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Amendments to GST,  
Customs & FTP

CA FINAL NOV 22 EXAMS

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## INDEX OF AMENDMENTS

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1	<b>Introduction to GST</b>	No Amendments in this segment			
2	<b>Taxable Event under GST</b>	1. Activities between a person other than individual and its members for a consideration, constitutes supply under Sec. 7(1)(aa)	Finance Act, 2021 Notification No. 39/2021	01-01-2022	
		2. Supply of goods by an unincorporated association or body to its members is treated as supply of goods is omitted. It may now constitute supply of goods or services	Finance Act, 2021 Notification No. 39/2021	01-01-2022	
		3. New service added in the list of notified services under Sec. 9(5) of CGST Act, where liability to pay GST on E Commerce Operator	Notification No. 17/2021	18-11-2021	
3	<b>Invoice &amp; Time of Supply</b>	4. E - Invoice limit has been reduced to ₹20 Crores	Notification No. 01/2022	01-04-2022	
		5. Clarification in respect of applicability of Dynamic Quick Response (QR) Code on payment received in forex.	Circular No. 165/21/2021	17-11-2021	
4	<b>Place of Supply</b>	No Amendments in this segment			
5	<b>Value of Supply</b>	No Amendments in this segment			
6	<b>Input Tax Credit</b>	6. Only matched ITC can be availed	Notification No. 40/2021	01-01-2022	
7	<b>Exemptions &amp; Charge</b>	7. Exemption w.r.to services provided to Government authority or Government entity in relation to activities entrusted under Article 243G or 243W of constitution withdrawn	Notification No. 7/2021 – CT(R)	30-09-2021	26
		8. Exemption w.r.to transportation of passengers by stage carriage or contract carriage (or) Metered Cab (or) Auto rickshaw through ECO is withdrawn	Notification No. 7/2021 – CT(R)	30-09-2021	26
		9. Exemption w.r.to transportation of goods by aircraft or vessel from India to outside India is extended	Notification No. 7/2021 – CT(R)	30-09-2021	27

		10. Services provided to government in relation to a training programme for which atleast 75% of expenditure borne by government is exempted	Notification No. 7/2021 – CT(R)	30-09-2021	28
		11. Permit charges collected by government is exempted	Notification No. 7/2021 – CT(R)	30-09-2021	29
		12. Exemption wr.to leasing of assets by Indian Railways Finance Corporation to Indian Railways is exempted	Notification No. 7/2021 – CT(R)	30-09-2021	29
Segment	Segment Name	Amendment Heading	Type of Amendment	Effective Date	Pg. No.
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9	<b>Registration</b>	14. Aadhar authentication mandatory for registered persons also	Notification No. 35/2021 and 38/2021	01-01-2022	31
		15. Threshold limit of ₹40 lakhs is not applicable to a person engaged in supply of fly ash bricks/blocks, building bricks, bricks of fossil, earthen/roofing tiles etc.,	Notification No. 3/2022	01-04-2022	32
10	<b>Payment Process</b>	16. Guidelines for disallowing debit of electronic Credit Ledger under Rule 86A	Department Instruction	02-11-2021	34
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12	<b>Accounts &amp; Records</b>	No Amendments in this segment			
13	<b>Assessment &amp; Audit</b>	No Amendments in this segment			
14	<b>Appeals</b>	17. Pre-deposit in case of Order Under Sec. 129 amended	Finance Act, 2021	01-01-2022	
15	<b>Search &amp; Seizure</b>	18. Penalty and procedure under Sec. 129 and 130 amended	Notification No. 40/2021	01-01-2022	
16	<b>Offences, &amp; Penalties</b>	19. Power to collect information under Sec. 151 amended	Finance Act, 2021	01-01-2022	
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Segment	Segment Name	Amendment Heading	Type of Amendment	Effective Date	Page No.
17	<b>Advance Ruling</b>	No Amendments in this segment			
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		22. Meaning of Self assessed tax added	Finance Act, 2021	01-01-2022	
		23. Scope of provisional attachment expanded	Notification No. 40/2021	29-12-2021	
19	<b>Refund under GST</b>	24. Proviso added in case of refund claimed by UIN holder	Notificaiton No. 40/2021	29-12-2021	39
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24	<b>Customs Valuation</b>	No Amendments in this segment			
25	<b>Procedures under Customs</b>	29. Customs (Import of Goods at Concessional Rate of duty) Rules amended	Notification No. 7/2022	01-03-2022	46
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Segment	Segment Name	Amendment Heading	Type of Amendment	Effective Date	
26	<b>Exemptions under Customs</b>	No Amendments in this segment			
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28	<b>Duty Drawback &amp; Refund</b>	No Amendments in this segment			
29	<b>Baggage</b>	No Amendments in this segment			
30	<b>Warehousing under Customs</b>	No Amendments in this segment			
30	<b>Foreign Trade Policy</b>	31. Extension of existing FTP upto 30/9/22	Notification No. 64/2015-20	31-03-2022	13
		32. Exemption from IGST and GST Compensation Cess extended upto 30/6/2022	Notification No. 66/2015-20	31-03-2022	13

For passionate learners...

## Summary of Amendments

### Goods & Services Tax

Scope of Supply enhanced:

Sec.	Nature of Supply	Consideration	Course or furtherance of business	Point of View	Coverage
7(1)(aa) [W.e.f 1.1.22]	Any activity between person other than individual & its members	✓	✓	Supplier	Goods/Services

\*Supply of goods by an unincorporated association or body to its members is treated as supply of goods is omitted. It may now constitute supply of goods or services <sup>[N22]</sup>

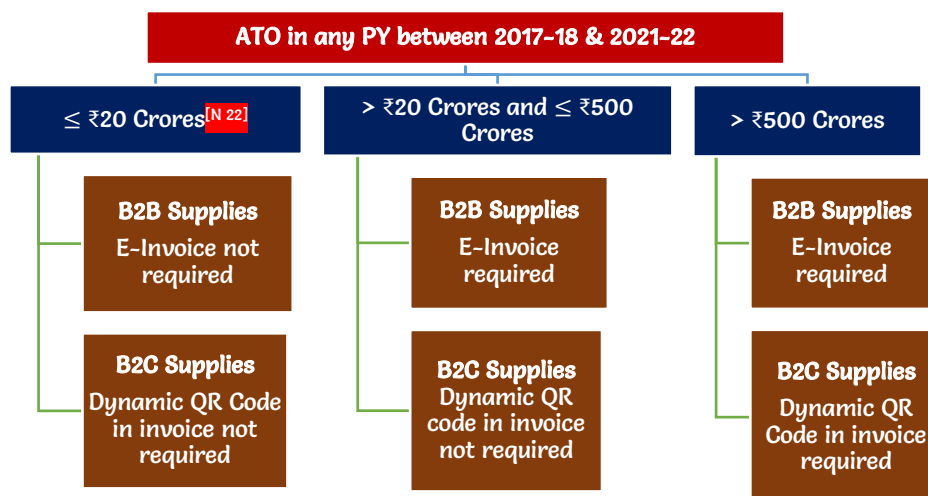
Sec. 9(5) – Liability to pay GST on E- Commerce Operator (ECO) in case of notified services:

	Notified Service	Supplier
H	Housekeeping Service (Eg: Urban Clap, Quikr Services)	URP
A	Accommodation Service (Eg: Goibibo, Make my Trip)	URP
T	Transportation of passengers by <del>radio taxi, motor cab, maxi cab &amp; motor cycle</del> any type of motor vehicle (Eg: OLA, UBER, RED BUS, RAPIDO) <sup>[N 22]</sup>	RP/URP
E	Eating food from restaurant (Eg: Swiggy, Zomato) <sup>[N 22]</sup> <u>Note: Supply of food by a restaurant in a hotel having declared tariff of &gt; ₹7,500 per unit per day or equivalent, not covered under Sec. 9(5)</u>	RP/URP

Utilization of TDS/TCS:

TDS/TDS deducted shall be reflected in GSTR – 2A of supplier, which is reflected in Electronic Cash Ledger and is used for payment of GST liability. It can also be used for payment of interest, penalty (or) late fee, payable <sup>[N 22]</sup>

Applicability of E-Invoice to tax payers with ATO > ₹20 crores:



Exception to mentioning dynamic QR Code in Invoice:

- If payment is received before (or) at the time of generating invoice & cross reference of such payment received (In case of cash receipt, the date on which cash is received) is mentioned in invoice.
- LOS = India, LOR = Outside India, POS = India and payment in convertible forex, it is not an export of service and dynamic QR code not required<sup>[N 22]</sup>

Only matched ITC can be availed:

Step - 1	<b>ITC Recognised in Books</b>
• Enter inward supply details in recipient books and Recognise ITC - Provisional	
Step - 2	<b>Monthly Matching</b>
• Matching of ITC in books with ITC as per GSTR - 2B	
Step - 3	<b>Avail ITC in GSTR - 3B<sup>[N 22]</sup></b>
• Enter ITC in GSTR - 3B, which is Eligible ITC as per GSTR - 2B (5% matching withdrawn)	
• <b>Note:</b> Matching not required in case of GST paid under RCM and can be availed in same month in which it is paid	
Step - 4	<b>Annual Reconciliation</b>
• ITC availed in GSTR - 3B should be reconciled with ITC as per GSTR - 2A	
Step - 5	<b>Reverse excess availed ITC</b>
• If ITC availed in 3B do not match with 2A, excess ITC shall be added to liability along with interest	
Step - 6	<b>Provisional ITC = Final ITC</b>
• If ITC availed in 3B matches with ITC as per 2A, then provisional ITC becomes final ITC	

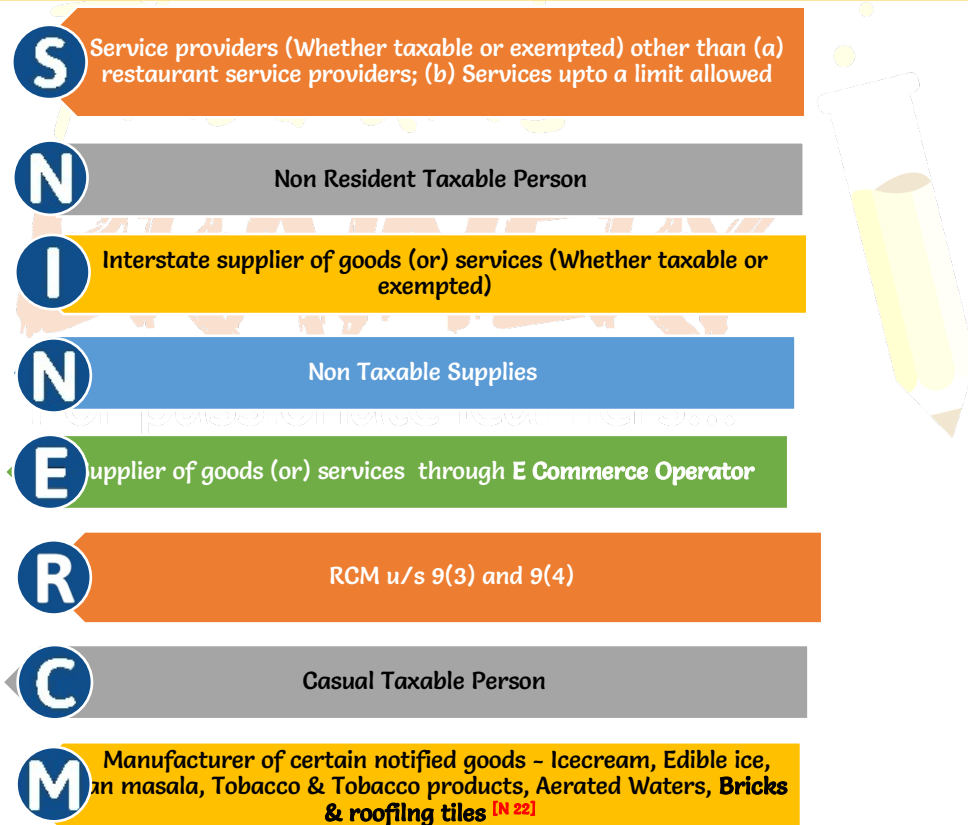
**New condition added in Conditions for availment of ITC [Sec. 16]:**

1. Only registered person can avail ITC.
2. Inward supplies on which ITC to be availed should be used or intended to be used in the course or furtherance of business.
3. Should be in possession of tax paid document – Tax invoice (or) Debit Note (or) ISD invoice (or) Bill of entry.
4. Should have actually received goods or services.
5. **Supplier should have furnished the details of invoices in GSTR – 1<sup>[N 22]</sup>**
6. Supplier should have paid tax w.r.to such supply.
7. Should have filed the returns (i.e. GSTR – 3B).

**Amendment in Services provided TO Government:**

- Services provided by any person to Government/~~Govt. Authority/Govt. Entity~~<sup>1</sup>, W.r.to functions entrusted under Article 243G or 243H of the constitution – Pure services are Exempted (or) Composite supply of goods or services, where value of goods  $\leq 25\%$  of total value is also exempted

**Manufacturer of Bricks and roofing tiles cannot opt for composition scheme:**



<sup>1</sup>W.e.f 1/1/22, exemption not available, if such services are provided to Government authority (or) Government entity (i.e., exemption available only if the services are provided to Government)



Higher threshold limit of ₹40 lakhs not applicable to supplier of bricks and roofing tiles:

- The limit of ₹ 40 lakhs is not applicable in the following cases:
  1. Persons who voluntarily got registered
  2. Persons who are compulsorily required to get registered under sec. 24
  3. Persons making supply of ice cream, edible ice, Pan Masala, Tobacco and tobacco products, **Bricks & Roofing tiles** <sup>[N 22]</sup>

Requirement of Aadhar Authentication:

**Note:** Aadhar Authentication mandatory for registered persons filing application for cancellation of registration <sup>[N 22]</sup>

**Note:** Aadhar Authentication mandatory for registered persons, filing application for revocation of cancellation of registration <sup>[N 22]</sup>

Restriction on utilization of amount available in Electronic Credit ledger [Rule 86A]:

GST officer has power to disallow the setoff of provisional credit against GST payable, for a maximum period of 1 year, if he is of the opinion that –

- ITC availed against an invoice issued by a supplier, who is not in existence (or) not doing business from the place where supplier has obtained registration.
- ITC availed by a recipient who is not in existence (or) not doing business from the place where recipient has obtained registration.
- ITC availed without receipt of goods
- ITC availed against an invoice, for which supplier has not paid tax to Government.
- Invoice or Debit note against which ITC availed is not in existence.

**Note:** Upon expiry of 1 year from the date of restriction, the registered person shall be able to debit input tax credit so disallowed, subject to any other action that may be taken against such person. <sup>[N 22]</sup>

For passionate learners

Pre-deposit in case of appeal against order u/s 129 amended:

First Appeal	<p><b>To Whom:</b>                      Commissioner (Appeals) → Against the order of Additional/Joint Commissioner                      Addl. Commissioner (Appeals) → Against the order of officer below the rank of Addl./Joint commissioner</p> <p><b>Time limit:</b>                      Assessee → Within 3 months + 1 month                      Department → Within 6 months + 1 month</p> <p><b>Pre-Deposit (Not applicable in case of dept appeal):</b> 100% of admitted due + [10% of disputed tax, subject to a max of ₹25 crores]</p> <p><b>Note:</b> Pre-deposit shall be 25% of penalty u/s 129 <sup>[N 22]</sup></p> <p><b>Fee:</b> N.A</p> <p><b>Time limit for disposal of appeal:</b> 1 year (Not Mandatory)</p>
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## Penalty in case of Seizure under Sec. 129 amended:

	[Sec. 68]
	Conveyance carrying goods are intercepted by proper officer for inspection <b>in transit</b>
	If transporter was found transporting or storing such goods, which are removed in contravention of provisions of Act, such Goods AND conveyance are liable for CONFISCATION
SEIZURE	Section 129
Seizure Order	Order for seizure of Goods AND conveyance shall be passed
Release of goods	2 options available
Option (i) – Pay appropriate amount and get it released	<p>1. Notice within 7 days of Seizure of goods and conveyance specifying below penalty. <sup>[N 22]</sup></p> <p>2. Order for penalty within 7 days of service of notice, after giving opportunity of being heard. <sup>[N 22]</sup></p> <p>3. Upon payment of penalty within 15 days <sup>[N 22]</sup> of receipt of order, all proceedings in this respect shall be deemed to be concluded</p> <p>4. The said period of 15 days shall be reduced in case of perishable goods.</p> <p><b>Owner of goods coming forward to claim release:</b>  <b>Taxable Goods</b> → Penalty = 200% of tax payable <sup>[N 22]</sup>  <b>Exempt Goods</b> → 2% of value of goods (or) ₹25,000 whichever is LOWER  <b>Release of Conveyance</b> → Penalty = 200% of tax payable (or) ₹1,00,000, whichever is lower. <sup>[N 22]</sup></p> <p><b>Owner of goods not coming forward to claim release:</b>  <b>Taxable goods</b> → Penalty = 50% of value of goods (Or) 200% of tax payable, whichever is HIGHER <sup>[N 22]</sup>  <b>Exempt goods</b> → 5% of value of goods (or) ₹25,000 whichever is LOWER  <b>Release of conveyance</b> → Penalty = 50% of value of goods (or) ₹1,00,000, whichever is lower. <sup>[N 22]</sup></p>
Option (ii) – Furnish Security and get provisional release	Provisional release of goods by executing a bond covering value of goods (+) Security in the form of bank guarantee = Amount equivalent to above i.e., Penalty payable for release of goods (Depending on whether owner of goods coming forward or not coming forward)

Recovery of penalty by sale of goods or conveyance Detained Or Seized In Transit [Rule 144A] <sup>[N 22]</sup>:

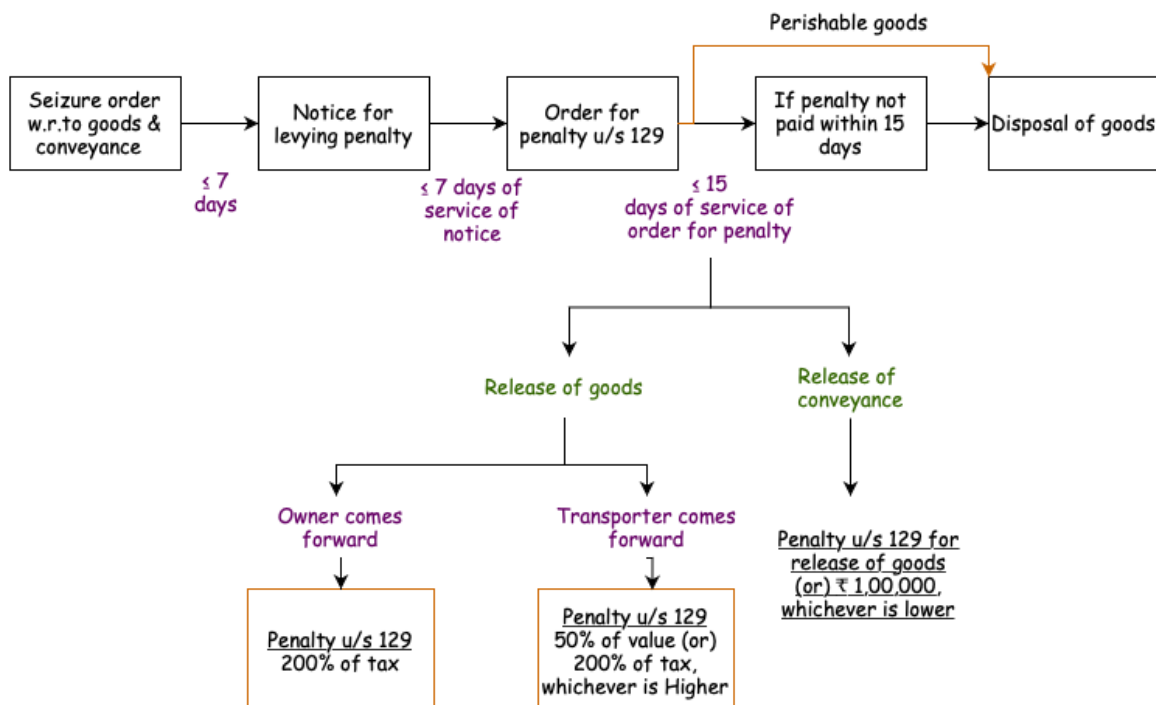
Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under Sec. 129, within 15 days from the date of receipt of copy of order, the proper officer shall proceed for sale or disposal of the goods or conveyance through a process of auction. The said period of 15 days may be reduced if such goods are perishable or hazardous in nature or likely to depreciate in value with passage of time.

Disposal of proceeds of sale of goods or Conveyance and movable or immovable property [Rule 154] <sup>[N22]</sup>

1. Appropriated against administrative cost of the recovery process
2. Appropriated against the amount to be recovered or to the payment of penalty under Sec. 129
3. Balance amount shall be credited to Electronic Cash Ledger of the owner of the goods or conveyance, if they are registered. Else, it shall be credited to their bank account
4. If balance of the sale proceeds cannot be so paid within 6 months from the date of sale, it shall be deposited in consumer welfare fund.

**Note:** seizure and confiscation of goods and conveyances in transit <sup>[Sec. 68 read with Sec. 129]</sup> a separate proceeding from recovery of tax and in such case, Sec. 74 is not applicable. <sup>[N 22]</sup>

Sec.129 read with Rule 144A: (Vide Finance Act, 2021)



Power to collect statistics replaced with power to collect information:

124	Any person required to furnish any information u/s 151 fails to do so [Section 151 empowers the jurisdictional commissioner to call for information from any person relating to any matter dealt with in connection with the Act.] <sup>[N 22]</sup>	Normal Cases – Upto ₹10,000 Continuing offence – ₹100 per day (failure period) subject to a Max. ₹25,000
152	Information obtained under Sec. 150 & 151 cannot be used, without giving opportunity of being heard to the person concerned. <sup>[N 22]</sup>	

Scope of provisional attachment enhanced:

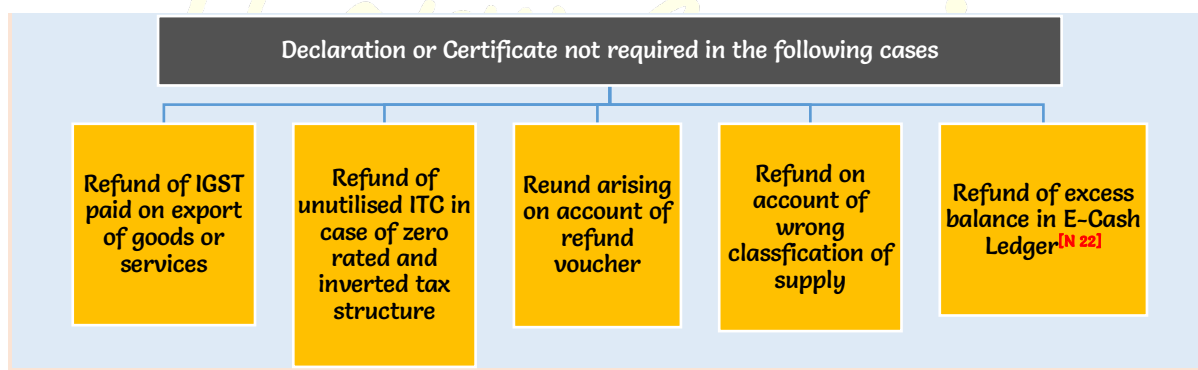
83	Provisional attachment to protect revenue	Provisional attachment of <b>any property</b> (incl. bank account), after initiation of any proceeding under <b>Assessment (or) Inspection, Search, Seizure and Arrest (or) Demand and Recovery</b> , for a period of <b>1 year</b> from the date of order of provisional attachment <sup>[N 22]</sup>
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Additional condition in case of refund to UIN holder:

- UIN of recipient should be mentioned in the tax invoice issued by supplier. If it is not mentioned, then refund available only if copy of invoice attested by authorized representative of applicant is submitted along with refund application. <sup>[N 22]</sup>

### Amendments in Refund provisions:

- ▶ Application for Refund – **FORM GST RFD 01** and in case of Refund to UIN holder it is **FORM GST RFD10** {In case of refund of IGST paid on export of goods, it is **SHIPPING BILL**}
- Note:** Aadhar Authentication mandatory for filing refund application<sup>[N 22]</sup>
- ▶ Acknowledgement for Refund application – FORM GST RFD 02 within 15 days of filing application. If there is any deficiency in application it shall be communicated in FORM GST RFD 03
- ▶ Time limit for filing refund claim – Within 2 years from relevant date (While computing 2 years, period from the date of filing refund claim till the date of communication of deficiencies shall be excluded) and in case of Refund to UIN holder it is within 18 months from the last date of the quarter in which supply is received
- ▶ Time limit of 2 years not applicable in case of refund of excess balance in Electronic Cash Ledger – CBIC Circular<sup>[N 22]</sup>
- ▶ Relevant date –
  - In case of export of goods (Date on which goods leave India);
  - In case of export of services (Date of receipt of payment or date of invoice, whichever is later);
  - In case of deemed exports (Date on which return is filed by supplier, whether refund is claimed by supplier or recipient)<sup>[N 22]</sup>;



### Consumer Welfare Fund [Sec. 57 & 58]:

- If an applicant, fails to prove that there is no unjust enrichment, such refund due shall be credited to consumer welfare fund.
- Also, any income from investment of the amount credited to the fund, is also deposited in the fund.
- Committee is appointed for utilization of such fund.
- Committee shall make available to the CBIC 50% of the amount credited to the fund each year, for publicity or consumer awareness on GST, provided the availability of funds for consumer welfare activities of the department of consumer affairs is > ₹25 cores per annum.<sup>[N 22]</sup>

### Period of operations of NAPA extended:

- The Authority shall cease to exist after the expiry of five years<sup>[N 22]</sup> from the date on which the Chairman enters upon his office unless the Council recommends otherwise. Therefore, it extends upto 30.11.2022.



## Customs

SWS is not payable if goods are exempted:

Where BCD is nil, SWS is also nil – CBIC Circular<sup>[N 22]</sup>

Electronic Cash Ledger Regulations, 2022<sup>[N 22]</sup>:

FORM ECL 01	Electronic Cash Ledger
FORM ECL 02	Challan for deposit under Sec. 51A of Customs Act, 1962
FORM ECL 03	Challan for payment of any sum under Customs Act, 1962
FORM ECL 04	Electronic Duty Payment Ledger
FORM ECL 05	Application for refund of deposit under Electronic Cash Ledger

- Deposit made in ECL shall not accrue any interest
- Deposit challan in ECL 02 is valid for a period of 15 days
- Modes of deposit – Net banking (or) NEFT/RTGS (or) Over the counter upto ₹10,000 in a day.
- OTC limit of ₹10,000 per day not shall be applicable to Government dept (or) upon authorization of Customs officer, if deposit is made.
- Commission (or) Charges payable for deposit, shall be borne by the person making deposit.
- Upon successful payment a Challan Identification Number (CIN) shall be generated
- Amount in the ledger can be used for payment of duty, interest, penalty, fee or other amount payable under Customs Act or Customs Tariff Act.
- Balance, can be claimed as refund and which shall be paid into the bank account of importer or exporter.
- Provisions of Sec. 51A not applicable in the following cases
  1. Customs automated system not in place in such customs station where goods are imported or exported
  2. Accompanied baggage
  3. Making payment other than duties under customs, IGST, Compensation Cess, Interest, penalty, fees (or) any other amount payable under Customs Act or Customs Tariff Act.

## Import of goods at concessional rate of duty Rules, 2021

(Previous Rules, 2017 amended by Notification No. 7/2022 w.e.f 01.02.22)

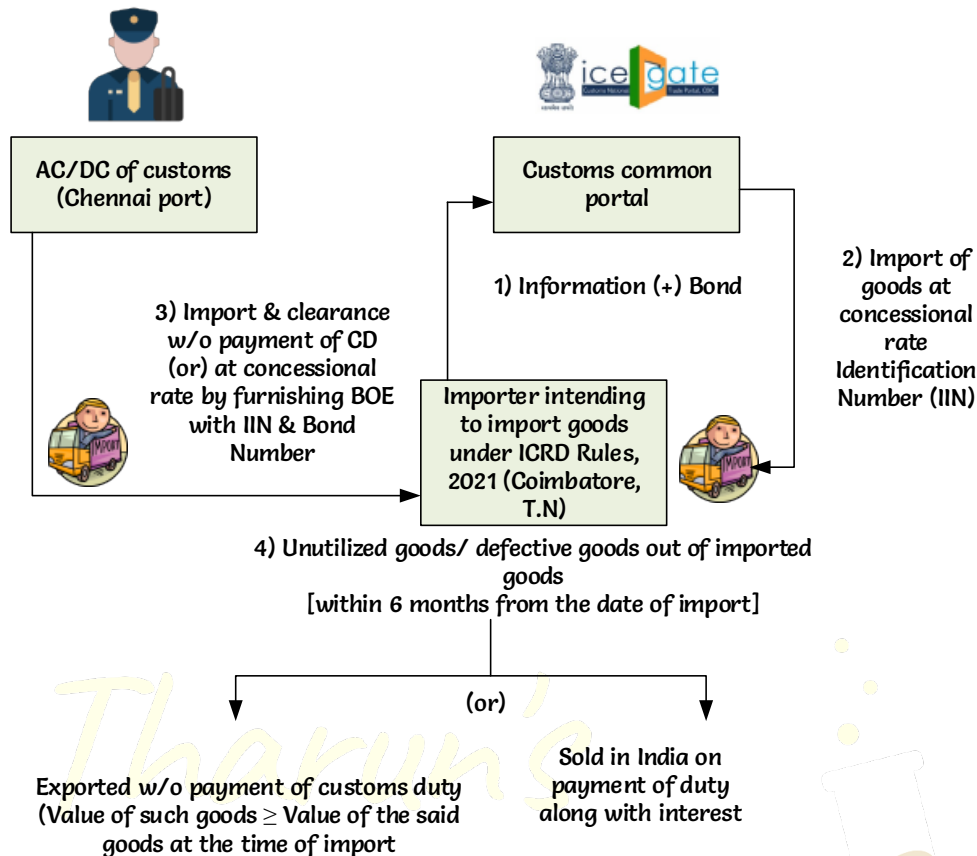
A manufacturer or service provider is eligible for an exemption notification

For import of goods without payment of customs duty or for import at concessional rate

Such imported goods to be used in manufacture of notified goods or rendering notified services, other than for providing after sales service

Such manufacture can be done by importer or get it done on job work basis (partly or entirely)

However some sectors such as Gold, Jewellery, Precious Stones and Metals have been excluded from job work basis



### FAQ's in this regard:

#### 1. What information to be submitted?

- Name and address of the importer and his job-worker, if any
- Goods produced or process undertaken
- Nature and description of imported goods used in above
- Nature of output service rendered using imported goods
- Particular of exemption notification applicable on such import
- The intended port of import

#### 2. What is the maximum period for which goods can be sent for job work?

6 months from the date of issue of delivery challan

#### 3. Can capital goods be imported under these rules?

Capital goods<sup>[Goods which are capitalized in the books of importer]</sup> can be imported at concessional rate for use in manufacture of notified goods or providing notified services. After that, the goods can be cleared in the domestic market on payment of duty and interest, at depreciated value.

#### 4. What is the type of bond to be executed?

Continuity bond with such surety (or) security as deemed appropriate by jurisdictional AC/DC of customs, with an undertaking to pay an amount equal to difference between the duty leviable on inputs but for the exemption and that already paid, if any along with applicable interest.

**5. What is the rate of interest and period for which interest is computed?**

Interest @ 15% p.a. from the date of import of goods (i.e., out of customs charge order date) Till the date of payment.

**6. What are the accounts and records to be maintained by importers?**

- i) Quantity and Value of goods imported
- ii) Date of receipt of goods imported in the relevant premises
- iii) Quantity of goods consumed
- iv) Goods sent for job work and received from job work
- v) Goods re-exported if any and
- vi) Goods remaining in stock

**7. Can the imported goods be transferred from one unit to another?**

[Yes] The importer can send goods from one unit to another and shall ensure that

- Goods are sent under the cover of invoice (or) E-way bill
- Maintain accounts & records regarding goods sent, received and waste generated, if any during manufacturing process.

**8. How to compute the depreciated value?**

Value of the imported goods (-) a % depending upon the period FROM the date it is put to use upto the date of its clearance, as follows

For every quarter or part thereof in 1st year @ 4%

For every quarter or part thereof in 2nd year & 3rd year @ 3%

For every quarter or part thereof in 4th year & 5th year @ 2.5%

And thereafter for every quarter or part thereof @ 2%

**9. When the unutilized or defective goods should be exported or sold in India?**

Within 6 months from the date of import (Not for Capital goods)

**10. What are the other compliances to be followed by importer?**

A monthly statement to be filed within 10th of the month following every month

## Foreign Trade Policy

**Foreign trade policy** is set of guidelines or instructions issued by the CG (Ministry of Commerce & Industry) in matters relating to import of goods into India or export of goods from India.

FTP Regulates, Develops and Promotes international trade

Customs Act, 1962 contains procedures, valuation, consequences

The provisions of FTP are governed by Foreign Trade (Regulation and Development) Act, 1992. The FTP is formulated, supervised and controlled by Directorate General of Foreign Trade (DGFT) & Regional Authorities (RA)

FTP is 5 year policy + Annual updation

Current FTP is 2015-21  
(Extended upto 30/09/22) <sup>[N 22]</sup>

Contents of FTP are:

1. Basic Policy + Export incentives
2. Hand Book of Procedures
3. Aayat Niryat Forms
4. Standard Input Output Norms(SION)
5. Harmonised system of coding [ITC(HS)]

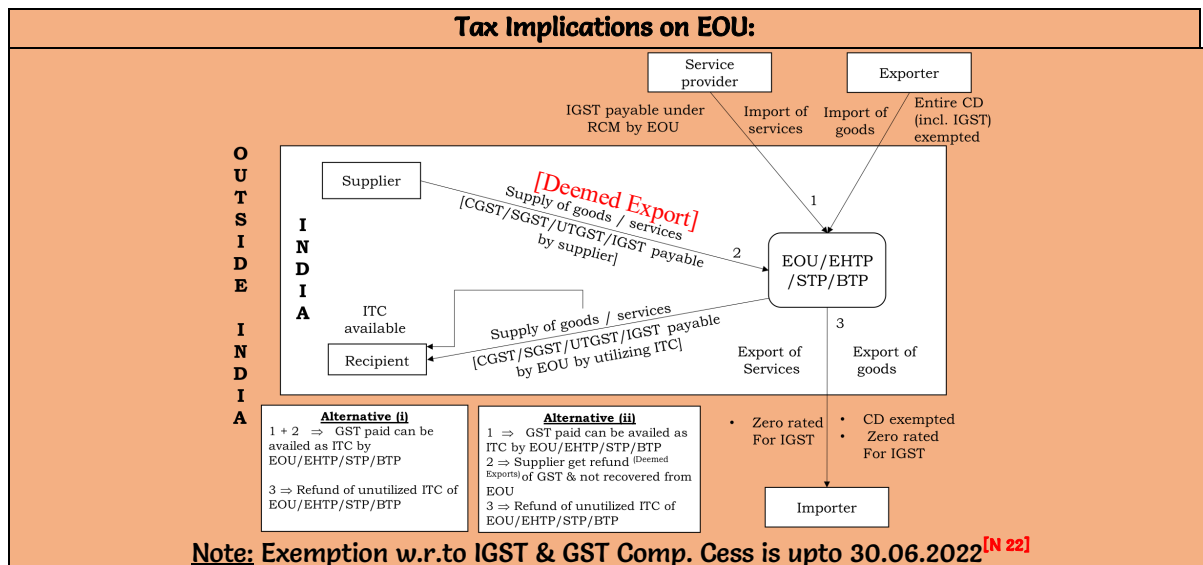
	Advance Authorization	Duty Free Import Authroization
1. Duties that are exempt	All duties (incl. IGST & GST Comp. Cess) payable on imports under AA are exempted. <u>Note:</u> Exemption w.r.to IGST & GST Comp. Cess is upto 30.06.2022 <sup>[N 22]</sup>	Only BCD payable in imports under DFIA is exempt

### EXPORT PROMOTION CAPITAL GOODS (EPCG) SCHEME:

- **What is this scheme about?** Export Promotion Capital Goods Scheme (EPCG) permits exporters to procure capital goods at zero customs duty (Even IGST & GST Comp. Cess is not payable). In return, exporter is under an obligation to fulfill the export obligation.

Note: Exemption w.r.to IGST & GST Comp. Cess is upto 30.06.2022 <sup>[N 22]</sup>

### Tax Implications on EOU:





# DETAILED EXPLANATION & ILLUSTRATIONS OF FEW AMENDMENTS

## Segment – 2

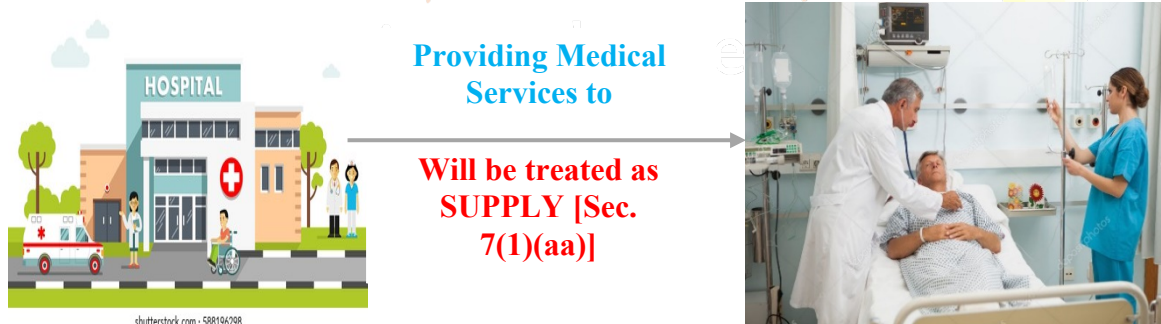
### Taxable Event under GST

**Sec. 7(1)(aa) - Widening the scope of supply so as to include transactions between a person (Other than Individual) and its members [Finance Act, 2021 w.e.f 1/1/22]:**

- The amendment will be made effective ~~retrospectively~~ from the date of introduction of the CGST Act i.e. 01.07.2017. This is however made as a prospective amendment w.e.f. 1.1.2022 vide Notification No. 39/2021
- supply of goods or services by any person, other than an individual, to its members or constituents or vice – versa within **the scope of 'supply'**.
- Such transactions shall be liable to GST irrespective of whether it is for cash, deferred payment or other valuable consideration.
- The person, its members and its constituents **shall be deemed to be two separate persons** and such supply shall be deemed to take place from one person to another.

**Example:**

A Prem Nurshing Home, a Partnership Firm is providing services related to medication to Mr. Jeevan Jain one of the Partner of this firm, will be treated as SUPPLY as per clause (aa) of sub-section (1) of section 7.



#### Comment on above Amendment:

Taxability on supply of service or goods by any association of person such as club or society has been a contentious issue both, in pre and post era of GST. As per the principles of 'doctrine of mutuality', any supply made to self and consideration thereof would not qualify as consideration.

A view has been taken by the taxpayers in the past that the clubs or societies operate on the concept of mutuality and therefore one cannot be said to be supplying goods or service to its own self. On the same issue, recently Hon'ble Supreme Court in the case of State of West Bengal & Ors. vs. Calcutta Club Limited and Chief Commissioner of Central Excise and Service & Ors. v Ranchi Club Limited [2019-TIOL-449-SC-ST-LB], it was held

that the services rendered by an unincorporated clubs to its members are exempted from service tax.

In order to negate the effect of Supreme Court decision and avoid similar litigation in the GST regime with respect to taxability of any activities or transactions by clubs / societies to its members or constituents, the government has bought the said amendment in the provisions of Section 7 of the CGST Act.

**Sec. 7(1A) read with schedule II– Supply of goods by an unincorporated association or body to its members is treated as supply of goods is omitted [Finance Act, 2021 w.e.f 1/1/22]:**

Consequent to above amendment i.e. Sec. 7(1)(aa), Para 7 of Schedule II to the CGST Act, which provides for supply of goods from unincorporated associations or body of persons to a member thereof to be treated as supply of goods, has also been omitted with retrospective effect.

Therefore, once an activity between unincorporated association or body and its members, constitutes supply under Sec. 7(1)(aa), the same shall be classified either as Supply of goods or Supply of services as per the principles laid down in Sec. 7(1A) read with Schedule II of CGST Act.

**Tax on supply of passenger transportation services by motorcab, maxicab, motor cycle, omnibus or any other motor vehicle and supply of restaurant service at other than specified premises, through ECO, payable by ECO - Notification No. 17/2021 CT(R) dated 18.11.2021, Notification No. 17/2021 IT(R) dated 18.11.2021 read with Circular No. 167/23/2021 GST dated 17.12.2021**

Notification No. 17/2017 CT (R) dated 28.06.2017 as amended has notified specific categories of services the tax on supplies of which shall be paid by the electronic commerce operator (ECO) if such services are supplied through ECO.

Hitherto, following services were so notified:

- (i) services by way of transportation of passengers by a radio-taxi, motorcab, maxicab and motor cycle;
- (ii) services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, except where the person supplying such service through electronic commerce operator is liable for registration under section 22(1) of the CGST Act.
- (iii) services by way of house-keeping, such as plumbing, carpentering etc, except where the person supplying such service through electronic commerce operator is liable for registration under sub-section 22(1) of the CGST Act.

**With effect from 01.01.2022**, entry (i) above has been amended to include services by way of transportation of passengers by an omnibus or any other motor vehicle also.

The term 'omnibus' shall have the same meaning as assigned to it under the Motor Vehicle Act, 1988.

Further, **with effect from 01.01.2022**, supply of restaurant service other than the services supplied by restaurant, eating joints etc. located at specified premises has also been notified under the category of services, the tax on which is payable by the ECO **if such services are supplied through ECO**.

In other words, the tax on supplies of restaurant service supplied through ECO shall be paid by the ECO.

**Sec. 9(5) – Liability to pay GST on E Commerce Operator (ECO) in case of notified services:**

Supply of restaurant service other than services supplied by restaurant, eating joints etc. located at specified premises.

I. Specified premises:

Premises providing hotel accommodation service having declared tariff of any unit of accommodation above Rs. 7500 per unit per day or equivalent.

II. Restaurant Services:

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 includes 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.

**Example for Restaurant services:**

Hotel Taj Coromandel is providing hotel accommodation service. It has various rooms having declared tariff of Rs. 4,000/-, Rs. 5,000/-, Rs. 7,000/-, Rs. 10,000 per unit per day.

A restaurant in Hotel Taj Coromandel is supplying restaurant services through Swiggy. **Whether Hotel Taj Coromandel is termed as “Specified Premises” under GST?**

Answer is yes. As the definition reads as hotel accommodation service having declared tariff of any unit of accommodation above Rs. 7,500/- per unit per day and Hotel Taj Coromandel has a room which has a declared tariff of above Rs. 7,500/- per unit per day, Hotel Taj Coromandel is termed as specified premises.

**Whether Swiggy is liable to pay GST on restaurant service supplied by a restaurant in Hotel Taj Coromandel?**

The Answer is no.

As Section 9(5)(iv) reads as “Supply of restaurant service other than the services supplied by restaurant, eating joints etc. located at specified premises”. As we saw earlier, Hotel Taj Coromandel comes under the definition of specified premises and the restaurant supplying the restaurant service is located at the specified premises, Swiggy is not liable to pay GST. Whereas the restaurant is liable to pay on supply of restaurant service through Swiggy.

### GST on Service Supplied by Restaurant through E-Commerce Operators - Circular 167/23/2021 GST

Certain representations have been received requesting for clarification regarding modalities of compliance to the GST laws in respect of supply of restaurant service through e-commerce operators (ECO). Clarifications are as follows:

Sl No	Issue	Clarification
1.	Would ECOs have to still collect TCS in compliance with section 52 of the CGST Act, 2017?	As 'restaurant service' has been notified under section 9(5) of the CGST Act, 2017, the ECO shall be liable to pay GST on restaurant services provided, with effect from the 1 <sup>st</sup> January, 2022, through ECO. Accordingly, the ECOs will no longer be required to collect TCS and file GSTR 8 in respect of restaurant services on which it pays tax in terms of section 9(5). On other goods or services supplied through ECO, which are not notified u/s 9(5), ECOs will continue to pay TCS in terms of section 52 of CGST Act, 2017 in the same manner at present.
2.	Would ECOs have to mandatorily take a separate registration w.r.t supply of restaurant service [notified under 9(5)] through them even though they are registered to pay GST on services on their own account?	As ECOs are already registered in accordance with rule 8(in Form GST-REG 01) of the CGST Rules, 2017 (as a supplier of their own goods or services), there would be no mandatory requirement of taking separate registration by ECOs for payment of tax on restaurant service under section 9(5) of the CGST Act, 2017.
3.	Would the ECOs be liable to pay tax on supply of restaurant service made by unregistered business entities?	Yes. ECOs will be liable to pay GST on any restaurant service supplied through them including by an unregistered person.
4.	What would be the aggregate turnover of person supplying 'restaurant service' through ECOs?	It is clarified that the aggregate turnover of person supplying restaurant service through ECOs shall be computed as defined in section 2(6) of the CGST Act, 2017 and shall include the aggregate value of supplies made by the restaurant through ECOs. Accordingly, for threshold consideration or any other purpose in the Act, the person providing restaurant service through ECO shall account such services in his aggregate turnover.
5.	Can the supplies of restaurant service made through ECOs be recorded as inward supply of ECOs (liable to reverse charge) in GSTR 3B?	No. ECOs are not the recipient of restaurant service supplied through them. Since these are not input services to ECO, these are not to be reported as inward supply (liable to reverse charge).



6.	Would ECOs be liable to reverse proportional input tax credit on his input goods and services for the reason that input tax credit is not admissible on 'restaurant service'?	ECOs provide their own services as an electronic platform and an intermediary for which it would acquire inputs/input service on which ECOs avail input tax credit (ITC). The ECO charges commission/fee etc. for the services it provides. The ITC is utilised by ECO for payment of GST on services provided by ECO on its own account (say, to a restaurant). The situation in this regard remains unchanged even after ECO is made liable to pay tax on restaurant service. ECO would be eligible to ITC as before. Accordingly, it is clarified that ECO shall not be required to reverse ITC on account of restaurant services on which it pays GST in terms of section 9(5) of the Act. <b>It may also be noted that on restaurant service, ECO shall pay the entire GST liability in cash</b> (No ITC could be utilised for payment of GST on restaurant service supplied through ECO)
7.	Can ECO utilize its Input Tax Credit to pay tax w.r.t 'restaurant service' supplied through the ECO?	No. As stated above, the liability of payment of tax by ECO as per section 9(5) shall be discharged in cash.
8.	Would supply of goods or services other than 'restaurant service' through ECOs be taxed at 5% without ITC?	ECO is required to pay GST on services notified under section 9(5), besides the services/other supplies made on his own account. On any supply that is not notified under section 9(5), that is supplied by a person through ECO, the liability to pay GST continues on such supplier and ECO shall continue to pay TCS on such supplies. Thus, present dispensation continues for ECO, on supplies other than restaurant services. On such supplies (other than restaurant services made through ECO) GST will continue to be billed, collected and deposited in the same manner as is being done at present. ECO will deposit TCS on such supplies.
9.	Would 'restaurant service' and goods or services other than restaurant service sold by a restaurant to a customer under the same order be billed differently? Who shall be liable for raising invoices in such cases?	Considering that liability to pay GST on supplies other than 'restaurant service' through the ECO, and other compliances under the Act, including issuance of invoice to customer, continues to lie with the respective suppliers (and ECOs being liable only to collect tax at source (TCS) on such supplies), it is advisable that ECO raises separate bill on restaurant service in such cases where ECO provides other supplies to a customer under the same order.
10.	Who will issue invoice in respect of restaurant service supplied through ECO - whether by the restaurant or by the ECO?	The invoice in respect of restaurant service supplied through ECO under section 9(5) will be issued by ECO.

11.	Clarification may be issued as regard reporting of restaurant services, value and tax liability etc in the GST return.	<p>A number of other services are already notified under section 9(5). In respect of such services, ECO operators are presently paying GST by furnishing details in GSTR 3B. The ECO may, on services notified under section 9 (5) of the CGST Act,2017, including on restaurant service provided through ECO, may continue to pay GST by furnishing the details in GSTR 3B, reporting them as outward taxable supplies for the time being. Besides, ECO may also, for the time being, furnish the details of such supplies of restaurant services under section 9(5) in Table 7A(1) or Table 4A of GSTR-1, as the case maybe, for accounting purpose.</p> <p>Registered persons supplying restaurant services through ECOs under section 9(5) will report such supplies of restaurant services made through ECOs in Table 8 of GSTR-1 and Table 3.1 (c) of GSTR-3B, for the time being.</p>
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## Segment – 3

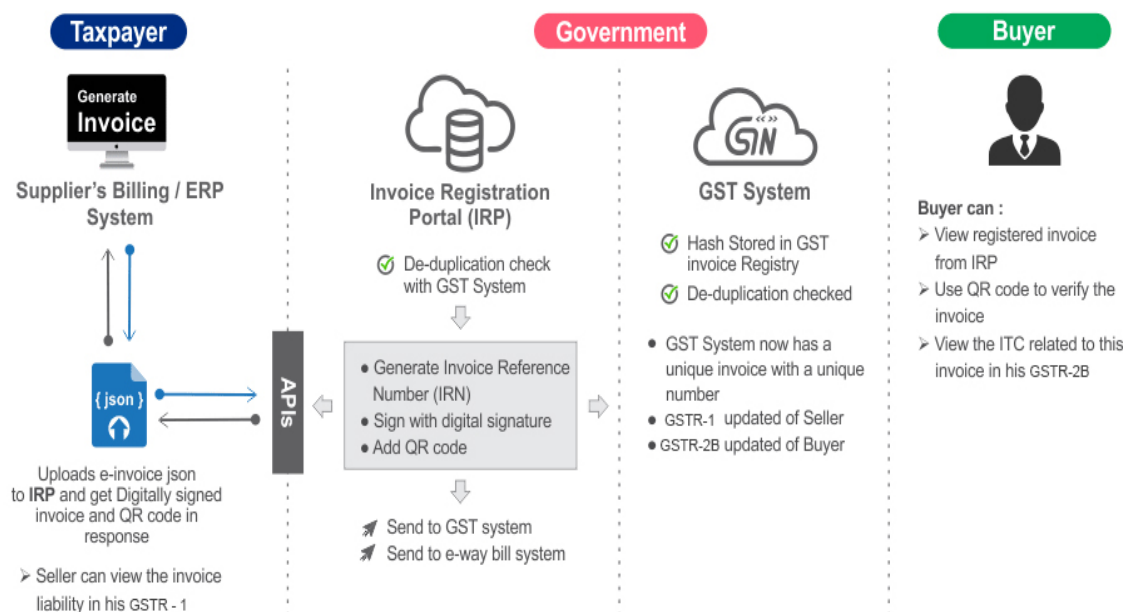
# Invoice & Time of Supply

E-invoicing mandatory for all registered businesses with aggregate turnover in any preceding financial year from 2017-18 onwards greater than ₹ 20 crore - Notification No. 01/2022 CT dated 24.02.2022

All registered businesses with an aggregate turnover (based on PAN) in any preceding financial year from 2017-18 onwards greater than ₹ 500 crore were required to mandatorily issue e-invoices for all B2B invoices with effect from 1<sup>st</sup> October, 2020. Since then, the threshold limit for issuing the e-invoices has been progressively reduced.

With effect from 01.04.2022, such limit has been further reduced to ₹ 20 crore. Thus, e-invoicing has been made mandatory for all registered businesses with an aggregate turnover in any preceding financial year from 2017-18 onwards greater than ₹ 20 crore.

- The invoice shall be prepared by such class of registered persons as may be notified by the Government, on the recommendations of the Council, by including such particulars contained in FORM GST INV-01 by uploading information contained therein on the Common Goods and Services Tax Electronic Portal in such manner and subject to such conditions and restrictions as may be specified in the notification



- Obtaining IRN, QR Code and digital signature for a normal invoice is known as E-Invoice.
- IRP - Electronic portals for e-invoice** - IRP (Invoice Registration Portal) is the website for uploading/reporting of invoices. Ten portals starting from [www.einvoice1.gst.gov.in](http://www.einvoice1.gst.gov.in) to [www.einvoice10.gst.gov.in](http://www.einvoice10.gst.gov.in) have been notified for preparation of e-invoice. These websites are managed by GSTN.
- If invoice is not prepared in aforesaid manner, it will be invalid. Recipient cannot avail ITC if E - Invoice not issued by a registered person, to whom E-Invoice is applicable.

- The invoice is not required for B2C transaction (i.e., Supplies to unregistered person). However, Dynamic QR Code is required, if ATO during any previous year > ₹500 Crores.
- **Where e-invoice required** - E-invoice is required for
  - a) tax invoice [B2B, B2B on RCM]
  - b) Revised tax invoice, Credit Note and Debit note
  - c) Consolidated tax invoice by insurer, banking company or Financial Institution
  - d) Export Invoice.

**Illustrations:**

1. X Ltd. Making outward supplies taxable under RCM u/s 9(3) & X Ltd. Is registered for the CY: 2022-23 & ATO during 2021-22 is ₹80 crores. X Ltd. Also makes supplies on which they need to pay GST under FCM. Whether E-Invoice required?  
ATO of X Ltd. between FY: 2017-18 to FY: 2021-22 in any one year > ₹20 Crores, therefore E-invoice is applicable for them for the FY: 2022-23.  
E-invoice is required w.r.to outward supplies covered under FCM as well as RCM.
2. If X Ltd. Is engaged only in outward supplies covered under RCM and are exempted from registration. But Y Ltd. Who receives the services is registered and they are liable to pay GST on their inward supplies under RCM. ATO of Y Ltd. For the FY: 2021-22 is ₹90 crores. Whether Y Ltd. Is required to issue invoice w.r.to inward supplies which are taxable under RCM?  
Even though recipient is required to generate invoice u/s 31(3)(f) and such recipient's ATO during any FY > ₹20 crores, such invoice is not necessary to be E-invoice and a simple tax invoice is sufficient in that case. (If is an inward supply and not an outward supply)

**Clarification in respect of applicability of Dynamic Quick Response (QR) code**

All **B2C invoices** issued by a registered person whose **aggregate turnover** in any preceding financial year from 2017-18 onwards **exceeds ₹ 500 crores** are **mandatorily required to have a Dynamic QR code** from December 1, 2020 vide Notification No. 14/2020 CT dated 21.03.2020.

In this regard, **Circular no. 156/12/2021 GST dated 21.06.2021** and **Circular No. 165/21/2021 GST dated 17.11.2021** have clarified that:

1. Dynamic QR Code is required to be provided on an invoice, issued to a person, who has obtained a UIN. Any person, who has obtained a Unique Identity Number (UIN), is not a "registered person" as per the definition of registered person provided in section 2(94). Therefore, any invoice, issued to such person having a UIN, shall be considered as invoice issued for a B2C supply and shall be required to comply with the requirement of Dynamic QR Code.
2. In cases, where an invoice is issued to a recipient located outside India, for supply of services, for which the place of supply is in India, as per the provisions of the IGST Act, and the payment is received by the supplier, in convertible FOREX or in Indian Rupees wherever permitted by the RBI (such supply of services is not considered as export of services as per the IGST Act), such invoice may be issued without having a Dynamic QR Code, as such dynamic QR code cannot be used by the recipient located outside India for making payment to the supplier.

Segment – 5

## Input Tax Credit

ITC can be availed only by the recipients only if the suppliers have uploaded the relevant invoices/debit notes in their GSTR-1/ IFF and communicated the same to the recipients in GSTR 2B [Section 16(2) amended and rule 36(4)] - Notification No. 40/2021 CT dated 29.12.2021

With effect from 01.01.2022, a new clause (aa) has been added to section 16(2) by the Finance Act, 2021 to stipulate following new condition for availment of ITC that input tax credit in respect of any supply of goods or services or both is available to a registered person only if **the details of the invoice/debit note in respect of said supply has been furnished by the supplier in the statement of outward supplies (GSTR-1) and such details have been communicated to the recipient of such invoice/debit note in the manner specified under section 37.**

Consequently, rule 36(4) has been substituted to give effect to aforesaid amendment. Substituted rule 36(4) reads as follows:

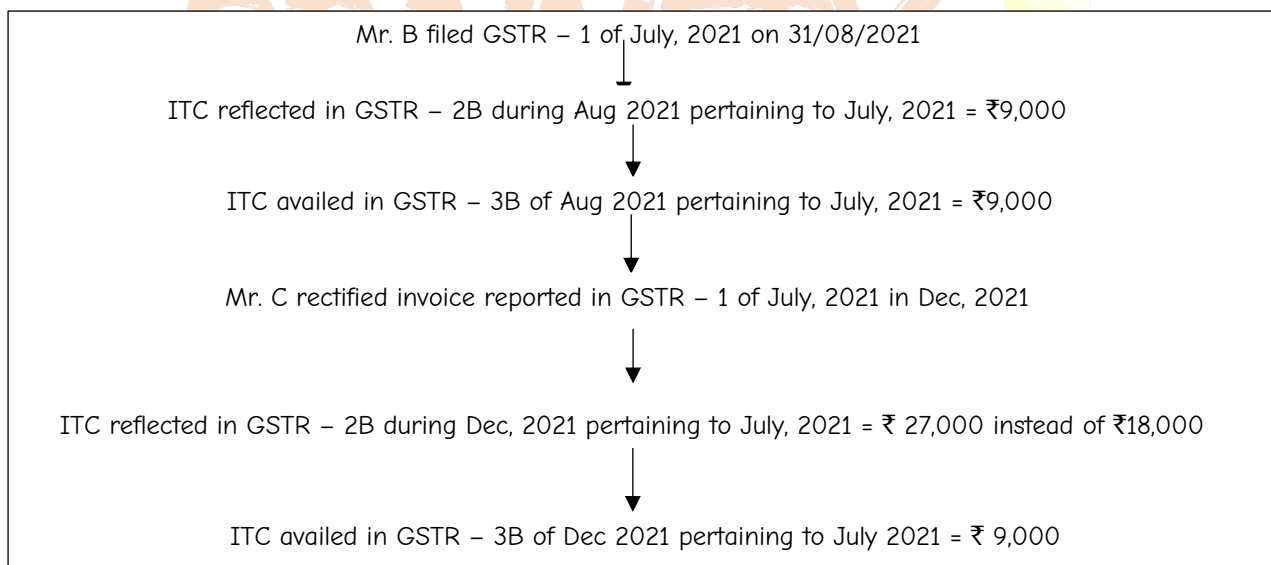
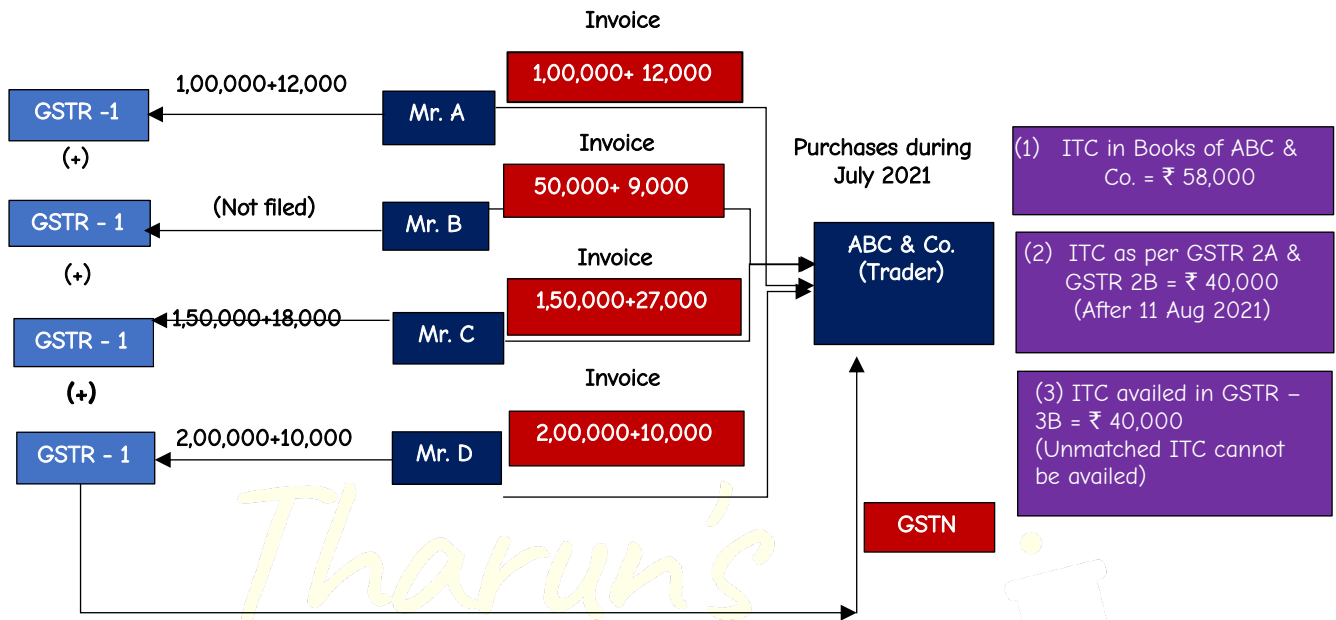
No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under section 37(1) unless,-

(a) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in Form GSTR-1 or using the invoice furnishing facility (IFF); and

(b) the details of such invoices or debit notes have been communicated to the registered person in Form GSTR-2B under rule 60(7).

Thus, ITC can now be taken only for those invoices whose details are reflected in GSTR-2B i.e the respective suppliers (vendors) have filed the details of such invoices their GSTR-1. Earlier, ITC, in respect of invoices/debit notes not uploaded by the suppliers in their GSTR-1s/IFF, could be availed upto 5% of the eligible credit available in respect of invoices/debit notes the details of which had been furnished by the suppliers in their GSTR-1s/using IFF.

W.E.F 01/01/2022 ONLY MATCHED ITC CAN BE AVAILED





## Segment – 7

# Exemptions & Charge

### Amendments to existing exemption w.r.to Services provided to Government:

**Entry 3 of Notification No. 12/2017:** Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority ~~or a Governmental authority or a Government Entity~~ by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution

**Entry 3A of Notification No. 12/2017:** Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent. of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority ~~or a Governmental authority or a Government Entity~~ by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution

"Governmental Authority" means an authority or a board or any other body,—

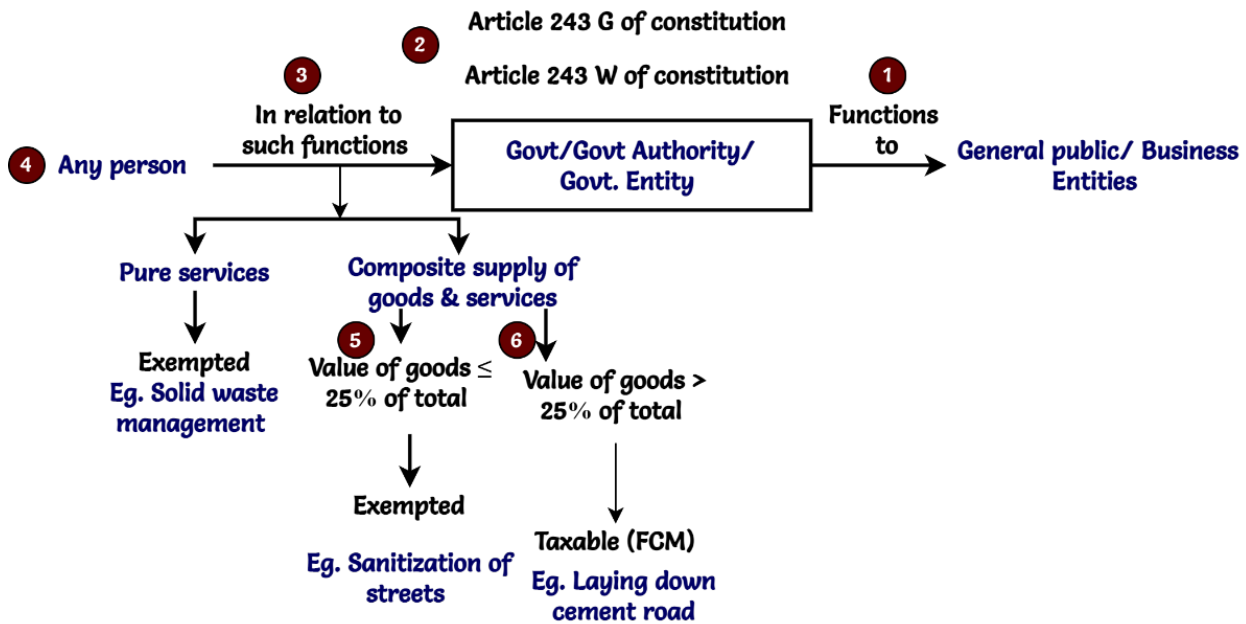
- (i) set up by an Act of Parliament or a State Legislature; or
- (ii) established by any Government,

with 90 per cent or more participation by way of equity or control, to carry out any function entrusted to a Municipality under article 243W of the Constitution or to a Panchayat under article 243G of the Constitution;

"Government Entity" means an authority or a board or any other body including a society, trust, corporation,

- (i) set up by an Act of Parliament or State Legislature; or
- (ii) established by any Government,

with 90 per cent or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority;



**Note:** W.e.f 1.1.22, exemption not available, if such services are provided to Government authority (or) Government entity (i.e. exemption available only if the services are provided to Government)

Entry 72 of Notification No. 12/2017: Services provided to the Central Government, State Government, Union territory administration under any training programme for which **75% or more of the** total expenditure is borne by the Central Government, State Government, Union territory administration

For passionate learners...

### Amendments to existing exemption w.r.to transportation of passengers (or) goods service:

**Entry 15 of Notification No. 12/2017:** Transport of passengers, with or without accompanied belongings, by –

(a) air, embarking from or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal;

(b) non-air conditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; or

(c) stage carriage other than air-conditioned stage carriage

**However, nothing contained in items (b) and (c) above shall apply to services supplied through an electronic commerce operator, and notified under section 9(5) of the CGST, 2017.**

**Entry 17 of Notification No. 12/2017:** Service of transportation of passengers, with or without accompanied belongings, by—

(a) railways in a class other than— (i) first class; or (ii) an air- conditioned coach;

(b) metro, monorail or tramway; (c) inland waterways;

(d) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and

(e) metered cabs or auto rickshaws (including e-rickshaws)

**However, nothing contained in item (e) above shall apply to services supplied through an electronic commerce operator, and notified under section 9(5) of the CGST, 2017.**

**Entry 19A of Notification No. 12/2017:** Services by way of transportation of goods by an aircraft from customs station of clearance in India to a place outside India

This exemption is applicable upto **30.09.2022**.

**Entry 19B of Notification No. 12/2017:** Services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India

This exemption is applicable upto **30.09.2022**.

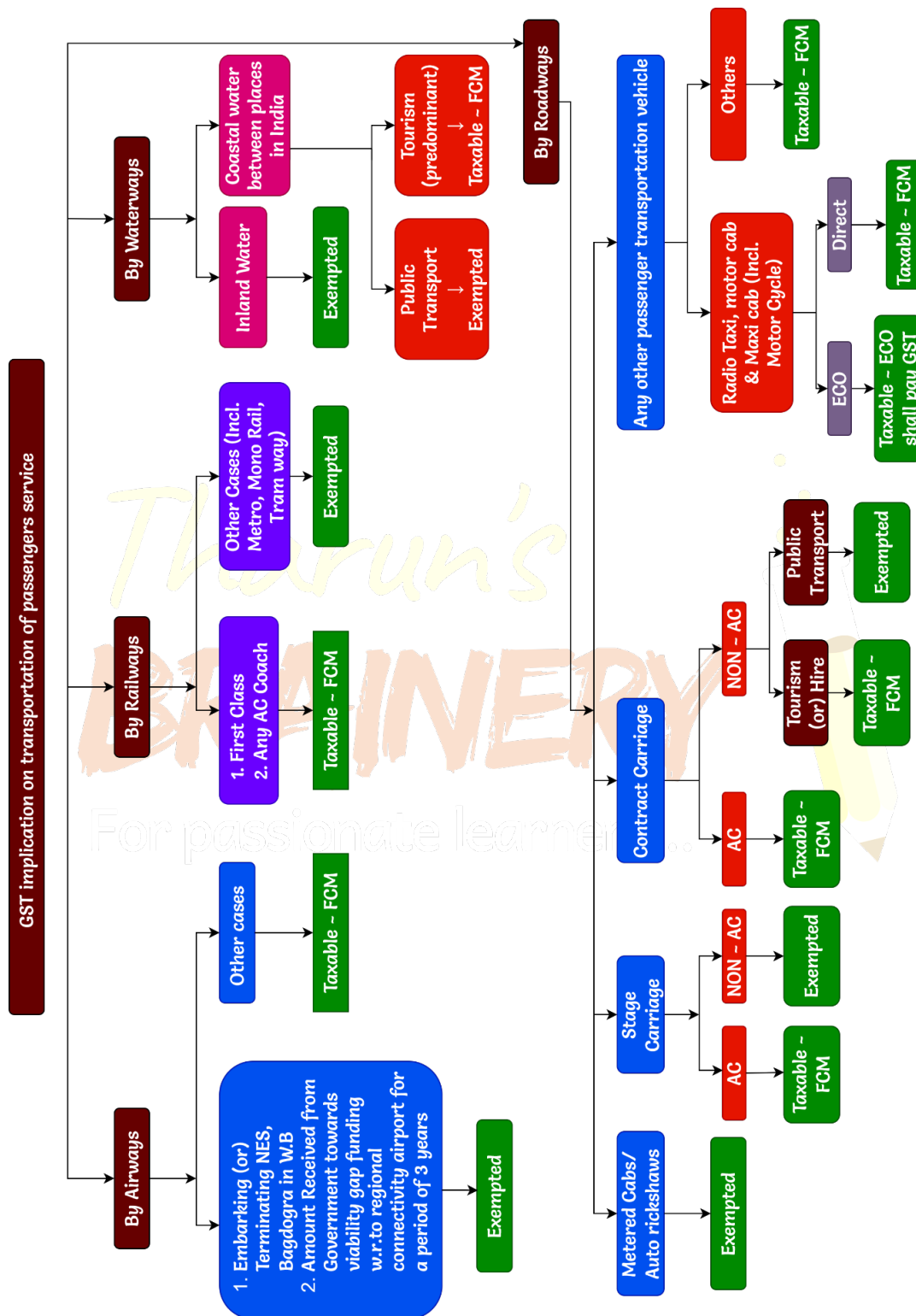
### New exemptions introduced

**Entry No. 61A of Notification No. 12/2017:** Services by way of granting National Permit to a goods carriage to operate through-out India/ contiguous States

### Withdrawal of existing exemption

**Entry No. 43:** Services of leasing of assets (rolling stock assets including wagons coaches, locos) by the Indian Railways Finance Corporation to Indian Railways

Transportation of passengers by metered cab (or) auto rickshaw (or) Contract carriage (or) Stage Carriage, through ECO is TAXABLE







**Note:** W.e.f 1.1.22, exemption not available if passengers are transported by metered cabs (or) Auto Rickshaws (or) Stage carriage (or) contract carriage, through an E COMMERCE OPERATOR (ECO)<sup>[IN 22]</sup>

## Segment – 8

**Composition Scheme**





Manufacturers of fly ash bricks/blocks, building bricks, bricks of fossil, earthen/roofing tiles, etc. ineligible to opt for composition levy - Notification No. 04/2022 CT dated 31.03.2022

As per section 10(2)(e) read with Notification No. 14/2019 CT dated 07.03.2019, a manufacturer of following goods cannot opt for composition scheme:

Tariff item, sub-heading, heading or Chapter	Description	
2105 00 00	Ice cream and other edible ice, whether or not containing cocoa	
2106 90 20	Pan Masala	
24	All goods i.e. Tobacco and manufactured tobacco substitutes	
2202 1010	Aerated water	



With effect from 01.04.2022, Notification No. 14/2019 CT dated 07.03.2019 has been amended to include following items in the above list:

Tariff item, sub-heading, heading or Chapter	Description	
6815	Fly ash bricks or fly ash aggregate with 90% or more fly ash content; Fly ash blocks	
6901 00 10	Bricks of fossil meals or similar siliceous earths	
6904 10 00	Building bricks	
6905 10 00	Earthen or roofing tiles	

## Segment – 9

## Registration

**Aadhaar authentication mandatory for registered person [New rule 10B] – Notification No. 35/2021 dated 24.09.2021 & Notification No. 38/2021 CT dated 21.12.2021 [Effective from 01.01.2022]**

Lately Aadhaar authentication has been made mandatory for the new registrants as well as for the existing registrants. Section 25(6A) stipulates that every registered person shall undergo authentication, or furnish proof of possession of Aadhaar number, in the prescribed manner, form and time.

Rule 10B prescribes the manner in which aadhaar authentication needs to be done by a registered person.

The registered person, who has been issued a certificate of registration under GST, shall undergo authentication of the Aadhaar number of:-

- Proprietor, in the case of proprietorship firm,
- Any partner, in the case of a partnership firm,
- Karta, in the case of a Hindu undivided family,
- Managing director or any whole-time director, in the case of a company,
- Any of the Members of the Managing Committee of an Association of persons or body of individuals or a Society, or of the Trustee in the Board of Trustees, in the case of a Trust; and of the Authorized Signatory,

in order to be eligible for the following purposes:

1. for filing of application for revocation or cancellation of registration
  2. for filing of refund application in Form RFD-01
  3. for refund of the IGST paid on goods exported out of India
- Consequential amendments by virtue of insertion of rule 10B have been made in rule 23(1) (revocation or cancellation of registration), in rule 89(1) (application for refund of tax, interest, penalty, fees or any other amount), and in rule 96(1) (refund of integrated tax paid on goods or services exported out of India).
  - First proviso to section 25(6A) provides that if an Aadhaar number is not assigned to an existing registered person, such person shall be offered alternate and viable means of identification in the prescribed manner. Such manner has been prescribed by rule 10B as follows:
    - If Aadhaar number has not been assigned to the person required to undergo authentication of the Aadhaar number, such person shall furnish the following identification documents, namely: –
      - (a) her/his Aadhaar Enrolment ID slip; and
      - (b) (i) Bank passbook with photograph; or (ii) Voter identity card issued by the Election Commission of India; or (iii) Passport; or (iv) Driving license issued by the Licensing Authority
  - Such person shall undergo the authentication of Aadhaar number within a period of 30 days of the allotment of the Aadhaar number.
  - The afore-said rule 10B shall not be applicable to persons notified under section 25(6D) of the CGST Act i.e. to persons exempt from aadhaar authentication.

Enhanced threshold limit of ₹ 40 lakh for registration available to persons exclusively engaged in making supplies of goods will not be available to suppliers of fly ash bricks/blocks, building bricks, bricks of fossil, earthen/roofing tiles, etc. - Notification No. 03/2022 CT dated 31.03.2022

Notification No. 10/2019 CT dated 07.03.2019 exempts any person who is engaged exclusively in supply of goods and whose aggregate turnover in a financial year does not exceed ₹ 40 lakh, from obtaining the registration.

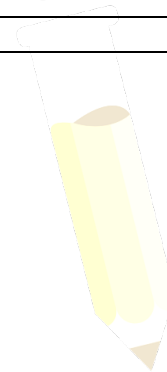
One of the exceptions to this exemption is that the persons engaged in making supplies of ice cream and other edible ice, whether or not containing cocoa [2105 00 00], Pan masala [2106 90 20] and all goods of Chapter 24, i.e. Tobacco and manufactured tobacco substitutes.

With effect from 01.04.2022, persons engaged in making supplies of following goods will also not be eligible to avail benefit of said exemption from registration:

Tariff item, sub-heading, heading or Chapter	Description
6815	Fly ash bricks or fly ash aggregate with 90% or more fly ash content; Fly ash blocks
6901 00 10	Bricks of fossil meals or similar siliceous earths
6904 10 00	Building bricks
6905 10 00	Earthen or roofing tiles

**BRAINERY**

For passionate learners...



## Segment – 10

## Payment Process

### Guidelines for disallowing debit of electronic credit ledger under rule 86A - CBEC-20/16/05/2021 GST/1552 dated 02/11/2021

CBIC vide has issued guidelines for disallowing debit of an amount from electronic credit ledger under rule 86A. Rule 86A provides that in certain specified circumstances, Commissioner or an officer authorised by him, on the basis of **reasonable belief** that ITC available in the electronic credit ledger has been fraudulently availed or is ineligible, may not allow debit of an amount equivalent to such credit in electronic credit ledger.

On perusal of Rule 86A, it is evident that Commissioner, or an officer authorised by him, not below the rank of Assistant Commissioner, must have "reasons to believe" that ITC available in the electronic credit ledger is either ineligible or has been fraudulently availed by the registered person, before disallowing the debit of amount from electronic credit ledger of the said registered person under rule 86A.

### Grounds for disallowing debit of an amount from electronic credit ledger

The reasons for such belief must be based on one or more following grounds:

- ➔ The credit is availed by the registered person on the invoices or debit notes issued by a supplier, who is found to be non-existent or is found not to be conducting any business from the place declared in registration.
- ➔ The credit is availed by the registered person on invoices or debit notes, without actually receiving any goods or services or both.
- ➔ The credit is availed by the registered person on invoices or debit notes, the tax in respect of which has not been paid to the government.
- ➔ The registered person claiming the credit is found to be non-existent or is found not to be conducting any business from the place declared in registration
- ➔ The credit is availed by the registered person without having any invoice or debit note or any other valid document for it

### Proper authority for the purpose of rule 86A:

The Commissioner/Principal Commissioner is the proper officer for the purpose of exercising powers under rule 86A. The Commissioner/Principal Commissioner may authorize any officer subordinate to him, not below the rank of Assistant Commissioner to be the proper officer for exercising powers under rule 86A based on the following monetary limits as mentioned below:

Total amount of ineligible or fraudulently availed ITC	Officer to disallow debit of amount from electronic credit ledger under rule 86A
Not exceeding ₹ 1 crore	Deputy Commissioner/Assistant Commissioner
Above ₹ 1 crore but not exceeding ₹ 5 crore	Additional/Joint commissioner
Above ₹ 5 crore	Principal Commissioner/Commissioner

The Additional Director General /Principal Additional Director General of DGGI can also exercise the powers assigned to the Commissioner under rule 86A. The monetary limits for authorization for exercise of powers under rule 86A to the officers of the rank of Assistant Director and above of DGGI by the Additional Director General /Principal Additional Director General may be same as mentioned for equivalent rank of officers in the table above.

## Segment – 11

# Appeals

**Pre-deposit of 25% of the penalty amount appeal filed to AA against penalty order passed for release of detained/seized goods and conveyance in transit [Proviso to section 107(6)]**

As per section 107(6), the amount of pre-deposit to be made by appellant for filing the appeal to the Appellate Authority (AA) is computed as under-

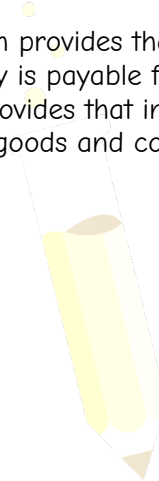
1. Full amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by appellant, and
2. 10% of the remaining amount of tax in dispute arising from the impugned order, subject to a maximum of ₹ 25 crore (₹ 50 crore in case of IGST).

**With effect from 01.01.2022**, a proviso has been inserted to sub-section (6) by the Finance Act, 2021, that no appeal shall be filed to (AA) against an order under section 129(3), unless a sum equal to 25% of the penalty has been paid by the appellant.

This amendment is subsequent to the amendment in section 129(3) which provides that in case of detention/seizure of goods and conveyance during transit, only penalty is payable for release of the goods. Consequently, aforesaid proviso has been inserted which provides that in case of appeal filed against penalty order passed for release of detained/seized goods and conveyance, pre-deposit amount shall be 25% of the penalty.

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## Segment – 13

**Seizure and Confiscation under GST**

Detained/seized goods to be released merely on payment of penalty; time limit of 7 days prescribed for issuing notice and order for penalty; section 129 delinked from section 130 [Section 129 and new rule 144A] - Notification No. 40/2021 CT dated 29.12.2021

Only penalty needs to be paid for release of detained/seized goods; penalty has also been enhanced

	Erstwhile Provisions	Provisions as amended by the Finance Act, 2021
	Detained/seized goods and conveyance (used as a means of transport for carrying said goods) and related documents shall be released on payment of:	Detained/seized goods and conveyance (used as a means of transport for carrying said goods) and related documents shall be released on payment of:
When owner of goods comes forward for payment of penalty [Sec. 129(1)(a)]		
Taxable goods	100% tax + penalty equal to 100% of tax payable	Penalty equal to 200% of tax payable
Exempted goods	2% of the value of goods or ₹ 25,000, whichever is LOWER	
When owner of goods does not come forward for payment of tax and penalty or for payment of penalty [Sec. 129(1)(b)]		
Taxable goods	Applicable tax + penalty equal to 50% of value of goods reduced by tax paid thereon	Penalty equal to higher of the following: 50% of value of goods (or) 200% of tax payable on such goods
Exempted goods	Lower of 5% of the value of goods or ₹ 25,000	

Detained/seized goods or conveyances not to be released on provisional basis [Section 129(2)]

Before Amendment:

Earlier, sub-section (2) provided that the detained/seized goods or conveyances shall be released, on a provisional basis, upon execution of a bond and furnishing of prescribed security, or on payment of applicable tax, interest and penalty payable, as the case may be.

After Amendment:

The said sub-section has been omitted.

This implies that the detained/seized goods or conveyances shall not be released on provisional basis upon execution of bond and furnishing security.

Time limit of 7 days prescribed for issuing notice as well as for passing order for payment of penalty [Section 129(3)]

Before Amendment:

Earlier, sub-section (3) provided that the proper officer detaining/ seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c).

After Amendment:

The proper officer detaining/seizing goods or conveyance shall issue a **notice within 7 days of such detention/seizure**, specifying the penalty payable. Thereafter, the proper officer shall pass an **order within a period of 7 days from the date of service of such notice**, for payment of penalty under clause (a) or clause (b) of sub-section (1).

Thus, time-limit of 7 days each has been prescribed for issue of notice and passing of order for payment of penalty after detention/seizure of goods/conveyances whereas earlier, no time-limit was prescribed for the same.

Proceedings under section 129 delinked from the proceedings under section 130

[Section 129(6)]

Before Amendment:

Earlier, sub-section (6) provided that in case where the transporter/owner of the goods fails to pay the specified amount of tax and penalty **within 14 days of such detention/seizure**, such conveyance or goods **would be liable to confiscation** as per section 130.

After Amendment:

Where the person transporting any goods/ owner of such goods fails to pay the specified amount of penalty **within 15 days from the date of receipt of the copy of the order levying penalty**, the goods or conveyance so detained/seized shall be **liable to be sold or disposed of otherwise**, in the prescribed time and manner, to recover the penalty so payable.

**Recovery of penalty by sale of goods or conveyance Detained Or Seized In Transit [Rule 144A]<sup>[N22]</sup>**

Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under Sec. 129, within 15 days from the date of receipt of copy of order, the proper officer shall proceed for sale or disposal of the goods or conveyance through a process of auction.

The said period of 15 days may be reduced if such goods are perishable or hazardous in nature or likely to depreciate in value with passage of time.

**Disposal of proceeds of sale of goods or Conveyance and movable or immovable property [Rule 154]<sup>[N22]</sup>**

1. Appropriated against administrative cost of the recovery process
2. Appropriated against the amount to be recovered or to the payment of penalty under Sec. 129
3. Balance amount shall be credited to Electronic Cash Ledger of the owner of the goods or conveyance, if they are registered. Else, it shall be credited to their bank account

If balance of the sale proceeds cannot be so paid within 6 months from the date of sale, it shall be deposited in consumer welfare fund.

Penalty payable by transporter to release conveyance:

Newly Inserted: now, the **transporter can get the conveyance released** on payment of:

✓ penalty under sub-section (3) or

✓ ₹1lakh

whichever is **less**.

Proceedings under section 130 delinked from proceedings under section 129[Section 130]

Section 130 relating to confiscation of goods or conveyances and levy of penalty has been amended as follows by the Finance Act, 2021 with effect from 01.01.2022, to delink its proceedings from the proceedings under section 129 relating to detention, seizure and release of goods and conveyances in transit:

(i) Non-obstante clause removed i.e. section 130 will no more have overriding effect over the other provisions of the Act. [Sub-section (1) amended].

(ii) The officer adjudging the confiscation gives to the owner of the goods an option to pay in lieu of confiscation, such fine as the said officer thinks fit [Sub-section (2)]. Earlier, second proviso to sub-section (2) provided that the aggregate of such fine and penalty leviable shall not be less than amount of penalty leviable under section 129(1).

Since section 129 has now been delinked from section 130, said proviso has been suitably amended to provide that the aggregate of fine and penalty leviable shall not be less than the penalty equal to 100% of the tax payable on such goods.

(iii) Sub-section (3) has been omitted, so as to remove requirement of paying tax, penalty and charges payable in respect of confiscated goods or conveyance, in addition, to fine imposed for the same under section 130(2).

**Question No 1:****[ICAI STUDY MATERIAL]**

From the following details, calculate the amount to be paid, for release of goods detained or seized under section 129 of the CGST Act, 2017, if owner of the goods does not come forward for payment of applicable tax and penalty

Details are as follows:

Particulars	Amount (₹)
Value of goods	30,00,000
Applicable GST on such goods	5,40,000
GST already paid on such goods	3,60,000

Would your answer be different if goods were exempted from GST and value remains the same namely ₹ 30,00,000

If owner of the goods does not come forward for payment of applicable tax and penalty:

The amount to be paid for release of goods detained or seized under section 129 of the CGST Act, 2017, is **penalty equal to 50% of the value of the goods.**

Therefore, in the given case, the amount payable\* = [50% of ₹ 30,00,000] = **₹ 20,40,000**

However, in case of exempted goods, amount to be paid for release of goods detained is equal to **5% of the value of goods or ₹ 25,000, whichever is less.**

= 5% of ₹ 30,00,000 or ₹ 25,000, whichever is less

= ₹ 1,50,000 or ₹ 25,000, whichever is less

= **₹ 25,000**

Note: The above penalty is under CGST Act and the same amount of penalty is also payable under SGST Act.

**Question No 2:****[ICAI May 19 – 4 Marks]**

XYZ carries goods from Vadodara, Gujarat to Pune, Maharashtra. The value of the goods is ₹80,000 which are chargeable to tax @ 18% IGST and in transit, proper officer intercepted the same under section 68 of the CGST Act, and found contravention.

Calculate the penalty payable under section 129 of CGST Act, 2017:

- If XYZ comes forward for payment of tax and penalty,
- If XYZ does not come forward for payment of tax and penalty.

The penalty payable under section 129 of the CGST Act, 2017 :

- a. 200% of the tax payable on goods detained or seized where the owner of the goods comes forward for payment of tax and penalty;
- b. 50% of the value of the goods where the owner of the goods does not come forward for payment of tax and penalty\*.

By virtue of “section 20 of the IGST Act, 2017 provisions of penalty payable under section 129 of the CGST Act, 2017 apply in case of IGST as well”. However, where the penalty is leviable under the CGST Act, 2017 and the SGST/ UTGST Act, 2017, the penalty leviable under the IGST Act, 2017 shall be the sum total of the said penalties. Therefore, penalty payable under IGST Act, 2017 is double the penalty payable under section 129 of the CGST Act, 2017.

Therefore, in the given case the penalty payable will be computed as under:

If XYZ comes forward for payment of penalty –

$$= ₹ 80,000 \times 18\% (9\% \text{ CGST and } 9\% \text{ SGST/ UTGST}) \times 200\%$$

$$= ₹28,800$$

If XYZ does not come forward for payment of penalty –

$$= [₹ 80,000 \times 100\% (50\% \text{ under CGST plus } 50\% \text{ under SGST/ UTGST})]$$

$$= ₹ 80,000$$

**Note:** In the above answer, the penalty payable has been computed in accordance with the provisions of the IGST Act, 2017 as tax chargeable on the goods is IGST. However, the question can also be answered on the basis of the provisions of section 129 of the CGST Act, 2017.

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## Segment – 16

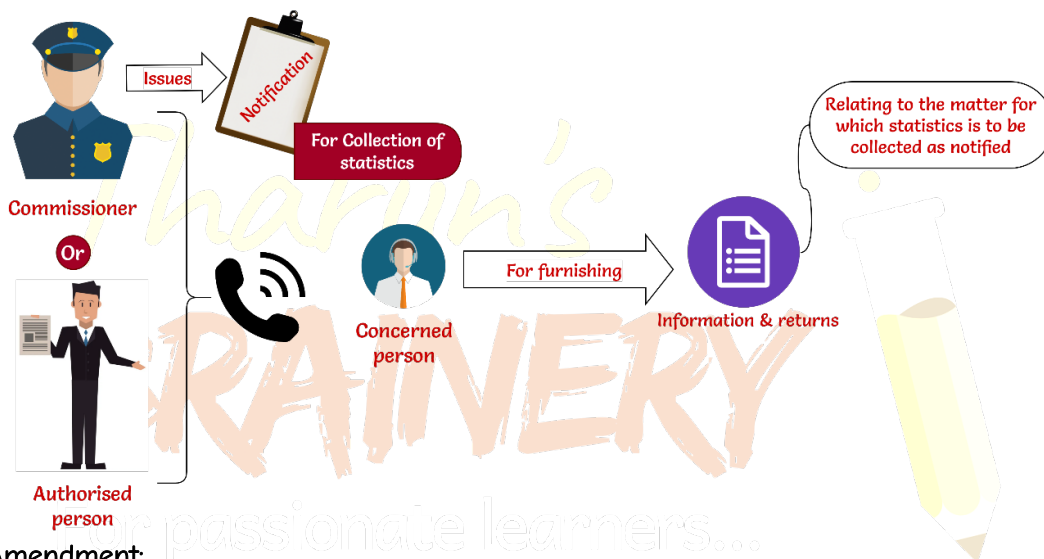
# Offences and Penalties

Jurisdictional commissioner to call for information from any person relating to any matters dealt with in connection with the Act [Section 151 and section 168]

With effect from 01.01.2022, section 151 has been substituted by the Finance Act, 2021 to provide that the **Commissioner or an officer authorised by him** may, by an order, direct any person to furnish information relating to any matter dealt with in connection with this Act, within such time, in such form, and in such manner, as may be specified therein.

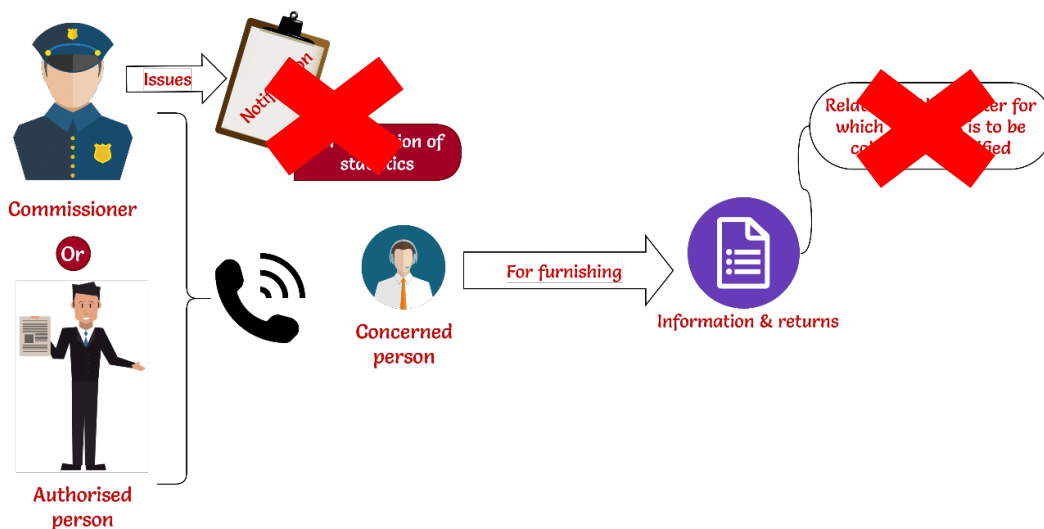
## Before Amendment:

Earlier, Commissioner was required to issue a notification to call for information from the concerned persons relating to any matter in respect of which statistics were to be collected.



## After Amendment:

Consequently, with effect from 01.01.2022, section 168 has also been appropriately amended by the Finance Act, 2021 so as to enable the jurisdictional commissioner to exercise powers under section 151 to call for information.





Scope of information prohibited to disclose widened and no proceedings can be initiated on the basis of such information unless an opportunity of being heard to the person concerned [Section 152]

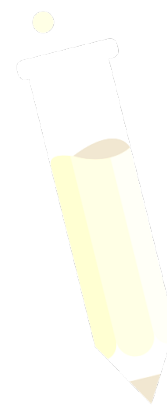
With effect from 01.01.2022, sub-section (1) of section 152 has been amended by the Finance Act, 2021 to provide that no information obtained under sections 150 and 151 shall be used for the purposes of any proceedings under the CGST Act without giving an opportunity of being heard to the person concerned.

**Amended section 152(1) provides as follows:**

No information with respect to any matter given for the purposes of section 150 or section 151 shall, without the previous consent in writing of the concerned person or his authorised representative, be published in such manner so as to enable such particulars to be identified as referring to a particular person and no such information shall be used for the purpose of any proceedings under this Act without giving an opportunity of being heard to the person concerned.

Further, consequent to amendment in section 151, sub-section (2) of section 152 which prohibits the access to any information/individual return (referred to in section 151) to any person not engaged in the collection/ compilation/ computerisation of statistics under GST law, except for the purposes of prosecution, has been omitted with effect from 01.01.2022.

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## Segment – 18

**Demand and Recovery****Proceedings under sections 129 and 130 delinked from proceedings under sections 73 and 74****Before Amendment:**

Earlier, as per clause (ii) of Explanation 1 to section 74, where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122 (penalty for specified offences), 125 (general penalty), 129 (detention, seizure and release of goods and conveyances in transit) and 130 (confiscation of goods or conveyances and levy of penalty) are deemed to be concluded.

**After Amendment:**

With effect from 01.01.2022, the said clause has been amended by the Finance Act, 2021. As per the amended position, on conclusion of proceedings under section 73/section 74, the proceedings under sections 122 and 125 will be deemed to be concluded but not the proceedings under sections 129 and 130.

This makes detention, seizure and confiscation of goods and conveyances in transit a separate proceeding from recovery of tax.

**Self-assessed tax to include tax payable on outward supplies furnished in GSTR-1 but not included in return under section 39 [Section 75(12)]**

Section 75(12) provides where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, there is no need to issue show cause notice and it can be directly recovered under section 79.

**With effect from 01.01.2022**, an explanation has been inserted to the said sub-section (12) by the Finance Act, 2021 to clarify that the expression "**self-assessed tax**" shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.

Thus, the scope of the term "self-assessed tax" has been widened and henceforth the recovery proceedings can straight away be initiated by the proper officer for the outward supplies shown in the GSTR-1, if not reflecting in GSTR-3B. In other words, where the tax payable in respect of details of outward supplies furnished in GSTR-1, has not been paid through GSTR-3B, either wholly/partly, or any amount of interest payable on such tax remains unpaid, then in such cases, the tax short paid on such self-assessed and thus self-admitted liability, and the interest thereon, are liable to be recovered under section 79.

However, the difference/mis-match between details of GSTR-1 and GSTR-3B may arise due genuine reasons:

for instance,

- ➞ a typographical error/wrongly reported details in GSTR-1 or GSTR-3B which may be rectified in subsequent GSTR-1 or GSTR-3B, or

- ➡ where a supply could not be declared in GSTR-1 of an earlier tax period, though the tax on the same was paid by correctly reporting the same in GSTR-3B of said tax period; details may now be reported in the GSTR- 1 of the current tax period.

Therefore, **Instruction No. 01/2022 GST dated 07/01/2022** provides that in case of mis-match between GSTR-1 and GSTR-3B, the proper officer may first send a communication to the registered person to pay the self-assessed tax short paid/not paid, or to explain the reasons for the same, within a reasonable time prescribed in the communication.

**Guidelines for recovery under section 79 for cases covered under explanation to section 75(12) of the CGST Act, 2017 – CBIC Circular [N 22]**

Where the tax payable in respect of details of outward supplies furnished by the registered person in GSTR-1, has not been paid through GSTR-3B return, either wholly or partly, or any amount of interest payable on such tax remains unpaid.

It has been provided that wherever any such difference is found, the proper officer may send a communication to the registered person to pay the amount short paid or not paid or to explain the reasons for such short payment or non-payment of self-assessed tax, within a reasonable time, as prescribed in the communication.

However, the proper officer may proceed with recovery proceedings under section 79 if :

- The said registered person either fails to reply to the proper officer or fails to make the payment of such amount short paid or not paid, within the time prescribed in the communication or such further period as may be permitted by the proper officer.
- The said registered person fails to explain the reasons for such difference/ short payment of tax to the satisfaction of the proper officer

**Commissioner empowered to invoke provisional attachment after initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV and also against person specified in section 122(1A) [Section 83(1) and rule 159]**

**Provisional attachment to protect revenue in certain cases [Sec. 83 of CGST Act]:**

During the pendency of proceedings, for the purpose of protecting the interest of revenue, it is necessary to do so, the proper officer by order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed for a period of 1 year from the date of order of provisional attachment.

**Inserted by Finance Act 2021- w.e.f 01/01/2022**

The Finance Act, 2021 provides amendments in Section 83 which aims to enlarge the scope of the section.

The amendments extends the scope of the provisional attachment to the proceedings which are initiated in any of the sections of the entire chapters of Assessment (Chapter XII), Inspection, Search, Seizure & Arrest (Chapter XIV) and Demand & Recovery (Chapter XV). Currently, only those cases are covered where proceeding is pending under specified Sections.

In addition, provisional attachment would not only be applicable to the concerned taxable person but also to the person specified in Section 122(1A), which are –

- Any person who retains the benefit of the following transactions-
  - Supply of any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply

- Issue any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder
  - Availment or utilization of ITC without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder
  - Takes or distributes ITC in contravention of Section 20, or the rules made thereunder
- At whose instance such transaction is conducted

Further, earlier the person whose property is attached could file an objection to such attachment **within 7 days** of the attachment. However, said provision has been amended by aforesaid notification to provide that the objections to such attachment can be filed **at any time**.

Further, amendment in rule 159 is also effective from 01.01.2022.

Further, a copy of the order of provisional attachment of the property including bank account shall also be sent to the person whose property is being attached.



## Segment – 19

## Refund under GST

Refund of GST can be claimed on submitting the attested copy of tax invoice by the UIN holder, if UIN is not mentioned therein [Rule 95] - Notification No. 40/2021 CT dated 29.12.2021

Rule 95 contains the provisions relating to refund of taxes paid on the notified inward supplies to notified specialized agency of UNO or Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947 or Consulate or Embassy of foreign countries or any other notified person/class of persons.

One of the conditions prescribed therein for sanction of refund is that name and GSTIN/UIN of the applicant is mentioned in the tax invoice [Sub-rule (3)].

A proviso has been inserted **retrospectively, with effect from 01.04.2021**, to said sub-rule to provide that where UIN of the applicant is not mentioned in a tax invoice, the refund of tax paid by the applicant on such invoice shall be available only if the copy of the invoice, duly attested by the authorised representative of the applicant, is submitted along with the refund application in prescribed form.

Thus, if UIN is not mentioned in the tax invoice, then refund shall be available to the applicant on submission of the attested copy of such invoice in the prescribed form.

Clarification on certain refund related issues - Circular No. 166/22/2021-GST dated 17/12/2021

Clarification with regard to refund of excess balance in the electronic cash ledger

No time period for filing refund claim

- The provisions of section 54(1) regarding time period, within which an application for refund can be filed, would not be applicable in cases of refund of excess balance in electronic cash ledger.

No certificate/declaration required to establish that there is no unjust enrichment

- In case of refund of excess balance in electronic cash ledger, neither a declaration by the applicant nor a certificate by a CA/ CMA is required to be furnished, to establish that there is no unjust enrichment (i.e. for not passing the incidence of tax to any other person).

TDS/TCS deposited in electronic cash ledger can be refunded as excess balance in cash ledger

- The amount deducted/collected as TDS/TCS and credited to electronic cash ledger, is equivalent to cash deposited in electronic cash ledger. Any amount, which remains unutilized, after discharge of tax dues and other dues, can be refunded to the registered person as excess balance in electronic cash ledger

Documentary evidence pertaining to passing of incidence of tax

Refund Amount	Requirement		Remarks
where refund claim ≤ ₹2 lakh	Declaration		a <b>declaration</b> needs to be furnished to establish that there is no unjust enrichment.
Where refund claim > ₹2 lakh	Certificate		a Certificate in <b>Annexure 2</b> of Form GST RFD-01 by a Chartered Accountant or a Cost Accountant to the effect that there is no unjust enrichment.
Neither a declaration by the applicant nor a certificate by a Chartered Accountant/Cost Accountant requested In case of refund of IGST paid on Supply to SEZ, Declaration/Certificate required.	1	refund of tax paid on export of goods or services or both or on inputs or input services used in making such exports.	
	2	refund of unutilised ITC in case of zero-rated supplies made without payment of tax or on account of inverted duty structure.	
	3	refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued.	
	4	refund of tax in pursuance of section 77, i.e., tax paid on a transaction treating it as an intra-State supply, but which is subsequently held to be an inter-State supply or vice-versa.	
	5	Refund of excess balance in E-Cash Ledger <sup>(N22)</sup>	
	6	the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.	
No unjust enrichment means establishing that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person.			

Clarification on determination of relevant date for filing refund claim in case of deemed exports

It has been clarified that clause (b) of Explanation (2) under section 54<sup>6</sup> is applicable for determining relevant date in respect of refund of amount of tax paid on the supply of goods regarded as deemed exports, irrespective of the fact whether the refund claim is filed by the supplier or by the recipient.

Further, as the tax on the supply of goods, regarded as deemed export, would be paid by the supplier in his return, therefore, the relevant date for purpose of filing of refund claim for refund of tax paid on such supplies would be the **date of filing of return, related to such supplies, by the supplier.**

In case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods	Date on which the return relating to such deemed exports is furnished (Actual date of return filed by supplier)
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**Consumer Welfare Fund [Sec. 57 & 58]: (Not in ICAI Amendments Material)**

- If an applicant, fails to prove that there is no unjust enrichment, such refund due shall be credited to consumer welfare fund.
- Also, any income from investment of the amount credited to the fund, is also deposited in the fund.
- Committee is appointed for utilization of such fund.
- Committee shall make available to the CBIC 50% of the amount credited to the fund each year, for publicity or consumer awareness on GST, provided the availability of funds for consumer welfare activities of the department of consumer affairs is > ₹25 crores per annum.<sup>[N 22]</sup>

**Segment – 20**

## **Miscellaneous Provisions**

**Tenure of National Anti-profiteering Authority increased to 5 years from 4 years [Rule 137] – Notification No. 37/2021 CT dated 01.12.2021**

National Anti-profiteering Authority is constituted by the Central Government to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him, this is to ensure that the consumer is protected from arbitrary price increase in the name of GST. The authority was established under section 171 on 01.12.2017. Rule 137 specifies the tenure of the said authority.

With effect from 30.11.2021, rule 137 has been amended to extend the tenure of the Authority to **5 years** from existing 4 years, from the date on which the Chairman enters upon his office (unless the Council recommends otherwise), in view of the pendency of the cases. Thus, the term of such authority has now been extended till 30.11.2022.

## Segment – 23

## Types of Customs Duties

Where BCD is Nil, SWS is also Nil - CBIC Circular 03/2022-GST  
[Dated: 1st Feb, 2022]

Clarification regarding applicability of Social Welfare Surcharge [SWS] on goods exempted from basic and other customs duties/cesses

- SWS is levied and collected, as a duty of customs, vide Section 110 of the FA, 2018 and is calculated @ 10% on the aggregate of duties, taxes and cesses which are levied and collected by the CG as a duty of customs on goods imported into India.
- In this regard, it may be noted that at present SWS applies @10% of the aggregate of customs duties payable on import of goods and not on the value of imported goods.
- **If aggregate customs duty payable is zero on account of an exemption, the SWS shall be computed as 10% of value equal to 'Nil'** (as aggregate amount of customs duties payable is zero). Law does not require computation of SWS on a notional customs duty calculated at tariff rate where applicable aggregate of duties of customs is zero.
- Thus, it is clarified that the amount of SWS payable would be 'Nil' in cases where the aggregate of customs duties (which form the base for computation of SWS) is zero even though SWS has not been exempted.

**Illustration:**

A machinery imported into India with a CIF value of ₹1,00,000 where basic customs duty rate is 10% but it is exempted through an exemption notification. However, IGST is payable @12%. Compute the total customs duties payable, if applicable social welfare surcharge is 10% of basic customs duty.

	Before this Circular	After this Circular
Assessable value	1,50,000	1,50,000
BCD @ 10% of AV	15,000	15,000
(+) SWS @ 10% of BCD	1,500	1,500
CD (excl. Additional custom duties)	16,500	16,500
(+) IGST	(1,50,000+ 16,500)*12% = 19,980	(1,50,000+ 16,500)*12% = 19,980
(-) BCD Exempted	(15,000)	(15,000)
(-) SWS Exempted	X	(1,500)
Total CD Payable	₹21,480	₹19,980

**Note:** We should consider BCD and SWS for computation of IGST, as there is no circular like this for computation of IGST. In future, when a clarification is provided for IGST, then it will be computed only on assessable value.

## Segment – 25

**Procedures under Customs**

Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017, amended - [Notification No. 07/2022 Cus (N.T.) dated 01.02.2022 and Circular No. 04/2022 Cus dated 27.02.2022]  
[Effective from 01.03.2022]

Rule 1	Short title and date of commencement
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Rule 8	Recovery of duty in certain cases
Rule 8A	Penalty

(\*Amended rules & Amendments marked in red)

Rule 1: Short title and date of commencement

These rules may be called the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017.

Rule 2: Application

(1) These rules shall apply to an importer, who intends to avail the benefit of an exemption notification issued under [section 25](#)(1) of the Customs Act, 1962 and where the benefit of such exemption is dependent upon the use of imported goods covered by that notification for the manufacture of any commodity or provision of output service.

(2) These rules shall apply only in respect of such exemption notifications which provide for the observance of these rules.

Examples:

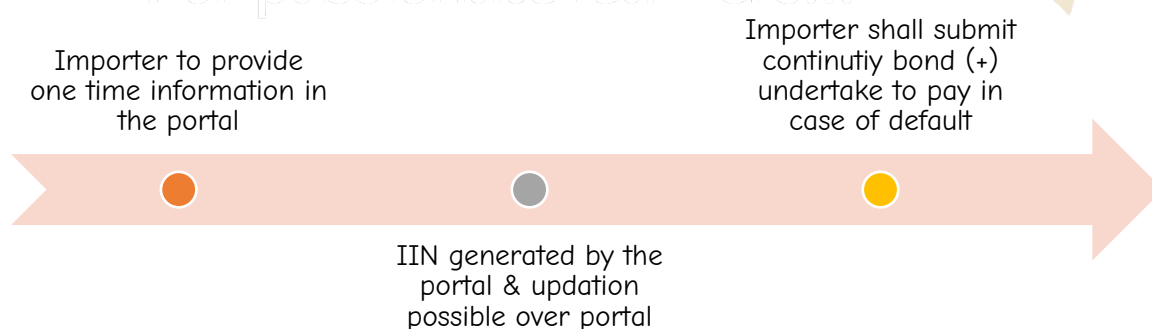
1. As per Notification No. 43/2017, exemption is available for import of specific equipment's by non-profit making scientific and educational institutions.
2. As per Notification No. 30/2010, exemption is available for import of specified materials for manufacture of solar panels.

Rule 3: Definitions

3(a)	Act	means the Customs Act, 1962
3(aa)	Capital goods	means goods, the value of which is capitalised in the books of account of the importer; <a href="#">Note:</a> This definition is in line with the meaning of capital goods under <a href="#">GST</a>
3(ab)	Common portal	means the common customs electronic portal as referred to in <a href="#">section 154-C of the Act</a> ; (i.e., <a href="http://www.icegate.gov.in">www.icegate.gov.in</a> )

3(ac)	Customs Automated system	the Indian Customs Electronic Data Interchange System ; (i.e., automated machine based clearance)
3(ad)	Date of import	the date of the order made under section 47 of the Act permitting clearance of such goods ; (i.e., Out of customs charge Order)
3(b)	Exemption notification	means a notification issued under sub-section (1) of <a href="#">section 25</a> of the Act;
3(c)	Information	means the information provided by the manufacturer who intends to avail the benefit of an exemption notification;
3(ca)	Job work	means any treatment, process or manufacture, consistent with the exemption notification undertaken by a person on goods belonging to the importer except gold, jewellery and articles thereof, and other precious metals or stones; and the term "job worker" shall be construed accordingly; <b>Note:</b> Manufacture of imported goods on job work basis is not allowed in case of jewellery and articles thereof, and other precious metals or stones
3(d)	Jurisdictional customs officer	means an officer of Customs of a rank equivalent to the rank of Superintendent or an Appraiser exercising jurisdiction over the premises where either the imported goods shall be put to use for manufacture or for rendering output services;
3(e)	Manufacture	means the processing of raw materials or inputs by the importer in any manner that results in emergence of a new product having a distinct nature or character or use or name; and the term "manufacturer" shall be construed accordingly;
3(f)	Output Service	means supply of service excluding after-sales service, utilizing imported goods. <b>Note:</b> Imported goods under exemption notification should not be used for after sales service

#### Rule 4: Importer to give prior information



The importer is required to provide **one-time information** on common portal [\[www.icegate.gov.in\]](http://www.icegate.gov.in) in the prescribed form consisting of the following particulars namely:-

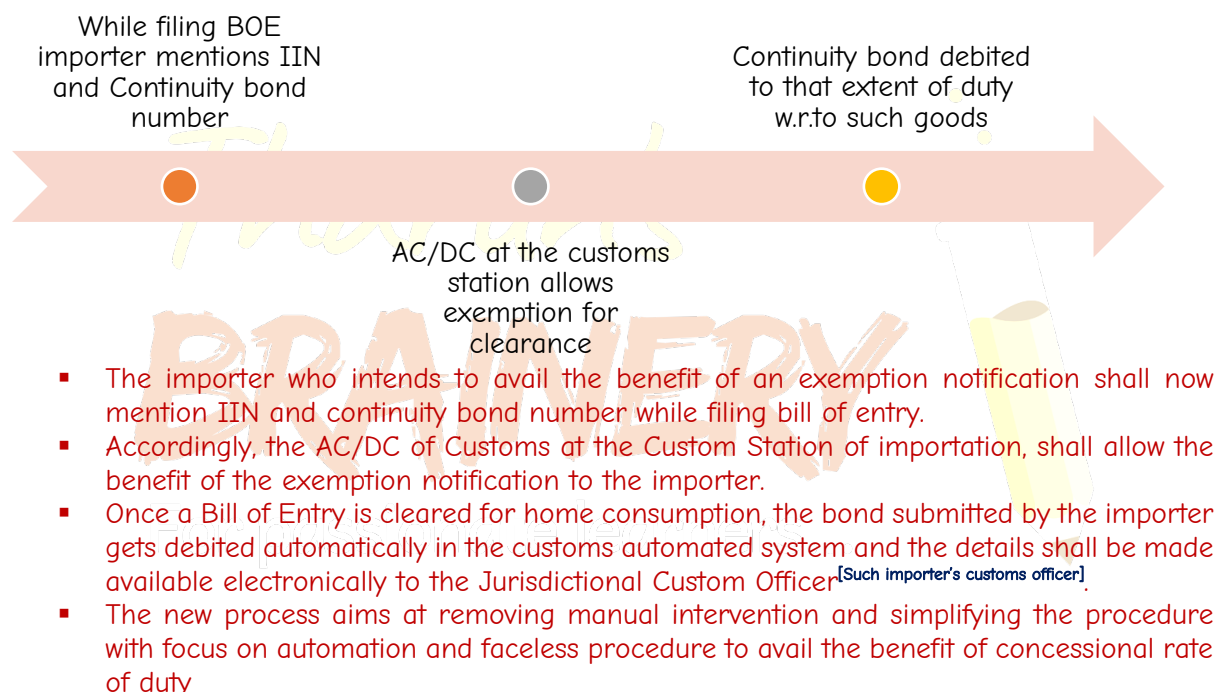
- (i) the name and address of the importer and his job worker, if any;
- (ii) the goods produced or process undertaken at the manufacturing facility of the importer or his job worker, if any, or both;
- (iii) the nature and description of goods imported used in the manufacture of goods at the premises of the importer or the job worker, if any;
- (iv) particulars of the exemption notification applicable on such import ;

- (v) nature of output service rendered utilising the goods imported; and
- (vi) the intended port(s) of import

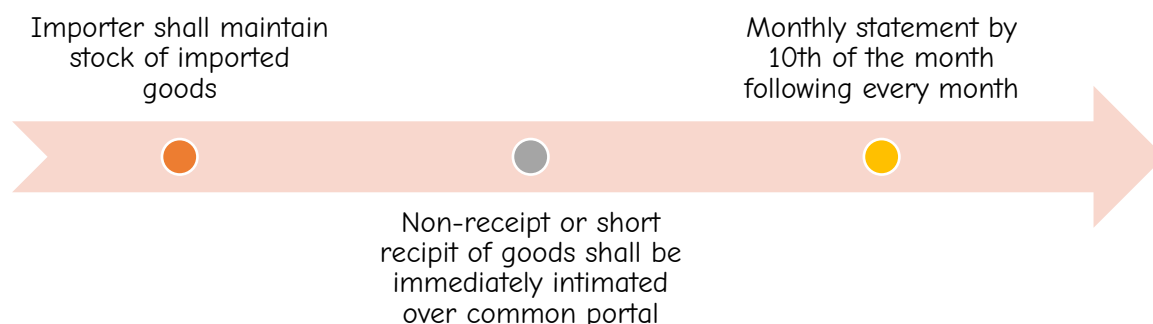
On acceptance of the above information, an **Import of Goods at Concessional Rate Identification Number (IIN)** shall be generated against such information furnished. The importer also has an option to update the prescribed form in case of any change in the details on the common portal.

- The importer who intends to avail the benefit of an exemption notification shall submit a **continuity bond** with such surety or security as deemed appropriate by the AC/DC of Customs, as the case may be, having jurisdiction over the premises where the goods imported shall be put to use for manufacture of goods or for rendering output service,
- with an **undertaking** to pay the amount equal to the difference between the duty leviable on inputs but for the exemption and that already paid, if any, at the time of import, along with interest.

#### Rule 5: Procedure to be followed



#### Rule 6: Importer to give information regarding receipt of imported goods and maintain records



The importer shall not be required to intimate the jurisdictional officer regarding receipt of goods imported.

Further, the importer shall maintain an account in such manner to clearly indicate the quantity-

1. and value of goods imported;
2. and date of receipt of the goods imported in the relevant premises;
3. of such goods consumed;
4. of goods sent for job work, nature of job work carried out;
5. of goods received after job work;
6. of goods re-exported, if any, under rule 7; and
7. remaining in stock, according to Bills of Entry

and shall produce the said account as and when required by the AC/DC of Customs, having jurisdiction over the premises or where the goods imported shall be put to use for manufacture of goods or for rendering output service:

Further, in case of non-receipt or short receipt of goods imported in the relevant premises, the importer shall intimate such non-receipt or short receipt immediately on the common portal in the prescribed form.

The importer shall submit a monthly statement on the common portal in the prescribed form by the 10<sup>th</sup> day of the following month.

### Rule 6A: Procedure for allowing imported goods for job-work

Importer shall maintain record of goods sent on jobwork on the cover of invoice (+) E-way Bill

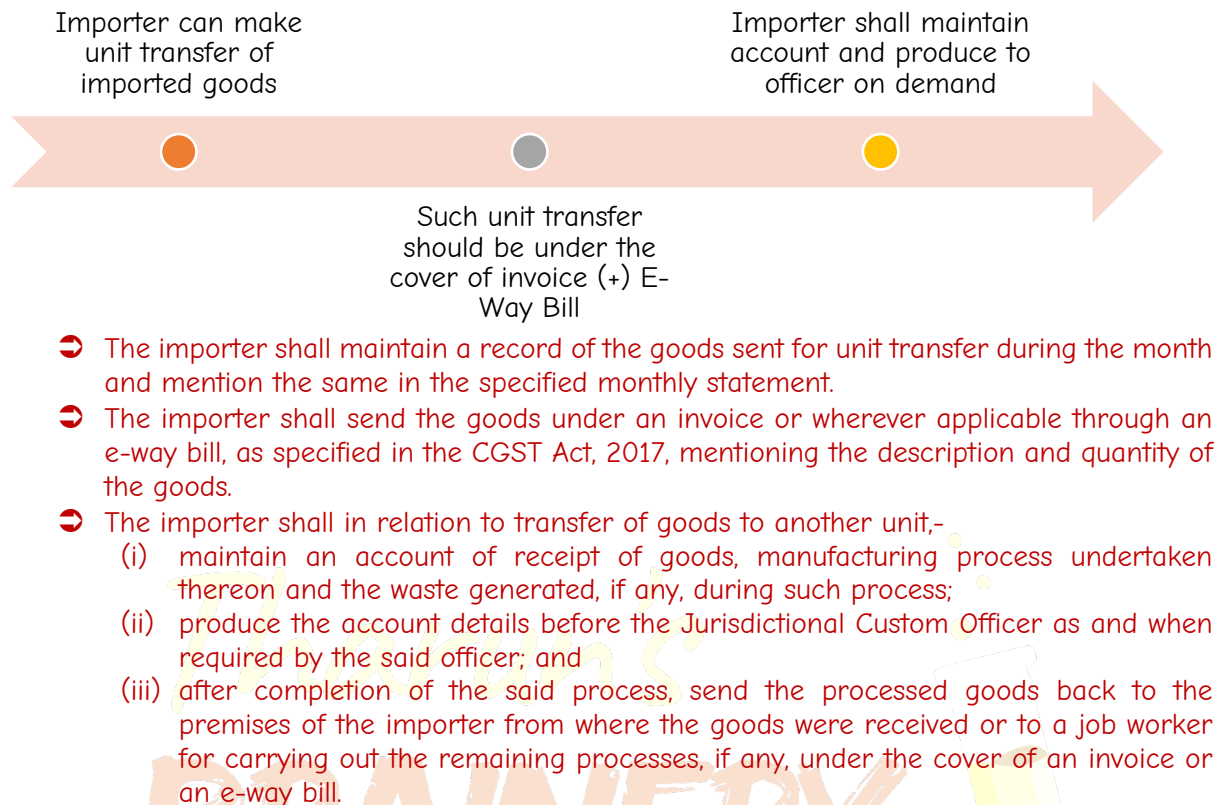
Job worker shall maintain account and produce to officer on demand

Goods sent on jobwork should be brought back within 6 months from the date of invoice

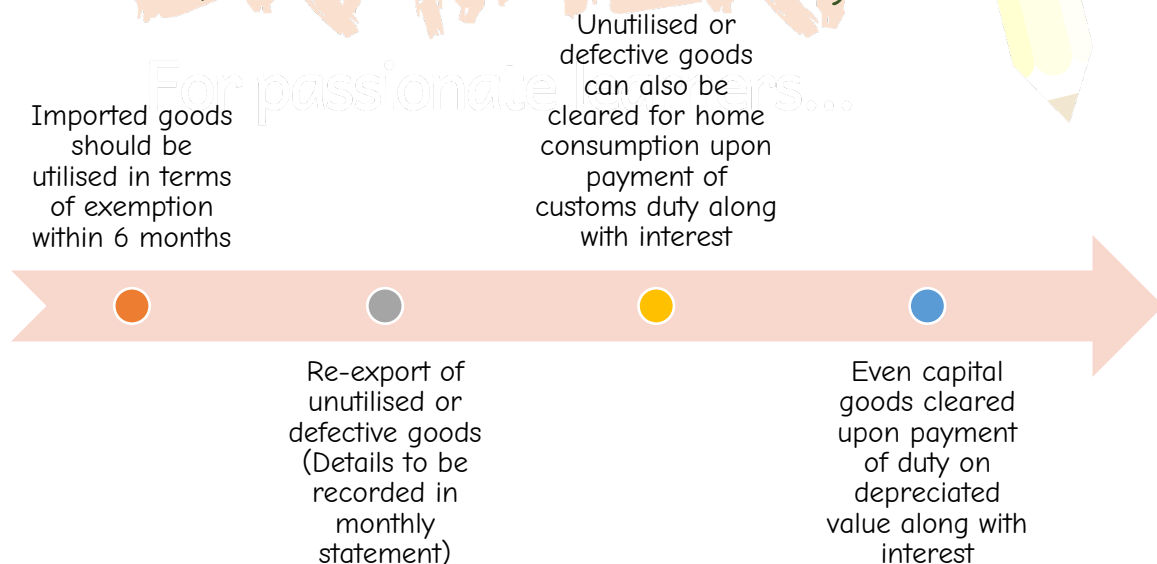
- ➔ The importer is no longer required to intimate jurisdictional customs officer about his intention of sending goods to job-worker.
- ➔ Further, the importer shall maintain a record of the goods sent for job work during the month and mention the same in the prescribed monthly statement.
- ➔ The importer shall send the goods to the premises of the job worker under an invoice or wherever applicable through an e-way bill, as specified in the CGST Act, 2017, mentioning the description and quantity of the goods.
- ➔ The maximum period for which the goods can be sent to the job worker shall be 6 months from the date of invoice or an e-way bill.
- ➔ In case the importer is not able to establish that the goods sent for job work have been used as per the particulars mentioned under rule 4, the Jurisdictional Custom Officer shall take necessary action against the importer under rules 8 and 8A.
- ➔ The job worker shall,-
  1. maintain an account of receipt of goods, manufacturing process undertaken thereon and the waste generated, if any, during such process;
  2. produce the account details before the Jurisdictional Custom Officer as and when required by the said officer; and
  3. after completion of the job work, send the processed goods to the importer or to another job worker as directed by the importer for carrying out the remaining processes, if any, under the cover of an invoice or an e-way bill.



### Rule 6B: Procedure for allowing imported goods for unit transfer



### Rule 7: Re-export or clearance of unutilised or defective goods within 6 months



- ➔ The importer who has availed the benefit of an exemption notification shall use the goods imported in accordance with the conditions specified in exemption notification within 6 months of date of import.
- ➔ The importer is allowed to suo moto decide to either re-export or clear the unutilized goods for home consumption within 6 months from date of import.

The importer who opts to re-export such goods shall record the details of necessary export documents in the monthly statement. Further, the value of such goods for re-export shall not be less than the value of the said goods at the time of import.	The importer who opts to clear the unutilised or defective goods for home consumption, shall pay the duty along with interest on the common portal and the particulars of such clearance and the payment of duty shall be recorded by the importer in the monthly statement.
<p>The importer has an option to clear the capital goods imported, after having been used for the specified purpose, on payment of duty equal to the difference between the duty leviable on such goods but for the exemption availed and that already paid, if any, at the time of importation, along with interest, on the depreciated value allowed in straight line method, as specified below, namely: —</p> <ul style="list-style-type: none"> <li>(i) for every quarter in the first year @ 4%;</li> <li>(ii) for every quarter in the second year @ 3%;</li> <li>(iii) for every quarter in the third year @3%;</li> <li>(iv) for every quarter in the fourth and fifth year @ 2.5%;</li> <li>(v) and thereafter for every quarter @ 2%.</li> </ul>	

As per the clarification provided by the circular, the period for calculation of such interest would start from the date of import of such goods and end with the date of actual payment

**Explanation. –**

1. For the purpose of computing rate of depreciation for any part of a quarter, a full quarter shall be taken into account.
2. The depreciation shall be allowed from the date when the imported capital goods have come into use for the purpose as specified in the exemption notification upto the date of its clearance.

**Rule 3: Recovery of duty in certain cases**

The AC/DC of Customs, having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service shall continue to take action and recover duties in the event of:

- Failure by the importer to comply with the conditions to avail the benefit of exemption notification
- Failure by the importer to make prescribed payment

By invoking the bond to initiate the recovery proceedings of the amount equal to the difference between the duty leviable on such goods but for the exemption and that already paid, if any at the time of importation,

- along with interest at the prescribed rate <sup>(15% p.a.)</sup>
- starting from the date of importation of the goods on which the exemption was availed <sup>(That is the date on which duty should have been paid)</sup> and
- ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay.

**Illustration – 1:**

Goods are imported on 10.12.21 (BOE filed dated) without payment of custom duty of ₹ 3,80,000 (10,000 units). 2000 units of imported goods could not be used for notified services and the same were sold on 28.03.22 for ₹ 1,00,000. Applicable custom duty along with interest paid on 31.03.2022. Compute the amount payable.

$$\text{Customs duty payable on 2000 units} = ₹ 3,80,000 \times \frac{2,000}{10,000} = ₹ 76,000$$

Due date to pay custom duty is 10<sup>th</sup> Dec 2021. Actual date of payment = 31.03.22

Period of delay = 111 days (21 + 31 + 28 + 31)

Interest payable = 76,000 × 15% × 111/365 days = 3466.85

**Illustration – 2:**

What will be the interest payable in above case, if the value of such goods originally imported is ₹ 10,00,000 and they are capital goods.

$$\text{Custom duty \%} = \frac{\text{₹ } 38,00,000}{\text{₹ } 10,00,000} \times 100 = 38\%$$

$$\text{Depreciated Value} = \text{₹ } 10,00,000 - (\text{₹ } 10,00,000 \times 2 \text{ Quarters} \times 4\%) = \text{₹ } 9,20,000$$

$$\text{Custom duty payable on above} = \text{₹ } 9,20,000 \times 38\% = 3,49,600$$

$$\text{Interest payable} = \text{₹ } 3,49,600 \times 15\% \times \frac{111}{365} = 15948$$

**Rule 8A: Penalty**

The importer or a job worker who contravenes any of the provisions of these rules or abets such contravention, shall be liable to a penalty to an extent of the amount specified under [section 158\(2\)\(ii\)](#) of the Act without prejudice to any other action which may be taken under the Act, rules or regulations made thereunder or under any other law for the time being in force. (i.e., Penalty upto ₹2,00,000 is payable).

**Specified deposits exempted from provisions of electronic cash ledger [Section 51A]**
**Electronic Cash Ledger (ECL) for payment of duty, interest penalty etc., [Sec. 51A of Customs Act, 1962]**

- 1) Every deposit made towards duty, interest, penalty, fee or any other sum payable by a person under the provisions of this Act or under the Customs Tariff Act, 1975 or under any other law for the time being in force or the rules and regulations made thereunder, using authorised mode of payment shall, subject to such conditions and restrictions, be credited to the electronic cash ledger of such person, to be maintained in such manner, as may be prescribed.
- 2) The amount available in the electronic cash ledger may be used for making any payment towards duty, interest, penalty, fees or any other sum payable under the provisions of this Act or under the Customs Tariff Act, 1975 or under any other law for the time being in force or the rules and regulations made thereunder in such manner and subject to such conditions and within such time as may be prescribed.
- 3) The balance in the electronic cash ledger, after payment of duty, interest, penalty, fee or any other amount payable, may be refunded in such manner as may be prescribed.
- 4) Notwithstanding anything contained in this section, if the Board is satisfied that it is necessary or expedient so to do, it may, by notification, exempt the deposits made by such class of persons or with respect to such categories of goods, as may be specified in the notification, from all or any of the provisions of this section.

**Electronic Cash Ledger Regulations, 2022<sup>[N 22]</sup>.**

FORM ECL 01	Electronic Cash Ledger
FORM ECL 02	Challan for deposit under Sec. 51A of Customs Act, 1962
FORM ECL 03	Challan for payment of any sum under Customs Act, 1962
FORM ECL 04	Electronic Duty Payment Ledger
FORM ECL 05	Application for refund of deposit under Electronic Cash Ledger

- Deposit made in ECL shall not accrue any interest
- Deposit challan in ECL 02 is valid for a period of 15 days
- Modes of deposit – Net banking (or) NEFT/RTGS (or) Over the counter upto ₹10,000 in a day.
- OTC limit of ₹10,000 per day not shall be applicable to Government dept (or) upon authorization of Customs officer, if deposit is made.

- Commission (or) Charges payable for deposit, shall be borne by the person making deposit.
- Upon successful payment a Challan Identification Number (CIN) shall be generated
- Amount in the ledger can be used for payment of duty, interest, penalty, fee or other amount payable under Customs Act or Customs Tariff Act.
- Balance, can be claimed as refund and which shall be paid into the bank account of importer or exporter.

- ➔ In terms of Section 51A(4) of the Customs Act, 1962, CBIC may by notification exempt certain deposits to which provisions of Electronic Cash Ledger will not be applicable.
- ➔ Accordingly, CBIC has specified certain deposits which are exempted from provisions of payment through electronic cash ledger:-
  - (i) with respect to goods imported or exported in customs stations where customs automated system is not in place;
  - (ii) with respect to accompanied baggage;
  - (iii) other than those used for making payment of,-
    - (a) any duty of customs, including cesses and surcharges levied as duties of customs;
    - (b) IGST;
    - (c) GST Compensation Cess;
    - (d) interest, penalty, fees or any other amount payable under the said Act, or the Customs Tariff Act, 1975.

**Note:** With respect to following charges, payment from Electronic Cash ledger is not applicable

1. Custodian charges
2. Demurrage charges
3. Ship demurrage charges
4. Warehousing charges
5. Delivery order charges

#### Deferrment of Sec. 51A vide Notification No. 47/2022 (Dt: 31st May 2022)

- In exercise of the powers conferred by , the CBIC on being satisfied that it is necessary and expedient so to do, hereby **EXEMPTS the deposits pertaining to and all categories of goods, from the provisions of the said section 51A.** This notification shall come into force with effect from and shall be effective upto 29th Nov, 2022.
- Therefore, in essence the applicable date of Electronic Cash Ledger is from 30th Nov, 2022 only.

Forthcoming batch details for CA Final

Batch	Attempt	Dates	Timing	Mode
Fastrack Batch	Nov 22 & May 23	18 <sup>th</sup> August to 28 <sup>th</sup> August	9.00 AM to 6.30 PM	F2F (or) G Drive (Recorded)
Crash Batch	Nov 22	19 <sup>th</sup> September to 23 <sup>rd</sup> September	-	G Drive (Only Recorded)
FREE Rocket Revision	Nov 22	1 <sup>st</sup> September to 3 <sup>rd</sup> September	9.00 AM to 6.30 PM	Youtube live (or) Recorded after live
Regular Batch	May 23 & Nov 23	1 <sup>st</sup> December to 12 <sup>th</sup> February	6.15 PM to 8.45 PM (Mon to sat) & 2.30 PM to 8.45 PM (Sunday)	F2F (or) Online live (or) G Drive (Recorded)
Fastrack Batch	May 23 & Nov 23	16 <sup>th</sup> February to 26 <sup>th</sup> February	9.00 AM to 6.30 PM	F2F (or) G Drive (Recorded)
Crash Batch	May 23	6 <sup>th</sup> March to 10 <sup>th</sup> March	-	G Drive (Only Recorded)
FREE Rocket Revision	May 23	1 <sup>st</sup> March to 3 <sup>rd</sup> March	9.00 AM to 6.30 PM	Youtube live (or) Recorded after live

For registration and enquiries, please visit [www.tharunraj.com](http://www.tharunraj.com) or call 9150938938 or call 9150939939 or telegram @idtwizard



# CA FINAL | PAPER-8 INDIRECT TAX LAWS

## REGULAR BATCH (180 Hours)

- 2 Volumes of Resource Book (Colour)
- Solved Work Book (B/W)
- Summary Book (That's it) Colour

## FAST TRACK BATCH (90 Hours)

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- Solved Work Book (B/W)

## CRASH BATCH (30 Hours)

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- Practice Manual (B/W).

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F2F & Online Live Batches during March & September

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- ▶ Online Live Classes
- ▶ Google Drive Classes
- ▶ Android





## CONGRATULATIONS TO OUR STUDENTS

### CA FINAL DEC'21



AIR  
03<sup>RD</sup>

NIVEDITHA N

(SECURED 88 MARKS IN IDT)



AIR  
04<sup>TH</sup>

SMRITI BALAJI

(SECURED 83 MARKS IN IDT)



AIR  
36<sup>TH</sup>

AISHWARYA

(SECURED 88 MARKS IN IDT)



AIR  
37<sup>TH</sup>

SUBIKSHA S

(SECURED 75 MARKS IN IDT)



AIR  
40<sup>TH</sup>

SUDHA  
BALASUBRAMANIAN

(SECURED 86 MARKS IN IDT)



AIR  
46<sup>TH</sup>

RANJANA R

(SECURED 75 MARKS IN IDT)

### CS PROFESSIONAL DEC'21



AIR  
02<sup>ND</sup>

HARI HARAN

(SECURED 82 MARKS IN ATLP)

### CMA FINAL DEC'21



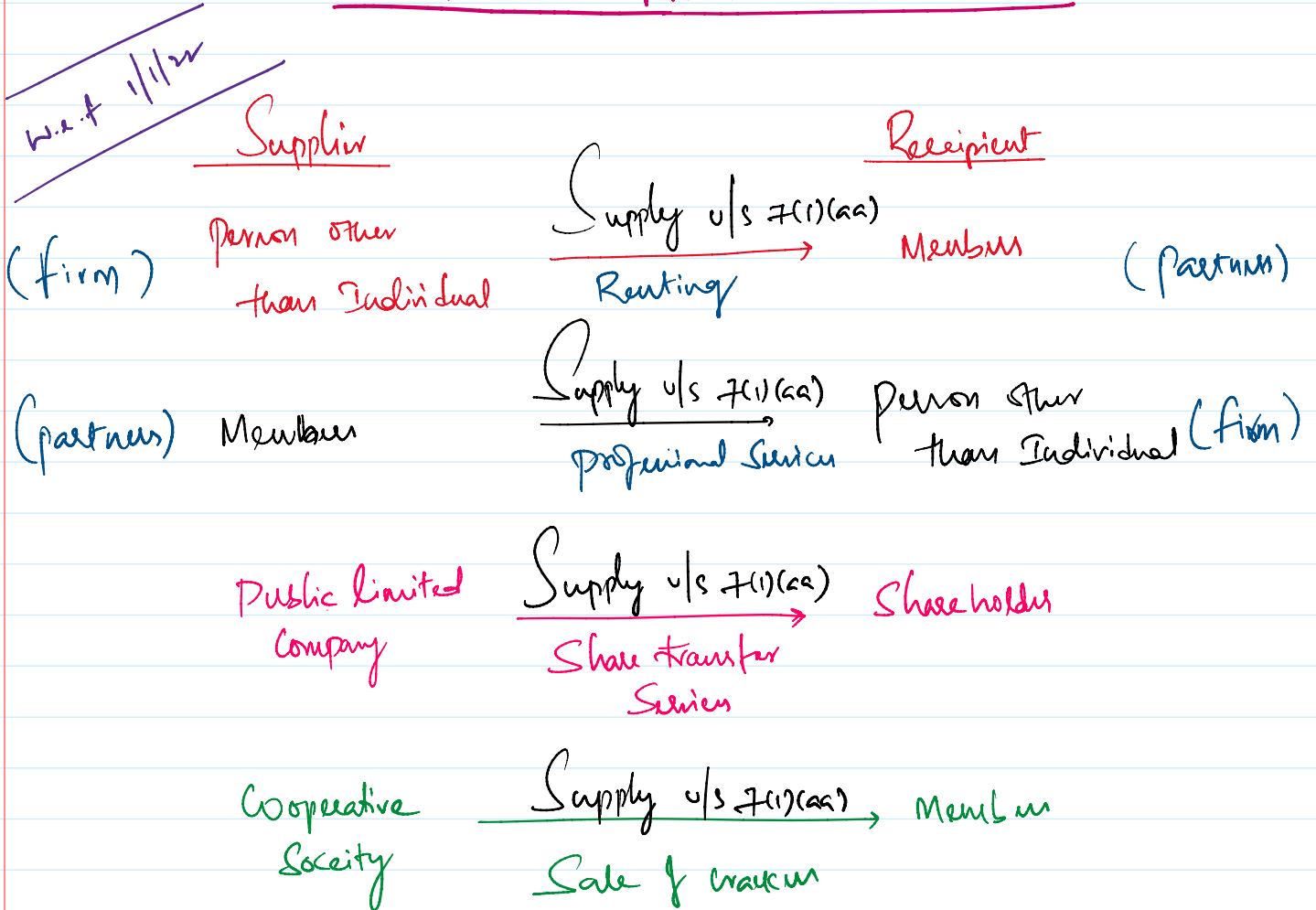
AIR  
31<sup>ST</sup>

NIRAJ P DAVEY

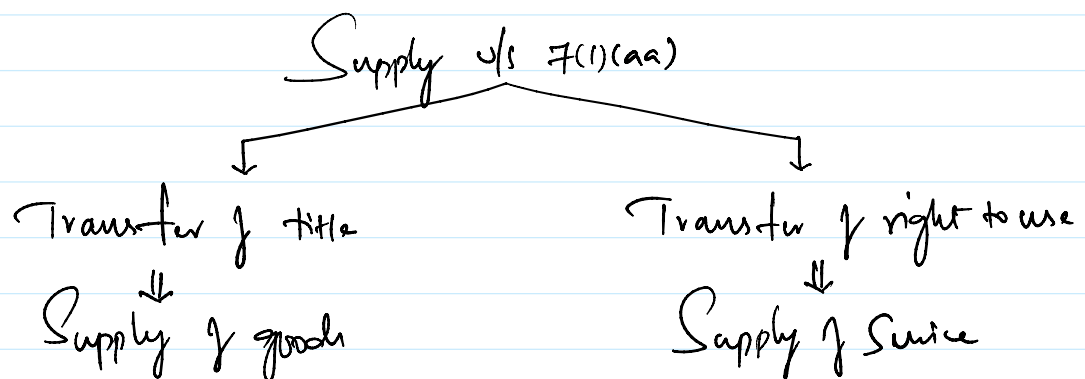
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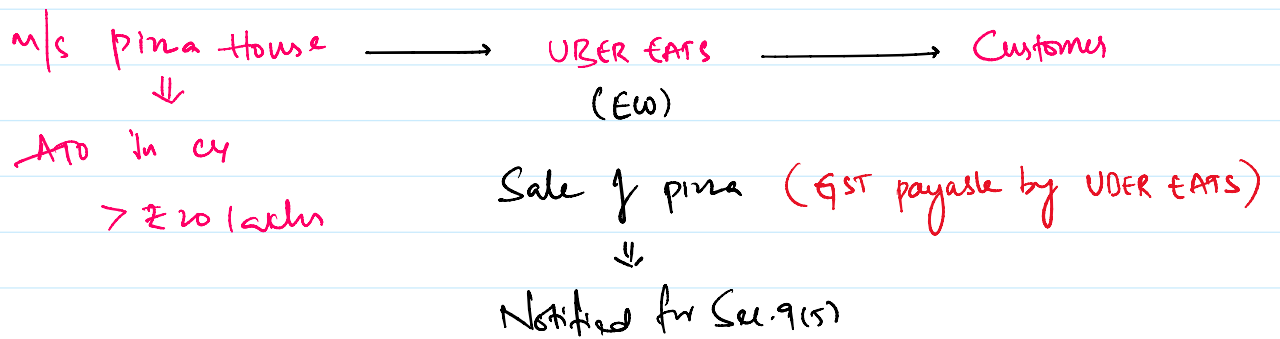
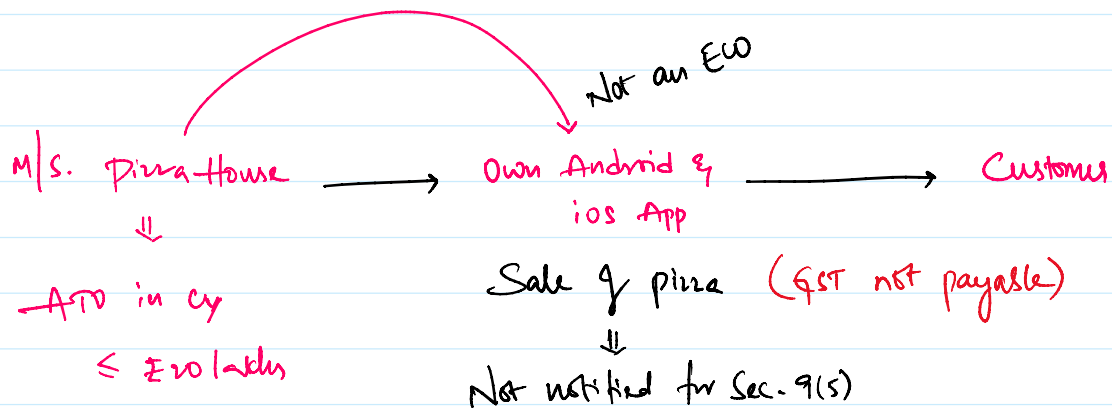


# CA FINAL AMENDMENTS - NOV 22

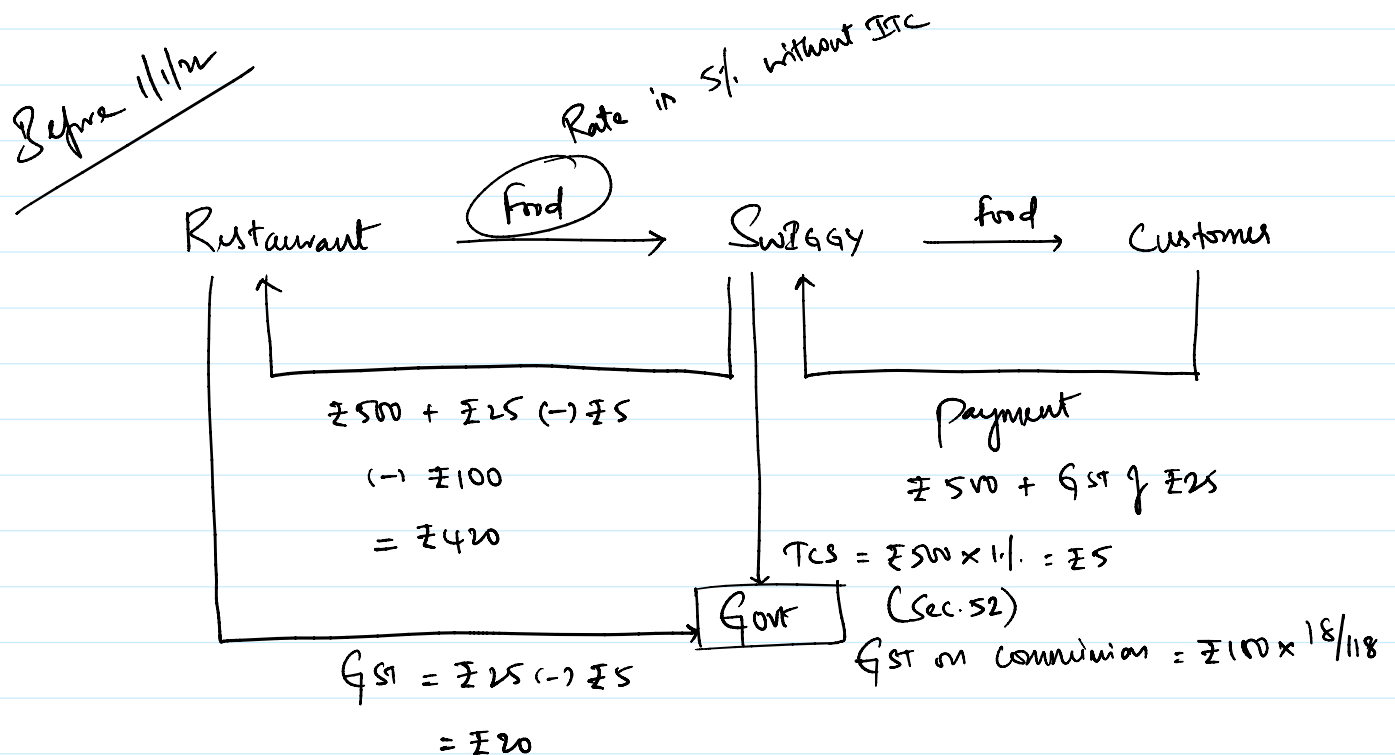


Note: As per Sec. 2(17), provision of facilities by a club or association or society to its members, fall under business





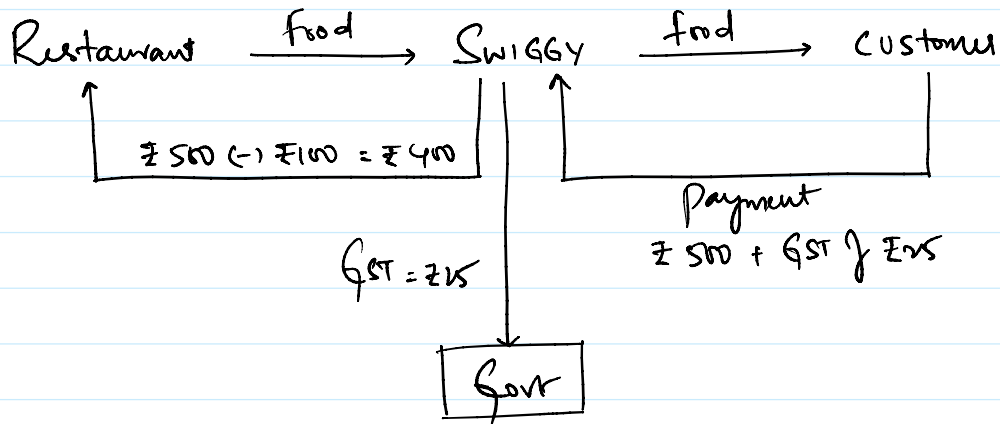
Note: Restaurant & ECo should be different. only then it is referred to as Supply through ECo



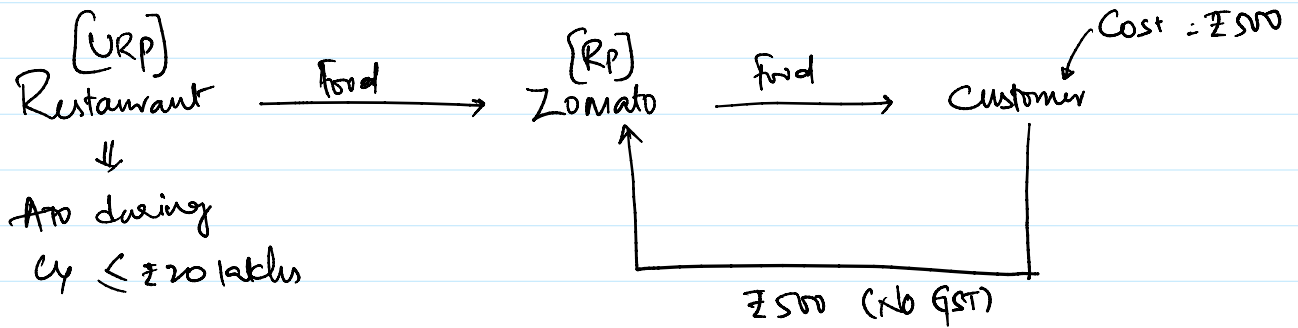
$$GST = ₹25 (-) ₹5$$

$$= ₹20$$

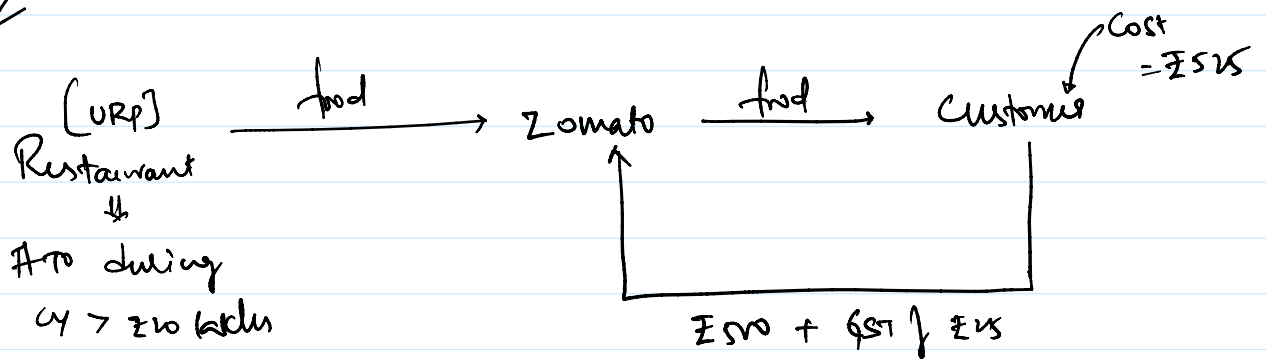
W.e.f 11/1/22



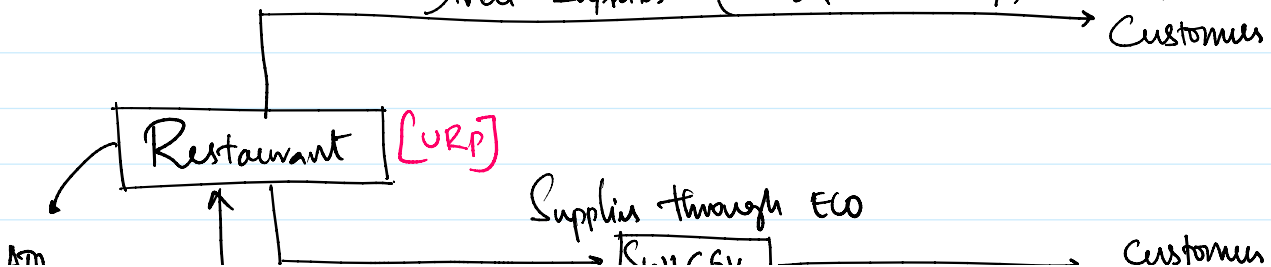
Before 11/1/22

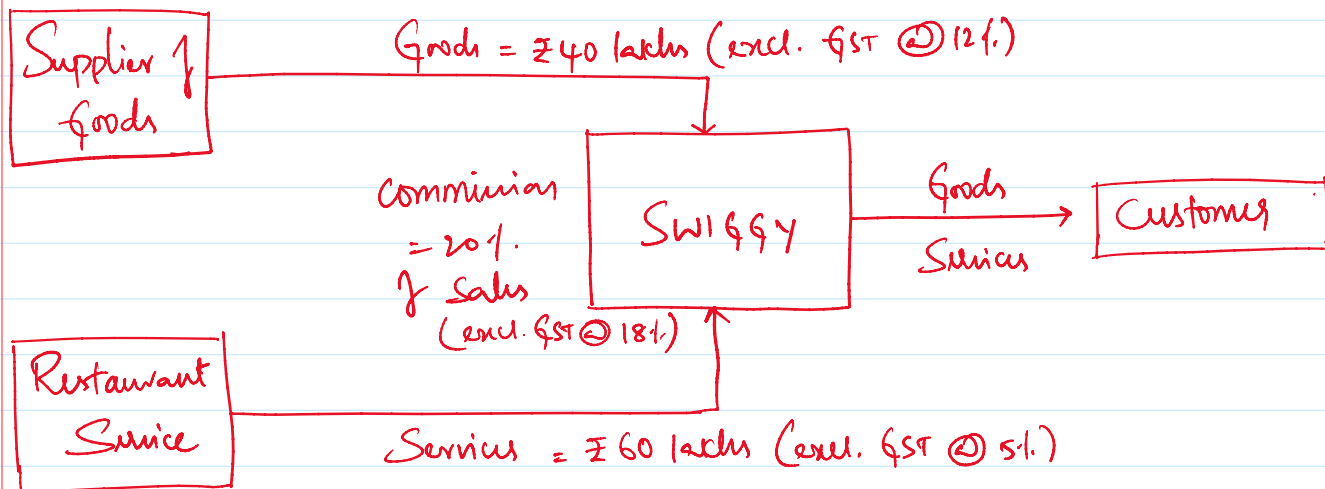
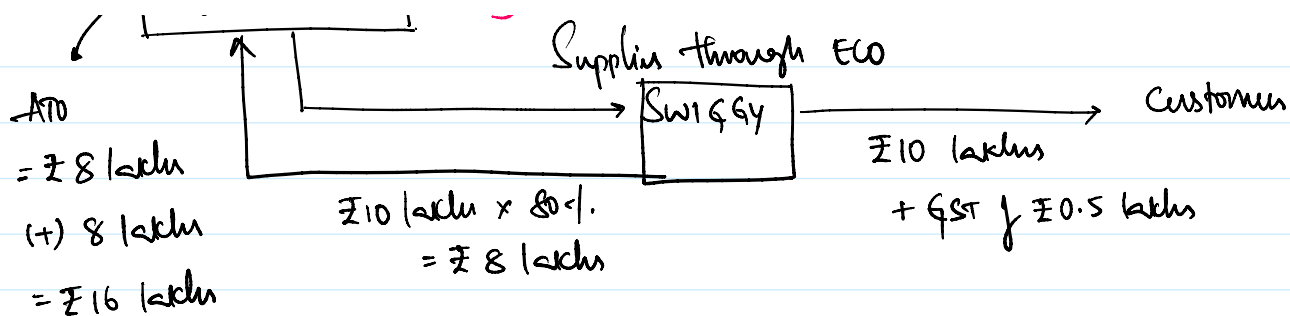


W.e.f 11/1/22



Direct Supplies (₹8 lacs in CY) → No GST





GST paid on input & input services of Swiggy is ₹ 1,20,000

From GST payable

w.r.to Goods [ ₹ 40 lakhs x 20% x 18% ] = 1,44,000 using  
ECI &  
ECRL

w.r.to Services [ ₹ 60 lakhs x 5% ] = 3,00,000 using  
ECI

4,44,000

(-) ITC w.r.to inward Supplies  
 (No reversal as per CBIC Circular)

₹ 3,24,000

Net GST payable

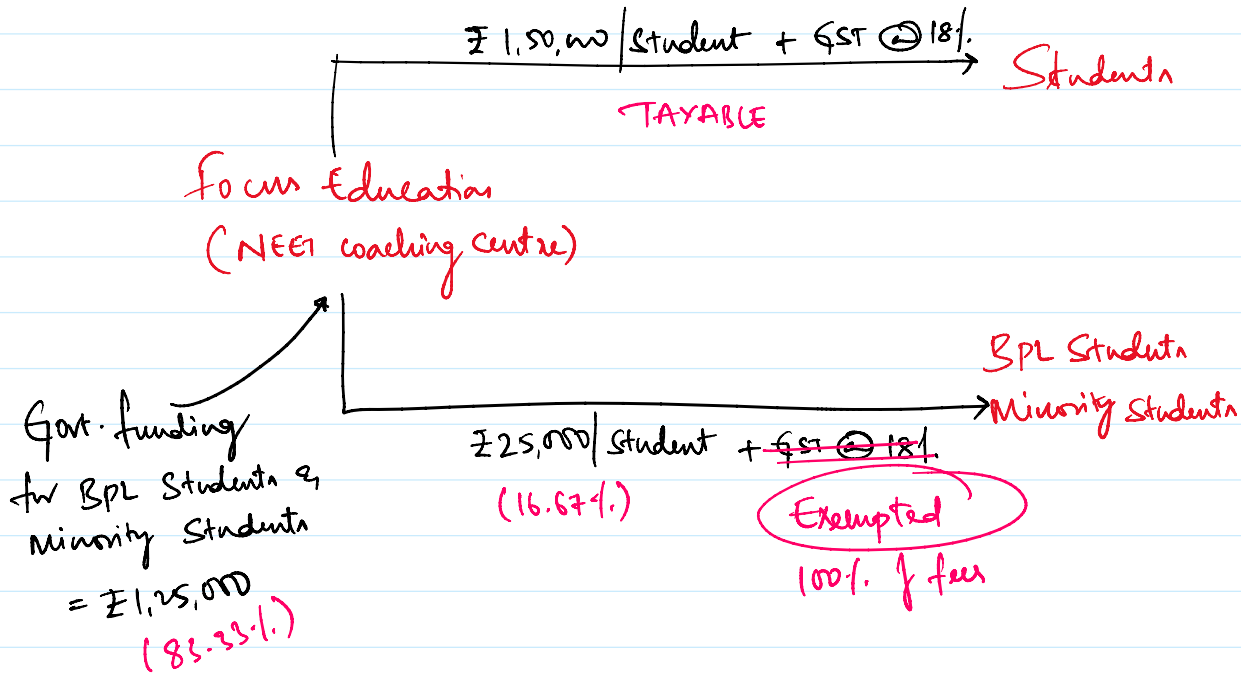
Note: If ITC available is ₹ 1,80,000 then Net GST payable = ₹ 3,00,000

₹ 4,44,000 - ₹ 1,80,000 = ₹ 2,64,000

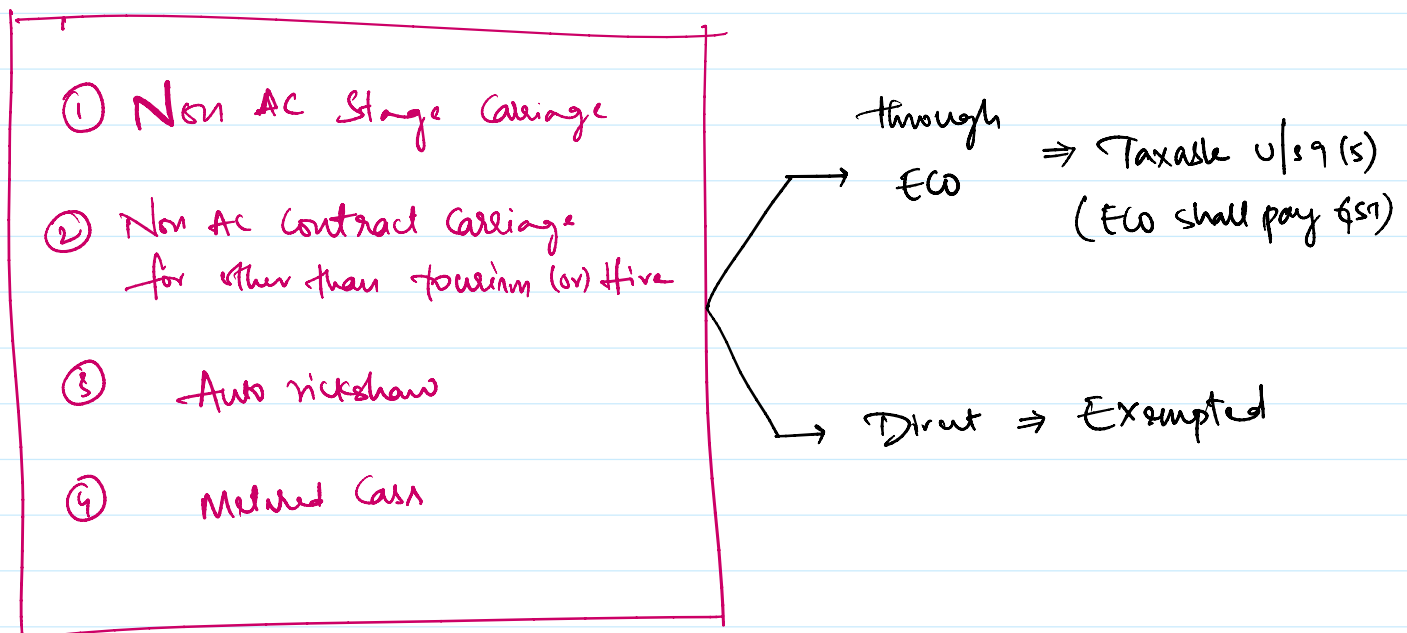


12000 → 11 - amount in ₹ 1,50,000 net 12000 4% payable = ₹ 2,00,000

₹ Excm ITC carried forward in ₹ 1,50,000 - ₹ 1,24,000 = ₹ 26,000



Note: If Govt. has contributed 60% & Student has contributed 40%, entirely it is taxable i.e. amount from both Student & Govt. is taxable



	<u>Composition Scheme</u>	vs. <u>Registration</u>
Notified goods	Ice cream Edible ice pan masala tobacco & its substitutes Bricks & roofing tiles Aerated water	Ice cream Edible ice pan masala tobacco & its substitutes Bricks & roofing tiles x
Restriction	<u>Manufacturer</u> of notified goods cannot opt for Composition Scheme	<u>Supplier</u> of notified goods cannot obtain ₹40 lakh threshold limit