

GST UPDATE - AMENDMENTS PURSUANT TO 48TH COUNCIL MEETING



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1.1. Amendments in GST Rates:

Sr n.	Chapter / Heading / Sub-Heading / Tariff Item	Goods	Existing Rate	Revised Rate
1	2207	Ethyl alcohol supplied to refineries for blending with motor spirit (petrol)	18%	5%
2	2302, 2309	Husk of pulses including chilka and concentrates including chuni/churi, khanda	5%	0%

[Notification No. 12/2022 and 13/2022-Central Tax (Rate), dated December 30, 2022]

1.2. Applicability of Reverse charge Mechanism:

- *Mentha Arvensis* is covered under Reverse charge mechanism which means *Mentha Arvensis* when supplied by any Unregistered person to any Registered person, the registered person will be liable to pay taxes on the same under RCM w.e.f. 1st January 2023.

[Notification No. 14/2022-Central Tax (Rate), dated December 30, 2022]

1.3. Amendments in Exemptions under GST:

- An Explanation has been inserted after entry 12 in the exemption notification, by virtue of which no GST is liable where the *residential dwelling is rented to a registered person in his personal capacity for use as his/her own residence and on his own account and not on account of his business.*
- Entry 23A of the exemption notification has been deleted and accordingly Service by way of access to a road or a bridge on payment of annuity shall be a taxable service.

[Notification No. 15/2022-Central Tax (Rate), dated December 30, 2022]

1.4. Amendments w.r.t. Application for Registration:

- The requirement of declaring and verifying the mobile number and email address by the person applying for the GST registration has been omitted.
- PAN will now be verified through separate one-time password received on the mobile number and email address linked to PAN.
- Rule 8(4A) of CGST Rules, 2017 (“CGST Rules”) has been amended to such that the application for registration shall be deemed to be complete *only after the biometric-based Aadhaar authentication and taking photograph of the applicant in case of an individual (or of such individuals in relation to the applicant as notified where the applicant is not an individual), along with the verification of the original copy of the documents uploaded with the application in FORM GST REG-01 at one of the notified Facilitation Centres.* Rule 8(4B) of the CGST Rules to specify the States or Union territories wherein the provisions of sub-rule (4A) shall not apply.
- *New proviso to Rule 9(1)(aa) and Rule 9(2)(aa) of the CGST Rules has been inserted w.r.t. granting of the registration, to state that the registration shall be granted within 30 days of submission of application to a person, who has undergone authentication of Aadhaar number, for carrying out physical verification of places of business.*
- Rule 12(3) of the CGST Rules has been amended to state that the proper officer may cancel the registration on a request made in writing by a person to whom a registration has been granted.
- Amended PART A of FORM GST REG-01 to state that E-mail id and mobile number shall be auto-populated from Income Tax database as linked with the Permanent Account Number of the applicant.
- The instruction in FORM GST REG-01 w.r.t. Providing E-mail Id and Mobile Number of authorised signatories for verification and future communications, has been omitted.



[Notification No. 26/2022-Central Tax, dated December 26, 2022]

1.5. Amendments w.r.t. Input Tax Credit:

- Rule 37 of CGST Rules has been amended retrospectively with effect from 01.10.2022 to provide for reversal of input tax credit only proportionate to the amount not paid to the supplier vis-à-vis the value of the supply, including tax payable.
- A new **Rule 37A** has been inserted in CGST Rules which states that where the recipient has availed ITC on an invoice or debit note which is visible in their respective GSTR-2B, however, the supplier fails to furnish the GSTR-3B for the tax period corresponding to the said invoice or debit note till 30th September following the end of FY in which the ITC has been availed, *the recipient will be liable to reverse or pay the ITC availed in the GSTR-3B filed on or before 30th November following the end of such FY, and which can be reclaimed once the supplier files the GSTR-3B for that period.*

[Notification No. 26/2022-Central Tax, dated December 26, 2022]

1.6. Amendments w.r.t. withdrawal of application of Appeal:

- **Rule 109C** has been inserted under CGST Rules in order to facilitate the withdrawal of appeal.
- According to the said rule, the appellant may make an application for withdrawal of appeal in *FORM GST APL-01/03W* at any time before
 - ✓ Issuance of show cause notice by the Appellate Authority; or
 - ✓ Issuance of Order by the Appellate Authority,



Whichever is earlier.

- Approval by the Appellate Authority will be required where the final acknowledgment in *FORM GST APL-02* has already been issued, and such application for withdrawal of the appeal shall be ***decided by the appellate authority within seven days of filing of such application.***
- No additional time shall be granted for filing any fresh appeal by the appellant pursuant to such withdrawal.

[Notification No. 26/2022-Central Tax, dated December 26, 2022]

1.7. Issuance of Provisional/Final acknowledgement by Appellate Authority:

- **Rule 108(3)** of CGST Rules w.r.t. Appeal to the Appellate Authority has been amended whereby a final acknowledgment, indicating appeal number, shall be issued in *FORM GST APL-02* by the Appellate Authority where the decision or order appealed against is uploaded on the common portal.
- However, where the decision or order appealed against is not uploaded on the common portal, the appellant shall ***submit a self-certified copy of the said decision or order*** within a period of ***seven days from the date of filing of FORM GST APL-01*** and a final acknowledgment, indicating appeal number, shall be issued in *FORM GST APL-02* by the Appellate Authority.
- ***The date of issuance of such provisional acknowledgment shall be considered as the date of filing of appeal.***
- Where the self-certified copy of the decision or order is ***not submitted within a period of seven days*** from the date of filing of *FORM GST APL-01*, ***the date of submission of such copy shall be considered as the date of filing of appeal.***
- In a similar manner, CBIC has amended Rule 109 of the CGST Rules w.r.t. requirement of submission of the certified copy of the order appealed against and the issuance of provisional and final acknowledgment by the appellate authority, to facilitate timely processing of appeals and ease the compliance burden for the appellants.

[Notification No. 26/2022-Central Tax, dated December 26, 2022]

1.8. Clarification w.r.t. Difference in ITC availed in GSTR-3B as compared to GSTR-2A:

- CBIC vide *Circular no. 183/15/2022-GST dated December 27, 2022* has clarified the way to deal with the difference in Input Tax Credit ("ITC") availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for FY 2017-18 and 2018-19 which might arise due to following:
- ✓ The supplier has *failed to file FORM GSTR-1* for a tax period but has filed the return in FORM GSTR-3B for said tax period.
 - ✓ The supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period, but has *failed to report a particular supply in FORM GSTR-1*.
 - ✓ Where supplies were made to a registered person and invoice is issued as per Rule 46 of CGST Rules containing GSTIN of the recipient, but *supplier has wrongly reported the said supply as B2C supply*, instead of B2B supply, in his FORM GSTR-1.
 - ✓ Where the supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period, but he has *declared the supply with wrong GSTIN of the recipient* in FORM GSTR-1.
 - ✓ Any other bonafide error committed in reporting during FY 2017-18 and FY 2018-19.
- According to the circular, a registered person shall:
- ✓ *Furnish details* regarding all the invoices on which ITC has been availed in his FORM GSTR 3B but which are not reflecting in his FORM GSTR 2A.
 - ✓ Provide sufficient *proof regarding the fulfilment of all the conditions* laid down in Section 16 of CGST Act, 2017.
 - ✓ Provide sufficient *proof that the ITC availed in an eligible credit* in accordance with Section 17 and 18 of CGST Act, 2017.
 - ✓ In order to verify the compliance with condition laid down in Section 16(2)(c) of CGST Act, 2017:



Difference between ITC claimed in GSTR-3B and that available in GSTR-2A	Certification regarding supplies were actually made to said registered person and tax on the same is duly discharged
In respect of a Supplier for the said financial year exceeds Rs. 5 Lakhs.	Required from CA/CMA along-with a Valid UDIN.
In respect of a Supplier for the said financial year is upto Rs. 5 Lakhs.	Required from Concerned Supplier

- However, it is clarified that for the period FY 2017-18, as per proviso to section 16(4) of CGST Act, 2017 the aforesaid relaxations shall not be applicable to the claim of ITC made in the FORM GSTR-3B return filed after the due date of furnishing return for the month of September, 2018 till the due date of furnishing return for March, 2019, if supplier had not furnished details of the said supply in his FORM GSTR-1 till the due date of furnishing FORM GSTR 1 for the month of March, 2019.

1.9. Procedure for filing application of refund by the unregistered buyers:

- Facility has been provided to unregistered buyers / recipients for *claiming refund of tax borne by them in the event of cancellation of the contract/agreement for supply of services of construction of flat/building or on termination of long-term insurance policy.*
- Application can only be made ***before the expiry of 2 years from the relevant date*** which can be date of issuance of letter of cancellation of the contract/ agreement for supply by the supplier.
- Refund claim can be filed by the unregistered persons only in those cases where at the time of cancellation/termination of agreement/contract for supply of services, the time period for issuance of credit note under section 34 of the CGST Act has already expired.
- Refund shall also be issued in case, where the ***unregistered person has borne the incidence*** of tax and not passed on the same to any other person.
- The unregistered person shall ***obtain a temporary registration*** using his Permanent Account Number (PAN). Unregistered person would also be required to undergo Aadhaar authentication and provide details of bank accounts in which refund amount is to be claimed.
- The application for refund shall be filed in FORM GST RFD-01 along with all the requisite documents which are as follows:
 - ✓ Details of invoices, in respect of which refund is being claimed along with copy of such invoices.
 - ✓ Proof of making such payment to the supplier
 - ✓ Copy of agreement or registered agreement or contract
 - ✓ Letter issued by the supplier for cancellation or termination of agreement or contract for supply of service
 - ✓ Certificate issued by the supplier to the effect that he has paid tax in respect of the invoices, not adjusted the tax amount by issuing credit notes and has not claimed refund and will not claim refund in respect of those invoices.
- Further, certificate is not required to be furnished in cases where refund is claimed by an unregistered person who has borne the incidence of tax.
- Further, no refund shall be claimed if the amount is less than one thousand rupees.
- ***Separate applications for refund have to be filed in respect of invoices issued by different suppliers.***
- Further, where the suppliers, in respect of whose invoices refund is to be claimed, are registered in different States/UTs, the applicant shall obtain *temporary registration in the each of the concerned States/UTs where the said supplier are registered.*
- The proper officer shall also upload a detailed speaking order along with the refund sanction order in FORM GST RFD-06.



[Notification No. 26/2022-Central Tax, dated December 26, 2022 and Circular No. 188/20/2022-GST dated December 27, 2022]

1.10. Clarification w.r.t. entitlement of ITC where the place of supply determined as per section 12(8) of IGST Act, 2017:

- CBIC vide *Circular No. 184/16/2022-GST dated December 27, 2022* has issued a clarification on the entitlement of input tax credit where the place of supply is determined in terms of the proviso to section 12(8) of the IGST Act, 2017.

Supplied to	Place of Supply
Registered Person	Location of such registered person
Unregistered person	Where goods are handed over for their transportation

- ***Provided that If transportation of goods is place outside India***, the place of supply is the concerned foreign destination where the goods are being transported.
- With respect to the above-mentioned proviso, the circular also clarified on certain points:
 - ✓ Aforesaid supply of services would be considered as ***inter-State supply*** since the location of the supplier is in India and the place of supply is outside India. Therefore, *integrated tax (IGST) would be chargeable on the said supply of services.*
 - ✓ The recipient of service of transportation of goods shall be ***eligible to avail input tax credit in respect of the IGST so charged by the supplier***, subject to the fulfilment of other conditions laid down in section 16 and 17 of the CGST Act.
 - ✓ The supplier of service shall report place of supply of such service by selecting State code as ***'96- Foreign Country'*** from the list of codes in the dropdown menu available on the portal in FORMGSTR-1.

1.11. Clarification w.r.t. applicability of provisions of Section 75(2) of CGST Act, 2017:

- CBIC vide *Circular No. 185/17/2022-GST dated December 27, 2022* has clarified the applicability of Section 75(2) of CGST Act, 2017 and its effect on limitation.

S.N.	Issues	Clarification
1	What would be the time period for re-determination of the tax, interest and penalty payable by the noticee where court concludes that the said notice is not sustainable under Section 74 of CGST Act for the reason that the charges of fraud or any willful-misstatement or suppression of facts to evade tax have not been established against the noticee and directs the proper officer to re-determine the amount of tax payable by the noticee, deeming the notice to have been issued under section 73 of CGST Act?	The proper officer is required to issue the order of redetermination of tax, interest and penalty payable under Section 73 within the time limit as specified in under Section 75 of the said Act, i.e. <u>within a period of two years from the date of communication of the said direction by appellate authority or appellate tribunal or the court</u> , as the case may be.
2	How the amount payable by the noticee, deeming the notice to have been issued under Section 73, shall be re-computed/ redetermined by the proper officer as per provisions of Section 75?	The proper officer has to re-determine the amount of tax, interest and penalty payable deeming that the notice has been issued under Section 73 of CGST Act in terms of section 75 of the said Act, can be re-determined for so much amount of tax short paid or not paid, or input tax credit wrongly availed or utilized or that of erroneous refund, in respect of which show cause notice was issued within the time limit as specified under Section 73 CGST Act, 2017 i.e. within 2 years and 9 months from the due date of furnishing of annual return for the respective financial year. Similarly, the amount of tax payable on account of erroneous refund along with interest and penalty payable can be redetermined only where show cause notice was issued within 2 years and 9 months from the date of erroneous refund.

1.12. Other amendments:

- A new proviso to Rule 46(f) has been inserted to provide that Supplier of Online Information And Database Access Or Retrieval services and Supplier supplying services through an Electronic Commerce Operator to a recipient who is unregistered, shall issue a Tax Invoice containing “name and address of recipient along-with its PIN code and the state name”. The same shall be deemed to be the address on record of the recipient.
- New proviso to *Rule 46A* has been inserted to provide that, the invoice-cum-bill of supply shall contain the particulars as specified under *Rule 46 or Rule 54, and Rule 49 of the CGST Rules*.
- *New Rule 59(6)(d)* has been inserted which states that a registered person to whom an intimation has been issued on the common portal and he has neither deposited the amount specified nor furnished a reply explaining the reasons, ***shall not be allowed furnish details in GSTR-1 or using invoice furnishing facility.***
- Rule 138(14) of the CGST Rules has been amended to prescribe that *no e-way bill is required to be generated in case of jewellery, goldsmiths' and silversmiths' wares and other articles (Chapter 71) except imitation jewellery (7117).*
- Rule 161 of the CGST Rules has been amended to prescribe that the intimation or notice for the reduction or enhancement of any demand under Section 84 of the CGST Act (recovery proceedings) shall be issued in *FORM GST DRC- 25*.
- FORM GST REG-17 has been amended w.r.t. supportive documents attached for case specific details to be provided in case ex parte decision in case of no reply to the Show Cause Notice (“SCN”) for cancellation of registration.
- FORM GST REG-19 has been amended w.r.t. order for cancellation of registration.
- FORM GSTR-1 has been amended w.r.t. details of outward supplies of goods or services by the *supplies made through e-commerce operators.*
- *FORM GST RFD-01 has been amended so as to allow the refund for unregistered persons.*
- FORM GST APL-02 has inserted reference to Rule 109(2) w.r.t. issuance of the provisional/final acknowledgment, indicating appeal number in FORM GST APL-02 by the Appellate Authority.
- New FORM GST APL-01/03W has been inserted w.r.t. the application for withdrawal of appeal application.
- CBIC vide Circular no. 186/18/2022-GST dated December, 2022 clarified that No Claim Bonus deducted from the Insurance premium cannot be considered as a consideration for any supply provided by the insured to the insurance company.
- Also, No Claim Bonus is a permissible deduction under Section 15 of CGST Act for the purpose of calculation of Value of Supply of Insurance services provided by the Insurance companies to the insured.
- The Exemption from generation of E-Invoices is for the entity as a whole and is not restricted by the nature of supply being made by the said entity.

- CBIC vide Circular no. 187/19/2022-GST dated December, 2022 has clarified that in cases where a confirmed demand for recovery has been issued by the tax authorities for which a summary has been issued in FORM GST DRC-07/DRC 07A against the corporate debtor, and where the *proceedings have been finalised against the corporate debtor under IBC* reducing the amount of statutory dues payable by the corporate debtor to the government under CGST Act or under existing laws, the jurisdictional Commissioner shall issue an *intimation in FORM GST DRC-25 reducing such demand*, to the taxable person or any other person as well as the appropriate authority with whom recovery proceedings are pending.

1.13. Clarification on refund related issues including IDS refund formula under GST Law:

- CBIC has issued a clarification on refund related issues under GST Law. The clarifications on the issues are as under:

Sn.	Issues	Clarifications
1	Whether the formula prescribed under Rule 89 of the CGST Rules for calculation of refund of unutilised input tax credit on account of inverted duty structure, as amended vide NN. 14/2022-CT dated July 05, 2022, will apply only to the refund applications filed on or after July 05, 2022, or whether the same will also apply in respect of the refund applications filed before July 05, 2022 and pending with the proper officer as on July 05, 2022?	Vide NN. 14/2022-Central Tax dated July 05, 2022, amendment has been made in Rule 89 of CGST Rules, modifying the formula prescribed therein. The said amendment is not clarificatory in nature and is applicable prospectively with effect from July 05, 2022. The refund applications filed before July 05, 2022 will be dealt as per the formula as it existed before the amendment made vide Notification No. 14/2022-Central Tax dated July 05, 2022.
2	Whether the restriction placed on refund of unutilised input tax credit on account of inverted duty structure in case of certain goods falling under chapter 15 and 27 vide NN.09/2022-Central Tax (Rate) dated July 13, 2022, which has been made effective from July 18, 2022, would apply to the refund application pending as on July 18, 2022 also or whether the same will apply only to the refund applications filed on or after July 18, 2022 or whether the same will be applicable only to refunds pertaining to prospective tax periods?	The said notification has come into force with effect from July 18, 2022. The restriction imposed vide the said notification on refund of unutilised input tax credit on account of inverted duty structure in case of specified goods falling under chapter 15 and 27 would apply prospectively only. Accordingly, it is clarified that the restriction imposed by the said notification would be applicable in respect of all refund applications filed on or after July 18, 2022 and would not apply to the refund applications filed before July 18, 2022.

[CBIC Circular No. 181/13/2022-GST dated November 10, 2022]

