY & Unadjusted advances at the end of FY, Deemed Supply, Credit Notes issued after the end of FY but reflect in annual return and Trade discount accounted for but not permissible under GST are required to report separately in the given table number.	For FY 2017-18 & 2018-19, taxpayers have an <b>option</b> to not fill this table. Report all such adjustment in Table 5O, namely adjustment in turnover not listed above.
5G	Turnover from April to June 2017	For FY 2017-18, taxpayers have an <b>option</b> to not fill this table. Report such adjustment in Table 5O, namely adjustment in turnover not listed above.
5H to 5N	Unbilled Revenue at the end of FY & Unadjusted advances at the beginning of FY, etc. are required to report separately in the given table number.	For FY 2017-18 & 2018-19, taxpayers have an <b>option</b> to not fill this table. Report all such adjustment in Table 5O, namely adjustment in turnover not listed above.

# Form GSTR- 9C

Table	Existing	Amendment
12B & 12C	ITC booked in earlier FY claimed in current FY, ITC booked in current FY to be claimed in subsequent FY are required to report separately in the given table number.	Made <b>Optional</b> for the registered person for the F.Y 17-18 & 18-19.
14	Details of ITC availed on account of purchases, freight, bank charges, etc. are required to report separately.	Made <b>Optional</b> for the registered person for the F.Y 17-18 & 18-19.
Part-B	Particulars given in the form GSTR 9C are <u>true and correct...</u>	Particulars given in the form GSTR 9C are <b><u>true and fair ...</u></b>

# Input Tax Credit Rule 36(4)

# Mismatched ITC under Rule 36(4)

Rule 36(4) – vide N. No. 49/2019- CT, dated 09.10.2019 –

- Input tax credit to be availed by a registered person *in respect of* invoices or debit notes, the details *of which* have not been uploaded by the suppliers *under section 37(1)*, shall not exceed 20% of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under section 37(1).

# Mismatched ITC under Rule 36(4)

## Questions:

- Whether ITC is available on receipts from quarterly suppliers on monthly basis
- What would happen if the supplier files the GSTR-1 between 12<sup>th</sup> and 19<sup>th</sup> of the next month... Can the Recipient claim ITC – Circular 123 dated 11 Nov. 2019
- Invoices pertaining to earlier months but shown and ITC claimed in the month of Oct. 2019
- What would happen if the mismatch is subsequently rectified, partly or fully
- Whether it would be Act wise – CGST, SGST and IGST, separately
- Precautions, if any

# Mismatched ITC under Rule 36(4)

- Sec 37(1) - Every registered person, other than an ISD a non-resident taxable person and a person paying tax under the provisions of sec 10 or sec 51 or sec 52, shall furnish, electronically, in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before the tenth day of the month succeeding the said tax period and such details shall be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed:
- Provided that the registered person shall not be allowed to furnish the details of outward supplies during the period from the eleventh day to the fifteenth day of the month succeeding the tax period:
- Provided further that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing such details for such class of taxable persons as may be specified therein:

# Mismatched ITC under Rule 36(4)

## Notification No. 45/2019 dated 9 Oct. 2019 – To illustrate

- In exercise of the powers conferred by section 148 of the CGST Act, the Central Government, on the recommendations of the Council, hereby notifies the registered persons having aggregate turnover of up to 1.5 crore rupees in the preceding financial year or the current financial year, as the class of registered persons who **shall** follow the special procedure as mentioned below for furnishing the details of outward supply of goods or services or both.
- The said registered persons **shall** furnish the details of outward supply of goods or services or both in FORM GSTR-1 under the CGST Rules, namely:-

Sl. No.	Quarter for which details in FORM GSTR-1 are furnished	Time period for furnishing details in FORM GSTR-1
1	October, 2019 to December, 2019	31st January, 2020
2	January, 2020 to March, 2020	30th April, 2020

# Mismatched ITC under Rule 36(4)

## Provisions - To summarise:

- As per Rule 36(4), ITC shall be restricted in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under section 37(1)
- Sec 37(1) casts the responsibility upon the supplier to File GSTR-1 on the tenth day of the month succeeding the said tax period
- Further, Sec 148, on the recommendation of Council, notifies certain classes of registered persons, and the special procedures to be followed by such persons including those with regard to furnishing of return and payment of tax
- Concerned notification mandatorily requires person having turnover upto 1.5 Cr (qtry. taxpayers) to file returns by the end of succeeding month
- Hence, legally as well as logically and harmoniously, monthly restriction under rule 36(4) should not apply on receipts from qtry. taxpayers

# Mismatched ITC under Rule 36(4)

## Questions and Answers :

1. Whether ITC is available on receipts from quarterly suppliers
  - *Yes. Based upon invoices of quarterly taxpayers and other eligibility criteria. However, matching would be done on quarterly basis*
2. What would happen if the supplier files the GSTR-1 between 12<sup>th</sup> and 19<sup>th</sup> of the next month... Can the Recipient claim ITC – Circular 123
  - *In our view, the intention of the Circular is to allow credit even in the subsequent months. Hence, claim in the current month based upon latest GSTR-2A. Might be litigation for one month interest*
3. Invoices pertaining to earlier months, but shown and ITC claimed in Oct. 2019
  - *To be considered for the purpose for the purpose of matching*
4. What would happen if the mismatch is subsequently rectified, partly or fully
  - *Claim in the subsequent months as stated in the Circular 123 dt 11.11.2019*
5. Whether it would be Act wise – CGST, SGST and IGST – *Yes Act wise*
6. Precaution, if any – *Take Screen Shot of ITC as per 2A to prove your claim*

# ITC under Sec 16(2)(c) - Restriction

## Please Note that section 16(2)(c) of the GST Act – It still exists

- *Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—*
  - (c) *subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply;*

# Reverse Charge

# RCM u/s 9(3) – New Significant Provisions

**W.e.f. 1.1.2019 - Security services (services provided by way of supply of security personnel) provided to a registered person:**

Provided that nothing contained in this entry shall apply to, -

- (i) (a) a Department or Establishment of the Central/State Govt or UT; or
- (b) local authority; or
- (c) Governmental agencies;

which has taken registration under the CGST Act only for the purpose of deducting tax under sec 51 of the said Act and not for making a taxable supply of goods or services; or

- (ii) a registered person paying tax under sec 10 of the said Act.

<b>Service Provider:</b>	<b>Service Receiver:</b>
Any person other than a body corporate	A registered person, located in the taxable territory

# RCM u/s 9(3) – New Significant Provisions

**W.e.f. 1.10.2019 - Services provided by way of renting of a motor vehicle provided to a body corporate**

**Service Provider:**

Any person other than a body corporate, paying GST @5% on renting of motor vehicles with input tax credit only of input service in the same line of business

**Service Receiver:**

Any body corporate located in the taxable territory

- *Not applicable where supplier is unregistered*
- *Not applicable where supplier paying GST at more than 5%*
- *Applicable – Renting of M.V. for Transportation of passenger*

# RCM u/s 9(3) – New Significant Provisions

No.	Heading	Description of Service	Rate	Condition
(1)	(2)	(3)	(4)	(5)
10	Heading 9966 (Rental services of transport vehicles with operators)	(i) Renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient.	5	Provided that ITC on goods & services used in supplying the service, other than ITC of input service in the same line of business (i.e. service procured from another service provider of transporting passengers in a motor vehicle or renting of a motor vehicle) has not been taken.
				or
		(ii) Not given here – Relating to vessels	12	-
		(iii) Rental services of transport vehicles with operators, other than (i) and (ii) above.	18	-

# RCM u/s 9(3) – New Significant Provisions

- With respect to the services of transfer or permitting the use or enjoyment of a copyright relating to original literary works supplied **BY AN AUTHOR TO A PUBLISHER**, the author is given a choice to either pay the GST under forward charge, else the publisher located in India would be liable to pay GST under RCM.
- In case the author wishes to pay under forward charge, he should be registered under the CGST Act, 2017 and file a declaration in Annexure I with the jurisdictional CGST or SGST Commissioner by 31 Oct '19 for exercising the option from 01.11.2019 (for F.Y 2019-20) or before commencement of a financial year for the option to be effective from that financial year. This declaration would be valid up to the end of the financial year 2019-20. Such declaration is to be filed for each financial year.

# RCM u/s 9(3) – New Significant Provisions

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	(2)	(3)	(4)
16	Services of lending of securities under Securities Lending Scheme, 1997 (“Scheme”) of Securities and Exchange Board of India (“SEBI”), as amended	Lender i.e. a person who deposits the securities registered in his name or in the name of any other person duly authorised on his behalf with an approved intermediary for the purpose of lending under the Scheme of SEBI	Borrower i.e. a person who borrows the securities under the Scheme through an approved intermediary of SEBI

# RCM u/s 9(3) – New Significant Provisions

## **Circular No. 119/38/2019-GST dated 11 Oct. 2019:**

- In such cases, the lender temporarily lends the securities held by him to a borrower and charges lending fee for the same from the borrower. The borrower of securities can further sell or buy these securities and is required to return the lend securities after stipulated period of time. The lending fee charged from the borrowers of securities has the character of consideration; and this activity is taxable in GST since 01 July 2017.
- The supply of lending of securities under the scheme is classifiable under heading 997119 and is leviable to GST@18% under Sl. No. 15(vii) of N. No. 11/2017- CT (Rate) dated 28.06.2017 as amended from time to time.

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# RCM u/s 9(3) – New Significant Provisions

## **Circular No. 119/38/2019-GST dated 11 Oct. 2019:**

- For the period from 01.07.2017 to 30.09.2019, GST is payable under forward charge by the lender and request may be made by the lender (supplier) to SEBI to disclose the information about borrower for discharging GST under forward charge. The nature of tax payable shall be IGST. However, if the service provider has already paid CGST / SGST / UTGST treating the supply as an intra-state supply, such lenders shall not be required to pay IGST again in lieu of such GST payments already made.
- With effect from 1 Oct. 2019, the borrower of securities shall be liable to discharge GST as per Sl. No 16 of Notification No. 22/2019-CT (Rate) dated 30.09.2019 under reverse charge mechanism (RCM). The nature of GST to be paid shall be IGST under RCM.

# RCM u/s 9(4) – New Significant Provisions

Sl. No.	Category of Supply of Services	Recipient of goods & services
(1)	(2)	(3)
1	Supply of such goods and services or both <i>[other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI)]</i> which constitute the shortfall from the minimum value of goods or services or both required to be purchased by a promoter for construction of project, in a financial year (or part of the financial year till the date of issuance of CC/OC, whichever is earlier) as prescribed in N. No. 11/2017- CT (Rate), dated 28.6.2017, at items (i), (ia), (ib), (ic) and (id) against serial number 3 in the Table, as amended. (*)	Promoter

# RCM u/s 9(4) – New Significant Provisions

Sl. No.	Category of Supply of Services	Recipient of goods & services
(1)	(2)	(3)
2	<b><u>W.e.f. 01-10-2019</u></b> : Cement falling in chapter heading 2523 in the first schedule to the Customs Tariff Act, 1975 Vide N. No. 24/2019-CT (Rate) dated 30.09.2019 w.e.f. 01.10.2019	Promoter
3	<b>Capital goods</b> falling under any chapter in the first schedule to the Customs Tariff Act, 1975 supplied to a promoter for construction of a project on which tax is payable or paid at the rate prescribed for items (i), (ia), (ib), (ic) and (id) against serial number 3 in the Table, in N.No. 11/2017- CT (Rate) dated 28.06.2017.	Promoter

**Supply**

# Donation to Charitable Trust

## **Circular No. 116/35/2019-GST dated 11 October, 2019**

- When name of the donor is displayed in recipient institution premises, in such a manner, which can be said to be an expression of gratitude and public recognition of donor's act of philanthropy and is not aimed at giving publicity to the donor in such manner that it would be an advertising or promotion of his business, then it can be said that there is no supply of service for a consideration (in the form of donation).
- There is no obligation (quid pro quo) on part of recipient of the donation or gift to do anything (supply a service).
- There is no reference or mention of any business activity of the donor which otherwise would have got advertised
- Therefore, there is no GST liability on such consideration

# Security Lending Fee

## **Circular No. 116/35/2019-GST dated 11 October, 2019**

- SEBI has prescribed the Securities Lending Scheme, 1997 for the purpose of facilitating lending and borrowing of securities. Under the Scheme, lender of securities lends to a borrower through an approved intermediary to a borrower under an agreement for a specified period with the condition that the borrower will return equivalent securities of the same type or class at the end of the specified period along with the corporate benefits accruing on the securities borrowed
- Lending fee charged from the borrowers of securities has the character of consideration; and taxable in GST since 01.07.2017 @18%
- Apart from above, activities of intermediaries facilitating lending and borrowing of securities for commission/fee are also taxable separately

# Liquor Licence Fee

## **Circular No. 116/35/2019-GST dated 11 October, 2019**

- Service by way of grant of alcoholic liquor licence, against consideration in the form of licence fee or application fee or by whatever name it is called are treated neither as a supply of goods nor a supply of service **(Notification No. 25/2019-CT (Rate) dated 30th Sept, 2019)**
- It is also clarified that this special dispensation applies only to supply of service by way of grant of liquor licenses by the State Governments as an agreement between the Centre and States and has no applicability or precedence value in relation to grant of other licenses and privileges for a fee in other situations, where GST is payable

# Cooperative Society / RWA

## **Circular No. 109/28/2019- GST dated 22 July 2019**

- Supply of service by RWA to its own members by way of reimbursement of charges or share of contribution up to an amount of INR 7,500/- (5,000/- upto 24.1.2018) per month per member for providing services and goods for the common use of its members in a housing society or a residential complex are exempt from GST
- In case the charges exceed INR 7,500/- per month per member, the entire amount is taxable. For example, if the maintenance charges are INR 9,000/- per month per member, GST @18% shall be payable on the entire amount of INR 9,000/- and not on  $[9,000 - 7,500] = \text{INR } 1,500/-$ .
- Where a person owns two or more residential apartments in a housing society or a residential complex, the ceiling of INR 7,500/- per month per member shall be applied separately for each residential apartment owned by him

# Development of Land and its sale

## **Maarq Spaces Private Ltd. 2019 (11) TMI 994 (30.9.2019) [AAR- Karn]**

- The Applicant entered into a Joint Development Agreement with Landowners for development of land into residential layout along with specifications and amenities. The consideration was agreed on revenue sharing basis in the ratio of 75% for Landowner and Agreement Holder and 25% for Applicant. Cost of the development shall be borne by Applicant. Pursuant to JDA, Applicant had entered into an agreement with customers for sale of developed plots for consideration.
- **Q No. 1:** The activities as envisaged in the agreement between the applicant and the landowners amount to supply of service and is liable to be taxed under GST.
- **Q No. 2:** Rule 31 applies in the instant case and the value of the supply is equal to the total amount received by the applicant, which is equal to 25% of the market value of each plot.

# Printer – Charges on “per click basis”

## HP India Sales Pvt. Ltd. 2019 (8) TMI 30 dated 17.02.2019 (AAAR-Maha)

- HP India entered agreement with the customer who agreed to pay the consideration for supply of ElectroInk and other ancillary materials on “per click” basis. The invoicing is done on a “per click basis” for all the supplies. Every customer is charged a single price for all the goods, irrespective of the fact that in achieving the final output of a print, there is different proportion of ElectroInk and other consumables.
- Observed that all the products are equally important for the printing to happen. It is not that the printing can take place with only Ink and that the other products are not necessary.
- In the present case, all the Imaging products are equally necessary and it is not that any one of them is a Principal supply. Therefore, this was taxable as **mixed supply**; and not a composite supply where the supply of Ink is a principal supply.

# Hospital Services

## **Ernakulam Medical Centre Pvt. Ltd., dated 14 Dec. 2018 - 2019 (3) TMI 757 (AAAR-Kerala)**

- The appellant runs a hospital, which is rendering medical services with professionals like doctors, nursing staff, lab technicians, etc. The pharmacy located in the hospital supplies medicines and allied items provided by the hospital to the in-patients as well as out-patients.
- Held that the supply of medicines through pharmacy to out-patients shall not be considered as the composite supply of healthcare services; and thus, is taxable under GST.
- However supply of medicines to the in-patients by the Hospital is a composite supply of healthcare services and hence, exempt under GST because no medicine can be supplied to any customer from outside without consulting the doctors in the hospital after taking admission as per hospital card issued.

# Refrain or Tolerate an Act

S. No.	Description	Whether supply of goods or service
5(e) 99979	Agreeing - (i) to the obligation to refrain from an act; or (ii) to tolerate an act or a situation; or (iii) to do an act.	Supply of service

Under the GST, the Advance Ruling Authorities has treated this entry as a residual entry; and tried to cover all types of penalties and damages, few of these are given as under:

# Refrain or Tolerate an Act - Held as supply

S. No.	Name	Nature of Activity/Transaction
1	Maharashtra State Power Generation Co. Ltd dt 11 Sept. 2018 (Maha)	Liquidated damages for delay in erection, testing & commissioning
2	North American Coal Corp India (P) Ltd dt 11 July 2018 (Maha)	Liquidated damages claimed and awarded to the Applicant under the arbitral award
3	Zaver Shankarlal Bhanushali dated 22 May 2018 (Maha)	<p>Compensation for alternate accommodation to be paid to the tenant of the old building by the developer/owner</p> <p>Compensation for alternate accommodation / damages for delayed handover of possession of the new premises to be paid to the tenant of the old building by the developer / owner</p>

# Refrain or Tolerate an Act - Held as supply

S. No.	Name	Nature of Activity/Transaction
4	K.P.H. Dream Cricket (P) Limited dated 20 Aug. 2018 (Punjab)	Providing complementary tickets free of charge to some persons
5	Bajaj Finance Ltd. Dt. 6 Aug. 2018 (Maha)	Penalty/ liquidated damages - Cheque bounce charge
6	Louis Dreyfus Company India Private Limited dated 2d Sept. 2018 (Punjab)	In forward contracts in cotton sales: being settled by Applicant with other party to the contract by way of payment of the differential of forward rate and rate fixed by Applicant using his discretion, such rate being different than the market price of cotton on the date of settlement - Supply
7	Orders under Serv. Tax	Notice Pay

**Rate of tax – 18% or the Applicable Rate**

# Refrain or Tolerate an Act – Rate of Tax

## Madhya Pradesh Poorv Kshetra Vidyut Vitaran Co. Ltd. dated 22.11.2018 – Delay in payment of Electricity Bill

- Delayed payment surcharge/ Late Payment Surcharge/ Surcharge on outstanding amount (by whatever name called) cannot be treated as separate service and same shall be included in the value of initial supply to which such charges relate, and portion of Delayed payment surcharge attributable to exempted supply will be exempted AND
- The portion of Delayed payment surcharge attributable to taxable supply is taxable at the rate on which corresponding supply is taxed.

# Refrain or Tolerate an Act – Rate of Tax

## T.P. Ajmer Distribution Ltd., 2019 (3) TMI 917 dated 18 Oct. 2018 (AAAR-Raj.)

- When value of supply of electricity itself stands exempted by virtue of the above-stated exemption notification, incremental value (i.e. consideration for delayed payment of the electricity bills) would also remain exempted.

## SPFL Securities Ltd., 2019 (8) TMI 32 dated 18 April 2019 (AAAR-U.P.):

- Since the service of buying and selling of securities is exempted under GST, the corresponding delayed payment charges, which are also linked to the above service of trading of securities, should also stand exempt under GST.

# GST Rates on Interest / Penal Interest

## Circular No. 102/22/2019-GST dated 28 June 2019

- X sells a mobile phone to Y. The cost of mobile phone is INR 40,000/-. Y has the option to avail a loan at interest of 2.5% per month for purchasing the mobile from ABC Ltd. The terms of the loan from ABC Ltd. allows Y a period of 4 months to repay the loan and an additional/penal interest @ 1.25% per month for any delay in payment.
- The additional/penal interest is charged for a transaction between Y and ABC Ltd., and the same is getting covered under Sl. No. 27 of N. No. 12/2017- CT (Rate) dated 28.06.2017. The term 'interest' has been defined in clause 2 (zk) of the said notification.

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# GST Rates on Interest / Penal Interest

## Circular No. 102/22/2019-GST dated 28 June 2019

- Accordingly, in this case the 'penal interest' charged thereon on a transaction between Y and ABC Ltd would not be subject to GST, as the same would be covered under the said notification.
- Value of supply of mobile by X to Y would be INR 40,000/- for the purpose of levy of GST.
- Further clarified that the transaction of levy of additional/penal interest does not fall within the ambit of entry 5(e) of Schedule II of the CGST Act, i.e., "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act", as this levy of additional/penal interest satisfies the definition of "interest" as contained in notification No. 12/2017- CT (Rate) dated 28.06.2017.

# Illegal Occupation of Property

## **Madhya Bai Mamubai Trust vs. Suchitra - 2019 (9) TMI 929 (Bom HC):**

During the tenure of contractual tenancy what is paid by the tenant to his landlord is the contractual rent. After quit notice from the date of termination of tenancy, the characteristics of the subject matter is changed to damages for use and occupation of the premises and after filing of the suit for eviction till the possession is handed over, if the decree of possession is passed in favour of the landlord, the characteristic is changed to ***mesne profits***. To what extent the quantum changes with the change of such characteristics is for the Courts to decide which the Courts do mould according to the facts and circumstances of the case to do justice between the parties..

# Illegal Occupation of Property

## **Madhya Bai Mamubai Trust vs. Suchitra - 2019 (9) TMI 929 (Bom HC):**

- The definition of 'business' includes, inter alia, any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit.
- However, no positive act of admission into premises for a consideration can be said to have taken place where the plaintiff's allegation is that of illegal occupation.
- For a supply to fall under Sec 7(a), 7(b) or 7(d), there must be a contemplated consideration. Only activities specified in Schedule I are considered a supply, even if made without consideration. Here, since there is no positive act from the plaintiff, it cannot be termed as supply.
- In the absence of reciprocal enforceable obligations, the Defendant's occupation of the Suit Premises against payment of royalty as a 'supply' for 'consideration' on which GST is payable, would not be characterised.

# Kundan Mishthan Bhandar

2019 (5) TMI 312 dt. 27.2. 2019 (AAAR-Uttara.)

Questions	Ruling
<p>(a) Whether supply of pure food items such as sweetmeats, namkeens, cold drink and other edible items from a sweetshop which also runs a restaurant is a transaction of supply of goods or of service?</p> <p>(b) Rate of tax applicable to the following items supplied from ground floor of a sweetshop in which restaurant is also located on the first floor and whether the applicant is entitled to claim benefit of ITC with respect to the same:</p> <p>(i) Sweetmeats, namkeens, dhokla, etc., known as snacks, cold drinks, ice creams and other edible items;</p> <p>(ii) Ready to eat (partially or fully pre-cooked/packed) items supplied from live counters such as jalebi, chola bhatura and other edible items;</p> <p>(iii) Takeaway order of sweetmeats or namkeens by a person sitting in the restaurant of sweetshop when such products are not consumed within the premises or the applicant but are takeaway.</p>	<p>(i) Sale of sweets, namkeens, cold drinks and other edible items through restaurant will be treated as 'composite supply' with restaurant supply being principal service. Existing GST rates on restaurant service will also be applicable on all such sales and no ITC will be allowed.</p> <p>(ii) Sale of sweets, namkeens, cold drinks and other edible items from sweetshop counter will be treated as supply of goods with applicable GST rates and ITC will be allowed.</p> <p>(iii) The applicant should maintain separate records for restaurant and sweetshop with respect to input and output and billings as well as other accounting records should also be separately maintained.</p>

# Intermediary Service

# Intermediary – “IGST” vs. “CGST + SGST”

**whether agent would charge “IGST” or “CGST + SGST/UTGST” on such service?**

- Looking at various sec of sec 7 and 8 of the IGST Act; and more particularly, sec 8(2), it is clear that such transaction shall be treated as intra-state supply; and the agent shall charge CGST + SGST/UTGST on his commission service. Sec 8(2) reads as,-  
“(2) Subject to the provisions of sec 12, supply of services where the location of the supplier and the place of supply of services are in the same State or same Union territory shall be treated as intra-State supply:”
- In Q. No. 25 of the FAQ on Banking, Insurance and Stock Brokers Sector released by the CBIC, the query was, “whether the intermediary services provided by a banking company to its offshore account holders be treated as an intra-State supply or an inter-State supply for payment of GST?”

# Intermediary – “IGST” vs. “CGST + SGST”

**whether the agent would charge “IGST” or “CGST + SGST/UTGST”?**

- It has been answered, citing sec 13(8)(b) of IGST Act as, *“the place of supply of such services is the location of the provider of services. As the location of supplier and place of supply are in same State, such supplies will be treated as intra-State supply and CGST and SGST/UTGST, as the case may be, will be payable.”*
- **However**, ambiguity has arisen due to the exemption entry inserted w.e.f. 01.10.2019, which allows the exemption to intermediary service under the IGST Act.
- Entry no. 12AA has been inserted in the N. No. 09/2017- IT(Rate) dated 28 June 2017 vide No. 20/2019- IT (Rate), dated 30-09-2019 to allow an exemption to services provided by an intermediary when the location of both supplier and recipient of goods are outside the taxable territory, subject to certain conditions.

# Intermediary – “IGST” vs. “CGST + SGST”

**whether the agent would charge “IGST” or “CGST + SGST/UTGST” on such service?**

- The said exemption has been allowed only under the IGST Act (and not the CGST Act). Thus, to claim exemption, one has to treat the intermediary services taxable in the IGST Act (and not the CGST Act).
- Thus, notwithstanding what is our interpretation, to read the provisions and exemption entry harmoniously, intermediary services would be subject to IGST.

# Important Exemptions

# Important Exemption - Services

<p>Ch.99 [Entry 10F/ IGST]</p>	<p><b>W.e.f. 27.7.2018</b> : Services supplied by an establishment of a person in India to any establishment of that person outside India, which are treated as establishments of distinct persons in accordance with Expln 1 in sec 8 of IGST Act. [<b>Condition:</b> <i>Provided the place of supply of the service is outside India in accordance with sec 13 of IGST Act.</i>]</p> <p><i>S. 2(6) of IGST: export of services” means the supply of any service when - the supplier of service and recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in sec 8</i></p>
<p>Ch.99 [E. 2]</p>	<p>Services by way of transfer of a going concern, as a whole or an independent part thereof.</p> <p><i>[Business must be carried on; no provision for transfer of e-cash ledger; NCLT cases (uncrystallised demands)]</i></p>

# Important Exemption - Services

Ch.99 Services by way of **pure labour contracts** of construction, erection, commissioning, or installation of original works pertaining to a **single residential unit** otherwise than as a part of a residential complex. *[Works contract is taxable @12%]*

[E.  
11]

*“single residential unit” means a self-contained residential unit which is designed for use, wholly or principally, for residential purposes for one family;*

2(49) *“family” means,—*

- (i) the spouse and children of the person, and*
- (ii) the parents, grand-parents, brothers and sisters of the person if they are wholly or mainly dependent on the said person;*

# Important Exemption - Services

E. 19A & 19B	<p>Services by way of transportation of goods <b>by an aircraft or vessel</b> from customs station of clearance in India to a place outside India. <i>[Nothing contained in this serial number shall apply after the <del>30.9.2019</del>. <b>30.09.2020</b>]</i></p> <p><i>S. 12(8) of IGST Act: Transportation of goods, including by mail or courier to -</i></p> <p><i>“Provided that where transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods.”</i></p>
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# Refund

# Refund – Limitation Period

- Sec 54(1) - Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application **before the expiry of two years from the relevant date** in such form and manner as may be prescribed
- Explanation (2) - **“relevant date” means—**
  - (a) in the case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods,—
    - (i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or
    - (ii) if the goods are exported by land, the date on which such goods pass the frontier; or
    - (iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;

# Refund – Limitation Period

- (b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished;
- (c) in the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of—
  - (i) receipt of payment in convertible foreign exchange [or in Indian rupees wherever permitted by the Reserve Bank of India], where the supply of services had been completed prior to the receipt of such payment; or
  - (ii) issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice;

# Refund – Limitation Period

- (d) in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court, the date of communication of such judgment, decree, order or direction;
- (e) in the case of refund of unutilised ITC under clause (ii) of the first proviso to sec 54(3), the due date for furnishing of return under sec 39 for the period in which such claim for refund arises;
- (f) in the case where tax is paid provisionally under this Act or the rules made thereunder, the date of adjustment of tax after the final assessment thereof;
- (g) in the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and
- (h) in any other case, the date of payment of tax.

# Refund – Limitation Period

## Circular No. 125 dated 18.11.2019 - Deficiency Memo

9. It may be noted that if the application for refund is complete in terms of sub-rule (2), (3) and (4) of rule 89 of the CGST Rules, an acknowledgement in FORM GST RFD-02 should be issued within 15 days of the filing of the refund application. The date of generation of ARN for FORM GST RFD-01 is to be considered as the date of filing of the refund application. Sub-rule (3) of rule 90 of the CGST Rules provides for communication of deficiencies in FORM GST RFD-03 where deficiencies are noticed within the aforesaid period of 15 days. It is clarified that either an acknowledgement or a deficiency memo should be issued within the aforesaid period of 15 days starting from the date of generation of ARN. Once an acknowledgement has been issued in relation to a refund application, no deficiency memo, on any grounds, may be subsequently issued for the said application.

# Refund – Limitation Period

## **Circular No. 125 dated 18.11.2019 - Deficiency Memo**

10. After a deficiency memo has been issued, the refund application would not be further processed and a fresh application would have to be filed. Any amount of input tax credit/cash debited from electronic credit/ cash ledger would be re-credited automatically once the deficiency memo has been issued. It may be noted that the re-credit would take place automatically and no order in FORM GST PMT-03 is required to be issued. The applicant is required to rectify the deficiencies highlighted in deficiency memo and file fresh refund application electronically in FORM GST RFD-01 again for the same period and this application would have a new and distinct ARN.

# Refund – Limitation Period

## **Circular No. 125 dated 18.11.2019 - Deficiency Memo**

11. It is further clarified that once an application has been submitted afresh, pursuant to a deficiency memo, the proper officer will not serve another deficiency memo with respect to the application for the same period, unless the deficiencies pointed out in the original deficiency memo remain un-rectified, either wholly or partly, or any other substantive deficiency is noticed subsequently
12. It is also clarified that since a refund application filed after correction of deficiency is treated as a fresh refund application, such a rectified refund application, submitted after correction of deficiencies, shall also have to be submitted within 2 years of the relevant date, as defined in the explanation after sub-section (14) of section 54 of the CGST Act.

# Refund – Transitional Credit

## **Circular No. 125 dated 18.11.2019- Refund of transitional credit- Para 50**

Refund of unutilized input tax credit is allowed in two scenarios mentioned in section 54(3). These two scenarios are zero rated supplies made without payment of tax and inverted tax structure.

The formulae use the phrase ‘Net ITC’ and defines the same as “input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both”.

It is clarified that as the transitional credit pertains to duties and taxes paid under the existing laws viz., under Central Excise Act and Chapter V of the Finance Act, 1994, the same cannot be said to have been availed during the relevant period and thus, cannot be treated as part of ‘Net ITC’ and thus no refund of such unutilized transitional credit is admissible.

# GST Rates

# GST Rates Amendment – w.e.f. 1.10.2019

**Notification No. 20/2019- Central Tax (Rate) dated 30th Sept, 2019 :**

## **Hospitality and tourism (lodging)**

- **The rate of GST on hotel accommodation service as below: –**
  - Transaction Value per Unit (Rs) per day GST Rs 1000 and less – Nil
  - Rs 1001 to Rs 7500 - 12%
  - Rs 7501 and more. - 18%

# GST Rates Amendment – w.e.f. 1.10.2019

Notification No. 20/2019- Central Tax (Rate) dated 30th Sept, 2019 :

## Job Work Services

- **For diamond related services**

Rate of GST reduced from 5% to 1.5% on supply of job work services in relation to diamonds.

- **For engineering related services other than bus body bldg.**

The rate of GST reduced from 18% to 12% on supply of machine job work such as in engineering industry, except supply of job work in relation to bus body building which would remain at 18%

# GST Rates Amendment – w.e.f. 1.10.2019

Notification No. 21/2019- Central Tax (Rate) dated 30th Sept, 2019 :

## Exemption to services

- **Heading 9961-** Services provided by an intermediary when location of both supplier and recipient of goods is outside the taxable territory – Exempt from IGST
- **Heading 9967 or 9985-** 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.
- **Heading 9965 -** Services by way of transportation of goods by an aircraft/vessel from customs station of clearance in India to a place outside India - Extended upto 30.09.2020

# GST Rates Amendment – w.e.f. 1.10.2019

## Notification No. 20/2019- Central Tax (Rate) dated 30th Sept, 2019 :

- **Outdoor catering –**
  - ✓ Rate of GST on outdoor catering services other than in premises having daily tariff of unit of accommodation of Rs 7501 reduced from present 18% with ITC to 5% without ITC. The rate shall be mandatory for all kinds of catering
  - ✓ Catering in premises with daily tariff of unit of accommodation is Rs 7501 and above shall remain at 18% with ITC

# GST Rates Amendment – w.e.f. 1.10.2019

## N. No. 20/2019- CT(Rate) dated 30.9.2019-Restaurants & Caterers :

Entry	Activity (Heading 9963)	Rate	Condition
(1)	(2)	(3)	(4)
7(ii)	Supply of 'restaurant service' other than at 'specified premises'	5	Provided that ITC charged on goods and services used in supplying service has not been taken
7(iii)	Supply of goods, being food or any other article for human consumption or any drink, by the Indian Railways or IRCTC or their licensees, whether in trains or at platforms.	5	- Same as above -
7(iv)	Supply of 'outdoor catering', at premises other than 'specified premises' provided by any person other than- (a) suppliers providing 'hotel accommodation' at 'specified premises', or (b) suppliers located in 'specified premises'.	5	- Same as above -

# GST Rates Amendment – w.e.f. 1.10.2019

## N. No. 20/2019- CT(Rate) dated 30.9.2019-Restaurants & Caterers :

Entry No.	Activity (Heading 9963)	GST Rate	Condition
(1)	(2)	(3)	(4)
7(v)	Composite supply of 'outdoor catering' together with renting of premises (including hotel, convention center, club, pandal, shamiana or any other place, specially arranged for organising a function) at premises other than 'specified premises' provided by any person other than- (a) suppliers providing 'hotel accommodation' at 'specified premises', or (b) suppliers located in 'specified premises'.	5	Provided that ITC charged on goods and services used in supplying the service has not been taken [Please refer to Explanation no. (iv)]
7(vi)	Food and beverage services other than (ii) to (v) above	18	

# GST Rates Amendment – w.e.f. 1.10.2019

## N. No. 20/2019- CT(Rate) dated 30.9.2019-Restaurants & Caterers

- (xxxii) **‘Restaurant service’** means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied.
- (xxxiii) **‘Outdoor catering’** means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, at Exhibition Halls, Events, Conferences, Marriage Halls and other outdoor or indoor functions that are event based and occasional in nature.
- .

# GST Rates Amendment – w.e.f. 1.10.2019

## N. No. 20/2019- CT(Rate) dated 30.9.2019-Restaurants & Caterers

- (xxxiv) **‘Hotel accommodation’** means supply, by way of accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes including the supply of time share usage rights by way of accommodation.
- (xxxv) **‘Declared tariff’** means charges for all amenities provided in the unit of accommodation (given on rent for stay) like furniture, air conditioner, refrigerators or any other amenities, but without excluding any discount offered on published charges for such unit.
- (xxxvi) **‘Specified premises’** means premises providing ‘hotel accommodation’ services having declared tariff of any unit of accommodation above INR 7,500/- per unit per day or equivalent.

# Job Work

# Job Work - Meaning

## **S. 2(68) - Meaning of job work + Circular No. 126 dated 22.11.2019:**

- Means undertaking any treatment or process by a person on goods belonging to another registered person
- If Principal is not registered person, then the treatment or process itself would not be termed as job-work
- The term job work does not cover such services which are carried out on physical inputs (goods) which are owned by persons other than those registered under the CGST Act.

## **Separate terms have been used in entry 26 & 27 of N. No. 11/2017:**

- Services by way of job work in relation to .....
- Services by way of any treatment or process on goods belonging to another person, in relation to .....

# Job Work – Printing – GST as on 1.10.2019

	Nature of Printing	Code/Entry	Rate
<b>A</b>	<b>Printing of newspaper</b>		
(i)	Job work for registered person	9988/Entry 26(i)(a)	5%
(ii)	Any treatment or process on goods belonging to another person for unregistered person	9988/Entry 26(ii)(a)	5%
(iii)	Printing where only content is supplied by the publisher and the physical inputs including paper used for printing belong to the printer	9989/Entry 27(i)	12%
<b>B</b>	<b>Printing of books (including Braille books), journals and periodicals</b>		
(i)	Job work for registered person	9988/Entry 26(i)(d)	5%
(ii)	Any treatment or process on goods belonging to another person for unregistered person	9988/Entry 26(ii)(b)	5%
(iii)	Printing where only content is supplied by the publisher and the physical inputs including paper used for printing belong to the printer [attracting 0%, 5% or 12%]	9989/Entry 27(i)	12%

# Job Work – Printing – GST as on 1.10.2019

	Nature of Printing	Code/Entry	Rate
<b>C</b>	<b>Printing of all goods falling under Chapter 48 or 49, which attract GST @ 5% or Nil</b>		
(i)	Job work for registered person	9988/Entry 26(i)(da)	5%
(ii)	Any treatment or process on goods belonging to another person for unregistered person	9988/Entry 26(ii)(c)	5%
(iii)	Printing where only content is supplied by the publisher and the physical inputs including paper used for printing belong to the printer	9989/Entry 27(i)	12%
<b>D</b>	<b>Printing of all goods falling under Chapter 48 or 49, which attract GST @ 12%</b>		
(i)	Job work for registered person	9988/Entry 26(ia)(b)	12%
(ii)	Any treatment or process on goods belonging to another person for un registered person	9988/Entry 26(ia)	12%
(iii)	Printing where only content is supplied by the publisher and the physical inputs including paper used for printing belong to the printer	9989/Entry 27(i)	12%

# Job Work – Printing – GST as on 1.10.2019

	Nature of Printing	Code/Entry	Rate
<b>E</b>	<b>Other printing of all goods falling under Chapter 48 or 49 [which attract GST @ 18%, e.g., letter cards, envelopes, registers, etc.] [Other than A to D above]</b>		
<b>(i)</b>	Job work for registered person	9988/Entry 26(id)	12%
<b>(ii)</b>	Any treatment or process on goods belonging to another person for unregistered person	9988/Entry 26(iv)	18%
<b>(iii)</b>	Printing where only content is supplied by the publisher and the physical inputs including paper used for printing belong to the printer	9989/Entry 27(ii)	18%

# Job Work – Others – GST as on 1.10.2019

S.No.	Nature of Job work/Manufacturing services		Code/Entry	Rate
(i)	Textiles and textile products falling under Chapter 50 to 63 in the First Schedule to the Customs Tariff Act, 1975			
	a	For Registered Persons	9988/Entry 26(i)(b)	5%
	b	For Unregistered Persons	9988/Entry 26(iv)	18%
(ii)	All products falling under Chapter 71 (Other than Diamonds) in the First Schedule to the Customs Tariff Act			
	a	For Registered Persons	9988/Entry 26(i)(c)	5%
	b	For Unregistered Persons	9988/Entry 26(iv)	18%
(iia)	diamonds falling under chapter 71 in the First Schedule to the Customs Tariff Act, 1975			
	a	For Registered Persons	9988/Entry 26(ib)	1.5%
	b	For Unregistered Persons	9988/Entry 26(iv)	18%
(iii)	Processing of hides, skins and leather falling under Chapter 41 in the First Schedule to the Customs Tariff Act			
	a	For Registered Persons	9988/Entry 26(i)(e)	5%
	b	For Unregistered Persons	9988/Entry 26(iv)	18%

# Job Work – Others – GST as on 1.10.2019

S.No.	Nature of Job work/Manufacturing services		Code/Entry	Rate
(iv)	Manufacture of leather goods or foot wear falling under Chapter 42 or 64 in the First Schedule to the Customs Tariff Act, 1975 respectively			
	a	For Registered Persons	9988/Entry 26(i)(ea)	5%
	b	For Unregistered Persons	9988/Entry 26(iv)	18%
(v)	All food and food products falling under Chapters 1 to 22 in the First Schedule to the Customs Tariff Act			
	a	For Registered Persons	9988/Entry 26(i)(f)	5%
	b	For Unregistered Persons	9988/Entry 26(iv)	18%
(vi)	All products falling under Chapter 23 in the First Schedule to the Customs Tariff Act, 1975, except dog and cat food put up for retail sale falling under tariff item 23091000 of the said Chapter			
	a	For Registered Persons	9988/Entry 26(i)(g)	5%
	b	For Unregistered Persons	9988/Entry 26(iv)	18%
(vii)	Manufacture of clay bricks falling under tariff item 69010010 in the First Schedule to the Customs Tariff Act, 1975			
	a	For Registered Persons	9988/Entry 26(i)(h)	5%
	b	For Unregistered Persons	9988/Entry 26(iv)	18%

# Job Work – Others – GST as on 1.10.2019

S.No.	Nature of Job work/Manufacturing services		Code/Entry	Rate
<b>(viii)</b>	<b>Manufacture of handicraft goods</b>			
	a	For Registered Persons	9988/Entry 26(i)(i)	5%
	b	For Unregistered Persons	9988/Entry 26(iv)	18%
<b>(ix)</b>	<b>Manufacture of umbrella</b>			
	a	For Registered Persons	9988/Entry 26(ia)(a)	12%
	b	For Unregistered Persons	9988/Entry 26(iv)	18%
<b>(x)</b>	<b>Bus Body Building services</b>			
	a	For Registered Persons	9988/Entry 26(ic)	18%
	b	For Unregistered Persons	9988/Entry 26(iv)	18%
<b>(xi)</b>	<b>Tailoring services</b>			
	a	For Registered Persons	9988/Entry 26(iii)	12%
	b	For Unregistered Persons	9988/Entry 26(iii)	12%
<b>(xii)</b>	<b>Other Job Work Services</b>			
	a	For Registered Persons	9988/Entry 26(id)	12%
<b>(xiii)</b>	<b>Other Manufacturing Services</b>			
	a	For Registered Persons	9988/Entry 26(iv) or 9989/Entry 27(ii)	18%
	b	For Unregistered Persons	9988/Entry 26(iv) or 9989/Entry 27(ii)	18%

**Others**

# Extension of Filing of Tran-1/2

## Rule 117; Vide N. No. 49/2019 dt. 09-10-2019:

In respect of registered persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal

- *Tran-1 in Rule 117(1A) – Extended to 31.12.2019*
- *Tran-2 in Rule 117(4) – Extended to 31.01.2020*

# GSTR-3B – Whether Return

**Rule 61(5) w.e.f. 01.07.2017; Vide N. No. 49/2019 dt. 09-10-2019:**

- Where the time limit for furnishing of details in FORM GSTR-1 under section 37 or in FORM GSTR-2 under section 38 has been extended, the return specified in sub-section (1) of section 39 shall, in such manner and subject to such conditions as the Commissioner may, by notification, specify, be furnished in FORM GSTR-3B electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:
- Provided that where a return in FORM GSTR-3B is required to be furnished by a person referred to in sub-rule (1) then such person shall not be required to furnish the return in FORM GSTR-3.]

# Illegal search

## Paresh Nathalal Chauhan Vs State of Gujarat reported in 2019-TIOL-2472-HC-AHM-GST:

- Section 67(2) of the Act empowers the authorised officer to search and seize the goods, documents or books or things
- However, s.67(2) does not empower the officer concerned to record statements of family members through force or coercion or to record their conversations in their mobile phones.
- It is shocking to see that in a premises where there are three ladies, namely, the petitioner's mother, wife and young daughter, male officers together with a CRPF officer have stayed throughout the day and night despite the fact that the goods, articles and things were already seized on 11.10.2019.
- A proper enquiry needs to be made in respect of the action of the respondent officers of staying day and night at the premises of the petitioner without any authority of law.

# Blocking of E-way bill

- Rule 138E of CGST Rules, 2017 (inserted vide N. No. 74/2018-CT dated 31st Dec 2018) [Effective from 21 November 2019] states -  
*“Notwithstanding anything contained in sub-rule (1) of rule 138, no person (including a consignor, consignee, transporter, an e-commerce operator or a courier agency) shall be allowed to furnish the information in PART A of FORM GST EWB-01 in respect of a registered person, whether as a supplier or a recipient, who,—*  
*(a) being a person paying tax under section 10 or availing the benefit of N. No. 02/2019-CT(Rate), has not furnished the statement in FORM GST CMP-08 for two consecutive quarters; or*  
*(b) being a person other than a person specified in clause (a), has not furnished the returns for a consecutive period of two months.*

# Blocking of E-way bill

- E-Way Bill system will have a new feature of blocking/ unblocking of the taxpayers from next month, as per the rule. That is, if the GST taxpayer has not filed Return 3B for the last two successive months in GST Common portal, then that GSTIN will be blocked for generation of e-way bill either as consignor or consignee.
- As per the Deptt : This month, the tax payer will be alerted with a cautionary message while generating the e-Waybills, in case Return 3B for the past 2 successive months of the consignor/consignee GSTIN has not been filed. However, from next month, such GSTINs will be blocked.
- On Filing of the Return-3B in the GST Common Portal, the GSTIN will get automatically updated as 'Unblock' within a day in the e-Way bill system and the tax payer can continue with e-way bill generation without any cautionary message

# Blocked Input Tax Credit u/s 17(5)(d)

## **Safari Retreats Private Limited 2019 (5) TMI 1278 - ORISSA HC**

Scope of Section 17(5)(d) - construction of immovable property (shopping malls) intending for letting out for rent

- The provision of Section 17(5)(d) is to be read down and the narrow restriction as imposed, reading of the provision by the Department, is not required to be accepted, inasmuch as keeping in mind the language used in EICHER MOTORS LTD. [1999 (1) TMI 34 - SC] , the very purpose of the credit is to give benefit to the assessee.
- In that view of the matter, if the assessee is required to pay GST on the rental income arising out of the investment on which he has paid GST, it is required to have the input credit on the GST, which is required to pay under Section 17(5)(d) of the CGST Act.

# ITC on CSR (Corporate Social Responsibilities)

- As per proviso to Rule 6 Companies (Corporate Social Responsibility Policy) Rules, 2014, “CSR activities do not include the activities undertaken in pursuance of normal course of business of a company”
- MCA vide its General Circular No. 1/2016 [NO.05/19/2015-CSR], dated 12th January, 2016, has clarified that the amount spent by a company towards CSR cannot be claimed as business expenditure
- Chapter III of the Finance Act, 2014 explains that any expenditure incurred by an assessee on the activities relating to CSR shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession.
- In Profit & Loss A/C, these expenses are generally debited to “CSR Expenses” or “Charity & Donation”.

# ITC on CSR (Corporate Social Responsibilities)

**CSR expenditure may be incurred in following manners:**

- (i) In the form of contribution/grant in the form of money to trust etc
- (ii) In the form of distributing gifts of the product manufactured by the Company free of cost or at subsidized rate
- (iii) In the form of distributing gifts of the product purchased by the Company

**The moot questions in the above scenarios are:**

- (a) Whether it is taxable supply under the GST?
- (b) If not, whether ITC is available on goods manufactured or purchased and distributed in compliance of CSR?

# ITC on CSR (Corporate Social Responsibilities)

- **In the form of contribution/grant in money form:** Where contribution is made in form of money, then the question of supply or input tax credit would not arise.
- **In the form of distributing gifts of the product manufactured/purchased by the Company**
  - Whether supply:
    - Permanent transfer or disposal of business assets where input tax credit has been availed on such assets has been considered as deemed supply vide entry no. 1 of Schedule I of the GST Act.
    - Alternatively, under the GST Act, consideration may be in cash or in kind; and the non-monetary value of consideration shall be determined at open market value for the purpose of taxation in GST. In the present case, it may be said that satisfaction/discharge of the obligation under Companies Act in itself is the consideration for the supply. [ICAI Background Material]

# ITC on CSR (Corporate Social Responsibilities)

- In the form of distributing gifts of the product manufactured/purchased by the Company
  - Eligibility of ITC (if we assume that it is not supply)
    - Essel Propack Ltd. vs. Comm. - 2018 (9) TMI 247 [CESTAT Mumbai], in relation to service tax matters - Expenses for the benefit of people located in nearby towns - YES; Cenvat is available - it is to win the confidence of the stake holders and shareholders including the people - Included within the definition of “activities relating to business”  
*[Note: Under Service Tax, there was no entry such as personal consumption, gift, etc for denial of Cenvat]*
    - Polycab Wires Private Limited 2019 (4) TMI 111 – AAR- Kerala – NOT Available

# Discounts - Circular No. 92 dt 07.03.2019

Treatment of output tax	Eligibility/Reversal of ITC
<i>Free Samples &amp; Gifts</i>	
It shall not be treated as “supply” under GST (except in case of activities mentioned in Schedule I such as supply to distinct persons, agents etc.) as it is without consideration.	ITC shall not be available to the supplier on the gifts or free samples distributed without consideration, except in case of activities mentioned in Sch. I. [Sec 17(5)(h) of GST Act].
<i>Buy one get one free offer</i>	
<p>It is not an individual supply of free goods but a case of two or more individual supplies where a single price is being charged for entire supply.</p> <p>Rate of tax of such supply will be dependent upon as to whether supply is a composite supply or a mixed supply.</p> <p>For example, if one soap is supplied free with another soap, then rate of tax of soap will be applied. However, where tooth brush is supplied with toothpaste, then higher rate between the two is applied.</p>	ITC shall be available to the supplier for the inputs, input services and capital goods used in relation to supply of goods or services or both as part of such offers.

# Discounts - Circular No. 92 dt 07.03.2019

Treatment of output tax	Eligibility/Reversal of ITC
<b><i>Buy more, save more discounts</i></b>	
For example, Get 10 % discount for purchases above INR 5,000/-, 20% discount for purchases above INR 10,000/- etc. Such discounts are shown on the invoice itself and shall be excluded to determine the value of supply.	The supplier shall be entitled to avail the ITC for such inputs, input services and capital goods used in relation to the supply of goods or services or both on such discounts.
<b><i>Volume Discounts</i></b>	
Such discounts are established in terms of an agreement entered into at or before the time of supply, as the actual quantum of such discounts gets determined after the supply has been effected and generally at the year end. Such discounts are passed on by the supplier through credit notes and shall be excluded to determine the value of supply, provided they satisfy the parameters laid down in sec 15(3), including the reversal of ITC by the recipient of the supply as is attributable to the discount.	The supplier shall be entitled to avail the ITC for such inputs, input services and capital goods used in relation to the supply of goods or services or both on such discounts.

# Discounts - Circular No. 92 dt 07.03.2019

Treatment of output tax	Eligibility/Reversal of ITC
<i>Secondary Discounts</i>	
<p>For example: M/s A supplies 10000 packets of biscuits to M/s B at INR 10/- per packet. Afterwards M/s A re-values it at INR 9/- per packet. Subsequently, M/s A issues credit note to M/s B for Rs. 1/- per packet.</p> <p>Such discounts are not known at the time of supply or are offered after the supply is already over. It is clarified that financial/ commercial credit note(s) may be issued by the supplier in this case. Such discounts shall not be excluded while determining the value of supply as the conditions laid down in sec 15(3)(b) of the said Act are not satisfied.</p>	<p>There is no impact on availability or otherwise of ITC in the hands of supplier in this case.</p>

# Q & A



Thank You

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