



Indirect Tax Compendio

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Newsletter from Mukesh Manish & Kalpesh, Chartered Accountants

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Key Rulings and Insights

1. ARS Steels & Alloy International (Mad HC)

Facts of the case

- ↳ **The question of law pertains to whether an assessee can claim ITC on goods which were offered under the ambit of 'sales promotional activities'?**
- ↳ The Petitioner was denied Input Tax Credit availed on goods viz., "Gold Coins" and "T-shirts" which were offered to intermediate dealers/retail dealers to promote the sales of products of the Petitioner.
- ↳ The Petitioner submitted that the sales promotional activity is in relation to the business activity and therefore, as per Section 16(1), he was entitled to avail ITC charged on the supply of both goods or services or both which were used or intended to be used in the course or furtherance of the business.
- ↳ They further submitted that the sales promotional activity has been recognized by the Authorities both under the Tamil Nadu Value Added Tax (TNVAT) Act, 2006 regime and under the Central Excise (CE) Act, 1944 and the jurisprudence on this aspect is well settled by a plethora of the decisions of the Hon'ble Supreme Court of India.
- ↳ The Respondents, on the other hand, argued that although Section 16(1) of the CGST Act, 2017 allows an Assessee to avail Input Tax Credit, it is subject to Limitation under Section 17(5) of CGST Act, 2017.
- ↳ As per Section 17(5)(h) of CGST Act, 2017 there is a specific embargo on an assessee from availing ITC on not only goods lost but also stolen, destroyed, written off or disposed of by way of gift or free samples. Thus, the Petitioner does not have an unfettered right to avail ITC.
- ↳ The Court held that there is an embargo under Section 17(5)(h) on the goods purchased by the petitioner for sales promotional activities, and this restriction will apply to goods disposed of by way of gift or free samples.
- ↳ The expression 'goods disposed by way of gift or free samples' will specifically apply to the goods whether manufactured or traded by an assessee under the provisions of the respective GST enactments.
- ↳ Thus, it was held that ITC cannot be claimed on the gold coins or t-shirts by the Petitioner.

Key Insights:

- ↳ The Court held that goods used for sales promotional activities by an assessee fall within the purview of gifts or free samples under Section 17(5)(h), disallowing the availment of ITC on these goods. This position may be different if the facts involve use of the goods for business promotion.
- ↳ **Citation: W.P. Nos. 31, 33 & 35 of 2022**

2. M/s Bharati Airtel Limited (Del HC)

Facts of the case

↳ **The question of law pertains to-**

1. Whether telecommunication towers qualify as immovable property under S. 17(5) of the CGST Act, 2017, thereby restricting input tax credit (ITC) on inputs and input services used for their installation.

2. Whether the exclusion of telecommunication towers from the definition of "plant and machinery" in S. 17(5) implies their classification as immovable property.

↳ The petitioner argued that the Telecommunication towers are movable properties and cannot be classified as immovable properties since they are not permanently annexed to the earth, they can be dismantled, relocated, or reassembled without damage to their structure and their attachment to the earth is for stability and operational efficiency, not for the permanent enjoyment of the land.

↳ Previous judicial rulings, including *Bharti Airtel Ltd. v. Commissioner of Central Excise, Pune* and *Vodafone Mobile Services Ltd. v. Commissioner of Service Tax, Delhi*, establish that telecommunication towers are movable goods and not immovable properties

↳ The petitioner further contended that Exclusion from the definition of "plant and machinery" under Section 17(5) does not imply they are immovable property. The towers' movable nature disqualifies their classification under Section 17(5)(d).

↳ The respondents contended that S. 17(5) of the CGST Act excludes telecommunication towers from the definition of "plant and machinery," suggesting their ineligibility for ITC and that their structural foundation and usage link them to the concept of immovable property.

↳ The respondents placed reliance on the legislative intent behind Section 17(5), which restricts ITC for goods and services used in immovable properties.

↳ The Hon'ble High Court ruled in favour of the petitioners and held that telecommunication towers are movable properties and not immovable. Thus, they do not fall within the ambit of Section 17(5)(d) of the CGST Act.

↳ It was further held that the exclusion of telecommunication towers from the scope of "plant and machinery" under Section 17(5) does not imply they are immovable property. Instead, their classification depends on their inherent characteristics.

Key Insights:

↳ This decision reaffirms that the movable nature of telecommunication towers overrides statutory exclusions under Section 17(5), preventing arbitrary denial of tax benefits.

↳ **Citation: W.P.(C) 13211/2024.**

3. M/s. SPK and Co. (Mad HC)

Facts of the case

- ↳ **The question of law pertains to whether the limitation period for challenging an assessment order begins from the date of the original assessment order or from the date of the order of rectification?**
- ↳ The petitioner challenged the order of assessment and rectification passed on account of the SCN issued being vague, however, the Hon'ble High Court stated that it would be appropriate for the petitioner to approach the appellate authority instead.
- ↳ The Petitioner further pointed out that the respondent would continue adjudication by considering the period of limitation from the date when the assessment order was passed which would render the appeal time barred.
- ↳ The petitioner argued that the period of limitation to challenge the original assessment order should be calculated from the date on which the order of rejection of rectification was passed.
- ↳ The respondent argued that the show cause notice was not vague and that the period of limitation should be calculated from the date on which the original assessment order was passed as the rectification application issued was effectively a challenge to the original assessment order.
- ↳ The court held that the period of limitation to challenge the original assessment order should be calculated from the date on which the order of rectification was passed.

Key Insights:

- ↳ This decision reinforces that if a rectification application is filed under Section 161 of the GST Act, the period of limitation for challenging the original assessment order begins only from the date of the order of the application of rectification.
- ↳ By establishing a clear starting point for limitation period to challenge an assessment order in case of application of rectifications this decision has removed ambiguity and potential disputes.
- ↳ This clarity reduces uncertainty for both taxpayers and tax authorities, leading to smoother and more efficient dispute resolution processes
- ↳ **Citation: 2024(12) TMI 140**

4. M/s. Royal Sundaram General Insurance (Mad HC)

Facts of the case

- ↳ **The question of law pertains to whether co-insurance premium and reinsurance commission should be considered a "supply" under GST, attracting liability to pay GST.**
- ↳ The petitioner Cited amendments to Schedule III of the CGST Act, 2017, specifically Items 9 and 10 (effective from November 1, 2024), which clarified that co-insurance premium and reinsurance commission would not constitute a supply.
- ↳ The Petitioner further pointed out that the amounts deposited (₹10 crore, ₹12 crore, and ₹13.5 crore) were made under the court's directions and not towards tax liability. As such, these are mere deposits and should be refunded.
- ↳ The petitioner Highlighted Circular No. 236/30/2024-GST dated October 11, 2024, supporting the exemption of co-insurance premium and reinsurance commission from GST as per the new entries in Schedule III.
- ↳ The respondent that prior to the inclusion of Items 9 and 10 in Schedule III, the activities in question were considered as supplies and subject to GST.
- ↳ The respondents further contended that the principle of 'as is where is' is applicable in the current case. This implies that payments made by the taxpayer at any given time irrespective of subsequent clarifications or changes in the law are final and not subject to adjustment or refund.
- ↳ The court held that the amounts deposited by the petitioners were not made voluntarily towards tax liability but were directed by the court. These cannot be treated as tax payments until final adjudication.
- ↳ The Hon'ble High court further observed that Items 9 and 10 in Schedule III of the CGST Act, 2017, read with the circular, support the petitioner's stance that the co-insurance premium and reinsurance commission are not supply and thus not taxable.

Key Insights:

- ↳ This decision provides clarity and potential financial relief for business in the insurance sector .
- ↳ The taxpayer who have deposited amounts under protest for similar transactions can leverage this judgment to claim refunds, provided those deposits were not voluntarily made as tax payments.
- ↳ **Citation: 2024 (12) TMI 434.**

5. M/s. Skandaguru (Mad HC)

Facts of the case

↳ **The question of law pertains to:**

i) Whether the respondents are empowered to issue Form GST ASMT-10, subsequent to the search conducted by the Central Authorities?

ii) Whether the blocking of ITC by virtue of the intimation is in accordance with the provisions of Rule 86A of the GST Rules, 2017?

iii) If the taxpayer had already received DRC-01A issued by the central authorities and the proceedings pertaining to the same were dropped, whether this would amount to determination of the issue in ASMT-10 issued by the state authorities as well?

↳ The petitioner challenged the blocking of their ECL by the respondents and argued that they had no power to issue such blocking notice as a search by the Central Authorities had already been conducted.

↳ It was further contended that the blocking of ITC was not in accordance with the provisions of Rule 86A of the GST Rules, 2017, as there were no available credits in the ECL.

↳ The petitioner also argued that the respondent will not have concurrent jurisdiction since the central authorities have already initiated proceedings for the same issue.

↳ The respondent argued that they have jurisdiction for blocking ECL even if the Central Authorities initiated proceedings first, as the period and quantum of amount differs while the issues are similar.

↳ The respondent further argued that they had jurisdiction to act since there is no statutory bar preventing them from initiating proceedings. Further it was contended that the petitioners can challenge any overlapping action after the issuance of the notice as it is premature doing so merely based in the issuance of ASMT-10.

↳ It was also submitted by the respondent that concurrent jurisdiction for initiating proceedings by central and state authorities is valid and legally permissible as the power of the respondent to block the ECL is independent and focused on protecting the states revenue.

↳ The respondents also stated that the demand notice issued by the Central authorities and the subsequent remittance did not address the entire issue as raised in the notice issued by the respondent.

↳ The Hon'ble High court held that the respondent had the authority to impose blocking orders. Even though the Central and State Authorities' concerns are identical, both Authorities have the authority to start the appropriate actions if the quantum of amounts and the time frame for which the notice was issued differs. Further it was held that it was premature to determine whether cross empowerment bars the respondent from proceeding as no actions were taken beyond the issuance of ASMT-10.

5. M/s. Skandaguru (Mad HC)

- ↳ The Hon'ble High Court further held that blocking of ITC remains to be the sole domain of the respondent since the petitioner is a state-registered taxpayer.
- ↳ Rule 86A of the CGST Rules is designed to prevent the use of fraudulently availed ITC in the ECL and allows blocking of ITC even when the balance of ECL is zero since negative blocking can continue until ITC equivalent to the wrongful credit availed is accumulated in the ECL. Blocking ITC under Rule 86A can be done for the entire amount of wrongfully availed credit, even if it has already been utilized as the rule allows blocking "available" credit, which includes both utilized and unutilized amounts.
- ↳ The demand notice and remittance for a small amount did not address the entire issue raised in the blocking notice. The State Authorities can decide on continuing the proceedings after considering the petitioner's reply.

Key Insights:

- ↳ This case clarifies the State Authorities' power to block the ECL for the entire amount of wrongful credit, regardless of its utilization. It also emphasizes the need for taxpayers to address both Central and State authorities' notices independently.

- ↳ **Citation: 2024(12) TMI 143.**

6. M/s. Dharania Motors (Raj HC)

Facts of the Case:

- ↳ **The question of law pertains to whether the requirement to file the TRAN-1 form for claiming transitional input tax credit, as specified under Rule 117 of the CGST Rules, 2017, is procedural and directory or substantive and mandatory.**
- ↳ The petitioner contended that entitlement to credit arises from meeting the eligibility criteria in Section 140(3) of the CGST Act, 2017 and that procedural lapses should not bar this entitlement.
- ↳ The petitioner further argued that TRAN-1 requirement is merely procedural and should not be treated as a mandatory condition. The CTD mechanism (TRAN-3) is distinct from the general TRAN-1 mechanism.
- ↳ The respondent contended that TRAN-1 submission is a mandatory condition for claiming transitional credit, as per Section 140(3) of the CGST Act, 2017. Entitlement to credit is subject to fulfilling conditions, including timely TRAN-1 submissions. The CTD mechanism is integrated with the TRAN-1 requirement.
- ↳ The respondent further argued that adequate time and extensions were provided for TRAN-1 submission, but the petitioner has failed to comply.
- ↳ The Hon'ble High court emphasized that Section 140 grants the Rule-Making Authority the responsibility to prescribe procedures for claiming transitional credit and the same was carried out under Rule 117.

6. M/s. Dharania Motors (Raj HC)

- ↳ The court held that the submission of a TRAN-1 declaration within the prescribed time is a mandatory requirement for claiming transitional credit. The time limit for submitting TRAN-1 is not merely procedural under rule 117(2) of CGST rules but a statutory mandate under Section 140(3) of the CGST Act, 2017.
- ↳ The Court further stated its not merely a formality but TRAN-1 serves a crucial purpose in ensuring smooth and hassle-free operation of the transitional credit mechanism. Declaration is not subject to just mere submitting the details but it binds the claimant solemnly to declare as to how and what manner he is eligible.
- ↳ The Court found that the petitioner's failure to comply with the mandatory requirement of timely TRAN-1 submission precluded him from claiming the transitional credit.

Key Insights:

- ↳ This judgment underscores the importance of adhering to the statutory requirements for claiming transitional credit under the GST regime. Failure to comply with the mandatory submission of TRAN-1 within the prescribed time can result in the denial of the claimed credit, even if the taxpayer fulfils the eligibility criteria for such credit.
- ↳ **Citation: 2024(12) TMI 266.**

7. National Gas Service (Raj HC)

Facts of the Case:

- ↳ **The question of law pertains to whether the failure to upload notices and orders under the 'Additional Notices and Orders' tab instead of the 'Due Notices and Orders' tab on the GST portal, as required by law, renders the impugned order invalid ?**
- ↳ The petitioner argued that the notices and orders issued by the department were uploaded on the 'Additional Notices and Orders' tab on the GST Portal, instead of the 'Due Notices and Orders' tab, as a result, the petitioner was unaware of the notices and orders and thus could neither appear before the authority nor challenge the validity of the orders within the prescribed limitation period.
- ↳ The department did not dispute the uploading error, acknowledging that notices were not uploaded in the correct tab and the fact the issue was squarely covered by the judgement in case of *Ola Fleet Technologies Pvt. Ltd. v. State of U.P.*
- ↳ The Hon'ble Court held that the present matter is governed by its judgment in *Ola Fleet Technologies Pvt. Ltd. v. State of U.P.*, which was duly followed in the instant case. It was observed that the procedural lapse of uploading notices under an incorrect tab on the GST portal resulted in the petitioner being unaware of such notices. Consequently, the petitioner was granted the benefit of the doubt, and the writ petition was accordingly allowed from claiming the transitional credit.

7. National Gas Service (Raj HC)

Key Insights:

- ↳ The court reaffirmed that a procedural lapse, such as uploading notices in an incorrect tab on the GST portal, can result in a denial of natural justice, as it prevents the recipient from being duly informed.
- ↳ This reinforces the requirement of strict adherence to procedural rules to ensure effective communication.
- ↳ **Citation: Writ Tax No. - 2420 of 2024.**

8. Messrs Aalidhra Textcraft Engineers (Guj HC)

- ↳ **The question of law pertains to whether a voluntary deposit made by a taxpayer under the GST Act, 2017, due to a system error or an incorrect assumption regarding ITC, is subject to the two-year limitation period for refunds prescribed under Section 54(1).**
- ↳ The petitioner contended that respondents themselves admitted in their reply that payment made by petitioner was not a tax but voluntary deposit; since the payment was not a tax, the two-year limitation period under Section 54(1) does not apply.
- ↳ The petitioner further cited the case of *M/s. Joshi Technologies International vs. Union of India* and the subsequent *Gujarat State Police Housing Corporation Ltd. vs. Union of India* as precedents supporting their claim for a refund.
- ↳ The Respondents, on the other hand, argued that the petitioner filed the refund application after the two-year limitation period prescribed by Section 54(1) of the GST Act and failed to provide a valid reason for the delayed refund claim.
- ↳ The respondents further argued that the payment was voluntary and not a tax recovery, thus the limitation period starts from the date of payment.
- ↳ The Hon'ble High Court upheld the Petitioner's claim, stating that the voluntary deposit did not constitute tax recovery and therefore was not subject to the limitation period.
- ↳ The court relied on the Supreme Court's judgment in *Salonah Tea Company Ltd.*, emphasizing that erroneous tax collections should be refunded unless the taxpayer's delay is inexcusable or causes undue prejudice to the Revenue
- ↳ It was also observed by the Hon'ble court that the voluntary deposits made by taxpayers due to system errors or incorrect assumptions regarding input tax credit (ITC) are not subject to the two-year limitation period for refunds under Section 54(1) of the GST Act.

Key Insights:

- ↳ This ruling provides important guidance for taxpayers and tax authorities regarding voluntary deposits under GST. It clarifies that the limitation period for refunds does not apply to amounts deposited by taxpayers due to genuine errors or system glitches
- ↳ **Citation: R/Special civil application No. 14554 of 2024.**

9. Pinnacle Vehicles & Services Pvt. Ltd. (Ker HC)

Facts of the case:

- ↳ **The question of law pertains to whether the State Tax Authorities, without a specific notification under Section 6(1) of the Central Goods and Services Tax Act, 2017 (CGST Act), have the jurisdiction to issue a show-cause notice to taxpayers assigned to Central Tax Authorities.**
- ↳ The petitioner argued that the show-cause notice (SCN) issued by the respondent lacks jurisdiction and as per Section 6(1) of the CGST Act, cross-empowerment of State officers requires a specific notification.
- ↳ The petitioner cited the judgment of the Madras High Court in *Tvl. Vardhan Infrastructure* to assert that without such notification, jurisdictional powers are not granted.
- ↳ Whereas the respondent contended that Section 6(1) of the CGST Act inherently empowers State officers as proper officers without needing a separate notification, unless restrictions are explicitly placed.
- ↳ The respondent placed reliance on a letter (F. No. CBEC-20/10/07/2019-GST) by the GST Policy Wing stating that such notifications are only needed to impose conditions, not for general empowerment.
- ↳ The Hon'ble Kerala High Court interpreted Section 6(1) to mean that State officers are authorized as proper officers by default, unless explicitly restricted via notification.
- ↳ Contrary to the Madras High Court's stance in *Tvl. Vardhan Infrastructure*, the Kerala High Court, it was opined that the provision itself enables State authorities to act unless conditions are specified.
- ↳ The Hon'ble High court recognized the need for consistency in interpretation, given conflicting judgments affecting multiple proceedings.

Key Insights:

- ↳ This decision emphasizes the need for clarity on jurisdictional authority under Section 6(1) of the CGST Act and highlights judicial divergence on the subject.
- ↳ **Citation: 2024 (12) TMI 128.**

10. M/s L&T PES JV (Tel HC)

Facts of the case:

- ↳ **The question of law pertains to: (1) Whether the work executed by the petitioner falls under S. 12(2)(a) or S. 12(3) of the Integrated Goods and Services Tax (IGST) Act, and determination of the place of supply. (2) Whether the work carried out in respective States amounts to inter-state supply or intra-state supply. (3) Whether the refund application submitted by the petitioner is maintainable.**
- ↳ The petitioner argued that construction work involves immovable property located in Telangana and Maharashtra which is where the place of supply should be determined in proportion to value of services executed in each State as per explanation to S. 12(3) of IGST Act.
- ↳ The petitioner contended that since work was executed in both Telangana & Maharashtra, tax liability should be discharged separately in each State.
- ↳ The petitioner sought refund for the excess TDS deducted and remitted entirely to Telangana, despite part of the work being executed in Maharashtra and further contended that the improper TDS deductions by the respondent were contrary to S. 24(vi) and S. 51 of the CGST Act.
- ↳ The respondents contended that the applicable provision is S. 12(2)(a) of the IGST Act, as the work does not fall under S. 12(3).
- ↳ The respondents argued that the supply of service should be treated as inter-state under S. 7(3) of the IGST Act and asserted that the petitioner failed to provide adequate proof regarding the proportion of work executed in Maharashtra and did not challenge the deduction method during the project execution.
- ↳ The Court concluded that the petitioner's work falls under Section 12(3) of the IGST Act, given the nature of works contract involving immovable property spread across two States. Place of supply must be determined proportionate to services executed in Telangana and Maharashtra as per explanation to Section 12(3). And supply of service was categorized as intra-state for respective States under Section 8(2). Tax liability must be discharged individually in each State based on the proportion of work executed.
- ↳ The Court observed that TDS was improperly deducted for the entire invoice amount and remitted it to Telangana as this deduction was contrary to Section 24(vi) of the CGST Act.
- ↳ The refund claim was deemed maintainable, provided the petitioner submitted evidence of tax liability discharge in Maharashtra. The Court emphasized that the Joint Commissioner's refusal to grant a refund was unsustainable.

Key Insights:

- ↳ This decision highlights the significance of distinguishing between Sections 12(2) and 12(3) for determining the place of supply, particularly in works contracts involving immovable property across multiple States. Effective tax administration requires coordination between States to address issues such as tax remittances and refund claims, ensuring compliance and avoiding duplication of liabilities.
- ↳ **Citation: 2024 (12) TMI 445.**

Notifications, Circulars and Other Developments

Notifications

1. Extension of due date for filing GSTR-3B for the month October,2024.

- This notification has extended the deadline for filing the return in FORM GSTR-3B for October 2024 until the 11th December 2024 for registered individuals whose primary place of business is in the Murshidabad district of West Bengal and who must file the return in accordance with subsection (1) of section 39 read with clause (i) of sub-rule (1) of rule 61 of the Central Goods and Services Tax Rules, 2017.

(Notification No. 30/2024- CT dated 10.12.2024)

2. Extension of due dates of GSTR Forms for the month of December 2024.

Notification no.	Form	Actual due date	Extended due date
01/2025	GSTR-1	11 th January 2025 - Regular taxpayers 13 th January 2025 - QRMP Scheme	13 th January 2025 - Regular taxpayers 15 th January 2025 - QRMP Scheme
02/2025	GSTR-3B	20 th January 2025	24 th /26 th January 2025
03/2025	GSTR-5	13 th January 2025	15 th January 2025
04/2025	GSTR-6	13 th January 2025	15 th January 2025
05/2025	GSTR-7	10 th January 2025	12 th January 2025
06/2025	GSTR-8	10 th January 2025	12 th January 2025

(Notification No. 01/2025-06/2025- CT dated 10.01.2025)

Circulars

1. Clarifications regarding input tax credit availed by electronic commerce operators:

- Clarifications regarding whether the Electronic commerce operator (ECO) is liable to reverse the proportionate amount of Input tax credit on its inputs and input services to the extent of supplies made under section 9(5) of the CGST Act by the Board are summarized as follows:

Particulars	Clarification
Reversal of Input Tax Credit	ECO is not required to reverse input tax credit proportionately under section 17(1) or 17(2) of the CGST Act for supplies made under section 9(5).
Payment of Tax	ECO must pay the full tax liability on supplies under Section 9(5) through electronic cash ledger. Credit availed cannot be used for this payment but can be used for discharging tax liability on his own services.
Conditions to be satisfied	ECO is required to pay tax under Section 9(5) for supplies made where he is deemed the supplier, and for supplying his own services by charging platform fees/commissions.
Input Tax Credit Usage	Input tax credit cannot be used to pay tax liability under section 9(5), and the full tax liability must be paid in cash and the credit available can be used for discharging the tax liability for the supply of services made on his own account.

(Circular No. 240/34/2024 dated 31.12.2024)

2. Clarification regarding ITC eligibility for goods delivered under Ex-Works Contracts

- If the contract between the supplier and the recipient is an Ex-Works Contract, the supplier delivers the goods to the recipient or someone acting on their behalf (like a transporter) at the supplier's location. The ownership of the goods transfers to the recipient at the time the goods are handed over.
- In these cases, the recipient is considered to have "received" the goods when they are handed over to them or to the transporter, according to the rules in section 16(2)(b) of the CGST Act.

Circulars

- The recipient can only claim input tax credit if they meet the conditions of sections 16 and 17, and the goods or services are used or intended to be used for business purposes.
- If the goods are used for personal or non-business purposes at any time—either before they are received at the business or afterward—the recipient cannot claim input tax credit.
- Also, if the goods are lost, stolen, destroyed, written off, given away as gifts, or used as free samples after they have been "received," the recipient will not be able to claim input tax credit for those goods, according to section 17(5)(h) of the CGST Act.

(Circular No. 241/35/2024 dated 31.12.2024)

3. Clarification regarding place of supply of Online Services supplied by the suppliers of services to unregistered recipients:

- In respect of supply of all 'Online supply of services' such as supply of in addition to online money gaming and OIDAR services to unregistered recipients, irrespective of the value of such supply, the supplier is required to mandatorily record the name of the State of the unregistered recipient on the tax invoice and such name of State of recipient shall be deemed to be the address on record of the recipient for the purpose of section 12(2)(b) of Integrated Goods and Services Tax Act, 2017 read with proviso to rule 46(f) of CGST Rules.
- The supplier is required to, in their GSTR-1/1A, declare the place of supply of the above services supplied and the location of such supply should be the name of state of the recipient.
- If there is any non-compliance of the provisions by the supplier, he may be liable to a penalty which may extend to twenty-five thousand rupees under the provision of section 122(3)(e) of the CGST Act.

(Circular No. 242/36/2024 dated 31.12.2024)

Circulars

4. Clarification on various issues pertaining to GST treatment of vouchers:

- Clarification proposed on the following issues relating to taxability of vouchers:

S. No.	Issue	Clarification
1.	Taxability of vouchers	Transactions in vouchers neither treated as a supply of goods nor services under GST.
2.	Distribution on principal-to-principal basis	<ul style="list-style-type: none">• Distributors and dealers, including sub-distributors, fully control the process of purchasing and selling vouchers to end users.• No GST is applicable on the distribution of vouchers when done on a principal-to-principal basis as these transactions do not qualify as supply of goods or services.
3.	Distribution on principal to-agent basis	<ul style="list-style-type: none">• Distributors, sub-distributors, and agents act as intermediaries for the voucher issuer and do not own or operate autonomously with the vouchers.• GST is applicable on the commission/fee or any other charge by the agent for distributing vouchers.
4.	Additional services related to vouchers	Services like advertisement, co-branding, marketing, promotion, customization, technology support, customer support related to vouchers are subject to GST.
5.	Unredeemed vouchers (breakage)	No GST is payable on the income booked from unredeemed vouchers (breakage). These are not considered a supply under GST.

(Circular No. 243/37/2024 dated 31.12.2024)

Portal Updates

1. Advisory on mandatory sequential filing of GSTR-7 as per Notification No. 17/2024.

- In light of Notification No. 17/2024 – CT, which mandated the sequential filing of Form GSTR 7, starting with the return period of October 2024, the GSTR-7 return must be filed in chronological sequence, i.e., for every month and when no deductions have been made for a month, the deductors should file a Nil Return for that month. This sequential filing is effective from 01.11.2024

2. Advisory for biometric-based aadhaar authentication and document verification for GST registration applicants.

- The requirement of biometric-based aadhaar authentication in the registration process has been rolled out in the following states on the following dates:

S. No.	States	Date
1.	Haryana, Manipur, Meghalaya and Tripura	7th December 2024
2.	Chhattisgarh, Goa and Mizoram	15th December 2024
3.	Arunachal Pradesh	28th December 2024

Process for Applicants:

- After the submission of the application in Form GST REG-01, the applicant will receive either of the following links in the e-mail, either OTP-based Aadhaar Authentication or booking an appointment with GST Suvidha Kendra (GSK) for Biometric-based Aadhaar Authentication and document verification.
- If the applicant receives the link for OTP, he/she can proceed with the application as per the existing process and if the applicant receives the link for booking, then the applicant shall book an appointment to visit the designated GSK, within the permissible time.
- During the visit to GSK, the applicant shall also carry the prescribed documents for the verification of the same, post which ARN will be generated indicating the completion of the Aadhar authentication process.

Portal Updates

3. Advisory on difference in value of Table 8A and 8C of Annual Returns FY 23-24.

- Pursuant to the Notification no. 12/2024-CT and Notification no.20/2024-CT, from FY 23-24 the ITC auto populating in Table 8A of GSTR 9 shall be from the GSTR 2B of FY 23-24 and not from GSTR 2A.
- This change from GSTR 2A to GSTR 2B, can result in mismatch between the values of Table 8A and Table 8C of the GSTR 9 for FY 23-24, few scenarios of the same has been discussed in the portal advisory which are as under:

S. No.	Issue	Reporting in GSTR 9
1.	Invoices dated FY 2023-24 but reported in GSTR-1 after March 2024 will not auto-populate in Table 8A of GSTR-9 for FY 2023-24 as they form part of the next year's GSTR-2B. How to report such transactions in the GSTR 9 of FY 23-24?	Taxpayers shall report such invoices in Table 8C and Table 13 of the GSTR 9 as this is the ITC of FY 2023-24. This is in line with the instructions issued for Table 8C and Table 13 of GSTR 9.
2.	Invoices of FY 2023-24 on which ITC was claimed in FY 23-24 and subsequently reversed due to non-payment of consideration within 180 days and then reclaimed in FY 2024-25 after payment. How to report such transactions in the GSTR 9 of FY 23-24?	This reclaimed ITC shall be reported in Table 6H and not in Table 8C and Table 13 of GSTR 9 of FY 2023-24. This is in line with the instructions issued for Table 13. Similar reporting is applicable for the ITC reclaimed as per Rule 37A.
3.	Invoices of FY 2023-24 but goods not received in FY 23-24, hence ITC is claimed in Table 4A(5) of GSTR 3B and reversed in Table 4B(2) as per guidelines of Circular 170 & such ITC reclaimed in FY 24-25. How to report such transactions in GSTR-9 of FY 23-24?	Taxpayers shall report the ITC reclaimed in Table 8C and Table 13 as this is the ITC of FY 2023-24.
4.	Invoice of FY 22-23 appearing in Table 8A of GSTR 9 of FY 23-24, as the supplier would have reported the same in GSTR 1 after March 2023. How to report such transactions in the GSTR 9 of FY 23-24?	It is the ITC of last year (2022-23) and was auto populated in Table 8A of GSTR-9 of FY 22-23. Hence, aforesaid value need not to be reported in Table 8C and Table 13 of GSTR-9 for FY 23-24.

Portal Updates

5.	Where to report the reclaim of ITC for an Invoice which belongs to FY 2023-24, and which is claimed, reversed and reclaimed in the same year?	According to the CBIC press release dated 3 rd July 2019 in para (k), it is clarified that the ITC declared in Table 6H is exclusive of Table 6B. Therefore, information of such input tax credit is to be declared in one of the rows only. Since, the ITC reclaimed is reported in only one row, the same should not be reported in the reversal under Table 7 of GSTR 9 of FY 23-24
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4. Advisory on Updates to E-Way Bill and E-Invoice Systems:

Updates in E-invoice system.

- The Multi-Factor Authentication (MFA) system requires users to login using a username, password and OTP. This was mandatory for the taxpayers whose annual aggregate turnover (AATO) > 100 crores and optional for taxpayers whose AATO > 20 crores. However, from 01.01.2025, MFA has been modified to be mandatory for the following taxpayers:

AATO limit	MFA effective from
AATO > 20 crores	Mandatory MFA from 01.01.2025
AATO > 5 crores	Mandatory MFA from 01.02.2025
All other taxpayers and users	Mandatory MFA from 01.04.2025

Updates in E-way bill system:

- The generation of E-Way Bills will be restricted to 180 days from the date of invoice. For example, an invoice dated earlier than 5th July 2024 will not be eligible for E-Way Bill generation starting 1st January 2025.
- The extension of E-Way Bills will be limited to 360 days from their original date of generation. For example, an E-Way Bill generated on 1st January 2025 can only be extended up to 25th December 2025.

Portal Updates

5. Advisory for Entry of RR No./ET-RRs in EWB system Post EWB-FOIS Integration:

- Pursuant to the Integration of Freight Operation Information System (FOIS) of Indian Railways with E-Way Bill (EWB) system, advisory have been issued on the functioning of the same, key points have been enumerated as under:
- Taxpayers must enter RR No./ET-RRs in the EWB system in the standardized format for goods transported through Indian Railways by selecting "Rail" in Part-B using the "Multi-Transport Mode" option.
- Then, the system will validate RR No. against FOIS data, issuing alerts in case of discrepancies. This will ensure smooth tracking and verification of transported goods. In case of any issues, taxpayers can raise support tickets for resolution, following the e-Demand customer guidelines.

6. Advisory for Waiver Scheme under Section 128A:

- The department vide Notification no. 20/2024-CT notified rule 164 which prescribes the procedure for the amnesty scheme of waiver of interest and penalty as envisaged under Section 128A of the CGST Act, 2017.
- Under the procedure for availing the waiver, the taxpayers requires to submit applications in FORM GST SPL-01 or FORM GST SPL-02 by March 31, 2025.
- Currently, out of the above two forms, GST SPL-02 is available on the GST portal and the process of filing the same is made available. Further, GST SPL-01 will be made available soon on the portal.
- Difficulty if any faced by the taxpayers may be reported by raising a ticket under category "Issues related to Waiver Scheme".

55th GST Council Meeting Recommendations

Key changes in GST rates :

Particulars	New rate of GST
Salted and spiced unpackaged popcorn	5%
Pre-packaged popcorn	12%
Caramel-coated popcorn	18%
Fortified Rice Kernels (FRK)	5%
Autoclaved Aerated Concrete (AAC) Blocks containing over 50% fly ash	12%
Sale of old and used vehicles including Evs	18%
Gene therapy	Exempt

Other recommendations of the 55th meeting of the GST council:

- Sponsorship services provided by body corporates to be taxed under the Forward Charge Mechanism.
- To exempt general insurance firm's contributions to the Motor vehicle accident Fund from GST on third-party motor vehicle premiums collected by them.
- In the case of hotels, the recommendation is to amend the definition of specified premises and omit the definition of declared tariff to link the rate of GST on restaurant services with the value of accommodation provided in the previous financial year. If accommodation value exceeds Rs. 7,500, the GST rate on restaurant services will be 18% with ITC; otherwise, it will be 5% without ITC. Hotels can further opt for 18% with ITC by declaring it before the financial year or registration. These changes will take effect from 01.04.2025.
- Taxpayers registered under composition scheme not to be covered under reverse charge mechanism for renting of any commercial / immovable property (other than residential dwelling) by unregistered person to registered persons w.e.f. 10.10.2024 on 'as is where is' basis.
- To amend the definition of 'pre-packaged and labelled' to include commodities for retail sale, weighing up to 25 kg or 25 litres, that are pre-packed as per the Legal Metrology Act and require labels with necessary declarations under the Act.
- Exemption from GST proposed on services provided by RBI regulated Payment Aggregators in relation to settlement of an amount up to INR 2,000 in a single transaction transacted through credit card, debit card, charge card or other payment card service.

55th GST Council Meeting Recommendations

Other recommendations of the 55th meeting of the GST council:

- Further, it is proposed to clarify that the said exemption does not cover payment gateway and other fintech services which do not involve settlement of funds.
- No GST on penal charges levied by NBFCs/banks for non-compliance with loan terms.
- Supply of goods warehoused in SEZ/ FTWZ before clearance of such goods for exports or to DTA shall be treated as "neither supply of goods nor services"
- Sections 12(4) and 13(4) of the CGST Act and Rule 32(6) of the Central Goods and Services Tax Rules, 2017 proposed to be omitted. The deletion of these provisions will resolve the ambiguity relating to the time of supply of vouchers. Further the following clarifications were provided as tabulated below:

Issue	Clarification
Taxability of vouchers	Transactions involving vouchers are a supply of neither goods nor services.
Principal-to-agent transactions	No GST is applicable on the distribution of vouchers when done on a principal-to-principal basis.
Principal-to-agent transactions	GST is applicable on the commission/fee or any other charge by the agent for distributing vouchers.
Additional services related to vouchers	Services like advertisement, co-branding, marketing, promotion, customization, technology support, customer support related to vouchers are subject to GST.
Unredeemed vouchers (breakage)	No GST is payable on income from unredeemed vouchers.

Issuance of clarification through circulars

- E-commerce operators are not obligated to reverse ITC under Section 17(1) or 17(2) of the CGST Act, 2017 the supplies for which tax is payable under Section 9(5) of the CGST Act, 2017.
- It is recommended to clarify that the late fee under Section 47(2) of the CGST Act is leviable for the delay in filing the complete annual return under Section 44 of the CGST Act, which includes both FORM GSTR-9 and FORM GSTR-9C.

55th GST Council Meeting Recommendations

- It is recommended that in an ex-works contract, where goods are delivered by the supplier to the recipient or a transporter at the supplier's place of business, and the property in goods transfers to the recipient at that point, the goods are considered to be "received" by the recipient under Section 16(2)(b) of CGST Act and the recipient may claim ITC on such goods, subject to the conditions outlined in Sections 16 and 17 of the CGST Act, 2017.
- It is also recommended to issue a notification under Section 128 for waiver of amount of late fee for delayed filing of FORM GSTR-9C for period 2017-18 to 2022-23, in excess of the amount of late fee payable till date of filing of FORM GSTR-9, provided the said FORM GSTR-9C is filed on or before 31.03.2025.

Compliance based measures:

- To insert section 148A, to help the government administer the Track and Trace mechanism for specified commodities identified as evasion prone commodities. The system will use a Unique Identification Marking affixed to goods or their packaging.
- For online services provided to unregistered recipients, it is mandatory for the supplier to include the State name of the recipient on the tax invoice. This State name will then be treated as recipient's address on record, which is necessary for the correct application of the place of supply rules under IGST Act.

Other measure pertaining to law and procedures:

1. Amendment in Section 17(5)(d) of the CGST Act, 2017:

- The Council has suggested amending section 17(5)(d) of the CGST Act, 2017 to replace the phrase "plant or machinery" with "plant and machinery" retroactively, with effect from July 1, 2017, in order to bring the provisions of the section into line with its intent.

2. Amendment in Section 107 and 112 of CGST Act, 2017:

- For filing appeals before the Appellate Authority in cases involving only the demand of a penalty and not the demand of tax, the proviso to section 107(6) of the CGST Act, 2017 should be amended to allow for the payment of a 10% pre-deposit instead of 25%.
- To add a new clause to section 112(8) of CGST Act, 2017 that requires a 10% pre-deposit to be paid to file an appeal with Appellate Tribunal in situations where there is only a penalty demand and no tax demand.

3. Amendment in Section 2(69) to insert explanation to definition regrading Local & Municipal Fund:

- To amend and insert an explanation under clause (c) of section 2(69) of the CGST Act, 2017 to define the terms "Local Fund" and "Municipal Fund".

55th GST Council Meeting Recommendations

4. Amendment in provisions pertaining to Input Services Distributor (ISD) mechanism under CGST Act, 2017 and CGST Rules, 2017

- To amend the definition of Input service distributor and Section 20(1) of the CGST Act, 2017 to explicitly include inter-state RCM transactions under the ISD mechanism by including reference to supplies subject to tax under RCM as per section 5(3) and 5(4) of IGST Act, 2017 in the said provisions.
- Consequently, rule 39(1A) and section 20(2) should be amended.
- These amendments are to be made effective from April 1, 2025.

5. Provision for grant of Temporary Identification Number by Tax Officers to persons, not liable to be registered otherwise.

- To insert new rule 16A to the CGST Rules, 2017 to provide for the creation of a temporary identity number for individuals who are not obliged to register under the CGST Act, 2017 but must make payments in accordance with rule 87(4) of the CGST Rules, 2017.
- To amend Rule 87 (4) of CGST Rules, 2017 incorporating a reference to the new Rule and consequential modification of FORM GST REG-12.

6. Amendment in the field 'category of registered person' for taxpayers who opted for composition levy through FORM CMP-02.

- To add a reference to FORM GST CMP-02 in sub-rule (1) of rule 19 of the CGST Rules, 2017 so that taxpayers can change their "category of registered person" in Table 5 of FORM GST CMP-02 using FORM GST REG-14.

7. Amendment in CGST Act, 2017 and CGST Rules, 2017 in respect of functionality of Invoice Management System (IMS).

- To create a legal basis for the creation of FORM GSTR-2B based on the actions performed by the taxpayers on the Invoice Management System (IMS), section 38 of the CGST Act, 2017 and rule 60 of the CGST Rules, 2017 should be amended.
- In order to reduce the supplier's output tax burden, section 34(2) of the CGST Act, 2017 should be amended to expressly compel the recipient to reverse input tax credit that is attributable to a credit note.
- In order to specify how the supplier's output tax liability should be reduced in relation to the credit note he supplied, a new rule 67B should be added to the CGST Rules, 2017.
- Section 39 (1) of the CGST Act, 2017 and Rule 61 of the CGST Rules, 2017 should be amended to state that FORM GSTR-3B of a tax period can only be filed following the upload of FORM GSTR-2B of the same tax period on the portal.

Indirect Tax Compliance Calendar for January 2025

January 2025

Important Due Dates under Indirect Tax

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

Important Due Dates under Indirect Tax

Due Date	Description
10 January 2025	<ul style="list-style-type: none">↳ Filing of GSTR-7 - By Tax Deductor for the month of December 2024.↳ Filing of GSTR-8 - By E-Commerce Operator for the month of December 2024.
11 January 2025	<ul style="list-style-type: none">↳ Monthly filing of GSTR-1 for the month of December 2024 (Regular taxpayers).
13 January 2025	<ul style="list-style-type: none">↳ Filing of GSTR-1 IFF - By Taxpayers under QRMP Scheme for the month of December 2024.↳ Filing of GSTR-5 - By Non-Resident Taxable Persons for the month of December 2024.↳ Filing of GSTR-6 - By Input Service Distributor for the month of December 2024.
20 January 2025	<ul style="list-style-type: none">↳ Filing of GSTR-3B (Regular Taxpayers) for the month of December 2024.↳ Filing of GSTR-5A by OIDAR Service Providers for the month of December 2024.
22 / 24 January 2025	<ul style="list-style-type: none">↳ Filing of GSTR-3B under QRMP Scheme.
25 January 2025	<ul style="list-style-type: none">↳ GST PMT-06- Challan for depositing GST for the first month of the quarter by taxpayers who have opted for QRMP Scheme
28 January 2025	<ul style="list-style-type: none">↳ Filing of GSTR-11 - Statement of Inward supplies by persons having Unique Identification Number (UIN) for claiming GST refund.
30 January 2025	<ul style="list-style-type: none">↳ Last date to report ITC reversal opening balance

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