



RECENT GST AMENDMENTS PURSUANT TO 48TH GST COUNCIL MEETING

**Keynote Speakers –
Adv. Ankit Kanodia
CA Piyush Sharma
Article Asst. Priyanka Ojha**



INTRODUCTION

Goods and services tax, which was touted as a single tax reform, has completed five years in the country. Over the last five years, many GST council meetings were held, and each has featured changes in tax rates, amendments to GST law etc. These council meets have announced significant reforms and measures to facilitate an efficient tax system.

Resultantly, the 48th GST Council meeting held on 17th December 2022 introduced several recommendations related to GST tax rate changes, trade facilitation measures, and measures for streamlining compliance with GST under the chairpersonship of the Union Finance & Corporate Affairs Minister Smt. Nirmala Sitharaman.

01.

CIRCULARS

02.

TAX NOTIFICATIONS

03.

RATE NOTIFICATIONS



01.

FEW IMP CIRCULARS

- **Circular No. 183/15/2022** - Clarification to deal with the difference in ITC availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for FY 2017-18 and 2018-19 .
- **Circular No. 184/16/2022** - Clarification on the entitlement of Input Tax Credit where the place of supply is determined in terms of the proviso to section 12(8) of the IGST Act, 2017.
- **Circular No. 185/17/2022** - Clarification with regard to the applicability of provisions of section 75(2) of the CGST Act and its effect on limitation.
- **Circular No. 186/18/2022** - Clarification on various issue pertaining to GST like applicability of e-invoicing w.r.t an entity.
- **Circular No. 188/20/2022** - Prescribing manner of filing an application for refund by unregistered persons

ITC MISMATCH IN GSTR-2A VS GSTR-3B

Circular seeks to address only few situations where **bonafide** errors have been committed by the vendors in reporting during **FY 2017-18 & 2018-19** illustrating the following situations where the mismatch has arisen:

Situation	Status of GSTR-1	Status of GSTR-3B	Remedy Available
A	Not Filed	Filed	Subject to verification
B	Filed but supply not reported, thus non reflection in GSTR-2A	Filed	Subject to verification
C	Filed but supply reported as B2C instead of B2B, thus non reflection in GSTR-2A	Filed	Subject to verification
D	Filed but the supply declared with the wrong GSTIN of the Recipient	Filed	Subject to verification + Additional Intimation

ITC MISMATCH IN GSTR-2A VS GSTR-3B

Circular lays out that in the precedent circumstances, the officer can permit the claim of the ITC contingent upon verification of the following:

- Recipient is in the *possession of a tax invoice or debit note* issued by the supplier or such other tax paying documents.
- Recipient has *received the goods or services or both*.
- Recipient has *made payment for the amount towards the value of supply*, along with tax payable thereon, to the supplier
- Reversal requirement *u/s 17 or u/s 18* of the CGST Act.
- Claim has been *made within the period* specified u/s 16(4).

Additional Intimation in Situation 4 Supra –

Proper officer of actual recipient

Disallow ITC if claimed
by such recipients in their FORM GSTR-3B

Concerned jurisdictional tax authority of the registered person

Circular 183/15/2022 Dated 27th December, 2022

ITC MISMATCH IN GSTR-2A VS GSTR-3B

In addition to the above, the officer can allow the claim subject to the furnishing of the following certificate:

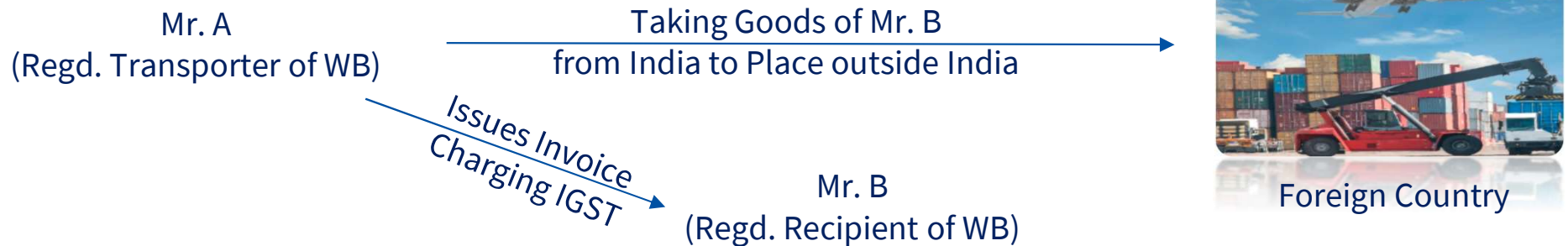
Difference of ITC	Certificate from?	Certification to include?
> 5 Lakh (for a particular supplier)	CA or CMA	CA or CMA to certify that supplies have actually been made and tax has been paid in GSTR-3B.
≤ 5 Lakh (for a particular supplier)	Concerned Supplier	Supplier to certify that supplies have actually been made by him to said registered person and tax has been paid by the said supplier in GSTR 3B.

The Circular is silent on whether the recovered ITC (presuming that the factum of actual payment has not been established via certificate) will be allowed as a re-credit when the said tax stands recovered by the vendor.

ITC AVAILMENT W.R.T TRANSPORTATION SERVICES

Section 12 of IGST Act, 2017 provides for determination of place of supply in case both the service provider and service receiver are located in India.

Proviso to Section 12(8) explains the following –



Is Mr. B permitted to claim ITC?

Provisions of law do not restrict availment of input tax credit by the recipient located in India if POS of said input service is outside India.

Thus, the recipient of service of transportation of goods shall be eligible to avail ITC in respect of IGST so charged by supplier, subject to fulfilment of other conditions laid down in section 16 & 17 of the CGST Act.

Circular 184/16/2022 Dated 27th December, 2022

E-INVOICING QUA THE ENTITY & NOT QUA NATURE

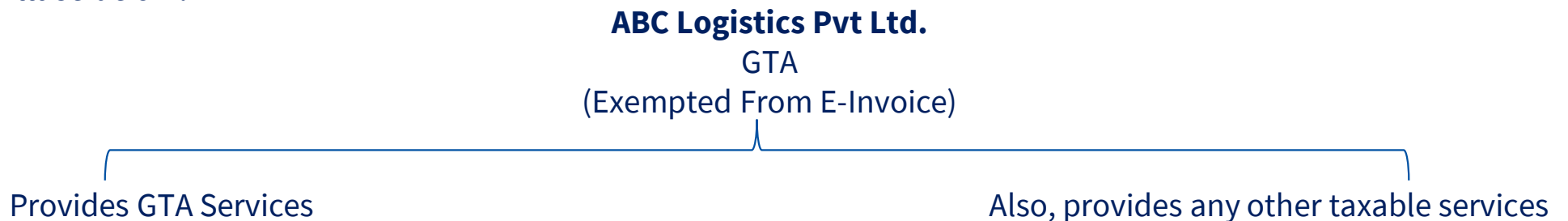
E-invoicing shall not be applicable to the following categories of registered persons, irrespective of the turnover, as notified in the CBIC *CT Notification No.13/2020* , dated 21st March 2020 :-

- Where the supplier of taxable service is an ***insurer or a banking company or a financial institution***, including a ***non-banking financial company***.
- Where the supplier of taxable service is a ***goods transport agency*** supplying services in relation to transportation of goods by road in a goods carriage.
- Where the supplier of taxable service is supplying ***passenger transportation service***.
- A registered person supplying services by way of ***admission to exhibition of cinematograph films in multiplex screens***.

E-INVOICING QUA THE ENTITY & NOT QUA NATURE

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

Illustration :-



*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.*

REFUND BY UNREGISTERED PERSONS

Manner of filing an application for refund By Unregistered persons :-

Illustration :-



URD person to file an application of refund under section 54 of CGST Act shall :-

- Obtain a temporary registration in the state where supplier(s) is located.
- Application shall be filed in Form RFD 01 under the category “Refund for unregistered person”.
- Separate applications in respect of invoices issued by different suppliers.

Circular 188/20/2022 Dated 27th December, 2022

LIMITATION FOR ISSUANCE OF SCN/ORDER

If a SCN was issued under section 74(1), the appellate authority or appellate tribunal or the court concludes that the said notice is not sustainable under 74(1) and directs the proper officer to re-determine the amount of tax payable, deeming the notice to have been issued under section 73(1) of CGST Act, in accordance with the section 75(2) of CGST Act.

What would be the time period for re-determination of the tax, interest and penalty payable by the noticee in such cases?

As per 75(2) CGST, if an appellate order concludes that notice is not sustainable u/s 74(1) then:

- Amount payable shall be re-determined u/s 73(1). Time period for re-determination shall be 2 years from the date of appellate order.
- Re-determination only of amount for which SCN was issued within the time limit of section 73(2).
- Proceedings for the remaining amount shall be dropped.



02.

FEW TAX NOTIFICATIONS

- **CT 26/2022** - In line with the recommendation of 48th GST Council Meeting, CBIC exercising the powers conferred by section 164 of CGST Act, has notified Central Goods and Services Tax (Fifth Amendment) Rules, 2022 vide this notification.

FAILURE TO PAY WITHIN 180 DAYS

Amendment in CGST Rules, 2017 :-

RULE 37 - Reversal of Input Tax Credit in the case of Non-payment of Consideration

- This is a much-needed amendment in the CGST Rules which provide that reversal of ITC in case of non-payment to vendors within 180 days from the date of invoice shall be done on ***proportionate basis***.
- ***Reversal Amount = ITC availed x [Unpaid amount/Invoice Value]***
- Above amount shall be ***reversed along with interest***. Further, the ITC so reversed can be reavailed once the payment is made to the vendor.

ITC REVERSAL IF TAX NOT PAID BY SUPPLIER

Amendment in CGST Rules, 2017 :-

RULE 37A - Reversal of input tax credit in case of non-payment of tax by supplier and reavailment thereof

- This Rule has been inserted to prescribe manner of reversal of ITC and reavailment thereof in case of nonpayment of tax by the supplier as envisaged by *section 41 of CGST Act*.
- The Rule states that if supplier fails to file FORM GSTR-3B within 30th September of subsequent FY in which ITC was availed by the recipient, then the recipient shall reverse the ITC so availed on such invoices within 30th November of subsequent FY in which ITC was availed by the recipient.
- If reversal is not done within above date, *interest under section 50* shall apply.
- ITC so reversed can be *reavailed* once the supplier files its FORM GSTR-3B.
- It should be noted that first availment shall depend on filing of GSTR-1 by the supplier and the subsequent availment on filing of GSTR-3B by the supplier.

CT Notification 26/2022 Dated 26th December, 2022

THE DISCREPANCY BETWEEN GSTR 1 & GSTR 3B

Amendment in CGST Rules, 2017 :-

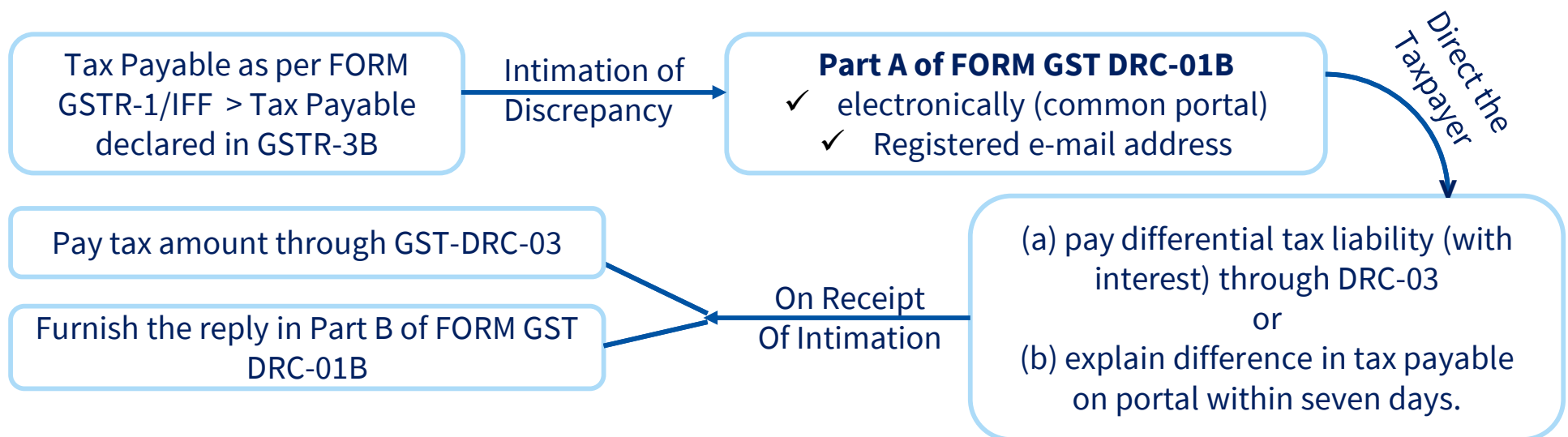
RULE 88C - Manner of dealing with difference in liability reported in statement of outward supplies and that reported in return

- This provision gives excessive powers to the department officers to initiate recovery proceedings where taxpayer fails to reply to FORM DRC 01B or the reply is not found to be satisfactory by the officer.
- Further, in our view there is no provision in the CGST Act 2017 which empowers introduction of this rule and therefore this rule will get challenged in higher forums in time to come.
- Furthermore, whether taxpayer will be able to file appeal under section 107 for recoveries made under this rule is also not clear.

THE DISCREPANCY BETWEEN GSTR 1 & GSTR 3B

Amendment in CGST Rules, 2017 :-

RULE 88C - Manner of dealing with difference in liability reported in statement of outward supplies and that reported in return



CT Notification 26/2022 Dated 26th December, 2022



03.

FEW RATE NOTIFICATIONS

- **CT(R) 12/2022** - Amends the Notification No. 1/2017- CT(R), dated the 28th June 2017, specifying GST Rate schedule.
- **CT(R) 14/2022** - Amends the Notification No. 4/2017- CT(R), dated the 28th June 2017, amending RCM provisions.
- **CT(R) 15/2022** - Amends the Notification No. 12/2017- CT(R), dated the 28th June 2017, amending Tax Exemption Notifications.

RCM ON RESIDENTIAL DWELLING

Amending Notification No. 12/2017-Central Tax (Rate), dated the 28th June 2017, CBIC inserts the explanation to the exemption provision already existing in Law:-

S. No.	Earlier Entry	Explanation Newly Inserted
12	Services by way of renting of residential dwelling for use as residence [except where the residential dwelling is rented to a registered person].	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.

As a relief it has been clarified that exemption to be available if the proprietor does not take deduction of expense for Income tax from his business income.

Notification justifies that RCM on Residential Dwelling is Qua the “Property” & not Qua the “Use”.

This notification shall come into force with effect from the 1st day of January 2023.

CT Rate Notification 15/2022 Dated 30th December, 2022

AMENDMENT IN TAX RATE SCHEDULE

Amending Notification No. 1/2017-Central Tax (Rate), dated the 28th June 2017, CBIC notifies :-

S. No.	Schedule	Tariff Item	Earlier Entry	New Entry
48	Schedule II	22029920 [5%]	Fruit pulp or fruit juice-based drinks	Fruit pulp or fruit juice-based drinks [other than Carbonated Beverages of Fruit Drink or Carbonated Beverages with Fruit Juice]

- *Hence Carbonated Beverages of Fruit Drink or Carbonated Beverages with Fruit Juice will fall under 12B of Sch IV which specifies “Carbonated Beverages of Fruit Drink or Carbonated Beverages with Fruit Juice”*
- *Carbonated Beverage of Fruit Drink or Carbonated Beverages with Fruit juice will be taxable at 28% under Entry 12B of Schedule IV*

This notification shall come into force with effect from the 1st day of January 2023.

AMENDMENT IN RCM APPLICATION ON GOODS

Amending Notification No. 4/2017-Central Tax (Rate), dated the 28th June 2017, CBIC substitutes the following provision :-

S. No.	Tariff Item	New Description	Supplier	Recipient
3A	33012400, 33012510, 33012520, 33012530, 33012540, 33012590.	Following essential oils other than those of citrus fruit namely: - a) Of peppermint (<i>Mentha piperita</i>); b) Of other mints: Spearmint oil (ex- <i>mentha spicata</i>), Water mint-oil(ex- <i>mentha aquatic</i>), Horsemint oil (ex- <i>mentha sylvestries</i>), Bergametoil (ex- <i>mentha citrate</i>), <i>Mentha Arvensis</i>	Any unregistered Person	Any registered person

Hence supply of Mentha Arvensis would also be on reverse charge incase supplied from any unregistered person to a registered person

This notification shall come into force with effect from the 1st day of January 2023.

THANK YOU !



**39A, Jorapukur Square Lane(Behind Girish Park),
Room # 202, Kolkata- 700006, WB, INDIA**

T | 033-7960-9924

E | info@skkassociates.com

W| www.skkassociates.com



Advocate Ankit Kanodia

LLM, LLB, FCA, CS, B.Com(H), CIDT- ICAI

Indirect Tax Litigation & Consultancy

**39A, Jorapukur Square Lane(Behind Girish Park),
Room # 205, Kolkata- 700006, WB, INDIA.**

T | 098315 43580

E | ankit@advocateak.com