
KEY UPDATES

SEPTEMBER, 2018



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CONTENTS

Sr. No.	Particulars	Page No.
1.	Significant Notifications	3
2.	FAQ's on TDS under GST	11
3.	Significant Circulars and Orders	15
4.	MGST - Trade Circulars	
	i. Processing of Final Refund under GST	24
	ii. Verification of Transitional Credit (Tran-1) claimed under GST in Electronic Credit Ledger	33
5.	Recent Case Laws	
	✓ Whether Services provided by an agent in relation to booking space for Cargo transportation shall be considered as Business Auxiliary Services?	34
	✓ Separate contracts for supply of material and services for Power Plants shall be treated as works contract	35
	✓ Service of printing question papers for Educational Institutions for specific Examination	37
	✓ Transitional credit in case of existing contracts.	39
	✓ Application before Anti-Profiteering Authority alleging that respondent had not passed on benefit of reduction in rate of GST in restaurant service.	41
	✓ Input Tax Credit in case of goods/services where value declared in the invoice is zero.	43
	✓ Supplies made to SEZ units are zero rated supplies and are taxable as per Section 16.	45

SIGNIFICANT NOTIFICATIONS

Sr.No	Notification No.	Key Update
1.	39/2018 – Central Tax, Dt - 04-09-2018	<ul style="list-style-type: none"> ➤ Amendments in Central Goods and Services Tax Rules, 2017 ➤ <u>Cancelation of Registration-</u> <ul style="list-style-type: none"> • Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled under section 29, he shall issue a notice to such person in FORM GST REG-17, requiring him to show cause, within a period of 7 working days from the date of the service of such notice, as to why his registration shall not be cancelled. • Where the reply furnished under sub-rule (2) is found to be satisfactory, the proper officer shall drop the proceedings and pass an order in FORM GST REG -20. • 1st proviso has been inserted as below: “Provided that where the person instead of replying to the notice served under sub-rule (1) for contravention of the provisions contained in clause (b) or clause (c) of section 29(2), furnishes all the pending returns and makes full payment of the tax dues along with applicable interest and late fee, the proper officer shall drop the proceedings and pass an order in FORM GST-REG 20.” • Amendment in Rule 36 (2) – proviso inserted for essential particulars required on documents for availing ITC - “Provided that if the said document does not contain all the specified particulars but contains the details of the amount of tax charged, description of goods or services, total value of supply of goods or services or both, GSTIN of the supplier and recipient and place of supply in case of inter-State supply, input tax credit may be availed by such registered person.” ➤ Amendment in Rule 55(5) - Where the goods are being transported in a SKD or CKD OR IN BATCHES OR LOTS-

		<p>a) <i>The supplier shall issue the complete invoice before dispatch of the first consignment;</i></p> <p>b) <i>The supplier shall issue a delivery challan for each of the subsequent consignments, giving reference of the invoice;</i></p> <p>c) <i>Each consignment shall be accompanied by copies of the corresponding delivery challan along with a duly certified copy of the invoice; and</i></p> <p>d) <i>The original copy of the invoice shall be sent along with the last consignment.</i></p> <p>➤ Amendments made to rule 89(4)(E) specifying process for application of refund which is as follows- “Adjusted Total Turnover” means the sum total of the value of-</p> <p>a) The turnover in a State or a Union territory, as defined under section 2(112), excluding the turnover of services; and</p> <p>b) The turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services, excluding-</p> <p>i. The value of exempt supplies other than zero-rated supplies; and</p> <p>ii. The turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any, during the relevant period.’</p> <p>➤ <u>Rule 96(10) has been amended as follows-</u> The persons claiming refund of integrated tax paid on exports of goods or services should not have</p> <p>a) Intra-State supply of taxable goods by a registered supplier to a registered recipient for export, from so much of the central tax leviable thereon under section 9 of the said Act, as is in excess of the amount calculated at the rate of 0.05 per cent and subject to the conditions mentioned therein.</p> <p>The registered supplier shall not be eligible for the above mentioned exemption if the registered recipient fails to</p>
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		<p>export the said goods within a period of 90 days from the date of issue of tax invoice and</p> <ul style="list-style-type: none"> • Supply of goods by a registered person against Advance Authorization. • Supply of capital goods by a registered person against Export Promotion Capital Goods Authorization. • Supply of goods by a registered person to Export Oriented Unit. • Supply of gold by a bank or Public Sector Undertaking specified in the notification No. 50/2017-Customs, dated the 30th June, 2017 (as amended) against Advance Authorization. or <p>b) Availed the benefit under Notification No. 78/2017 Customs, dated 13/10/2017 and Notification No. 79/2017, Customs dated 13/10/2017</p> <p>➤ 5th Proviso has been added to Rule 138A(1) of CGST Rules, 2017 which is as follows-</p> <p>“In case of imported goods, the person in charge of a conveyance shall also carry a copy of the bill of entry filed by the importer of such goods and shall indicate the number and date of the bill of entry in Part A of FORM GST EWB-01.”</p> <p>➤ Form REG-20 and ITC – 04 have been amended.</p> <p>➤ Form GSTR-9 – Annual Return (for others) and Form GSTR -9A – Annual Return (for composition suppliers) have been prescribed.</p>
2.	40/2018 – Central Tax , Dt- 04-09-2018	<p>➤ The time limit for making the declaration in FORM GST ITC-04, in respect of goods dispatched to a job worker or received from a job worker or sent from one job worker to another, during the period from July, 2017 to June, 2018 has been extended till the 30th day of September, 2018.</p>

3.	41/2018 - Central Tax, Dt-04/09/2018	<p>➤ The Central Government, on the recommendations of the Council, hereby waives the late fee paid under section 47 of the CGST Act, 2017 by the following classes of taxpayers:-</p> <p>i. The registered persons whose return in FORM GSTR-3B of the CGST Rules, 2017 for the month of October, 2017, was submitted but not filed on the common portal, after generation of the application reference number;</p> <p>ii. The registered persons who have filed the return in FORM GSTR-4 of the CGST Rules, 2017 for the period October to December, 2017 by the due date but late fee was erroneously levied on the common portal;</p> <p>iii. The Input Service Distributors who have paid the late fee for filing or submission of the return in FORM GSTR-6 of the CGST Rules, 2017 for any tax period between the 1st day of January, 2018 and the 23rd day of January, 2018.</p>									
4.	42/2018 - Central Tax, Dt- 04/09/2018	<p>➤ The Commissioner, hereby extends the time limit for making the declaration in FORM GST ITC-01 of the CGST Rules, 2017 by registered persons who have filed the application in FORM GST-CMP-04 of the said rules between the 2nd day of March, 2018 and the 31st day of March, 2018, for a period of 30 days from the date of publication of this notification in the Official Gazette.</p>									
5.	43/2018 - Central Tax, Dt- 10-09-2018	<p>➤ For taxpayer having TURNOVER OF UP TO RS. 1.5 CRORES in the preceding financial year or the current financial year:</p> <table border="1" data-bbox="555 1402 1378 1890"> <thead> <tr> <th data-bbox="555 1402 839 1529">Category of registered person</th> <th data-bbox="839 1402 1126 1529">Quarters for which details are furnished</th> <th data-bbox="1126 1402 1378 1529">Time period</th> </tr> </thead> <tbody> <tr> <td data-bbox="555 1529 839 1709">1. Persons registered in the State of Kerala;</td> <td data-bbox="839 1529 1126 1709">July, 2017 – September, 2018</td> <td data-bbox="1126 1529 1378 1709">15th November, 2018</td> </tr> <tr> <td data-bbox="555 1709 839 1890">2. Whose principal place of business is in Kodagu district in the</td> <td data-bbox="839 1709 1126 1890"></td> <td data-bbox="1126 1709 1378 1890"></td> </tr> </tbody> </table>	Category of registered person	Quarters for which details are furnished	Time period	1. Persons registered in the State of Kerala;	July, 2017 – September, 2018	15th November, 2018	2. Whose principal place of business is in Kodagu district in the		
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		<p>State of Karnataka;</p> <p>3. Whose principal place of business is in Mahe in the Union territory of Puducherry</p>											
		Migrated in GST as per the term specified in Notification No. 31/2018-Central Tax dt. 06.08.2018	July, 2017 – September, 2018	31st December, 2018									
		Others	July, 2017 – September, 2018	31st October 2018									
		Others	October – December, 2018	31st January, 2019									
		Others	January - March, 2019	30th April, 2019									
		<p>➤ The time limit for furnishing the details or return, as the case may be, section 38(2) and of section 39(1) of the said Act, for the months of July, 2017 to March, 2019 shall be subsequently notified in the Official Gazette.</p>											
6.	44/2018-Central Tax, dt. 10-09-2018	<p>➤ For taxpayer having TURNOVER OF MORE THAN RS. 1.5 CRORES in the preceding financial year or the current financial year:</p> <table border="1"> <thead> <tr> <th>Category of registered person</th> <th>Months for which details are furnished</th> <th>Time period</th> </tr> </thead> <tbody> <tr> <td>Migrated in GST as per the term specified in Notification No. 31/2018-Central Tax dt. 06.08.2018</td> <td>July, 2017 – November, 2018</td> <td>31st December, 2018</td> </tr> <tr> <td>Others</td> <td>July, 2017 – September, 2018</td> <td>31st October 2018</td> </tr> </tbody> </table>			Category of registered person	Months for which details are furnished	Time period	Migrated in GST as per the term specified in Notification No. 31/2018-Central Tax dt. 06.08.2018	July, 2017 – November, 2018	31st December, 2018	Others	July, 2017 – September, 2018	31st October 2018
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		Others	October, 2018 - March, 2019	11th day of succeeding month
		<p>➤ The time limit for furnishing the details or return, as the case may be under section 38(2) and Section 39(1) of the CGST Act, for the months of July, 2017 to March, 2019 shall be subsequently notified in the Official Gazette</p>		
7.	<p>45/2018-Central Tax, dt. 10-09-2018;</p> <p>46/2018-Central Tax, dt. 10-09-2018</p> <p>and</p> <p>47/2018-Central Tax, dt. 10-09-2018</p>	<p>Extension for filing form GSTR 3B in certain cases -</p> <p>Due date for furnishing the return in Form GSTR-3B, for the period from July, 2017 to November, 2018, for taxpayers who have obtained the GSTIN (Goods and Services Tax Identification Number) in terms of taxpayers who had only Provisional Identification Number till 31st December, 2017 is extended to 31st December, 2018.</p>		
8.	<p>48/2018-Central Tax, dt. 10-09-2018</p>	<p>➤ Extension for filing form TRAN 1 in certain cases -</p> <p>Rule 117 of CGST Rules, 2017 - Extension of due date for submitting the declaration in FORM GST TRAN-1 till 31st March, 2019, in respect of registered persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal and in respect of whom the Council has made a recommendation for such extension.</p> <p>➤ Extension for filing of TRAN 2 in certain cases -</p> <p>Registered persons who have filed the declaration in FORM GST TRAN-1 in accordance with the above condition may submit the statement in FORM GST TRAN-2 by 30th April, 2019.</p> <p>➤ The Proper Officer shall upload electronically a summary of order issued under section 125 (contravention of provisions for which no penalty is separately provided) in FORM GST DRC-07.</p>		

9.	49/2018 - Central Tax, dt- 13-09-2018	<p>➤ GST AUDIT:</p> <p>FORM GSTR-9C i.e. Reconciliation Statement has been prescribed for taxpayers whose annual turnover exceeds Rs. 2 Crore. Those taxpayers have to get their accounts audited.</p>
10.	<p>51/2018 - Central Tax, dt- 13-09-2018;</p> <p>52/2018 - Central Tax, dt- 20-09-2018</p> <p>and</p> <p>02/2018 - Integrated Tax, dt- 20-09-2018</p>	<p>➤ As per Section 52 of CGST Act every electronic commerce operator, not being an agent, shall collect tax at source (TCS) on the net value (excluding GST and cess) consideration collected by them where the supplies are made by other supplier through them.</p> <p>➤ E-Commerce Operator shall collect tax TCS @0.5% CGST and 0.5% SGST/ UTGST; OR 1% IGST</p> <p>of the net value of taxable supplies made through it by other suppliers.</p> <p>➤ Tax Collected at Source shall be paid to the Government within 10 days after the end of the month of collection.</p> <p>➤ The operator who collects tax shall furnish a statement, electronically, containing all the details regarding:</p> <p>a) Outward supplies of Goods and Services</p> <p>b) Return of goods and services</p> <p>In Form GSTR-8 within 10 days from the end of the month</p> <p>➤ The Central Government hereby appoints the 1st day of October, 2018, as the date on which the provisions of above section shall come into force.</p>
11.	23/2018 - Central Tax (Rate), Dt- 20.09.2018;	<p><u>In respect of the mentioned exemption: -</u></p> <p>➤ One time upfront amount (called as premium, salami, cost, price, development charges or by any other name) leviable in respect of the service, by way of granting long term (thirty years, or more) lease of industrial plots, provided by the State Government Industrial Development Corporations or Undertakings to industrial units.</p>

<p>24/2018 - Integrated Tax (Rate), dt- 20.09.2018 and 23/2018 - Union Territory Tax (Rate), dt-20.09.2018</p>	<p><u>The following explanation has been added: -</u></p> <p>➤ In order to avail the exemption, the Central Government, State Government or Union Territory shall have 50 percent or more ownership in the entity directly or through another entity which is wholly owned by the Central Government, State Government or Union Territory</p>
<p align="center">For detailed Notifications kindly follow below link- http://www.cbic.gov.in/htdocs-cbec/gst/index</p>	

FAQ's ON TDS UNDER GST

As per **Notification No. 50/2018** the Central Government hereby appoints **the 1st day of October, 2018**, as the date on which the **provisions of section 51 (TDS)** of the **CGST Act, 2017** shall come into force .

Sr. No.	Particulars(FAQs)	Explanation
1.	What is TDS under GST?	<p>➤ Basically the payer (viz. deductor) is required to deduct some amount as tax from the invoice of a supplier and pay the said deducted amount to the Government. On the other hand, supplier can claim credit of the tax so deducted while discharging his liabilities. It acts as a powerful instrument to prevent tax evasion and expands the tax net, as it provides for the creation of an audit trail.</p>
2.	Who is required to deduct the TDS under GST?	<p>➤ As per Section 51(1) of the CGST Act, 2017, following persons are required to deduct the tax:</p> <p>A. A department or establishment of the Central Government or State Government; or</p> <p>B. Local authority; or</p> <p>C. Governmental agencies; or</p> <p>D. Such persons or category of persons as may be notified by the Government on the recommendations of the Council namely:</p> <p>a) An authority or a board or any other body-</p> <p style="padding-left: 20px;">i. Set up by an Act of Parliament or a State Legislature; or</p> <p style="padding-left: 20px;">ii. Established by any Government, with fifty-one per cent or more participation by way of equity or control, to carry out any function;</p> <p>b) Society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860 (21 of 1860);</p> <p>c) Public sector undertakings.</p>

3.	On which transaction is TDS under GST required to be deducted?	<ul style="list-style-type: none"> ➤ Section 51(1) prescribes that the TDS is to be deducted from the payment made or credited to the supplier of taxable goods or services or both, where the total value of such supply, under a contract, exceeds INR 2,50,000/-. ➤ It should also be noted that in such cases, TDS provisions shall only apply on a particular contract where such limits are crossed and not all the contracts with the concerned supplier.
4.	How to compute the value of INR 2,50,000/- for TDS under GST?	<ul style="list-style-type: none"> ➤ Explanation to Sec. 51(1) provides that the value of supply shall be taken as the amount excluding the Central tax, State tax, Union territory tax, integrated tax and cess indicated in the invoice. Hence the limit of INR 2, 50,000/- shall be calculated excluding the tax indicated in the invoice.
5.	Are there any exceptions to TDS under GST?	<ul style="list-style-type: none"> ➤ Proviso to Sec. 51(1) provides that no deduction shall be made if the location of the supplier and the place of supply is in a State or Union territory which is different from the State or as the case may be, Union territory of registration of the recipient.
6.	What is the rate of TDS?	<ul style="list-style-type: none"> ➤ TDS is to be deducted at the rate of 1% each (i.e. aggregate 2% for CGST+SGST/UTGST) or 2% for IGST from the payment made or credited to the deductee.
7.	Is deductor required to be compulsorily registered?	<ul style="list-style-type: none"> ➤ As per Sec. 24(vi) of the CGST Act, 2017 there is a compulsory registration for the persons who are required to deduct tax under section 51, whether or not separately registered under CGST Act.
8.	Which form is to be filed for obtaining registration?	<ul style="list-style-type: none"> ➤ Form GST REG-07 needs to be filed for obtaining registration as deductor. Applicants who don't have PAN can register on the basis of TAN. The proper officer may grant registration after due verification and issue a certificate of registration in FORM GST REG-06 within a period of three working days from the date of submission of the application.
9.	When TDS is to be deducted?	<ul style="list-style-type: none"> ➤ Section 51(1) provides that the specified person shall deduct the tax from the payment made or credited to the supplier.

10.	When TDS is required to be paid?	➤ As per Section 51(2) , TDS is required to be paid within 10 days after the end of the month in which such deduction is made.
11.	In which form is TDS certificate required to be issued?	➤ As per Section 51(3) , the deductor shall furnish to the deductee a certificate mentioning therein: <ul style="list-style-type: none"> a) The contract value, b) Rate of deduction, c) Amount deducted, d) Amount paid to the Government and e) Such other particulars in such manner as may be prescribed. <p>Such certificate must be electronically made available in Form GSTR-7A within 5 days of crediting the amount so deducted to Government.</p>
12.	Which return needs to be filed by the deductor?	➤ As per Rule 66(1) , every registered person required to deduct tax at source under section 51 shall furnish a return in FORM GSTR-7 electronically through the common portal. Details furnished in FORM GSTR-7 shall be made available electronically to each of the suppliers in Part C of FORM GSTR-2A and FORM GSTR-4A. Accordingly certificate referred in the previous question, in Form GSTR-7A , shall be electronically made available to concerned suppliers.
13.	What is the due date for furnishing the return in FORM GSTR-7?	➤ The due date of filing GSTR-7 is 10th of the following month.
14.	How can deductee claim ITC?	➤ As per Sec. 51(5), a deductee shall claim credit, in his electronic cash ledger, of the tax deducted and reflected in the return of the deductor in such manner as may be prescribed.

15.	What are the consequences of not complying with TDS provisions?	<table border="1"> <thead> <tr> <th>Sr.No</th> <th>Event</th> <th>Consequences</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>TDS not deducted</td> <td>Applicable Interest to be paid along with the TDS amount; else the amount shall be determined and recovered as per the law.</td> </tr> <tr> <td>2.</td> <td>TDS certificate not issued or delayed beyond the prescribed period of five days</td> <td>Late fee of Rs. 100/- per day subject to a maximum of Rs. 5,000/-.</td> </tr> <tr> <td>3.</td> <td>TDS deducted but not paid to the Government or paid later than 10th of the succeeding month</td> <td>Applicable Interest to be paid along with the TDS amount; else the amount shall be determined and recovered as per the law.</td> </tr> <tr> <td>4.</td> <td>Late filing of TDS returns</td> <td>Late fee of Rs. 100/- for every day during which such failure continues, subject to a maximum amount of Rs. 5,000/-</td> </tr> </tbody> </table>			Sr.No	Event	Consequences	1.	TDS not deducted	Applicable Interest to be paid along with the TDS amount; else the amount shall be determined and recovered as per the law.	2.	TDS certificate not issued or delayed beyond the prescribed period of five days	Late fee of Rs. 100/- per day subject to a maximum of Rs. 5,000/- .	3.	TDS deducted but not paid to the Government or paid later than 10th of the succeeding month	Applicable Interest to be paid along with the TDS amount; else the amount shall be determined and recovered as per the law.	4.	Late filing of TDS returns	Late fee of Rs. 100/- for every day during which such failure continues, subject to a maximum amount of Rs. 5,000/-
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16.	How shall the Government recover the amount in default?	➤ Amount in default shall be recovered in accordance with Section 73 (determination of tax in non-fraud cases) or Section 74 (determination of tax in fraud cases) of the CGST Act, 2017.																	
17.	How is Refund of TDS possible under GST?	➤ As per section 51(8) of the CGST Act, 2017 any excess or erroneous amount deducted and paid to government account shall be dealt under section 54 of CGST Act, 2017. ➤ If wrong deduction is made by deductor or the amount deducted is excess of the amount required to be deducted then a refund can be made to the deductor. ➤ If the amount wrongly or excessively deducted is credited to electronic cash ledger of the deductee then no such refund will be made.																	

SIGNIFICANT CIRCULARS AND ORDERS

Sr. No.	Circular/ Order No.	Key Update
1.	57/31/2018- CGST, dt- 04-09-2018	<p><u>Scope of Principal-agent relationship in the context of Schedule I of the CGST Act:</u></p> <ul style="list-style-type: none"> ➤ Where the invoice for further supply is being issued by the agent in his name then, any provision of goods from the principal to the agent would fall within deemed supply in Schedule I of CGST Act, 2017. However, it may be noted that in cases where the invoice is issued by the agent to the customer in the name of the principal, such agent shall not fall within the ambit of Schedule I of the CGST Act. ➤ Similarly, where the goods being procured by the agent on behalf of the principal are invoiced in the name of the agent then further provision of the said goods by the agent to the principal would be covered under schedule I of CGST Act, 2017. ➤ If the agent is covered under Deemed supply then he has to get himself compulsory registered under section 24(vii) of CGST Act, 2017 or he has to get registered under section 22(1) on exceeding the threshold limits i.e. where a person makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees.
2.	58/32/2018- CGST, dt - 13-09-2018	<p><u>Recovery of arrears of wrongly availed CENVAT credit under the existing law and inadmissible transitional credit:</u></p> <ul style="list-style-type: none"> ➤ The Board has clarified that the recovery of arrears arising under the existing law shall be made as Central Tax liability to be paid through the utilization of the amount available in the Electronic Credit ledger or Electronic Cash ledger of the registered person, and the same shall be recorded in Part II of the Electronic Liability Register (FORM GST PMT-01). ➤ Currently, the functionality to record this liability in the electronic liability register is not available on the common portal. As an alternative method, taxpayers may reverse the wrongly availed CENVAT credit under the existing law and inadmissible transitional credit through Table 4(B)(2) of FORM GSTR-3B

		<ul style="list-style-type: none"> ➤ The applicable interest and penalty shall apply on all such reversals which shall be paid through entry in column 9 of Table 6.1 of FORM GSTR-3B.
3.	59/33/2018- CGST, dt-04-09-2018	<p><u>Clarification on refund related issues of available ITC on the exports made.</u></p> <ul style="list-style-type: none"> ➤ It was clarified that the invoices relating to inputs, input services and capital goods were to be submitted for processing of claims for refund of integrated tax where services are exported with payment of integrated tax; and invoices relating to inputs and input services were to be submitted for processing of claims for refund of input tax credit where goods or services are exported without payment of integrated tax. ➤ For the difficulties being faced by the claimants of refund, it has been decided that the refund claim shall be accompanied by a print-out of FORM GSTR-2A of the claimant for the relevant period for which the refund is claimed. ➤ There may be situations in which FORM GSTR-2A may not contain the details of all the invoices relating to the input tax credit availed. In such situations, the proper officer may call for the hard copies of such invoices if he deems it necessary for the examination of the claim for refund. ➤ It is emphasized that the proper officer shall not insist on the submission of an invoice the details of which are present in FORM GSTR-2A of the relevant period submitted by the claimant. ➤ The claimant shall also submit the details of the invoices on the basis of which input tax credit had been availed during the relevant period for which the refund is being claimed, in the format enclosed as Annexure-A manually along with the application for refund claim in FORM GST RFD-01A and the Application Reference Number (ARN). ➤ The claimant shall also declare the eligibility or otherwise of the input tax credit availed against the invoices related to the claim period in the said Annexure for enabling the proper officer to determine the same. ➤ System validations in calculating refund amount <p>Least of the 3 given below:</p>

		<ol style="list-style-type: none"> 1. Consolidated amount of ITC, i.e. Central tax + State tax/Union Territory tax +Integrated tax + Cess (wherever applicable) 2. The balance in the electronic credit ledger of the claimant at the end of the tax period for which the refund claim is being filed after the return for the said period has been filed. 3. The balance in the electronic credit ledger of the claimant at the time of filing the refund application. <p>After calculating the least of the three amounts, as detailed above, the equivalent amount is to be debited from the electronic credit ledger of the claimant in the following order:</p> <ol style="list-style-type: none"> a) Integrated tax, to the extent of balance available; b) Central tax and State tax/Union Territory tax, equally to the extent of balance available and in the event of a shortfall in the balance available in a particular electronic credit ledger (say, Central tax), the differential amount is to be debited from the other electronic credit ledger (i.e., State tax/Union Territory tax, in this case). <ul style="list-style-type: none"> ➤ Section 54(14) of the CGST Act provides that no refund under section 54(5) or (6) shall be paid to an applicant, if the amount is less than one thousand rupees. ➤ It is clarified that the limit of rupees one thousand shall be applied for each tax head separately and not cumulatively. The limit would not apply in cases of refund of excess balance in the electronic cash ledger. All field formations are requested to reject claims of refund from the electronic credit ledger for less than one thousand rupees and re credit such amount by issuing an order in FORM GST RFD-01B. ➤ <u>Scope of rule 96(10) of the CGST Rules:</u> Registered persons, including importers, who are directly purchasing/importing supplies on which the benefit of reduced tax incidence or no tax incidence under certain specified notifications has been availed, shall not be eligible for refund of integrated tax paid on export of goods or services. <p><u>Status of refund claim after issuance of deficiency memo:</u></p> <ul style="list-style-type: none"> ➤ Rule 90(3) of the CGST Rules provides that where any deficiencies in the application for refund are noticed, the proper officer shall communicate the deficiencies to the claimant in
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		FORM GST RFD-03, requiring him to file a fresh refund application after rectification of such deficiencies.
4.	60/34/2018-CGST, dt-04-09-2018	<p>➤ Canteen Service Distributor (CSD) shall be entitled to claim a refund of 50% of the applicable Central tax, Integrated tax and Union territory tax paid by the CSD on all inward supplies of goods received by the CSD.</p> <p>➤ <u>Manual filing of claims on a quarterly basis-</u></p> <p>Apply for refund on quarterly basis by filing an application in FORM GST RFD-10A. The said form shall be accompanied with the following documents:</p> <ol style="list-style-type: none"> 1) An undertaking stating that the goods on which refund is being claimed have been received by the CSD; 2) A declaration stating that no refund has been claimed earlier against the invoices on which the refund is being claimed; 3) Copies of the valid return filed in FORM GSTR-3B by the CSD for the period covered in the refund claim; 4) Copies of FORM GSTR-2A of the CSD for the period covered in the refund claim along with the attested hard copies of the invoices on which refund is claimed but which are not reflected in FORM GSTR-2A; 5) Details of the bank account in which the refund amount is to be credited. <p>➤ On the Receipt of Form GST RFD-10A acknowledgment will be issued in 15 days of the receipt of the Form GST RFD-10A. In case of deficiency, deficiency memo will be issued in 15 days of the receipt of Form GST RFD-10A.</p> <p>➤ Proper officer shall issue refund sanction/Rejection order manually in Form GST RFD-06 & payment advice in Form GST RFD-05</p>
5.	61/35/2018-CGST, dt-04-09-2018	<p><u>E-way bill in case of storing of goods in godown of transporter</u></p> <p>➤ The transporters providing such warehousing facility will have to get themselves registered under GST and maintain detailed records in cases where the transporter takes delivery of the goods and temporarily stores them in his warehouse for further</p>

		<p>transportation of the goods till the consignee/recipient taxpayer's premises</p> <ul style="list-style-type: none"> ➤ As per rule 138 of the CGST Rules, 2017 e-way bill is a document which is required for the movement of goods from the supplier's place of business to the recipient taxpayer's place of business. Therefore, the goods in movement including when they are stored in the transporter's godown (even if the godown is located in the recipient taxpayer's city/town) prior to delivery shall always be accompanied by a valid e-way bill. ➤ Section 2(85) of the CGST Act defines the "place of business" as "a place from where the business is ordinarily carried out, and <i>includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both.</i>" An additional place of business is the place of business from where taxpayer carries out business related activities within the State, in addition to the principal place of business. ➤ Where the transporter's godown has been declared as the additional place of business by the recipient taxpayer, the transportation under the e-way bill shall be deemed to be concluded once the goods have reached the transporter's godown. Hence, e-way bill validity in such cases will not be required to be extended. ➤ Whenever the goods move from the transporter's godown (i.e. recipient taxpayer's additional place of business) to the recipient taxpayer's any other place of business, a valid e-way bill shall be required, as per the extant State-specific e-way bill rules.
6.	<p>62/36/2018- CGST, dt- 12-09-2018</p>	<p><u>Levy of GST on Priority Sector Lending Certificates.</u></p> <p>Representations have been received requesting to clarify the following:</p> <ul style="list-style-type: none"> a) Mechanism for discharge of tax liability on trading of Priority Sector Lending Certificate (PSLC) for the period 1.7.2017 to 27.5.2018. b) GST rate applicable on trading of PSLCs. <p>It is clarified that GST on PSLCs for the period 1.7.2017 to 27.05.2018 will be paid by the seller bank on forward charge basis and GST rate of 12% will be applicable on the supply.</p>

7.	63/37/2018 - GST, dt-14-09-2018	<p><u>Clarification regarding processing of refund claims filed by UIN entities.</u></p> <p>In order to expedite the processing of the refund applications filed by the UIN entities, the following formats/documents are hereby specified:</p> <ul style="list-style-type: none"> ➤ Refund Checklist: In order to bring in uniformity in the processing of the refund claims, a checklist has been specified in Annexure A. All UIN entities may refer to this checklist while filing the refund claims. ➤ Certificate: A sample certificate to be submitted by Embassy/Mission/Consulate is enclosed as Annexure-B and that to be submitted by United Nations Organizations/Specified International Organizations is enclosed as Annexure-B-1. ➤ Undertaking: A sample undertaking to be submitted by Embassy/Mission/Consulate is enclosed as Annexure-C and that to be submitted by United Nations Organizations/Specified International Organizations is enclosed as Annexure-C-1. ➤ Statement of Invoices: The detailed statement of invoices shall be submitted in the format specified in Annexure D. ➤ Prior Permission letter for GST refund for purchase of vehicles: UIN entities must submit the copy of the 'Prior Permission letter' and mention the same in the covering letter while applying for GST refund on purchase of vehicles to avoid delay in processing of refunds. ➤ Waiver from recording UIN in the invoices for the months of April, 2018 to March, 2019: A one-time waiver is hereby given from recording the UIN on the invoices issued by the suppliers pertaining to the refund claims filed for the quarters from April, 2018 to March, 2019, subject to the condition that the copies of such invoices which are attested by the authorized representative of the UIN entity shall be submitted to the jurisdictional officer. ➤ Format of Monthly report: A monthly report to be furnished to the Principal Director General of Goods and Services Tax by the 30th of the succeeding month. The report shall now be furnished in a new format as specified in Annexure E.
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8.	64/38/2018- CGST, dt - 14-09-2018	<p><u>Modification of the procedure of E-Way Bill for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances</u></p> <ul style="list-style-type: none"> ➤ Section 68 of the CGST Act read with rule 138A of the CGST Rules, 2017 requires that the person in charge of a conveyance carrying any consignment of goods of value exceeding Rs 50,000/- should carry a copy of documents viz., invoice/bill of supply/delivery challan/bill of entry and a valid e-way bill in physical or electronic form for verification. ➤ In case such person does not carry the mentioned documents, there is no doubt that a contravention of the provisions of the law takes place and the provisions of section 129 and section 130 of the CGST Act are invocable. [section 129 of the CGST Act provides for detention and seizure of goods and conveyances and their release on the payment of requisite tax and penalty in cases where such goods are transported in contravention of the provisions of the CGST Act] ➤ Further, it may be noted that the non-furnishing of information in Part B of FORM GST EWB-01 amounts to the e-way bill becoming not a valid document for the movement of goods by road as per Explanation (2) to rule 138(3) of the CGST Rules, except in the case where the goods are transported for a distance of upto 50 Kms within the State or Union territory to or from the place of business of the transporter to the place of business of the consignor or the consignee, as the case may be. ➤ Section 129 of the CGST Act provides for detention and seizure of goods and conveyances and their release on the payment of requisite tax and penalty in cases where such goods are transported in contravention of the provisions of the CGST Act or the rules made thereunder. ➤ It is clarified that in case a consignment of goods is accompanied by an invoice or any other specified document and not an e-way bill, proceedings under section 129 of the CGST Act may be initiated. ➤ In case a consignment of goods is accompanied with an invoice or any other specified document and also an e-way bill, proceedings under section 129 of the CGST Act may not be initiated, <i>inter alia</i>, in the following situations: <ul style="list-style-type: none"> a) Spelling mistakes in the name of the consignor or the consignee but the GSTIN, wherever applicable, is correct;
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		<p>b) Error in the pin-code but the address of the consignor and the consignee mentioned is correct, subject to the condition that the error in the PIN code should not have the effect of increasing the validity period of the e-way bill;</p> <p>c) Error in the address of the consignee to the extent that the locality and other details of the consignee are correct;</p> <p>d) Error in one or two digits of the document number mentioned in the e-way bill;</p> <p>e) Error in 4 or 6 digit level of HSN where the first 2 digits of HSN are correct and the rate of tax mentioned is correct;</p> <p>f) Error in one or two digits/characters of the vehicle number.</p> <p>In case of the above situations, penalty of Rs. 500/- each under section 125 of the CGST Act and the respective State GST Act should be imposed (Rs.1000/- under the IGST Act) in FORM GST DRC-07 for every consignment.</p>
9.	65/39/2018-DOR, dt- 14-09-2018	<p><u>Guidelines for Deductions and Deposits of TDS under GST.</u></p> <ul style="list-style-type: none"> ➤ Section 51 of the CGST Act 2017 provides for deduction of tax by the Government Agencies (Deductor) or any other person to be notified in this regard, from the payment made or credited to the supplier (Deductee) of taxable goods or services or both, where the total value of such supply, under a contract, exceeds Rs 2,50,000/-. ➤ The amount deducted as tax under this section shall be paid to the Government by deductor within 10 days after the end of the month in which such deduction is made along with a return in FORM GSTR-7 giving the details of deductions and deductees. ➤ The deductor has to issue a certificate to the deductee mentioning therein the contract value, rate of deduction, amount deducted etc. ➤ As per the Act, every deductor shall deduct the tax amount from the payment made to the supplier of goods or services or both and deposit the tax amount so deducted with the Government

		<p>account through NEFT to RBI or a cheque to be deposited in one of the authorized banks, using challan on the common portal.</p> <p>➤ In addition, the deductors are entrusted the responsibility of filing return in FORM GSTR-7 on the common portal for every month in which deduction has been made based on which the benefit of deduction shall be made available to the deductee.</p>
10.	<p>Circular No. 66/40/2018-CGST dt-26-09-2018</p>	<p><u>GST on Residential programmes or camps meant for advancement of religion, spirituality or yoga by religious and charitable trusts</u></p> <p>“The services provided by entity registered under Section 12AA of the Income Tax Act, 1961 by way of advancement of religion, spirituality or yoga are exempt. Fee or consideration charged in any other form from the participants for participating in a religious, Yoga or meditation programme or camp meant for advancement of religion, spirituality or yoga shall be exempt. Residential programmes or camps where the fee charged includes cost of lodging and boarding shall also be exempt as long as the primary and predominant activity, objective and purpose of such residential programmes or camps is advancement of religion, spirituality or yoga. However, if charitable or religious trusts merely or primarily provide accommodation or serve food and drinks against consideration in any form including donation, such activities will be taxable. Similarly, activities such as holding of fitness camps or classes such as those in aerobics, dance, music etc. will be taxable”.</p>
11..	<p>Order No. 4/2018-CGST dated 17th September, 2018.</p>	<p><u>Extension of time limit for submitting the declaration in FORM GST TRAN-1</u></p> <p>On the recommendations of the Council, the Commissioner hereby extends the period for submitting the declaration in FORM GST TRAN-1 till 31st January, 2019, for the class of registered persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal and whose cases have been recommended by the Council.</p>

MGST – TRADE CIRCULARS

Trade Cir. No. 22 T of 2018, dated 01-09-2018

Processing of Final Refund under GST

- During the verification of the claim of refund either provisionally or, as the case may be, the final refund, there are instances where the tax payer, has either erroneously claimed the refund of accumulated credit, or of the IGST paid in case of exports. It has also been reported that in certain cases the refund is claimed in respect of input tax credit that is inadmissible under the GST law or where there is mis-match or un-match of the input tax credit availed by the recipient and that passed on by the supplier. It is further reported that due like reasons, Nodal Officer(s) have denied the refund either partly or fully. Therefore, under such circumstances, the Nodal Officers have rejected the refund so claimed.
- On this background, refund claimed or granted erroneously necessitates the initiation of proceedings for Demand and Recovery under appropriate provisions of GST law.
- The procedure and methodology laid down in this Trade Circular **shall be applicable to all the pending 10% refund claim pertaining to the Export of goods or services or both and in respect of all the pending refund applications pertaining to the supplies made to the Developer of SEZ or SEZ Unit, inverted tax structure and deemed export.**

Part A <i>(Legal aspects about the admissibility or in admissibility of ITC under MGST Act and rules made thereunder)</i>	Part B <i>(Quantification of eligible and in-eligible refund amount, and further process in this behalf)</i>
Verification of refund claim and related documents.	The documents or information related to input tax credit that need to be verified and kept on record.
Legal provisions relating to availment of Input Tax Credit.	Verification of tax invoices for inward supply, details of GST paid on reverse charge mechanism and other relevant documents.
Availment of Transitional Credit under existing laws	Claim of refund and cross-checking of the Input Tax Credit availed or utilized
	Initiation of Audit proceedings as per section 65 of the MGST Act.
	The issues that need to be considered while issuing the Show-cause Notice for Demand and recovery of the refund granted erroneously or ITC availed/utilized wrongly etc.

Part A - Legal aspects about the admissibility or in-admissibility of ITC under MGST Act and rules made thereunder

Sr. No.	Particulars	Explanations
1.	Verification of refund claim and related documents.	<ul style="list-style-type: none"> ➤ It may be worth to note that the Refund application in FORM-GST-RFD-1A, debit entry in the Electronic Credit Ledger/Cash Ledger (wherever required), GSTR-3B, GSTR-1, tax invoices and auto-drafted invoice level inward supplies details in FROM-GSTR-2A are vital and primary documents that facilitates determination of the eligible amount of refund under SGST Act/CGST Act/IGST Act/Cess Act. ➤ The applicant is required to submit along with refund application in FORM-GST-RFD-01A with requisite declarations and undertakings, the tax invoices, Statement in Proforma (in Excel) attached to Internal Circular 19A of 2018 dated 18th July 2018 and soft copy of latest GSTR-2A consisting details of supplies made for the month for which refund application is filed. ➤ In case of amendments to the invoices uploaded with return in FORM-GSTR-1 and has added certain missed invoices in the subsequent month GSTR-1 return, it becomes necessary to provide all such information i.e. auto-drafted GSTR-2A in order to cross-verify the ITC availed. ➤ In cases where the refund applicant is filing return in GSTR-1 with monthly periodicity, whereas the supplier is filing his GSTR-1 return quarterly, in such cases to compute the match, mis-match or un-match of ITC these tax payers who opts of submit GSTR-1 quarterly, it would be absolutely necessary that the refund applicant shall take return filing frequency into account and submit the GSTR-2A or inward supply invoices details to the concerned Nodal Officer. ➤ It may be noted that the GSTR-2A has been made available on the SAP portal. ➤ On careful examination of aforesaid, the Nodal Officer shall determine ITC that is: <ul style="list-style-type: none"> a) Admissible b) In-admissible or in-eligible c) Un-match or mis-match

2.	Legal provisions relating to availment of Input Tax Credit	<p>On fulfilling following conditions registered person is entitled to avail the input tax credit (As per section 16)</p> <ol style="list-style-type: none"> 1) Recipient is in possession of the tax invoice or debit note issued by the supplier holding the VALID GST number (GSTIN). 2) The recipient has received the goods except in the cases where transaction is in bill to ship to nature. [As per Explanation of section 16(2) (b) the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;]. 3) Tax charged in respect of supply has been actually paid to the Government either in cash or through utilization of input tax credit admissible in respect of said supply. (Except for Composition tax payer, the payment of tax can only be made through GSTR-3B the filing of GSTR-3B becomes mandatory). [As per 16(2) (c)]. 4) Recipient has furnished the return in FORM-GSTR-3B and FORM-GSTR-1. 5) If the goods are received in the lots then the recipient shall be entitled to take ITC upon receipt of last lot or instalment. 6) In case the tax payer has failed to pay to the supplier of goods or services both (except the supplies where tax is payable on reverse charge basis), the amount towards the value of supply along with tax payable thereon within a period of 180 days from the date of issue of invoice by the supplier then such ITC may be taken once said outstanding payment is made to the supplier. 7) In case, the registered person has claimed depreciation in respect of the tax component of the cost of the capital goods and plant and machinery, as per the Income Tax Act, 1961, then the ITC in respect of said component of tax shall not be allowed.
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		<p>8) The registered person shall not be entitled to take ITC in respect of any invoice or the debit note for supply of goods or services or both after the due date for furnishing the return for the month of September of the following financial year to which such tax invoice or debit note relates or furnishing the relevant annual return, whichever is earlier.</p> <p>➤ <u>Apportionment of the Credit</u> The Refund Processing Officer is required to determine the apportionment of the credit, on the basis of the contingencies given in section 17, 18, 19, 20 and 21 of the MGST Act.</p> <p>i. Apportionment of Credit attributable to business purpose and for other than business purposes: The taxable person shall not be entitled to take the input tax credit in respect of the goods or services or both that are used for other than the business purposes or are used for making the exempt supplies.</p> <p>ii. Banking company or a financial institution including a nonbanking financial company:</p> <p>➤ In order to facilitate better compliance, Banking Company, may exercise the options as given below:</p> <p>a) Either comply with the provisions of section 17(2) as discussed in preceding i.e. avail the credit in the proportion of taxable supply and exempt supply; or</p> <p>b) Alternatively, avail of, every month, an amount equal to 50% of the eligible input tax credit on inputs, capital goods and input services in that month and the rest shall lapse.</p> <p>➤ Once the Banking Company chooses one of the option as above, it is not allowed to withdraw the said option during the remaining part of the financial year.</p> <p>➤ The restriction of 50% ITC in relation to inter-branch taxable supply is not applicable.</p>
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		<p>iii. The registered taxable person shall not take credit of input tax in respect of the contingencies given in clause (A) to (I) below</p> <p>a) Motor vehicles and other conveyances except when they are used for making the following taxable supplies</p> <p>b) Motor vehicles and other conveyances for transportation of goods</p> <p>c) The following supply of goods or services or both-</p> <ul style="list-style-type: none"> • Foods and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where an inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply. • Membership of a club, health and fitness centre; • Rent-a-cab, life insurance and health insurance except where the services as notified are obligatory for an employer to provide to its employees under any law for the time being in force; or • Travel benefits extended to employees on vacation <p>d) Works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service</p> <p>e) Goods or services or both received by a taxable person for construction of an immovable property</p> <p>f) Amount paid in lieu of tax under composition as per section 10 of the MGST Act.</p> <p>g) Goods or services or both received by a non-resident taxable person except on goods imported by him</p> <p>h) Goods or services or both used for personal consumption</p>
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- i) Goods that are lost, stolen, destroyed, written off or disposed of by way of gift or free samples
- There are certain other contingencies given in section 18 where the input tax credit is not available or restricted

Sr. No.	Conditions and restrictions	Consequences
1.	Change in constitution on account of sale, merger, demerger, amalgamation, lease or transfer of business with specific provision of transfer of liabilities. [Section 18(3)]	<ul style="list-style-type: none"> • The said registered person shall be allowed to transfer the input tax credit which remains unutilized in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business. • FORM GST ITC-02 is required to be used for transfer of unutilized input tax credit lying in his electronic credit ledger.
2.	<p>Any registered person who has availed of the credit, [Section 18(4)]</p> <p>a) But subsequently opt to pay tax under Composition Scheme, or</p> <p>b) Where the goods or services or both supplied by him become wholly exempt.</p>	<ul style="list-style-type: none"> • Shall pay an amount through debiting the electronic credit ledger equivalent to the credit of input tax held- <ul style="list-style-type: none"> ○ In stock and ○ Inputs contained in semi-finished or finished goods held in stock and on capital goods on the day immediately before the day on which option is exercised. ○ The credit in respect of capital goods shall

			<p>be reduced as given in rule 44(3) of the MGST Rules</p> <ul style="list-style-type: none"> ○ It may be noted that any balance remaining in the electronic credit ledger after payment as aforesaid shall lapse.
		<p>3. [Section 18(6)]</p> <p>a) In case of supply of capital goods or plant and machinery, on which input tax credit has been taken,</p> <p>b) where refractory bricks, molds and dies, jigs and fixtures are supplied as scrap</p>	<ul style="list-style-type: none"> ● Shall pay on transaction value as determined under section 15, an amount equal to the input tax credit taken on the said capital goods or plant and machinery ● The credit in respect of capital goods shall be reduced a given in rule 44(3) of the MGST Rules.
3.	Availment of Transitional Credit under existing laws:	<ul style="list-style-type: none"> ➤ The Transitional Credit pertaining to the existing laws is allowed to be taken into Electronic Credit Ledger as per the conditions and restrictions provided under section 140 and 142 of the MGST Act. ➤ It may be noted that the refund of Transitional Credit is not available when the goods or services are exported or are supplied to Developer of Special Economic Zone or SEZ Unit without payment of tax. 	

Part - B Quantification of eligible and in-eligible refund amount, and further process in this behalf

Sr. No.	Particulars	Explanation
1.	The documents or information related to input tax credit that need to be verified and kept on record	<p>➤ For quantification of eligible or in eligible refund the Nodal Officer shall verify the following documents or information-</p> <ul style="list-style-type: none"> • Physical copies of the inward supply tax invoices • An auto-drafted GSTR-2A for the period corresponding such claim and containing the details of the invoices for inputs or input services or, as the case may be the capital goods, shall be made available by the tax payer. • The Nodal Officer, may on SAP portal i.e. MAHAGST, raise a request as per the MANUAL available on the said portal. • The return filing frequency of the supplier as also the amendments made to the subsequent months GSTR-1 and addition of missing invoices by the supplier shall also be taken into account while determining the match, un-match or mis-match in the input credit availed by the refund applicant and that is passed on by the supplier. • The Economic Intelligence Unit of the Department will also provide the information about the input tax credit passed on by the supplier and availed by the recipient i.e. refund applicant.

		<ul style="list-style-type: none"> • The tax payer may be asked to submit the details of inward supplies in the Proforma appended to the Internal Circular 19A • If the ITC claim pertains to IGST on account of Import of Goods then the tax payer may be asked to produce the information in a specific format. • In case the input tax credit claim pertains to the IGST on account of Import of services then the tax payer may be asked to produce the information in specific format
2.	Verification of tax invoices for inward supply, details of GST paid on reverse charge mechanism and other relevant documents	➤ Upon receipt of the refund Application the Nodal Officer will do the scrutiny of refund application, ARN receipts, statement under rule 89 and Tax Invoice etc.
3.	Claim of refund and cross-checking of the Input Tax Credit availed or utilized	<ul style="list-style-type: none"> ➤ Verification of GSTR-RFD-01A, GSTR-3B and GSTR-2A shall be carried out with appropriate reconciliation. ➤ On carrying out the verification, the eligible amount of refund need to be determined on the basis of the nature of refund viz. refund on account of IGST paid on export of services, refund of accumulated credit on account of export of goods etc. ➤ Refund on account of inverted tax structure shall be processed as given in rule 89(5)
4.	Initiation of Audit proceedings as per section 65 of the MGST Act	➤ It explains about Circumstances under which the Audit proceedings need to be issued

		➤ Initiation of Audit proceedings
5.	The issues that need to be considered while issuing the Show-cause Notice for Demand and recovery of the refund granted erroneously or ITC availed/utilized wrongly etc.	<ul style="list-style-type: none"> ➤ It provides for determination of tax not paid or short paid or erroneously refunded, input tax credit wrongly availed or utilized for any reason other than fraud or any willful mis-statement or suppression of facts. ➤ Whereas, the section 74 provides for determination of tax not paid or short paid or erroneously refunded input tax credit wrongly availed or utilized by reason of fraud or any willful misstatement or suppression of facts.

Internal Circular No. 23 A of 2018, dated 01-09-2018

Particular	Explanation
Verification of Transitional Credit	<ul style="list-style-type: none"> ➤ State of Maharashtra issued an Internal Circular for clarification on Verification of Transitional Credit in TRAN - 1 claimed in GST in Electronic Credit Ledger. As per such Circular GST Department has to verify all transitional ITC availed and provide internal report by 10th November, 2018. Accordingly, taxpayers have started receiving notices in order to justify credits availed through TRAN - 1. ➤ Further, this Circular had clarified all situations arising under Section 140 (1) to Section 140(5) with examples wherever required. Moreover, it has also clarified credit eligibility to builders and developers under Section 140(1) and Section 140 (6) of CGST Act with examples

RECENT CASE LAWS

1. Whether the services provided by an agent in relation to booking space for Cargo transportation shall be considered as Business Auxiliary Services?

Assessee (Plaintiff)	Inter freight Services (P.) Ltd
Department (Respondent)	Commissioner of Service Tax
Journal of Publication	93 taxmann.com 197
Date of Publication	14 th March , 2018
Ruling authority	Chennai - CESTAT

FACTS
<ul style="list-style-type: none"> • The assessee, a custom house agent, was engaged in booking space for cargo transportation in airlines/ship. It paid charges for space booking to the respective airlines/steamer agents. • Whenever consignment of the customer was sent using the space booked, it charged from the customer freight charges for the transportation of the goods by the respective airlines/steamer agents. • The Adjudicating Authority held that the activities undertaken by the assessee would fall under the category of “business auxiliary service” defined in section 65(19) and accordingly confirmed the demand against the assessee.
ISSUE
<ul style="list-style-type: none"> • Whether services provided by assessee would fall under category of “business auxiliary service” as pleaded by revenue?
HELD
<ul style="list-style-type: none"> • The demand is made alleging that the assessee had received consideration for pre-booking of space in airlines/shipping lines. • The very same issue was decided by the Chennai Bench of the Tribunal in the case of Bax Global India Ltd. v. CST [Final Order No. 42113 of 2017, dated 18-9-2017] in favor of the assessee. • The said service will not fall under “Business auxiliary service”.

2. Separate contracts for supply of material and services for Power Plants shall be treated as works contract

Applicant	Fermi Solar Farms (P.) Ltd
Journal of Publication	93 taxmann.com 96
Date of Ruling:	3 rd March, 2018
Ruling Authority	Authority for Advance Rulings, Maharashtra

FACTS
<ul style="list-style-type: none"> • The applicant was engaged in operation of renewable energy power plant projects. • These typically include operation of solar power plants set up across India for generation and distribution of electricity generated. • Assessee was engaged with an impugned agreement contended to be for supply of goods was actually a works contract involving engineering, design, procurement and commissioning of solar power plant. • Further, contract contended to be for supply of services was also one for executing a works contract involving a provision of goods as well as services.
ISSUE
<ul style="list-style-type: none"> • Whether in case of separate contracts for supply of goods and services for a solar power plant, there would be separate taxability of goods as 'solar power generating system' at 5% and services at 18 %? • Whether parts supplied on standalone basis (when supplied without PV modules) would also be eligible to concessional rate of 5 % as parts of solar power generation system? • Whether benefit of concessional rate of 5 % of solar power generation system and parts thereof would also be available to sub-contractors?
HELD
<ul style="list-style-type: none"> • The agreements tendered in support of this question reveal that the impugned transaction of setting up and operation of a solar photovoltaic plant is in the nature of a 'works contract' in terms of clause (119) of section 2 of the GST Act. Schedule II (Activities to be treated as supply of goods or supply of services) treats 'works contracts' under section 2(119) as supply of 'services'. • Depending upon the nature of supply, intra-State or inter-State, the rate of tax would be governed by the Entry No.3 (ii) of the Notification No. 8/2017-Integrated Tax (Rate) under the Integrated Goods and Services Tax Act, 2017 (IGST Act) or the Notification No. 11/2017 -Central Tax/State Tax (Rate) under the CGST Act and MGST Acts.

- The rate of tax would be 18 % under the IGST Act and 9 % each under the CGST Act and the MGST Act, aggregating to 18 % of CGST and MGST.
- In the absence of any documents brought forward, this question was not dealt in the present proceedings.

3. Service of printing question papers for Educational Institutions for specific Examination

Applicant	Ashok Kumar Basu
Journal of Publication	97 taxmann.com 665
Date of Ruling:	28 th September, 2018
Ruling Authority	Authority for Advance Rulings, West Bengal

FACTS
<ul style="list-style-type: none"> • The Applicant is registered under HSN 4901 under GST and is providing services by way of printing question papers for various examinations, conducted by the Council of Higher Secondary Education of various States, Joint Entrance Boards, and various UGC granted Universities in India and by various authorities of vocational educations. • The Councils/Boards/Universities/Institutions are supplying the matter to be printed to the Applicant, who is providing the paper, ink, other inputs, manpower, machinery, etc to print the given matter in appropriate question paper format as provided by the Councils/Boards/Universities/Institutions supplying the matter.
ISSUE
<ul style="list-style-type: none"> • Whether GST is to be charged on such supply and, if so, at what rate and under what HSN or SAC code is the GST to be charged? • Whether credit of the GST paid on the inputs used for provisioning the supply can be availed? • The Applicant's customers, being either Government organizations or Government aided organizations, are not paying GST on the services so provided, which is rendering them unable to take credit on the GST paid during purchase of inputs.
HELD
<ul style="list-style-type: none"> • The content of the printed matter is specific to the customer, and, neither is the matter pre-printed, nor has the Applicant any ownership to the content at any point of time, and, therefore, cannot transfer title of the above printed matters. • The Question Papers supplied by the Applicant to their customers are not marketable commodities in the open market and as goods they have no legitimate value to persons other than the specific customer who provides the input content. • Therefore, cannot be said to be supplying Question Papers as "goods" under the GST Act, but to be supplying the service of printing. • Hence, the SAC is to be determined and not the HSN.

- Service of printing Question Papers for Educational Institutions [as defined under clause 2(y) read with Explanation (iv) to Notification No. 12/2017-CT (Rate) dated 28/06/2017] for specific examination is classifiable under SAC 9992.
- Service to such Educational Institutions relating to conduct of examination, as described in 66(b)(iv) of Notification No.12/2017-CT(Rate) dated 28/06/2017, includes supply of the service of printing question papers, and is exempt under the CGST Act.
- Being an exempt supply, the Applicant cannot claim credit of the GST paid on the inputs used for provisioning the service of printing question papers provided to the Boards/Educational Institutions relating to conduct of examination.

4. Transitional credit in case of existing contracts.

Applicant	M/s. R.B. Construction Company
Journal of Publication	NO. GUJ/GAAR/R/2017-18/3
Date of Ruling:	17th January, 2018
Ruling Authority	Authority for Advance Ruling, Gujarat

FACTS
<ul style="list-style-type: none">• The applicant company was engaged in construction of pipeline network. They had bid in a tender issued by the State Municipal Corporation to supply pipes, lay the pipes in desired formation as planned by the Government and to test the pipes against the leakages and then commission the project. The work to be executed as per the tender was to construct a pipeline network as per the specifications and design of the corporation.• The applicant submitted that they had bought pipes for the project of corporation. At the time of purchase, the applicant had paid Central Excise and VAT.• The applicant submitted that while the project of corporation was unfinished, the Goods and Services Tax Act (GST) got implemented, posing a challenge to the applicant to enjoy the credit of material bought in pre-GST era as per the transition provisions.
ISSUE
<ul style="list-style-type: none">• Does the work executed and invoice to be raised for the pending event of testing and commissioning by the applicant after the implementation of the Goods and Services Tax Act amount to supply, and specifically supply of works contract?• Is the applicant entitled to enjoy proportionate credit worth 10 per cent duty of excise and VAT paid on materials bought vide invoices showing Excise and VAT separately, under the transition provisions so that there is no double taxation, i.e., levy of tax on tax is avoided?
HELD
<ul style="list-style-type: none">• The underground pipeline network created by joining the pipes either by lamination or welding cannot be dismantled without substantial damage and thus, cannot be reassembled, therefore the pipeline network so created would be considered as immovable. As the applicant is engaged in the activity of construction of pipeline network which becomes immovable property wherein transfer of property in goods is involved, the said activity falls within the definition of 'works contract'.• As per clause 6(a) of the Second Schedule read with section 7, the composite supply, namely works contract as defined in clause (119) of section 2 shall be treated as a supply of services.

- The applicant is required to discharge Goods and Services Tax liability for the part of the supply made by the applicant wherein time of supply of service is after implementation of the 2017 Act.
- As submitted by the applicant, only the work of Testing and Commissioning of network of pipeline was pending on the appointed date, for which no input in stock was required to be used on or after the appointed date. Therefore, the condition prescribed under section 140(6) (i) is not fulfilled. Testing and Commissioning of network of pipeline being part of the contract, GST is leviable, however, since no input/materials is required for such Testing and Commissioning of network of pipeline, transitional Input Tax Credit is not allowable.
- This, it is held that the work of laying of underground pipeline network falls under the definition of “works contract” provided under section 2(119) under CGST Act (2017). In respect of that part of supply wherein time of supply is on or after the appointed date, Goods and Services Tax is required to be paid. The applicant is not entitled under section 140(6) to avail input tax credit.

5. Application before Anti-Profiteering Authority alleging that respondent had not passed on benefit of reduction in rate of GST in restaurant service.

Assessee (Plaintiff)	Jjrusha N. Bhattacharya
Department (Respondent)	NP Foods (Franchisee Subway India)
Journal of Publication	97 taxmann.com 633
Date of Publication	27 th September, 2018
Ruling authority	National Anti-Profiteering Authority

FACTS
<ul style="list-style-type: none"> An application dated 01.01.2018 was filed by the Applicant No. 1 before the Standing Committee constituted under Rule 123 (1) of the above Rules alleging that the Respondent has not passed on the benefit of reduction in the rate of GST in restaurant service, when he had purchased "6 Hara Bhara Kabab Sub" (here-in-after referred to as the product).
ISSUE
<ul style="list-style-type: none"> The Respondent had increased the base price of the product from Rs. 130/- to Rs. 145/- when the GST was reduced from 18% to 5%. It was further alleged that the Respondent had indulged in profiteering in contravention of the provisions of Section 171 of CGST Act, 2017.
HELD
<ul style="list-style-type: none"> The above report was considered by the Authority in its sitting held on 15.05.2018 and it was decided to hear the Applicant on. 29.05.2018 however, the Applicant did not appear during the course of the hearings. M/s Subway Systems India Private Limited the owners of the 'Subway' Brand which had appointed the Respondent as it's franchisee were also associated during the hearings S/Sh. Nihal Kothari and Mayank Jain Advocates who appeared on behalf of M/s Sunway submitted that it worked on the franchisee based model, and no consideration was taken from the franchisee expect the royalty on the net turnover. They further submitted that no ITC was being passed on by M/s Subway as the franchisee was free to buy the raw material from the local sources It is apparent from the facts of the case that the Respondent had increased the base price of his products to make good the loss which had occurred due to denial of ITC post GST rate reduction.

- It is further revealed that the Respondent had increased the average base price by 12.14% to neutralize the denial of ITC of 11.80% and such increase is commensurate with the increase in the cost of the product on account of denial of ITC.
- Therefore, the allegation of not passing on the benefit of rate reduction is not established against the Respondent.
- Based on the above facts it is clear that the Respondent has not contravened the provisions of Section 171 of the CGST Act, 2017 and hence there is no merit in the application filed by the Applicant No. 1 and the same is accordingly dismissed.

6. Input Tax Credit in case of goods/services where value declared in the invoice is zero.

Applicant	Assistant Commissioner, CGST & CX
Journal of Publication	97 taxmann.com 636
Date of Ruling:	27th September, 2018
Ruling Authority	Appellate Authority for Advance Ruling, West Bengal

FACTS

- The appeal has been filed by the Assistant Commissioner against the Advance Ruling No. 07/WBAAR/2018-19 dated 30-05-2018 pronounced by the West Bengal Authority for Advance Ruling.
- M/s GKB Lens Pvt. Ltd. is a reseller and importer of Sun Glasses, Frames, Lenses, Contact Lenses, etc., having its Head Office in West Bengal transferring, goods, namely, Optical Lenses and Frames for Spectacles and Accessories, from Head Office in West Bengal to its branches in other States.
- He sought an advance ruling on the following matters: -
 - a) Whether the transfer of goods from the Head Office in West Bengal to its branches in other states, can be done at cost price, by applying the second proviso to Rule 28 of CGST Rules, 2017 (instead of 90% of MRP as required by the first proviso)?
 - b) What is meant by the expression “where the recipient is eligible for full input tax credit” as used in the second proviso?
- The Authority ruled that the initial applicant has the option of not supplying goods to its branches under the First Proviso and the second proviso can be applied to value the goods. The expression “where the recipient is eligible for full input tax credit” means that recipient will be eligible to take full input tax credit for the amount of tax paid by the supplier as mentioned in the respective invoice as per Section 16(2)(a) of the GST Act.

ISSUE

- The applicant has filed an appeal regarding the availability of Input Tax Credit on stock transfer from the Head Office to its branches in other states at Zero Value.

HELD

- According to Section 16(2)(a) in case of supply between distinct/related persons (Head Office and Branch), the value declared in the invoice shall be deemed to be the open market value of the goods. Thus, if value declared is zero, no input tax credit is available to the recipient.
- It is clarified that no input tax credit is available to the recipient of goods/services if the value declared by the supplier in the invoice/debit note is zero.

7. Supplies made to SEZ units are zero rated supplies and are taxable as per Section 16.

Applicant	Vishwanath and Parthasarathi Dey
Journal of Publication	NO.14/WBAAR/2018-19
Date of Ruling:	1st August, 2018
Ruling Authority	Authority for Advance Ruling, West Bengal

FACTS
<ul style="list-style-type: none">The applicant, a dealer of 'Cummins India Limited' functioning mainly in the trading of diesel engines and its spare parts along with services of diesel engine either on AMC basis or on as and when required basis.
ISSUE
<ul style="list-style-type: none">The applicant is seeking a ruling on whether or not the supply of goods and on-site services to customers in SEZ area to any SEZ unit or SEZ developer is zero rated supply under Section 16 of the IGST Act, 2017 and whether GST is chargeable for the supply of goods or services to SEZ unit or SEZ developer.
HELD
<ul style="list-style-type: none">Section 16 of IGST Act deals with "zero rated supply" which includes the supply of goods and services or both to a Special Economic Zone Unit or a Special Economic Zone Developer.Since the Applicant supplies to units and developers of Special Economic Zones only, as stated in the Application and reiterated by the authorized representative during Personal Hearing, the provisions of Section 16 of IGST Act will be applicable in this case and the tax liability will be at zero rate under sub section 1(b) of the IGST Act.He may supply without paying tax subject to the provisions under section 16 (3) (a), or he may supply on payment of tax and claim refund subsequently under section 16 (3) (b) of the IGST Act.