KEY UPDATES

OCTOBER, 2019

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CONTENTS

SIGNIFICANT NOTIFICATIONS

<table>
<tr><th>Sr. No</th><th>Notification No.</th><th>Key Update</th></tr>
<tr><td>1.</td><td>44/2019-Central Tax, Dt-9.10.2019

and

44/2019-MGST Act, Dt-10.10.2019</td><td>➢ <u>Due date of FORM GSTR-3B for October, 2019 to March, 2020.</u>

Returns in FORM GSTR-3B for each of the months from October, 2019 to March, 2020 shall be furnished electronically through the common portal, on or before the 20th day of the month succeeding such month.

Every registered person furnishing the return in FORM GSTR-3B shall discharge his liability towards tax, interest, penalty, fees or any other amount payable under the said Act by debiting the electronic cash ledger or electronic credit ledger, as the case may be, not later than the last date on which he is required to furnish the said return.</td></tr>
<tr><td>2.</td><td>45/2019-Central Tax, Dt-9.10.2019</td><td>➢ <u>Due date of FORM GSTR-1 if aggregate turnover is up to Rs. 1.5 crore .</u>

The registered persons having aggregate turnover of up to Rs.1.5 crore in the preceding financial year or current financial year, shall furnish the details of outward supply of goods or services or both in FORM GSTR-1:

<table>
<tr><th>Sr no.</th><th>Quarter for which details in FORM GSTR-1 are furnished</th><th>Time period for furnishing details in FORM GSTR-1</th></tr>
<tr><td>1.</td><td>October, 2019 to December, 2019</td><td>31st January, 2020</td></tr>
<tr><td>2.</td><td>January, 2020 to March, 2020</td><td>30th April, 2020</td></tr>
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<tr><td>3.</td><td>46/2019-Central Tax, Dt-9.10.2019

and

46/2019-MGST Act, Dt-10.10.2019</td><td>➢ <u>Due date of furnishing GSTR 1 if aggregate turnover exceeds Rs. 1.5 crore for the months of October, 2019 to March, 2020</u>

Registered persons having aggregate turnover of more than Rs.1.5 crore in the preceding financial year or the current financial year, for each of the months from October, 2019 to March, 2020 shall furnish the details of Form GSTR-1 till the 11th day of the month succeeding such month.</td></tr>
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<td>4.</td>
<td>47/2019-Central Tax, Dt-9.10.2019</td>
<td>➢ <u>Optional GST Annual Return of F.Y. 2017-18 and F.Y. 2018-19 for turnover upto Rs. 2 crores.</u>

Registered persons whose aggregate turnover in a financial year does not exceed two crore rupees are not required to file GST annual return for F.Y. 2017-18 and F.Y. 2018-19 respectively.

For those persons, it shall be deemed that they have filed the GST annual returns for the said financial years.</td>
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<td>5.</td>
<td>48/2019-Central Tax, Dt-9.10.2019</td>
<td>➢ <u>Extended due date of Form GSTR-1, GSTR-7 & GSTR-3B for J&K</u>

Late fees waived off for the registered persons having principal place of business is in the State of Jammu & Kashmir when Form GSTR-1, Form GSTR-7 and Form GSTR-3B have been furnished for the months of July, 2019 and August, 2019 on or before the following dates

<table>
<tr><td>Type of Return</td><td>Filed return for the month of July, 2019</td><td>Filed return for the month of August, 2019</td></tr>
<tr><td>GSTR-1(Turnover more than Rs. 1.5 crores)</td><td>October 11, 2019</td><td>October 11, 2019</td></tr>
<tr><td>GSTR-7</td><td>October 10, 2019</td><td>October 10, 2019</td></tr>
<tr><td>GSTR-3B</td><td>October 20, 2019</td><td>October 20, 2019</td></tr>
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<td>6.</td>
<td>49/2019-Central Tax, Dt-9.10.2019</td>
<td>➢ <u>Amendments in GST Rules:</u>

<u>Restriction on ITC in case of mismatch as per GSTR 2A</u>

Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers in their Form GSTR-1 shall not exceed 20% of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers i.e. ITC as reflected in GSTR 2A.

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<tr><th>Rule No.</th><th>Description</th><th>CGST Rules, 2017</th><th>CGST (Amendment) Rules, 2019</th></tr>
<tr><td>21A(3)</td><td>Suspension of registration</td><td>A registered person, whose registration has been suspended under sub-rule (1) or sub-rule (2), shall not make any taxable</td><td>The following explanation shall be inserted, namely:-

“Explanation - For the purposes of this sub-rule, the expression “shall not make any taxable supply” shall mean that the registered person shall not issue a</td></tr>
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					supply during the period of suspension and shall not be required to furnish any return under section 39.	tax invoice and, accordingly, not charged tax on supplies made by him during the period of suspension."
						The new sub rule 4 has been inserted which is as follows;- Where any order having the effect of revocation of suspension of registration has been passed, the provisions of clause (a) of sub-section (3) of section 31 i.e. and section 40 in respect of the supplies made during the period of suspension and the procedure specified therein shall apply.
			36(3)	**Documentary requirements and conditions for claiming input tax credit**		The new sub rule 4 has been inserted which is as follows :- Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers of section 37(1), shall not exceed 20% of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers of section 37(1).
			61(5)	**Form and manner of submission of**		Where the time limit for furnishing of details in FORM GSTR-1 and in

			monthly return			FORM GSTR-2 under has been extended and the circumstances so warrant, the Commissioner may, by notification, shall specify the manner and conditions subject to which the return shall be furnished in FORM GSTR-3B.
			61(6)(b)		Where a person is required to furnish Form GSTR-3B,then such person is not required to furnish Form GSTR-3.	Such sub-rule shall be omitted with effect from the 1st July, 2017.
			91	**Grant of provisional refund.**	The proper officer shall issue a payment advice in **FORM GST RFD-05** for the amount sanctioned under sub-rule (2) and the same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.	With effect from 24.09.2019, the Central Government shall disburse **the refund based on the consolidated payment advice** issued under sub-rule (3).

			97	**Electronic Cash Ledger.**		The new sub rule 7(A) has been inserted which is as follows:- The Committee shall make available to the Board 50 % of the amount credited to the Fund each year, for publicity or consumer awareness on Goods and Services Tax, provided the availability of funds for consumer welfare activities of the Department of Consumer Affairs is not less than Rs.25 Crores per annum. (b) in sub-rule (8) which state the powers of the committee, clause (e)- "Power to recover any sum due from any applicant in accordance with the provisions of the Act" shall be omitted.
			117(1a)	**Tax or duty credit carried forward under any existing law or on goods held in stock on the appointed day**		Notwithstanding anything contained in sub-rule (1), the Commissioner may, on the recommendations of the Council, **extend the date for submitting the declaration** electronically in FORM GST TRAN-1 by a further period not beyond **31st December, 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.
		142	**Notice and order for demand of amounts payable under the Act**		The new sub rule 142(1A) has been inserted which is as follows The proper officer shall, before service of notice to the person chargeable with tax, interest and penalty, under Section 73(1) or of Section 74(1), as the case may be, shall communicate the details of any tax, interest and penalty as ascertained by the said officer, in **Part A** of **FORM GST DRC-01A.;** Where, before the service of notice or statement, the person chargeable with tax makes payment of the tax and interest in accordance with the provisions of section 73(5)or, as the case may be, tax, interest and penalty in accordance with the provisions of section 74(5)**,** or where any person makes payment of tax, interest, penalty or any other amount due in accordance with the provisions of the Act **whether on his own ascertainment or, as communicated by the proper officer under sub rule (1A),** he shall inform the proper

						officer of such payment in **FORM GST DRC-03** and the proper officer shall issue an acknowledgement, accepting the payment made by the said person in FORM GST DRC–04.
			83A		A person enrolled as a goods and services tax practitioner in terms of sub-rule (2) of rule 83 is required to pass the examination within two years of enrolment: Provided that if a person is enrolled as a goods and services tax practitioner before 1st of July 2018, he shall get one more year to pass the examination: Provided further that for a goods and services tax practitioner who has enrolled as a sales tax practitioner or tax return preparer under the existing law for a period of not less than	In sub-rule (6), for clause (I), the following clause shall be substituted, namely Every person referred to in clause (b) of sub-rule (1) of rule 83 and who is enrolled as a goods and services tax practitioner under sub-rule (2) of the said rule is required to pass the examination within the period as specified in the second proviso of sub-rule (3) of the said rule. Thus, examination prescribed in rule 83A is to be passed only by those GST Practitioners who are covered under rule 83(1)(b) of CGST Rules, 2017 i.e those who were earlier enrolled as a sales tax practitioner or tax return preparer under the existing law for a period of not less than five years.

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<tr><td></td><td></td><td>five years;the period to pass the examination will be within a period of thirty months from the appointed date as specified in the second proviso of sub-rule (3) of said rule.</td><td></td></tr>
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<u>Rule 142(2A)</u>

Form GST DRC- 01 has been amended for “Intimation of tax ascertained as being payable under section 73(5) / 74(5) .</td></tr>
<tr><td>7.</td><td>50/2019-Central Tax, Dt-24.10.2019</td><td>➢ <u>Extended due date for filing GST CMP-08</u>

The last date for filing of FORM GST CMP-08, containing the details of payment of self-assessed tax, for the quarter July- September, 2019 has been extended by four days from 18.10.2019 till 22.10.2019.</td></tr>
<tr><td colspan="3">For detailed Notifications kindly follow below link–
<u>http://www.cbic.gov.in/htdocs-cbec/gst/central-tax-notfns-2017</u></td></tr>
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Sr. No.	Circular/ Order No.	Key Update
1.	110/2019-Central Tax, Dt- 3.10.2019	➢ **Eligibility to file a refund application in FORM GST RFD-01 for a period and category under which a NIL refund application has already been filed** • It is now clarified that a registered person who has filed a NIL refund claim in FORM GST RFD-01A/RFD-01 for a given period under a particular category, may again apply for refund for the said period under the same category only if he satisfies the following two conditions: a. The registered person must have filed a NIL refund claim in FORM GST RFD-01A/RFD-01 for a certain period under a particular category; b. No refund claims in FORM GST RFD-01A/RFD-01 must have been filed by the registered person under the same category for any subsequent period. It may be noted that condition (b) shall apply only for refund claims falling under the following categories i. Refund of unutilized input tax credit (ITC) on account of exports without payment of tax; ii. Refund of unutilized ITC on account of supplies made to SEZ Unit/SEZ Developer without payment of tax; iii. Refund of unutilized ITC on account of accumulation due to inverted tax structure; • In all other cases, registered persons shall be allowed to re-apply even if the condition (b) is not satisfied.
2.	111/2019-Central Tax, Dt- 3.10.2019	➢ **Procedure to claim refund in FORM GST RFD-01 subsequent to favorable order in appeal or any other forum** • In case a favorable order is received by a registered person in appeal or in any other forum in respect of a refund claim rejected through issuance of an order in FORM GST RFD-06, the registered person would file a fresh refund application under the category "Refund on account of assessment/provisional assessment/appeal/any other order" claiming refund of the amount allowed in appeal or any other forum. • Since the amount debited, if any, at the time of filing of the refund application was not re-credited, the registered person shall not be

		required to debit the said amount again from his electronic credit ledger at the time of filing of the fresh refund application under the category "Refund on account of assessment/provisional assessment/appeal/any other order". • The registered person shall be required to give details of the type of the Order (appeal/any other order), Order No., Order date and the Order Issuing Authority. The registered person would also be required to upload a copy of the order of the Appellate or other authority, copy of the refund rejection order in FORM GST RFD 06 issued by the proper officer or such other order against which appeal has been preferred and other related documents.
3.	**112/2019-Central Tax, Dt-3.10.2019**	➢ **Seeks to withdraw Circular No. 105/24/2019-GST dated 28.06.2019.** • Circular No. 105/24/2019-GST dated 28.06.2019 wherein certain clarifications were given in relation to various doubts related to treatment of secondary or **post-sales discounts under GST** is hereby withdrawn.
4.	**113/2019-Central Tax, Dt-11.10.2019**	➢ **Classification and applicable GST rate on Almond Milk:** Almond milk is classified under the residual entry in the tariff item 2202 99 90 and attract GST rate of **18%.** ➢ **Applicable GST rate on Mechanical Sprayer:** The GST Council in its 25th meeting recommended 12% GST on mechanical sprayer. ➢ **Clarification regarding taxability of imported stores by the Indian Navy:** Indian Naval ship stores are exempted from import duty in terms of section 90(1) of the Customs Act, 1962. Accordingly, it is clarified that imported stores for use in navy ships are entitled to **exemption** from GST. ➢ **Clarification regarding taxability of goods imported under lease:** • In respect of goods imported on temporary basis, aircrafts, aircraft engines and other aircraft parts imported into India under a transaction covered by item 1(b) or 5(f) of Schedule II of the Central Goods and Service Tax Act, 2017 are exempted from IGST *vide* S. No. 547A of **notification No. 50/2017-Customs dated 30.06.2017**, subject to condition No. 102, which are as under :-

		The importer, by the execution of bond, in such form and for such sum as may be specified by the Commissioner of Customs, binds himself – (i) To pay integrated tax leviable under section 5(1) of the IGST Act, 2017 on supply of service covered by item 1(b) or 5(f) of Schedule II of the Central Goods and Services Act, 2017; (ii) Not to sell or part with the goods, without the prior permission of the Commissioner of Customs of the port of importation; (iii) To re-export the goods within three months of the expiry of the period for which they were supplied under a transaction covered by item 1(b) or 5(f) of Schedule II of the Central Goods and Services Act, 2017; (iv) To pay on demand an amount equal to the integrated tax payable on the said goods but for the exemption under this notification in the event of violation of any of the above conditions. • Similarly, rigs and ancillary items imported for oil or gas exploration and production taken on lease by the importer for use after import have also been exempted from IGST *vide* S. No. 557A of the said notification. • Subsequently, all goods, vessels, ships (other than motor vehicles) imported under lease, by the importer for use after import, were also exempted from IGST *vide* S. No. 557B of the said notification. Both these entries are subject to the same condition No. 102 of the said notification. ➢ **Applicability of GST rate on parts for the manufacture solar water heater and system:** • 5% GST rate applies to parts used in manufacture of Solar Power based devices solar water heater and system. • Solar power-based devices and parts for their manufacture attract 5% concessional GST. • Parts including Solar Evacuated Tube for the manufacture of solar water heater and system will attract 5% GST. ➢ **Applicability of GST on the parts and accessories suitable for use solely or principally with a medical device:** • Parts and accessories of the instruments used mainly and principally for the medical instrument shall be classified with the machine only.

		• Thus, parts of ophthalmic equipment suitable for use solely or principally with an ophthalmic equipment should be classified with the ophthalmic equipment only and shall attract 12%.
5.	**114/2019-Central Tax, Dt- 11.10.2019**	➢ **Clarification on scope of support services to exploration, mining or drilling of petroleum crude or natural gas or both** It is clarified that the scope of support services to exploration, mining or drilling of petroleum crude or natural gas or both shall be decided based on the explanatory notes to Heading 9983 and 9986.
6.	**115/2019-Central Tax, Dt-11.10.2019**	➢ **Clarification on issue of GST on Airport levies** • The airline acting as pure agent of the passenger should separately indicate actual amount of PSF(Passenger Service Fee) and UDF (User Development fee) and GST payable on such PSF and UDF by the airport licensee, in the invoice issued by airlines to its passengers. • The airline shall not take ITC of GST payable or paid on PSF and UDF. The airline would only recover the actual PSF and UDF and GST payable on such PSF and UDF by the airline operator. The amount so recovered will be excluded from the value of supplies made by the airline to its passengers. • In other words, the airline shall not be liable to pay GST on the PSF and UDF (for airport services provided by airport licensee), provided the airline satisfies the conditions prescribed for a pure agent under Rule 33 of the CGST Rules. • The registered passengers, who are the ultimate recipient of the airport services, may take ITC of GST paid on PSF and UDF on the basis of pure agent's invoice issued by the airline to them. The airport operators shall pay GST on the PSF and UDF collected by them from the passengers through the airlines. Since, the airport operators are collecting PSF and UDF inclusive of ST/GST, there is no question of their not paying ST/GST collected by them to the Government. • The collection charges paid by airport operator to airlines are a consideration for the services provided by the airlines to the airport operator (AAI, DAIL, MAIL etc) and airlines shall be liable to pay GST on the same under forward charge. ITC of the same will be available with the airport operator.

7.	**116/2019-Central Tax, Dt-11.10.2019**	➢ **Levy of GST on the service of display of name or placing of name plates of the donor in the premises of charitable organizations receiving donation or gifts from individual donors** • Where all the three conditions are satisfied namely the gift or donation is made to a charitable organization, the payment has the character of gift or donation and the purpose is philanthropic (i.e. it leads to no commercial gain) and not advertisement, GST is not leviable.
8.	**117/2019-Central Tax, Dt-11.10.2019**	➢ **Clarification on applicability of GST exemption to the DG Shipping approved maritime courses conducted by Maritime Training Institutes of India** • Maritime Training Institutes and their training courses are approved by the Director General of Shipping which are duly recognized under the provisions of the Merchant Shipping Act are educational institutions under GST Law and the courses conducted by them are exempt from levy of GST.
9.	**118/2019-Central Tax, Dt-11.10.2019**	➢ **Clarification regarding determination of place of supply in case of software/design services related to Electronics Semi-conductor and Design Manufacturing (ESDM) industry** • It is clarified that the place of supply of software/design by supplier located in taxable territory to service recipient located in non-taxable territory by using sample prototype hardware / test kits in a composite supply, where such testing is an ancillary supply, is the location of the service recipient as per Section 13(2) of the IGST Act. Provisions of Section 13(3)(a) of IGST Act do not apply separately for determining the place of supply for ancillary supply in such cases.
10.	**119/2019-Central Tax, Dt-11.10.2019**	➢ **Clarification regarding taxability of supply of securities under Securities Lending Scheme, 1997** • A transaction in securities which involves disposal of securities is not a supply in GST and hence not taxable. • The activity of lending of securities is not a transaction in securities as it does not involve disposal of securities. • The lending fee charged from the borrowers of securities has the character of consideration and this activity is taxable in GST. • The supply of lending of securities is leviable to GST@18%.

		• With effect from 1st October, 2019, the borrower of securities shall be liable to discharge GST under reverse charge mechanism (RCM). The nature of GST to be paid shall be IGST under RCM.
11.	**120/2019-Central Tax, Dt-11.10.2019**	➢ **Clarification on the effective date of explanation** • The notification stating- The term 'business' shall not include any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities.". shall be effective since **21.09. 2017**.
12.	**121/2019-Central Tax, Dt-11.10.2019**	➢ **Clarification related to supply of grant of alcoholic liquor** • Service by way of grant of alcoholic liquor license, against consideration in the form of license fee or application fee is neither a supply of goods nor a supply of service. Central Government decided to exempt service provided or agreed to be provided by way of grant of liquor license by the State Government, against consideration in the form of license fee or application fee. • This special dispensation applies only to supply of service by way of grant of liquor licenses by the State Governments as an agreement between the Centre and States and has no applicability or precedence value in relation to grant of other licenses and privileges for a fee in other situations, where GST is payable.
13.	**Internal Circular No.35A of 2019 Dt-19.10.2019**	➢ **Verification of TRAN-1 credits** **1. Credit as per revised return under MVAT:** • Earlier by Internal Circular No. 1A of 2018 and 23A of 2018, instructions had been given to allow credit in TRAN-1, as per original MVAT return for the period ending on 30th June 2017 and not to allow credit as per the revised MVAT return for the said period. • It has been brought to our notice that there are some cases, in which the credit in TRAN-1 u/s 140(1) of the MGST Act is being denied. In this regard, following guidelines are being issued, for different situations, to allow TRAN-1 credit u/s 140(1): **Situation 1:** A dealer has mentioned an amount in his MVAT original return field *"excess credit claimed as refund in this return"* for the period ending on 30th June 2017. Actually, this dealer desired to carry forward the excess MVAT credit in TRAN-1 and hence was required to mention such amount in MVAT return field *"excess credit carried forward to subsequent tax period".* Realising the mistake, the dealer corrects the mistake and:

		a) Files revised MVAT return and mentions same amount in the field *"excess credit carried forward to subsequent tax period".* **Clarification:** In this situation, the credit claimed in TRAN-1 may be allowed. b) Files revised MVAT return and mentions higher amount in the field *"excess credit carried forward to subsequent tax period".* **Clarification:** In this situation, the credit may be allowed to be claimed in TRAN-1, equal to the amount of refund claimed as per the original return. The difference in amount of such credit as per the original return and the revised return can be considered during MVAT assessment proceedings of the said dealer. In case, such dealer has not applied in e-501 for MVAT refund, then the dealer may make a request in writing to the nodal authority. The nodal authority, after verification of such request, shall send it to the Zonal Selection Committee through proper channel. c) Files revised MVAT return and mentions lesser amount in the field *"excess credit carried forward to subsequent tax period".* **Clarification:** In this situation, the credit may be allowed to be claimed in TRAN-1, as per the revised return. **Situation 2:** A dealer has carried forward credit in revised MVAT return for the period ending on 30th June 2017 but such amount is more than amount of credit carried forward by him in his original MVAT return. **Clarification:** In this situation, the credit, carried forward in original return, shall be allowed to be taken in TRAN-1. As explained on page 2, difference in credit claimed and credit allowed can be considered during MVAT assessment. **Situation 3:** A dealer has carried forward credit in revised MVAT return but such amount is less than amount of credit carried forward by him in his MVAT original return for the period ending on 30th June 2017. **Clarification:** In this situation, the amount of excess credit carried forward by him in the revised MVAT return (i.e. lesser amount), for the period ending on 30th June 2017 should be considered for the purpose of allowing TRAN-1 credit claim. **Situation 4:** A dealer has claimed refund and has also carried forward balance credit in his original MVAT return for the period ending on 30th June 2017. Subsequently, he files a revised return for the period ending on 30th June 2017, claiming refund as well as carrying forward credit but the amounts so claimed as refund and carried forward as excess credit are different.

Clarification: In this situation, the amount of credit carried forward by him in his original return and the amount of credit carried forward in his revised return shall be compared and the lesser of these two amounts shall be allowed to be claimed in TRAN-1.

It goes without saying that in no case, the dealer shall be eligible for MVAT refund of excess credit as well as to claim it in TRAN-1, in respect of the same credit and hence the MVAT refund application shall not be considered for the grant of refund. In any case, the nodal authorities shall ensure avoidance of such duplicate claims.

2. Verification of CST declarations:

Verification of CST declarations is necessary to determine the credit eligible to be taken u/s 140(1) and u/s 140(4)(a) of the MGST Act.

A. Periods for which verification to be done:

A dealer, who has carried forward credit in his MVAT return for the period ending on 30th June 2017 in his TRAN-1, is expected to furnish details of CST declarations received for the periods starting from 1st April 2015 to 30th June 2017.

Nodal authorities are expected to verify CST declarations, only for the years or periods for which credit is being carried forward.

B. CST declarations received after filing of TRAN-1:

It is also noticed that some dealers have claimed lesser credit in TRAM-1 u/s 140(1) than the amount of credit carried forwaixi in their MVAT returns for the period ending on 30th June 2017 because they were not in possession of all CST declarations. Subsequently, such CST declarations may have been received by them.

Clarification: In such cases, credit claimed in TRAN-1 u/s 140(1), supported by valid CST declarations, should only be allowed. However, in any case, as provided in the proviso to sec. 140(1), such dealers may ask for MVAT refund, if otherwise eligible. In case, such a dealer has not filed an application for refund in e-501, then he may make a request in writing for taking up his case for MVAT/CST assessment to grant MVAT refund. The nodal authority, after verification of such request shall send the application to the Zonal Selection Committee through the respective Jt. Commissioner.

3. Verification of MVAT credits:

A. Mismatch of VAT credit:

Earlier, by Internal Circular No 23A of 2018, the nodal authorities had been asked to verify MVAT setoff on the basis of the EIU data and the SAP portal data *[BI Launch pad].* In case of mismatch, instructions were given to issue notice in FORM-603. Such

verification may have already been done. In case, any such verification is pending in any case, then it need not be done now by the nodal authorities. Instead, EIU would communicate such reports to the nodal authorities after data analysis and recommend suitable cases for MVAT assessment etc.

B. **Verification of MVAT credit, in respect of cases, allotted to central tax authorities:** Earlier, administrative instructions, had been given that after verification of MVAT credit in TRAN-1 is completed, in respect of a dealer, allotted to the central tax authorities, a report should be submitted to the respective central tax authority and the central tax authority was expected to complete further process by issuing notice in DRC-01 etc. and vice versa.

These instructions are modified and so henceforth, after verification of VAT credit claims in TRAN-1, in respect of cases allotted to the central tax authorities, further action shall also be initiated and completed by the respective nodal authorities i.e. issuing DRC-01A, DRC-01 and so on.

4. TRAN-1 verification process:

A. **Issuing of DRC-01A & DRC-01**

Proceedings u/s 73 must have been initiated by issuing show cause notice along with summary in DRC-01 */Rule 142(1)(a)J.* Rule 142 has now been amended by notification No. 49 dated 9th Oct. 2019. In view of this amendment, it is now necessary to communicate details of any tax and interest, as ascertained by the nodal authority, in Part A of the newly introduced Form DRC-01A before issuing show cause notice and summary in DRC-01. Such communication in DRC-01A may be made physically to the dealers till this functional utility becomes available on the GSTN BO System.

B. **Intimation in DRC-03:** Dealers must have been informing about the payments made by them in Form DRC-03 *[rule 142(2)].* Now, by virtue of the amendment to rule 142 *[Notification No. 49 dated 9th Oct. 2019]* , where a dealer, on whom DRC-01A has been served, makes partial payment of the amount communicated to him or desires to file any submissions against the liability proposed in DRC-01A, then he may make such submission in Part B of FORM GST DRC-01A. Normal compliances are expected to be filed by dealers in DRC-03, instead of GSTR-3B.

C. **Issuing of DRC-07:**

In case, an order in DRC-07 has already been issued earlier physically, then such orders in DRC-07 should now be issued through the system. In this case, the actual date of service of DRC-07, which was physically served on the dealer, should be entered in the system.

		5. Interest u/s 50 on *excess* credit availed in TRAN-1: Clarification has been sought by the nodal authorities as regards the applicability of interest u/s 50 of the MGST Act on excess credit in TRAN-1. In this regard, clarification is given as follows: 1. Interest on excess credit "availed": Interest u/s 50 is payable in case excess credit has been "availed" in TRAN-1 by a dealer. In other words, mere availment of excess credit in TRAN-1 is sufficient to attract interest u/s 50 of the MGST Act and such excess credit need not have been "utilized" to discharge GST liability. Thus, interest u/s 50 shall become payable, in respect of such excess credit claim, from the date of filing of TRAN-1 till the date the dealer reverses such excess credit in GSTR-3B *(as per earlier instructions)* or makes payment and informs either in DRC-03 or in Part B of DRC-01A. 2. Revised TRAN-1: In case, a dealer has filed a revised TRAN-1 and has increased the amount of MVAT credit, which is found to be inadmissible, then interest shall be payable u/s 50 from the date of submission of such revised TRAN-1, in respect of such inadmissible credit claimed in revised TRAN-1.
For detailed Notifications kindly follow below link– http://www.cbic.gov.in/htdocs-cbec/gst/central-tax-notfns-2017		

RECENT CASE LAWS

1. Whether reimbursement of expenses to staff are liable to tax and whether RCM is applicable on reimbursement paid to directors.

Applicant	**M/s Alcon Consulting Engineers (India) Pvt. Ltd.**
Journal of Publication	Taxknowledge.com
Date of Ruling	25th September 2019
Ruling Authority	**GST AAR Karnataka**

FACTS

- The applicant is in the business of providing consultancy services, like surface survey and map making, project management consultancy services for construction projects, engineering advisory, etc.
- While providing the above said services, some of the expenses are incurred by their employees on behalf of the Company such as travelling, reimbursement of food and transportation, consumables, etc. and are reimbursed to them periodically.

ISSUE

- Whether the expenses incurred by the Staff members on behalf of the Company exceeding Rs.5,000/- a day and then reimbursed periodically are liable to tax?
- Whether RCM is applicable on remuneration paid to the Directors?

HELD

- The amount paid by the employee to the supplier of service is covered under the term "**consideration**" defined in **clause (31) of Section 2** of the CGST Act 2017, as if it is paid by the applicant himself for the services received by them on behalf of the company.
- This amount reimbursed by the applicant to the employee later on would not amount to consideration for the supplies received as the services of the employee to his employer in the course of or in relation to his employment, covered under **Clause 1 of the Schedule III**, is not a supply of goods or supply of services and hence the same is not liable to tax.
- As regards the remuneration to the Directors paid by the applicant, the services provided by the Directors to the Company are not covered under clause (1) of the Schedule III to the Central Goods and Services Tax Act, 2017 as the Director is not the employee of the Company.
- The remuneration paid to the Director of the applicant company is liable to tax under RCM under sub-section (3) of section 9 in the hands of the applicant company as it is covered under entry no. 6 of **Notification No. 13/2017-Central Tax (Rate) dated 28.06.2017**

2. No GST on Profit Sharing Agreement between shareholders and the company.

Applicant	**Venkataswamy Jagannathan**
Journal of Publication	Order No.19/AAR/2019
Date of Ruling	21st May2019
Ruling Authority	**AAR- Tamil Nadu**

FACTS

- The applicant is employed in Star Health and Allied Insurance Company Limited (SHA), as Chairman and managing Director and also a stakeholder.
- The applicant entered into a profit sharing agreement with the company that if not less than 51% of the equity shares are transferred in strategic sale or on listing of shares after an IPO at a price not less than Rs. 75/- per share, then the economic benefit arising of such sale or an IPO will be passed on to him by the shareholders.
- The applicant also states that GST will not be applicable on this sharing agreement since it will only arise from and out of his role as an employee of the company and is covered under SI no 1 of Schedule III of Goods and Service Act 2017.

ISSUE

- Will the profit sharing agreement between the applicant as an employee and the shareholders, attract GST in his hands?

HELD

- As per the officer the Profit Sharing Agreement is between various parties who are all current investors/ shareholders of SHA and the applicant. However, the shareholders are not the company and they cannot and do not act on behalf of the company. Hence it is clear that the Profit Sharing Agreement is between the shareholders and the applicant but not between the company and the applicant. Hence, this transaction will not be covered by the SI no 1 of Schedule III as that SI No pertains to services by an employee to employer and not to the shareholders of the employer as is the case here.
- The applicant has a claim to the specified amounts in the event of occurrence of the specified strategic sale or IPO. His claim is contingent on such events occurring. Hence it can be said that the agreement is an **"actionable claim"**.
- The Profit Sharing Agreement between the applicant and various shareholders of SHA is an actionable and claim and is neither a supply nor a supply of services covered under Schedule III to CGST Act and SGST Act and hence is not taxable.

3. GST on supply, erection, installation, commissioning and testing of UPS system for DMRC.

Applicant	**Vertiv Energy Private Limited**
Journal of Publication	Order No.19/AAR/2019
Date of Ruling	4th October 2019
Ruling Authority	**AAR- Maharashtra**

FACTS

- The applicant is engaged in the manufacture of various types of UPS systems which serve as an alternative source of power for a specific period of time in the event of power failure.
- It also supplies installation, commissioning, maintenance and other services to its customers.
- The goods are consigned to DMRC at the time of removal from the manufacturing unit.
- The applicant submits that the goods once removed from the factory and consigned to DMRC's location cannot be diverted by the applicants for supply to any other customer.
- The applicant first supplies the UPS system to DMRC. Thereafter, the applicant also undertakes erection, installation, commissioning and testing etc. of the UPS system.

ISSUE

- Whether the contract entered into with DMRC for supply, erection, installation, commissioning, and testing of UPS system qualifies as a supply of works contract under section 2 (119) of the CGST Act?
- If yes, whether such supply made to DMRC would be taxable at the rate of 12% in terms of Sr. no 3(v) of Notification No 11/2017?

HELD

- Section 2(119) of the CGST Act provides that a contract for construction, erection, installation, maintenance, etc. of immovable property which involves transfer of property in goods during the execution of such contract would qualify as a works contract.
- In the present case, the applicant submits that the UPS system supplied by the applicant is merely fixed to a foundation by way of nuts and bolts for its proper functioning.
- Further, the said UPS system is capable of being dismantled elsewhere. Thus, the UPS system does not result in the emergence of any immovable property.
- In the contract submitted by the applicant the major part of the contract is supply of goods i.e. UPS units. Without these goods the services cannot be supplied by the applicant. Thus it is a case of composite supply.
- Therefore, the GST will have to be paid on the goods at the appropriate rate. Since the principal supply is UPS units, the applicant is liable to pay GST on the whole contract @ 18%.

- The contract entered into with DMRC for supply, erection, installation, commissioning, and testing of UPS system does not qualify as a supply of works contract under Section 2(119) of the CGST Act.

4. Part recovery of parental health insurance coverage from the employees does not amount to Supply of insurance services under GST.

Applicant	**Jotun India Private Limited**
Journal of Publication	Taxknowledge.com
Date of Ruling	4th October 2019
Ruling Authority	**AAR- Maharashtra**

FACTS

- The applicant is a leading manufacturer, supplier and exporter of paints and powder coatings. The Applicant has introduced a parental insurance scheme for the employee's parents.
- The Applicant initially pays the entire premium along with taxes to the insurance company. The insurance company issues a receipt in the name of the company. The Applicant recovers 50% of the premium from the employees who opt for the scheme and the rest 50% is borne by the Applicant.

ISSUE

- Whether the recovery of 50% of insurance premium from the salary of the employees is considered as supply under GST
- Whether the GST will be payable on the same.

HELD

- The Authority after taking into consideration that the Applicant is not in the business of providing insurance coverage and providing parental insurance is not mandatory under any law, non-provision of insurance coverage would not affect the business of Applicant by any means came to a conclusion that the same is not in course or furtherance of business of the Applicant.
- The Authority thus held that recovery of 50% of parental health insurance premium from the employees does not amount to "supply of services" under **Section 7 of the CGST Act, 2017**.

5. What rate of tax shall be applicable for provision of construction service rendered to NCBS?

Applicant	**M/s URC Construction (P) Ltd**
Journal of Publication	KAR ADRG 73
Date of Ruling	23rd September 2019
Ruling Authority	**AAR- Maharashtra**

FACTS

- The applicant states that he has entered into a works contract agreement with the National Centre for Biological Sciences for execution of works contract for construction of the building for laboratories and associated facilities at NCBS Campus in Bangalore. NCBS began as a separate center of the Tata Institute of Fundamental Research which receives grants from the Department of Atomic Energy.
- The applicant states that in this the transaction, two parties are involved viz., the contractor and the contractee and both parties have different opinions regarding the issue.
- The applicant, who is the contractor is of the opinion that under the GST Act composite supply of works contract services are taxable at 12% or at 18%.

ISSUE

- What is the applicable rate of tax for the provision of construction service rendered to NCBD?

HELD

- The applicant has themselves stated that the NCBS began as a separate center of TIFR in 1992, first in the Molecular Biology Unit at TIFR in Bombay, and then at the IISc Campus in Bangalore where its laboratories are established. The Government of India has agreed to fund the institute and the institute was to function as an autonomous unit under the aegis of TIFR.
- Hence NCBS is neither set up by an Act of Parliament or State Legislature nor is established by any Government.
- Further, the council which administers this institute has only four members appointed by the Government and hence the government does not have more than 90% control over it. One more important point to note is that this institute is not established to carry out a function entrusted by the Government. Hence, for all these reasons, NCBS is not covered under the definition of a "Government Entity" as per CGST act 2017.
- Hence it is not liable for tax at 6% CGST and 6 % SGST and is taxable at 9% CGST and 9% SGST.

6. Membership Fees received by Clubs for convenience of members is chargeable under the GST Regime as supply

Applicant	**Rotary Club of Mumbai Western Elite**
Journal of Publication	Taxknowledge.com
Date of Ruling	4th October 2019
Ruling Authority	**AAR- Maharashtra**

FACTS

- Rotary club receives fees from its members which is utilized for the purposes of expenditure on meetings and communication, subscription for Rotary regional magazine, district per capita dues, etc.

- Club holds Programs, seminars which are only for Rotary members and non-members are not allowed to take part.

ISSUE

- Whether the amount collected by the applicant towards convenience of members and pool together for paying various above mentioned considered as a supply of goods or services to members under GST as the applicant claims that the same is not in course or furtherance of business and neither any service are rendered nor any goods are traded.

HELD

- The Authority held that only the membership fees recovered from their members, spent towards various administrative expenses will be exempted.

- The definition of "business" includes provision by a club, for a consideration, facilities or benefits to its members. Keeping the above definition in mind, the Authority held that the amount collected by the Rotary club is towards the convenience of its members and pooled together for paying various expenses. Thus, the said transaction by the applicant to its members is supply of goods/services and is liable to GST.

7. No Input Tax Credit on goods and services distributed as free samples.

Applicant	**M/S Surfa Coats (India) Pvt. Ltd.**
Journal of Publication	KAR ADRG 28/2019
Date of Ruling	12th September 2019
Ruling Authority	**AAR- Karnataka**

FACTS
• Surfa Coasts (India) (P.) Ltd (Applicant) company was engaged in the business of manufacturing decorative paints meant for interiors as well as exterior surfaces. • Certain incentives have been provided in the form of TV's, Washing Machines, Foreign and local trips and even various Gold schemes to the dealers and painters on completion of certain targets and to boost up sales of the company without consideration. • The company duly pays GST on the inward supplies of such incentives purchased from registered suppliers.
ISSUE
• Whether the applicant can claim ITC on purchase of such goods or services which have been distributed as free samples to the dealers and painters as it is purchased in course of business.
HELD
• Karnataka AAR held that ITC cannot be claimed on inward supply of such incentives as it is distributed to dealers without any consideration which is a pre-requisite to get classified as supply under sec 7 of the acts. • Further the AAR drawn attention towards sec 17(5)(h) of the acts which states No ITC is allowed on goods lost, stolen, destroyed, written off or disposed by way of gift or free samples.

8. GST to be charged on Interest, Late Fees and Penalty for which invoice raised after GST regime.

Applicant	**M/S Chennai Port Trust**
Journal of Publication	35/AAR/2019
Date of Ruling	26th July 2019
Ruling Authority	**AAR- Tamil Nadu**

FACTS
• The applicant is engaged in the supply of port services and incidental supply of goods like disposal of discarded assets. Applicant leases port spaces and collects lease rents and also collects interest, late fee penalty in case of belated payments for which a separate invoice is raised. • There are quite a few cases where they have raised invoices during Service Tax regime and paid the service tax as per the then existed POT rules, but they are receiving interest, late fee, penalty in the GST regime for the reason that consideration for such services are received belatedly.
ISSUE
• Whether the amount received on or after 1st July 2017 towards interest, late fees, penalty relating to the services other than the continuous supply of service rendered by the applicant before 1st July 2017 are liable to GST.
HELD
• AAR held that amount received on or after 01.07.2017 towards interest, late fee penalty relating to the services of lease/rent, due to delayed payment of consideration for those services rendered by the applicant before 01.07.2017, are liable to GST, provided separate invoice for such interest, late fee penalty is raised on or after 01.07.2017. • However, if the payment of interest, late fee penalty is received after 01.07.2017 for an invoice raised before 01.07.2017 is not liable to GST.

9. No GST on delayed payment charges on reimbursement amount paid.

Applicant	**SPFL Securities Ltd**
Journal of Publication	Order No. 06/AAAR/18/4/2019
Date of Ruling	18th April 2019
Ruling Authority	**Authority of Advance Ruling (AAR)**

FACTS
• The applicant is engaged primarily in the business of providing services of stockbroking, i.e., purchasing and selling of shares on behalf of the clients on exchange platform by virtue of being a recognized BSE/NSE appointed stockbroker. • It is purely a deferment of liability only which arose since the payment was not made within the stipulated period of time by the client to the Stock Exchange for purchase of securities.
ISSUE
• Taxability on Delayed Payment Charges on reimbursement of amount by client to applicant, where client failed to pay amount paid to Stock Exchanges for purchase of securities with T+1 (trading day plus one day) under SEBI Regulation norms and deducted by Stock Exchange from applicant account being purchase consideration of securities which are neither goods nor service under GST.
HELD
• Since the service of buying and selling of securities which is exempted under GST, as per the definitions of 'goods' and 'services' under section 2(52) and section 2(102) respectively, the corresponding delayed payment charges which are also linked to the above service of trading of securities should also stand exempt under GST. • Applicant is not liable to pay GST on the delayed payment charges on reimbursement of amount by client to Applicant, where client failed to pay amount paid to Stock Exchange for purchase of securities with T+1 (trading day plus one day) under SEBI Regulation norms and deducted by Stock Exchange from Applicant account being purchase consideration of securities which are neither goods nor services under GST.

10. Applicability of GST for procuring goods and services from the third parties for upkeep and maintenance of the apartments and collecting the monies from its members to pay third party vendors.

Applicant	**M/s Prestige South Apartment Owners Association**
Journal of Publication	Taxknowledge.com
Date of Ruling	17th September 2019
Ruling Authority	**AAR- Karnataka**

FACTS

- M/s Prestige South Apartment Owners Association is an Apartment Owners Association, registered under Karnataka Apartment Ownership Act 1972. They are also registered under the Goods and Services Act, 2017. It is a non-profit organization.
- The applicant has 264 members who are the owners of the apartment.
- The applicant, being the Apartment Owners Association, have been engaged in providing maintenance and repairs of the common area of apartments & Surroundings areas. It procures goods and services from third party vendors for maintenance of the apartments and charges the maintenance charges on its members.
- The applicant collects contribution from its members calculated on the basis of super built-up area owned by the members. In addition, it separately collects contribution towards corpus funds for future contingencies.
- The applicant also pays electricity charges for power consumed towards lightning of common area of the apartment, including parks, community hall, security room, sports area committee room, pumping water to various units, etc. and recovers the same from each of the units in the apartment by raising a debit note indicating their share of charges towards electricity.

ISSUE

- Whether the activity of procuring Goods and Services from the third parties for upkeep and maintenance of the apartments and collecting the monies from its members to pay third party vendors is an activity liable to GST?
- If liable to GST, whether the exemption entry no 77 of the notification 12/2017 Central tax (Rate) dated 28.06.2017 apply for maintenance charges collected from members?
- If exemption is available, whether it is available on per member basis or per flat basis, as some of the members could have more than one flat?
- Whether the exemption as per entry no 77 of notification12/2017 central tax (rate) is a standard exemption that can be claimed irrespective of the amount collected towards maintenance? i.e. if maintenance charges from a member for a month is Rs 10000/-, whether Rs 10000/- liable to GST or Rs 250/- (Rs 10000- 7500) liable to GST?

- Whether the electricity charges paid to BESCOM (Electricity supply authority) for the power consumed towards common facilities and separately recovered from members, liable to GST?

- Whether the Corpus/Sinking Fund collected from members liable to GST?

HELD

- The activity of procuring Goods and Services from third parties for upkeep and maintenance of apartments and collecting the money from its members to pay third parties is an activity liable to GST.

- The exemption of Rs.7500/- in terms of entry no. 77 of Notification NO.12/2017 – Central Tax (Rate) dated 28.06.2017, as amended, is applicable for maintenance charges collected from members.

- The benefits of exemption up to Rs 7500/- is applicable on per flat basis, when members have more than one flat.

- The exemption of Rs 7500/-, in terms of entry no. 77 of Notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017, as amended, on maintenance charges charged by a Resident Welfare Association (RWA) from resident is available only if such charges do not exceed Rs. 7500/- per month per member. In case the charges exceed Rs. 7500/- per month per member, the entire amount is taxable.

- The electricity charges paid to BESCOM for power consumed towards common facilities and separately recovered from members is liable to GST as consideration received for the supply of maintenance services to the members.

- The Corpus Fund or Sinking Fund collected from members is not to liable GST, as it amounts to deposits received towards future supply of services to members.