

CA Test Series

CA Final | Inter | Foundation Test Series

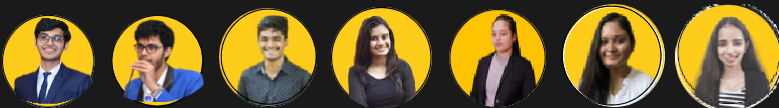


NOTE'S

CA FINAL INDIRECT TAXATION AMENDMENTS NOTES



Consistently Top AIRs from CA Test Series



IDT Amendment notes

Charge of GST

1.RCM not applicable when residential dwelling is used by proprietor as his residence [Notification No. 15/2022 -Central Tax (Rate) w.e.f. 1st January, 2023, Notification No. 15/2022 - Integrated Tax (Rate) w.e.f. 1st January, 2023]

As per notification 12/2017 – CTR as amended by Notification 04/2022 – CTR, Services by way of renting of residential dwelling for use as residence except where the residential dwelling is rented to a registered person are exempt.

The above exemption was not available to registered person, meaning thereby if a prop. is registering his house as place of business, he would not be entitled for exemption and tax shall be payable by him under reverse charge by virtue of entry no. 5AA of notification 13/2017 – CTR.

A writ application has been filed to Hon'ble DHC in case of Seema Gupta vs UOI (10986/2022 & CM Appl. 32131/2022) for challenging notification 4/2022 CTR dated 28.06.2017, wherein it has been decided that if the residential dwelling is used by RP for its own personal use as residential capacity, then the exemption would still available to him. Accordingly, government has inserted an explanation as below:

Services by way of renting of residential dwelling for use as residence except where the residential dwelling is rented to a registered person are exempt.

(EXPLANATION IS INSERTED BELOW)

Explanation. - For the purpose of exemption under this entry, this entry shall cover services by way of renting of residential dwelling to a registered person where, –

(i) the registered person is proprietor of a proprietorship concern and rents the residential dwelling in his personal capacity for use as his own residence; and

(ii) such renting is on his own account and not that of the proprietorship concern.

2. Expanding the scope of Government, under reverse charge notification [Notification No. 02/2023-Central Tax (Rate), Notification No. 02/2023- Integrated Tax (Rate) dated 27th February, 2023] w.e.f. 1st March, 2023.

In Explanation in clause (h) of N. No. 13/2017 (RCM Service notification), for the words 'and State Legislature' the words 'State Legislatures, Courts and Tribunals' shall be substituted.

Accordingly, the Explanation reads as follows "provisions of this notification, in so far as they apply to the Central Government and State Governments, shall also apply to the Parliament, State Legislatures, Courts and Tribunals." Now RCM provisions will apply to Service provided by Courts & Tribunal as they apply currently to Central Govt. & State Govt. (Entry no 5, 5A of N, No. 13/2017).

[Please note that services by court or tribunal are in schedule III (negative list of supply), however, the definition has expanded only for limited purpose of entry 5 and 5A and not for all the services provided by court or tribunals]

Exemptions under GST

3. Clarification on Educational institution for conduct of examination

[Notification No. 01/2023-

Central Tax (Rate) dated 28th February, 2023 w.e.f. 1st March, 2023], Notification No. 01/2023-Integrated Tax (Rate) dated 28th February, 2023 w.e.f. 1st March, 2023]

It is clarified that any authority, board or body set up by the Central Government or State Government including National Testing Agency for conduct of entrance examination for admission to educational institutions shall be treated as educational institution for the limited purpose of providing services by way of conduct of entrance examination for admission to educational institutions.

4. Exemption from CGST available to following services has been withdrawn [Notification No. 15/2022 CT(R) dated 30.12.2022]:

Service by way of access to a road or a bridge on payment of annuity were exempt. However, CATESTSERIES.ORG

w.e.f.1stJanuary, 2023,the saidserviceswillbecometaxable.

5.

ApplicabilityofGSTonaccommodationservicesuppliedbyAirForceMesstoitspersonnel:

All services supplied by Central Government, State Government, Union Territory or local authority to any person other than business entities (barring a few specified services such as services of postal department, transportation of goods and passengers etc.) are exempt from GST.

Therefore, as recommended by the GST Council, it is hereby clarified that accommodation services provided by Air Force Mess and other similar messes, such as, Army mess, Navy mess, Paramilitary and Police forces mess to their personnel or any person other than a business entity are exempt.

6. Applicability of GST on incentive paid by MeitY to acquiring banks under Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions

Under the Incentive scheme for promotion of RuPay Debit Cards and low value BHIMUPI transactions, the Government pays the acquiring banks an incentive as a percentage of value of RuPay Debit card transactions and low value BHIM-UPI transactions up to Rs.2000/.

The Payments and Settlements Systems Act, 2007 prohibits banks and system providers from charging any amount from a person making or receiving a payment through RuPay Debit cards or BHIM-UPI.

The service supplied by the acquiring banks in the digital payment system in case of transactions through RuPay/BHIM UPI is the same as the service that they provide in case of transactions through any other card or mode of digital payment. The only difference is that the consideration for such services, instead of being paid by the merchant or the user of the card, is paid by the central government in the form of incentive. However, it is not a consideration paid by the central government for any service supplied by the acquiring bank to the Central Government.

The incentive is in the nature of a subsidy directly linked to the price of the service and the same does not form part of the taxable value of the transaction in view of the provisions of section 2(31) and section 15 of the CGST Act, 2017.

Value of Supply

7. Taxability of No Claim Bonus offered by Insurance companies [Circular No. 186/18/2022-GST dated 27th December, 2022]

As per practice prevailing in the insurance sector, the insurance companies deduct No Claim Bonus from the gross insurance premium amount, when no claim is made by the insured person during the previous insurance period(s). The customer/ insured procures insurance policy to indemnify himself from any loss/ injury as per the terms of the policy, and is not under any contractual obligation not to claim insurance claim during any period covered under the policy, in lieu of No Claim Bonus.

It is, therefore, clarified that there is no supply provided by the insured to the insurance company in form of agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s) and No Claim Bonus cannot be considered as a consideration for any supply provided by the insured to the insurance company.

Deduction of No Claim Bonus permissible as Discount: As per S. 15(3)(a) of CGST Act, value of supply shall not include any discount which is given before or at the time of supply if such discount has been duly recorded in the invoice issued in respect of such supply. Insurance companies make the disclosure in policy documents. It is, therefore, clarified that No Claim Bonus (NCB) is a permissible deduction. GST shall be leviable on actual insurance premium amount, payable by the policy holders to the insurer, after deduction of No Claim Bonus mentioned on the invoice.

Input Tax Credit

8. Amendment in provision stating Non – payment of Invoice value to Supplier within 180 days [Rule 37 vide Notification No. 26/2022 – Central Tax dated 26th December, 2022 w.e.f. 1st October, 2022] (BOLD AND ITALIC WORDS ARE INSERTED)

(1) A registered person, who has availed of input tax credit on any inward supply of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, but fails to pay to the supplier thereof, the amount towards the value of such supply WHETHER WHOLLY OR PARTLY (INSERTED) along with the tax payable thereon, within the time limit specified in the second proviso to sub-section (2) of section 16, shall pay OR REVERSE (INSERTED) an amount equal to the input tax credit availed in respect of such supply PROPORTIONATE TO THE AMOUNT NOT PAID TO THE SUPPLIER (INSERTED) along with interest payable thereon under section 50, while furnishing the return in FORM GSTR-3B for the tax period immediately following the period of one hundred and eighty days from the date of the issue of the invoice:

However, value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.

Further, additions in value of supplies u/s 15(2)(b) of CGST Act, shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.

(2) Whereinput tax credit referred to in sub-rule (1).
(UNCHANGED)

Impact:

If the recipient has not paid part amount to the supplier within 180 days, the reversal would only be in proportion to the unpaid amount instead of full input tax credit.

9. Insertion of New Rule 37A: [Notification No. 26/2022 – Central Tax dated 26th December, 2022]

Where input tax credit has been availed by a registered person in the return in FORM GSTR-3B for a tax period in respect of such invoice or debit note, the details of which have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 or using the

invoice furnishing facility, but the return in FORM GSTR-3B for the tax period corresponding to the said statement of outward supplies has not been furnished by such supplier till the 30th day of September following the end of financial year in which the input tax credit in respect of such invoice or debit note has been availed, the said amount of input tax credit shall be reversed by the said registered person, while furnishing a return in FORM GSTR-3B on or before the 30th day of November following the end of such financial year

However, where the said amount of input tax credit is not reversed by the registered person in a return in FORM GSTR-3B on or before the 30th day of November following the end of such financial year during which such input tax credit has been availed, such amount shall be payable by the said person along with interest thereon under section 50.

Impact and Analysis:

❖ In case a supplier files GSTR – 1, but has not filed GSTR 3B (i.e., taxes are not paid) by 30th September, of succeeding financial year, the recipient would be liable to reverse input tax credit availed by him in GSTR 3B on or before 30th day of November following the end of such financial year. In case of non-reversal of input tax credit by recipient by 30th November, he would be liable to pay along with interest as well u/s 50.

Place of Supply

10. Clarifications in respect of proviso to Section 12(8) of IGST Act, 2017 [Circular No. 184/16/2022- GST dated 27th December, 2022]

As per proviso to section 12(8) of IGST Act, where destination of goods is outside India, the place of supply of transportation services shall be outside India.

Query	Clarification
1. Whether such supply is inter- state supply or Intra-state supply?	It would be inter-state supply as per section 7(5) of IGST Act as place of supply is outside India and location of supplier is in India. Thus, IGST is payable.

2. Whether the recipient of service of transportation of goods would be eligible to avail input tax credit in respect of the said input service of transportation of goods?	<p>Yes, the recipient of service of transportation of goods shall be eligible to avail input tax credit in respect of the IGST so charged by the supplier, subject to the fulfilment of other conditions laid down in section 16 and 17 of the CGST Act.</p> <p>[Code to be used: '96-Foreign Country' from the list of codes in the dropdown menu available on the portal in FORM GSTR-1.]</p>
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Registration under GST

11. Miscellaneous Amendments in procedure for registration – Amendment in Rules relating to registration: [Notification No. 26/2022 – Central Tax dated 26th December, 2022]

Prior provision	Amended provision	Impact
Before applying for registration, declare his Permanent Account Number, mobile number, e-mail address, State or Union territory in Part A of FORM GST REG-01 on the common portal. [R.8(1)]	Before applying for registration, declare his Permanent Account Number, mobile number, e-mail address, State or Union territory in Part A of FORM GST REG-01 on the common portal.	Mobile number and email ID will not be a general one. Mobile number and email ID which are linked with PAN will be verified.

<p>The Permanent Account Numbers shall be validated online by the common portal from the database maintained by the Central Board of Direct Taxes.</p> <p>[R.8(2)(a)]</p>	<p>The Permanent Account Numbers shall be validated online by the common portal from the database maintained by the Central Board of Direct Taxes <u>and shall also be verified through separate one-time passwords sent to the mobile number and e-mail address linked to the Permanent Account Number</u></p>	
<p>Rule 8(2)</p> <p>(b) The mobile number declared under sub-rule (1) shall be verified through a one-time password sent to the said mobile number; and</p>	<p>Rule 8(2)</p> <p>(b) The mobile number declared under sub-rule (1) shall be verified through a one-time password sent to the said mobile number; and</p>	<p>(As per above)</p>
<p>(c) The e-mail address declared under sub-rule (1) shall be verified through a separate one-time password sent to the said e-mail address.</p>	<p>(c) The e-mail address declared under sub-rule (1) shall be verified through a separate one-time password sent to the said e-mail address.</p>	

<p>Date of Submission of Application in case of Aadhar Authentication:</p> <p>(4A) Where an applicant, other than a person notified under sub-section (6D) of section 25, opts for authentication of Aadhaar number, he shall, while submitting the application under sub-rule (4), undergo authentication of Aadhaar number and the date of submission of the application in such cases shall be the date of authentication of the Aadhaar number, or fifteen days from the submission of the application in Part B of FORM GST</p>	<p>“(4A) Where an applicant, other than a person notified under sub-section (6D) of section 25, opts for authentication of Aadhaar number, he shall, while submitting the application under sub-rule (4), undergo authentication of Aadhaar number and the date of submission of the application in such cases shall be the date of authentication of the Aadhaar number, or fifteen days from the submission of the application in Part B of FORM GST REG-01 under sub-rule (4), whichever is earlier.</p>	<p>On a sampling basis, government may require certain persons who are identified on risk parameters to undergo biometric based Aadhar authentication along with original documents and photograph will be captured at GST Facilitation Centre.</p>
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<p>REG-01 under sub-rule(4), whichever is earlier.</p>	<p>Provided that every application made under sub-rule (4) by a person, other than a person notified under sub-section (6D) of section 25, who has opted for authentication of Aadhaar number and identified on the common portal, based on data analysis and risk parameters, shall be followed by biometric-based Aadhaar authentication and taking photograph of the applicant where the applicant is an individual or of such individuals in relation to the applicant as notified under sub-section (6C) of section 25 where the applicant is not an individual, along with the verification of the original copy of the documents uploaded with the application in FORM GST REG-01 at one of the Facilitation Centres notified by the Commissioner for the purpose of this sub-rule and the application shall be deemed to be complete only after completion of the process laid down under this proviso</p>	
<p>Rule 8(4B): Not there</p>	<p>The Central Government may, on the recommendations of the Council, by notification specify the States or Union</p>	<p>List of persons who will not be required to follow Rule 8(4A) will</p>

	territories where in the proviso to sub-rule (4A) shall not apply	be notified.
Rule 8(5): On receipt of an application under sub-rule (4), an acknowledgement shall be issued electronically to the applicant in FORM GST REG-02.	Rule 8(5): On receipt of an application under sub-rule (4) or (4A), an acknowledgement shall be issued electronically to the applicant in FORM GST REG-02.	Acknowledgment
Rule 9(1)(aa) Not there	Rule 9 (1) (aa) A person, who has undergone authentication of Aadhaar number as specified in sub-rule (4A) of rule 8, is identified on the common portal, based on data analysis and risk parameters, for carrying out physical verification of places of business.	A person who was required to go through biometric Aadhaar Authentication, will get GST Registration only after physical verification.
Rule 9(2)(aa) Not there	Rule 9 (2) (aa) A person, who has undergone authentication of Aadhaar number as specified in sub-rule (4A) of rule 8, is identified on the common portal, based on data analysis and risk parameters, for carrying out physical verification of places of business	If the registration application made by A person who was required to go through biometric Aadhaar Authentication, is found deficient, SCN shall be issued within 30 days of submission of application.

12. Amended Rule 10B of CGST Rules:

As per section 25(6A) of CGST Act, If an Aadhaar number is not assigned to an existing registered person, such person shall be offered alternate and viable means of identification in the prescribed manner. Such manner has been prescribed as follows:

If Aadhaar number has not been assigned to the person required to undergo authentication of the Aadhaar number, such person shall furnish the following identification documents, namely: –

- (a) his/ her Aadhaar Enrolment ID slip; and
- (b) Bank passbook with photograph; or
- (c) Voter identity card issued by the Election Commission of India; or
- (d) Passport; or
- (e) Driving license issued by the Licensing Authority

However, once Aadhaar number is allotted to such person, he shall undergo the authentication of Aadhaar number within a period of 30 days of the allotment of the Aadhaar number.

In case of failure to undergo Aadhaar authentication/furnish proof of possession of Aadhaar number/furnish alternate and viable means of identification, registration allotted to such person shall be deemed to be invalid and the other provisions of CGST Act shall apply as if such person does not have a registration.

13. Persons/class of persons exempt from Aadhaar authentication [S. 25(6D)] [Effective from 26.12.2022]

Section 25(6D) stipulates that above provisions shall not apply to such person or class of persons or any State or Union territory or part thereof, as may be notified. Following persons have been notified in this regard:

- ❖ A person who is not a citizen of India
- ❖ Department or establishment of State Government or Central Government
- ❖ Local authority

- ❖ Statutory body
- ❖ Public Sector Undertaking
- ❖ A person applying for Unique Identity Number under section 25(9)

14. Cancellation of TDS Registration and TCS Registration on Application by Regd. person – Amendment in Rule 12 of CGST Rules [Notification No. 26/2022 – Central Tax dated 26th December, 2022]

In rule 12(3), cancellation of Tax deductor registration or tax collector registration was possible only on inquiry or pursuant to any other proceedings, by virtue of this notification, cancellation of registration is also possible on a request made in writing by a person to whom a registration has been granted.

Rule 12(3): Where, ON A REQUEST MADE IN WRITING BY A PERSON TO WHOM A REGISTRATION HAS BEEN GRANTED OR upon an enquiry or pursuant to any other proceeding under the Act, the proper officer is satisfied that a person to whom a certificate of registration in FORM GST REG-06 has been issued is no longer liable to deduct tax at source under section 51 or collect tax at source under section 52, the said officer may cancel the registration issued

Documentation & E – Way Bill

15. Name, Address and PIN code to be prescribed by OIDAR service provider or through an E – commerce operator [Notification No. 26/2022 – Central Tax dated 26th December, 2022] [Amendment in Rule 46]

Where any taxable service is supplied by or through an electronic commerce operator or by a supplier of online information and database access or retrieval services to a recipient who is unregistered, irrespective of the value of such supply, a tax invoice issued by the registered person shall contain the name and address of the recipient along with its PIN code and the name of the State and the said address shall be deemed to be the address on record of the recipient.

16. Particulars of Invoice–Cum Bill of Supply [Notification No. 26/2022 – Central Tax dated 26th December, 2022]

Invoice cum bill of supply shall contain particulars as per Rule 46 or rule 54 or rule 39 (as the case may be). (Invoice cum bill of supply is a document issued by registered person supplying taxable and exempt supplies together to an unregistered recipient).

17. Clarifications on E – Invoice Applicability [Circular No. 186/18/2022-GST dated 27th December, 2022]:

Issue: Whether the exemption from mandatory generation of e – invoices, in terms of Notification No. 13/2020-Central Tax, dated 21st March, 2020, as amended, is available for the entity as whole, or whether the same is available only in respect of certain supplies made by the said entity?

Clarification: exemption from generation of e-invoices is for the entity as a whole and is not restricted by the nature of supply being made by the said entity.

Example: A Banking Company providing banking services, may also be involved in making supply of some goods, including bullion. The said banking company is exempted from mandatory issuance of e- invoice in terms of Notification No. 13/2020-Central Tax, dated 21st March, 2020, as amended, for all supplies of goods and services and thus, will not be required to issue e-invoice with respect to any supply made by it.

18. E-way bill to be generated for transporting imitation jewellery [Rule 138(14) amended] [Notification No. 26/2022 CT dated 26.12.2022]

Rule 138(14) illustrates the cases where e-way bill is not required to be generated. One such case is where jewellery, goldsmiths' and silversmiths' wares and other articles (Chapter 71) are being transported. Thus, jewellery, goldsmiths' and silversmiths' wares and other articles (Chapter 71) can be transported without generating e-way bill.

This provision has been amended to provide that henceforth, e-way bill needs to be generated for transporting imitation jewellery.

Payment of Tax, TDS, TCS

19. New Rule Inserted to deal with difference in liability reported in statement of outward supplies and that reported in return [Rule 88C] [Notification No. 26/2022 – Central Tax dated 26th December, 2022]

(1) Where the tax payable by a registered person, furnished by him in FORM GSTR-1 or IFF in respect of a tax period, exceeds the amount of tax paid by such person GSTR-3B, by such amount and such percentage (not specified), the said registered person shall be intimated of such difference in Part A of FORM GST DRC-01B, and a copy of such intimation shall also be sent to his e-mail address highlighting the said difference and directing him to:

(a) pay the differential tax liability, along with interest under section 50, through FORM GST DRC- 03; or

(b) explain the aforesaid difference in tax payable on the common portal, within a period of seven days.

(2) The registered person shall, either: -

(a) pay the amount of the differential tax liability, as specified in Part A of FORM GST DRC-01B, fully or partially, along with interest under section 50, through FORM GST DRC-03 and furnish the details thereof in Part B of FORM GST DRC-01B or,

(b) furnish a reply electronically incorporating reasons in respect of that part of the differential tax liability that has remained unpaid, if any, in Part B of FORM GST DRC-01B, within the period specified.

(3) Where any amount specified in the intimation remains unpaid within the period specified in that sub-rule and where no explanation or reason is furnished by the registered person in default or where the explanation or reason furnished by such person is not found to be acceptable by the proper officer, the said amount shall be recoverable in accordance with the provisions of section 79 (recovery proceedings).

Further, amendment has been made in rule 59(6) of CGST Rules, stating a registered person, to whom an intimation has been issued on the common portal under the provisions of sub-rule (1) of rule 88C in respect of a tax period, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1 or using the invoice furnishing facility for a subsequent tax period, unless he has either deposited the amount specified in the said intimation or has furnished a reply explaining the reasons for any amount remaining unpaid, as required under the provisions of Rule 88C(2).

20. Electronic Cash Ledger to be updated on the basis of e-Scroll of the RBI in case of failure of bank to communicate details of Challan Identification Number to the common portal [Rule 87(8) amended] [Notification No. 26/2022 CT dated 26.12.2022]

In cases where bank fails to communicate the Challan Identification Number (CIN) details of taxes paid through e-payment mode to GST System for updating the Electronic Cash Ledger (ECL), the ECL of such taxpayers are updated next day on the basis of RBI e-Scroll file containing the successful payment made against the CINs as shared by banks with RBI. However, there is presently no provision in the CGST Rules, 2017 providing for such updation of ECL based on e-Scroll of RBI.

In this regard, CAG highlighted the need for having a specific provision in law for updation of ECL on the basis of e-Scroll of RBI. Thus, in order to regularize the process of updating ECL of the taxpayer on the basis of e-Scroll data received from the RBI in the cases where payment has been received successfully, but bank fails to share the signed CIN with GST System, following proviso has been inserted to rule 87(8):

Where the bank fails to communicate details of Challan Identification Number to the common portal, the Electronic Cash Ledger may be updated on the basis of e-Scroll of the RBI in cases where the details of the said e-Scroll are in conformity with the details in challan generated in Form GST PMT- 06 on the common portal.

Returns under GST

21. Prescribes late filing fees for Annual return [Notification No. 07/2023 CT dated 31.03.2023]:

Total amount of late fee payable under section 47 from the financial year 2022-23 onwards, by the registered person who fail to furnish annual return by the due date, shall be as follows:

Class of persons	Late fees prescribed
Upto 5 crores	Rs. 50 per day (Rs. 25 CGST, Rs, 25 SGST) or, 0.04% of turnover in the State or Union territory (0.02% CGST+ 0.02% SGST) Whichever is lower
More than 5 crores upto Rs. 20 crores	Rs. 100 per day (Rs. 50 CGST, Rs, 50 SGST) or, 0.04% of turnover in the State or Union territory (0.02% CGST+ 0.02% SGST) Whichever is lower

More than 20 crores	Rs. 200 per day (Rs. 100 CGST, Rs, 100 SGST) or, 0.5% of turnover in the State or Union territory (0.25% CGST+ 0.25% SGST) Whichever is lower
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Refunds under GST

22. Clarification on refund claims by unregistered person whose contracts are cancelled [Circular No. 188/20/2022-GST dated 27th December, 2022]

In case a buyer who had entered into an agreement/ contract with a builder for supply of services of construction of flats/ building, etc. and had paid the amount towards consideration for such service, either fully or partially, along with applicable tax, had to get the said contract/ agreement cancelled subsequently due to non-completion or delay in construction activity in time or any other reasons, in such cases, GST borne by him shall be refunded. Through this circular, government prescribes the manner to claim refund. (Note: The circular is not limited upto construction industry cancellation contracts, it was just the example to understand)

Particulars	Description
Section under which refund is allowed	In terms of 54(8)(e) CGST Act, in cases where the unregistered person has borne the incidence of tax and not passed on the same to any other person, the said refund shall be paid to him instead of being credited to Consumer Welfare Fund
Manner	The unregistered person has to take temporary registration under GST Act and apply for refund under the category 'Refund for Unregistered person.' Following shall also be done: Undergo Aadhaar authentication as per rule 10B of CGST rules, 2017 The applicant shall provide the details of the bank account which is in his name and has been obtained on his PAN.
Statements	Where the refund is claimed by an unregistered person where the agreement or contract for supply of service has been cancelled or terminated: - Rule 89(2) (ka): - A statement containing the details of invoices viz. number, date, value, tax paid and details of payment, in respect of which refund is being claimed along with copy of

	<p>such invoices, proof of making such payment to the supplier, the copy of agreement or registered agreement or contract, as applicable, entered with the supplier for supply of service, the letter issued by the supplier for cancellation or termination of agreement or contract for supply of service, details of payment received from the supplier against cancellation or termination of such agreement along with proof thereof.</p> <p>Rule 89(2) (kb): -</p> <p>A certificate issued by the supplier to the effect that he has paid tax in respect of the invoices on which refund is being claimed by the applicant; that he has not adjusted the tax amount involved in these invoices against his tax liability by issuing credit note; and also, that he has not claimed and will not claim refund of the amount of tax involved in respect of these invoices.</p> <p>Further, it is to be noted that a certificate as above is not required to be furnished in cases where refund is claimed by an unregistered person who has borne the incidence of tax.</p>
Time period for issuance of CN is not yet expired	<p>Where the time period for issuance of credit note under section 34 of the CGST Act has not expired at the time of cancellation/termination of agreement/contract for supply of services, the concerned suppliers can issue credit note to the unregistered person. In such cases, the supplier would be in a position to also pay back the amount of tax collected by him from the unregistered person and therefore, there will be no need for filing refund claim by the unregistered persons in these cases.</p> <p>Accordingly, the refund claim can be filed by the unregistered person only in those cases where at the time of cancellation/termination of agreement/contract for supply of services, the time period for issuance of credit note under section 34 of the CGST Act has already expired.</p>
Relevant date for filing of refund	Date of issuance of letter of cancellation of the contract/ agreement for supply by the supplier will be considered as the date of receipt of the service by the applicant.
Minimum refund amount	No refund shall be claimed if the amount is less than one thousand rupees.
Officer's duties	❖ The proper officer shall process the refund claim filed by the unregistered person in a manner similar to other RFD-01 claims

	<ul style="list-style-type: none"> ❖ Scrutinize the application with respect to completeness and eligibility of the refund claim to his satisfaction and issue the refund sanction order in FORM GSTRFD-06 ❖ Speaking order along with the refund sanction order in FORM GSTRFD-06 shall be uploaded
Proportionate Refund	In cases where the amount paid back by the supplier to the unregistered person on cancellation/termination of agreement/contract for supply of services is less than amount paid by such unregistered person to the supplier, only the proportionate amount of tax involved in such amount paid back shall be refunded to the unregistered person.

Demand and Recovery

23. Clarifications in respect of procedure for issuance of SCN u/s 74 which are converted into section 73 [Circular No. 185/17/2022-GST dated 27th December, 2022]

Issue		Clarification
In some of the cases where SCN has been issued u/s 74(1), the appellate authority or appellate tribunal or the court concludes that the said SCN is not sustainable u/s 74, for the reason that the charges of fraud or any willful-misstatement or suppression of facts to evade tax have not been established and directs the proper officer to re-determine the amount of tax payable by the noticee, deeming the notice to have been issued u/s 73 of CGST Act, in accordance with the provisions of section 75(2). What would be the time period for re-determination of the tax, interest and penalty payable by the noticee in such cases?		As per section 75(3), order, required to be issued in pursuance of the directions of the appellate authority or appellate tribunal or the court, has to be issued within a period of two years from the date of communication of the said direction by appellate authority or appellate tribunal or the court, as the case may be.
How the amount shall be re-computed as per section 75(2)		
Case	SCN issued time	Impact
SCN issued u/s 74(1) converted into Section 73(1)	SCN was issued u/s 74(1) within 2	Amount can be redetermined

	years 9 months from due date to file annual return	
SCN issued u/s 74(1) converted into Section 73(1)	SCN was issued u/s Section 74(1) beyond 2 years 9 months from due date to file annual return	Amount cannot be redetermined. Proceedings to be drop off.
SCN issued u/s 74(1) for multiple years together and then converted into S. 73(1)	SCN was issued for multiple years u/s Section 74(1). Some years were within 2 years 9 months and some were beyond 2 years 9 months.	Amount can redetermined only in respect of financial years wherein SCN was issued within 2 years 9 months.
Note: At first instance officer would feel that he is issuing SCN within time limit of 4 years 6 months, as this is the time limit to issue SCN u/s 74, but then it is converted into S. 73 case, thus, we are checking 2 years 9 months in all the cases		

24. Clarification on treatment of reduced statutory dues under IBC act [Circular No. 187/19/2022-GST dated 27th December, 2022]

As per section 84 of CGST Act, where such Government dues are reduced in such appeal, revision or in other proceedings (emphasised) the Commissioner shall give intimation of such reduction to him and to the appropriate authority with whom recovery proceedings is pending. Thus, proceedings under IBC Law shall be construed as “other proceedings”

Thus, if the corporate debtors,’ statutory dues are reduced under IBC law, jurisdictional commissioner shall issue intimation to the taxable person or any other person as well as the appropriate authority with whom recovery proceedings are pending in FORM GST DRC-25 for such reduction of demand specified under section 84 of CGST Act. (Summary order under DRC 07/07A shall be passed)

Appeals & Revision

25. Minor updation in appeal filing procedure [Notification No. 26/2022 – Central Tax dated 26th December, 2022]:

Where the decision or order appealed against is uploaded on the common portal, a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal:

However, where the decision or order appealed against is not uploaded on the common portal, the appellant shall submit a self-certified copy of the said decision or order within a period of seven days from the date of filing of FORM GST APL-01 and a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf, and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal.

Further, where the said self-certified copy of the decision or order is not submitted within a period of seven days from the date of filing of FORM GST APL-01, the date of submission of such copy shall be considered as the date of filing of appeal.

26. Application to Appellate Authority [Amendment in Rule 109, vide [Notification No. 26/2022 – Central Tax dated 26th December, 2022]

(1) An application to the Appellate Authority under S. 107(2) shall be filed in FORM GST APL-03, along with the relevant documents, either electronically or otherwise as may be notified by the Commissioner and a provisional acknowledgment shall be issued to the appellant immediately.

(2) Where the decision or order appealed against is uploaded on the common portal, a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal under sub-rule (1):

However, where the decision or order appealed against is not uploaded on the common portal, the appellant shall submit a self-certified copy of the said decision or order within a period of seven days from the date of filing of FORM GST APL-03 and a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this

behalf, and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal:

Further where the said self-certified copy of the decision or order is not submitted within a period of seven days from the date of filing of FORM GST APL-03, the date of submission of such copy shall be considered as the date of filing of appeal.

27. Withdrawal of Appeal [New Rule 109C]:

The appellant may, at any time before issuance of show cause notice under sub-section (11) of section 107 or before issuance of the order under the said sub-section, whichever is earlier, in respect of any appeal filed in FORM GST APL-01 or FORM GST APL-03, file an application for withdrawal of the said appeal by filing an application in FORM GST APL-01/03W.

However, where the final acknowledgment in FORM GST APL-02 has been issued, the withdrawal of the said appeal would be subject to the approval of the appellate authority and such application for withdrawal of the appeal shall be decided by the appellate authority within seven days of filing of such Application.

Further, that any fresh appeal filed by the appellant pursuant to such withdrawal shall be filed within the time limit specified in sub-section (1) or sub-section (2) of section 107, as the case may be.



Job Work & Miscellaneous provisions

28. Appoints Competition Commission of India to check Anti-profiteering [S. 171 of CGST Act, read with Notification No. 23/2022 – Central Tax dated 23rd November, 2022 w.e.f. 1st December, 2022] [NOT IMPORTANT FOR EXAMS]

By virtue of the above notification, Competition Commission of India is appointed to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

Further, by virtue of Notification No. 24/2022 – Central Tax dated 23rd November, 2022, Rule 122 (Constitution of the Authority), Rule 124 (Appointment, salary, allowances and other terms and

conditions of service of the Chairman and Members of the Authority), Rule 125 (Secretary to the Authority) are omitted.

The word “duties” of authority have been replaced with “functions” of authority. Further, rule 134 (Decision to be taken by the majority) & rule 137 (Tenure of Authority) are omitted.

VALUATION UNDER CUSTOMS

Customs (Assistance in Value Declaration of Identified Imported Goods) Rules, 2023 (CAVR, 2023) notified

The second proviso of section 14(1) of the Customs Act lists out certain matters which may be provided for in the rules. The said sub-section was amended vide the Finance Act, 2022 to insert the following text under its second proviso –

“(iv) the additional obligations of the importer in respect of any class of imported goods and the checks to be exercised, including the circumstances and manner of exercising thereof, as the Board may specify, where, the Board has reason to believe that the value of such goods may not be declared truthfully or accurately, having regard to the trend of declared value of such goods or any other relevant criteria:”

The said amendment is a measure to address the issue of undervaluation in imports and it provides for rules to be framed by the Central Government whereby the Board can be enabled to specify the additional obligations of the importer in respect of a class of imported goods whose value is not being declared correctly, the criteria of selection of such goods, and the checks in respect of such goods.

The aspects in these rules include –

(a) the processes to be followed before the Board may specify a class of imported goods, for which there is a reason to believe that the value may not be declared truthfully or accurately but below it, as identified goods.

(b) the procedures for an importer of identified goods, once the relevant class of goods have been specified as identified goods by the Board. These include declaring certain aspects while filing the bill of entry. Further, if required by the Customs Automated System, such importer shall also fulfil the specified additional obligations, and specified checks shall be performed so as to enable and assist the importer to demonstrate the truthfulness and accuracy of the declared value.

(c) the specification that where the proper officer still has reasonable doubt about the truth or accuracy of the value declared in relation to the identified goods, the further proceedings shall be taken in accordance with rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR, 2007) only.

The CAVR, 2023 can be applied only by following the processes referred in the rules. The written reference must have been made to the Board which, if found suitable by Screening Committee for detailed examination, must have been comprehensively examined by Evaluation Committee which should have concluded the likelihood that the value of the relevant class of goods may not be declared truthfully, having regard to the trend of the declared value or other relevant criteria. Thereafter, the Screening Committee's recommendation confirming the completeness of such report must have been made to the Board. If satisfied that the recommended report should be accepted, the Board may specify the identified goods.

Exception:-

These rules shall not be applied to, –

- (a) imports not involving duty;
- (b) goods for which tariff value has been fixed by the Board in terms of section 14(2) of the Act;
- (c) goods which attract import duty on specific rate basis;
- (d) imports made in terms of authorization or license issued under duty exemption scheme of the Foreign Trade (Development and Regulation) Act, 1992 in which the inputs imported prior to export are physically contained in the export product;
- (e) imports where buyer and seller are related and an investigation on relationship has already been contemplated or finalized;
- (f) Project imports;
- (g) imports by Government, Public Sector Undertakings;
- (h) imports made in non-commercial quantities;
- (i) goods imported for the purpose of re-export; or
- (j) imports specified by the Board.

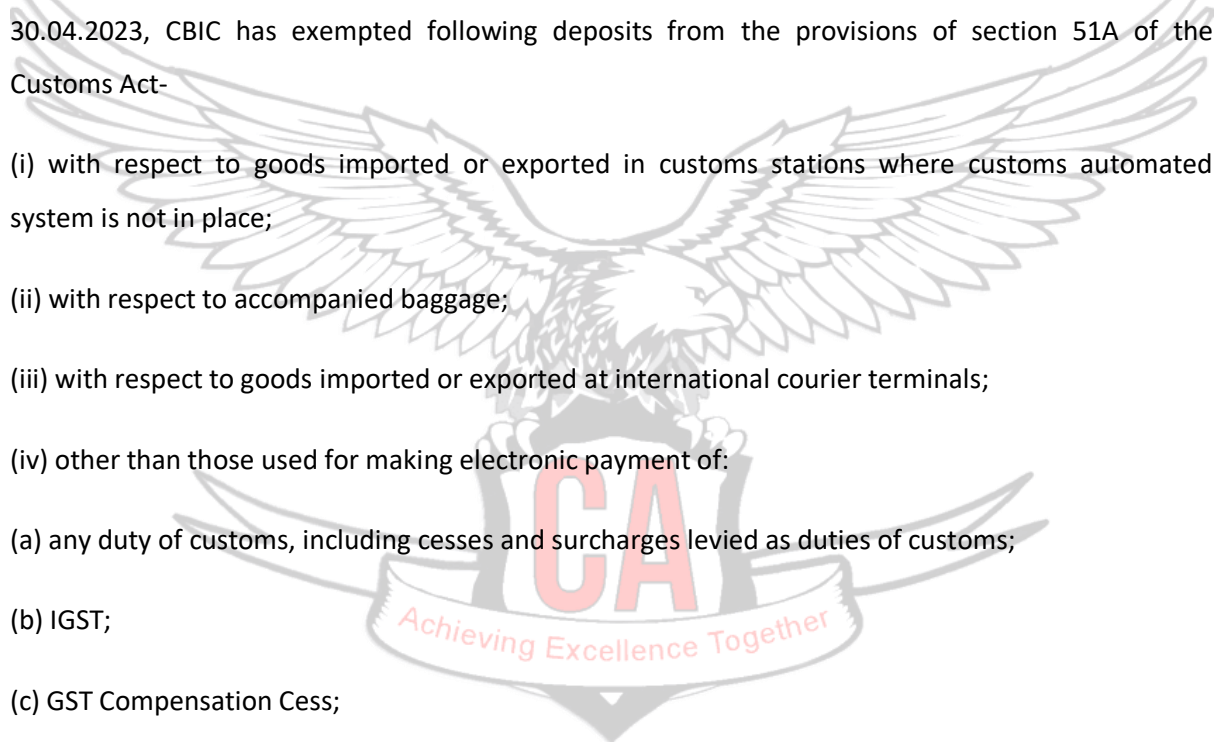
[Notification No. 03/2023 Cus (N.T.) dated 11.01.2023 read with Circular No. 01/2023 Cus dated 11.01.2023]

IMPORT EXPORT PROCEDURES

Phased implementation of Electronic Cash Ledger (ECL) in Customs w.e.f. 01.04.2023 [Section 51A]

The Electronic Cash Ledger (ECL) functionality is covered in Section 51A of the Customs Act, 1962. It provides enabling provision whereby the importer, exporter or any person liable to pay duty, fees etc., under the Customs Act, has to make a non-interest- bearing deposit with the Government for the purpose of payment.

Section 51A (4) provides that CBIC may by notification exempt certain deposits to which provisions of Electronic Cash Ledger will not be applicable. Accordingly, in the first phase from 01.04.2023 till 30.04.2023, CBIC has exempted following deposits from the provisions of section 51A of the Customs Act-

- 
- (i) with respect to goods imported or exported in customs stations where customs automated system is not in place;
 - (ii) with respect to accompanied baggage;
 - (iii) with respect to goods imported or exported at international courier terminals;
 - (iv) other than those used for making electronic payment of:
 - (a) any duty of customs, including cesses and surcharges levied as duties of customs;
 - (b) IGST;
 - (c) GST Compensation Cess;
 - (d) interest, penalty, fees or any other amount payable under the Act, or Customs Tariff Act, 1975.

In second phase, from 01.05.2023, the exemptions cited above would continue, except for the deposits with respect to goods imported or exported at International Courier Terminals. In other words, payments relating to Courier shipments would be required to be done through ECL from 01.05.2023 onwards.

The phased introduction of ECL is aimed at leveraging technology and reforming the payment process, inter-alia related to clearance of goods as the deposit may be held in ECL by the trade for making subsequent transaction-wise payments of various types. This has potential to easing compliance in numerous ways.

[Notification No.18/2023-Cus (N.T.) dated 30.03.2023 & Notification No. 19/2023-Cus (NT) dated 30.03.2023 amending Notification No. 19/2022- Customs (NT) dated 30.03.2022 read with Circular No. 09/2023 Cus dated 30.03.2023]

