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VIDHIMAAN'S GST PROFESSIONALS TODAY

Editor : B P Bhargava • Executive Editors : CA Rajeev Talwar ; CA Shivashish Karnani

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Editor

B P Bhargava

Executive Editors

CA Rajeev Talwar

CA Shivashish Karnani

Associate Editors

CA Sumit Binani

CA Rohit Surana

CA Harsh Gadodia

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Central Goods and Services Tax (Second Amendment) Rules, 2019

GSR 249(E)/Notification No. 16/2019 – Central Tax, dated 29th March, 2019

In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely:-

1. (1) These rules may be called the Central Goods and Services Tax (Second Amendment) Rules, 2019.

(2) Save as otherwise provided in these rules, they shall come into force on the date of their publication in the official gazette.

2. In the Central Goods and Services Tax Rules, 2017 ('the said rules'), in rule 41, in sub-rule (1), after the proviso, the following explanation shall be inserted, namely :-

'*Explanation* :- For the purpose of this sub-rule, it is hereby clarified that the "value of assets" means the value of the entire assets of the business, whether or not input tax credit has been availed thereon.'.

3. With effect from 1st April, 2019, in rule 42 of the said rules, –

(*a*) in sub rule (1), –

(*a*) in clause (*f*), the following *Explanation* shall be inserted, namely :

"*Explanation :* For the purpose of this clause, it is hereby clarified that in case of supply of services covered by clause (*b*) of paragraph 5 of Schedule II of the said Act, value of T_4 shall be zero during the construction phase because inputs and input services will be commonly used for construction of apartments booked on or before the date of issuance of completion certificate or first occupation of the project, whichever is earlier, and those which are not booked by the said date."

(*b*) in clause (*g*), after the letter and figure "**FORM GSTR-2**", the words, letters and figure "**and** at summary level in **FORM GSTR-3B**" shall be inserted ;

(*c*) in clause (*h*), –

(*i*) for the brackets and letter "(*g*)", the brackets and letter "(*f*)" shall be substituted ;

(*d*) in clause (*i*), –

(*i*) before the proviso, the following proviso shall be inserted, namely :

"Provided that in case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the Act, the value of "E/F" for a tax period shall be calculated for each project separately, taking value of E and F as under :

E = aggregate carpet area of the apartments, construction of which is exempt from tax plus aggregate carpet area of the apartments, construction of which is not exempt from tax, but are identified by the promoter to be sold after issue of completion certificate or first occupation, whichever is earlier ;

F = aggregate carpet area of the apartments in the project ;

Explanation 1 : In the tax period in which the issuance of completion certificate or first occupation of the project takes place, value of E shall also include aggregate carpet area of the apartments, which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier ;

Explanation 2 : Carpet area of apartments, tax on construction of which is paid or payable at the rates specified for items (*i*), (*ia*), (*ib*), (*ic*) or (*id*), against serial number 3 of the Table in the notification No. 11/2017-Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (*i*) dated 28th June, 2017 vide GSR number 690(E) dated 28th June, 2017, as amended, shall be taken into account for calculation of value of "E" in view of *Explanation (iv)* in paragraph 4 of the notification No. 11/2017-Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (*i*) dated 28th June, 2017 *vide* GSR number 690(E) dated 28th June, 2017, as amended.

(*ii*) in the proviso, for the word "Provided", the words "Provided further" shall be substituted ;

(*e*) for the clause (*l*), the following clause shall be substituted, namely :

"(*l*) the amount "C3", "D1" and "D2" shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in **FORM GSTR-3B** or through **FORM GST DRC-03** ;" ;

(*f*) in the clause (*m*), for the words "added to the output tax liability of the registered person", the words, letters and figures "reversed by the registered person in **FORM GSTR-3B** or through **FORM GST DRC-03**" shall be substituted ;

(*b*) in sub rule (2), for the words "The input tax credit", the words, figures and bracket "Except in case of supply of services covered by clause (*b*) of paragraph 5 of the Schedule II of the Act, the input tax credit" shall be substituted ;

(*c*) in the clause (*a*) of sub-rule (2), for the words "added to the output tax liability of the registered person", the words, letters and figures "reversed by the registered person in **FORM GSTR-3B** or through **FORM GST DRC-03**" shall be substituted ;

(*d*) after sub rule (2), the following sub rules shall be inserted, namely :

"(3) In case of supply of services covered by clause (*b*) of paragraph 5 of the Schedule II of the Act, the input tax determined under sub-rule (1) shall be calculated finally, for each ongoing project or project which commences on or after 1st April, 2019, which did not undergo or did not require transition of input tax credit consequent to change of rates of tax on 1st April, 2019 in accordance with notification No. 11/2017- Central Tax (Rate), dated the 28th June, 2017, published *vide* GSR No. 690(E) dated the 28th June, 2017, as amended for the entire period from the commencement of the project or 1st July, 2017, whichever is later, to the completion or first occupation of the project, whichever is earlier, before the due date for furnishing of the return for the month of September following the end of financial year in which the completion certificate is issued or first occupation takes place of the project, in the manner prescribed in the said sub-rule, with the modification that value of E/F shall be calculated taking value of E and F as under :

E = aggregate carpet area of the apartments, construction of which is exempt from tax plus aggregate carpet area of the apartments, construction of which is not exempt from tax, but which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier :

F = aggregate carpet area of the apartments in the project ;

and, –

(*a*) where the aggregate of the amounts calculated finally in respect of "D1" and "D2" exceeds the aggregate of the amounts determined under sub-rule (1) in respect of "D1" and "D2", such excess shall be reversed by the registered person in **FORM GSTR-3B** or through **FORM GST DRC-03** in the month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation of the project takes place and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment ; or

(*b*) where the aggregate of the amounts determined under sub-rule (1) in respect of "D1" and "D2" exceeds the aggregate of the amounts calculated finally in respect of "D1" and "D2", such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project.

(4) In case of supply of services covered by clause (*b*) of paragraph 5 of Schedule II of the Act, the input tax determined under sub-rule (1) shall be calculated finally, for commercial portion in each project, other than residential real estate project (RREP), which underwent transition of input tax credit consequent to change of rates of tax on the 1st April, 2019 in accordance with notification No. 11/2017-Central Tax (Rate), dated the 28th June, 2017, published *vide* GSR No. 690(E) dated the 28th June, 2017, as amended for the entire period from the commencement of the project or 1st July, 2017, whichever is later, to the completion or first occupation of the project, whichever is earlier, before the due date for furnishing of the return for the month of September following the end of financial year in which the completion certificate is issued or first occupation takes place of the project, in the following manner.

(*a*) The aggregate amount of common credit on commercial portion in the project ($C3_{aggregate_comm}$) shall be calculated as under,

C3aggregate_comm

Where, –

= [aggregate of amounts of C3 determined under sub- rule (1) for the tax periods starting from 1st July, 2017 to 31st March, 2019, x (A_C / A_T)] + [aggregate of amounts of C3 determined under sub- rule (1)for the tax periods starting from 1st April, 2019 to the date of completion or first occupation of the project, whichever is earlier]

A_C = total carpet area of the commercial apartments in the project
A_T = total carpet area of all apartments in the project

(*b*) The amount of final eligible common credit on commercial portion in the project ($C3_{final_comm}$) shall be calculated as under

C3final_comm =C3aggregate_comm x (E/ F)

Where, –

E = total carpet area of commercial apartments which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier.

F = A_C = total carpet area of the commercial apartments in the project

(*c*) where, $C3_{aggregate_comm}$ exceeds $C3_{final_comm,}$ such excess shall be reversed by the registered person in **FORM GSTR-3B** or through **FORM GST DRC-03** in the month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment ;

(*d*) where, $C3_{final_comm}$ exceeds $C3_{aggregate_comm,}$ such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project.

(5) Input tax determined under sub-rule (1) shall not be required to be calculated finally on completion or first occupation of an RREP which underwent transition of input tax credit consequent to change of rates of tax on 1st April, 2019 in accordance with Notification No. 11/2017-Central Tax (Rate), dated the 28th June, 2017, published *vide* GSR No. 690(E) dated the 28th June, 2017, as amended.

(6) Where any input or input service are used for more than one project,

input tax credit with respect to such input or input service shall be assigned to each project on a reasonable basis and credit reversal pertaining to each project shall be carried out as per sub-rule (3).".

4. With effect from 1st April, 2019, in rule 43 of the said rules, –

(*i*) in sub rule (1), –

(*a*) in clause (*a*), after the words, letters and figures "**FORM GSTR-2**", the words, letters and figure "and **FORM GSTR-3B**" shall be inserted ;

(*b*) in clause (*b*), after the letters and figure "**FORM GSTR-2**", the words, letters and figures "and **FORM GSTR-3B**" shall be inserted ;

(*c*) after clause (*b*), the following explanation shall be inserted, namely :

"*Explanation :* For the purpose of this clause, it is hereby clarified that in case of supply of services covered by clause (*b*) of paragraph 5 of the Schedule II of the said Act, the amount of input tax in respect of capital goods used or intended to be used exclusively for effecting supplies other than exempted supplies but including zero rated supplies, shall be zero during the construction phase because capital goods will be commonly used for construction of apartments booked on or before the date of issuance of completion certificate or first occupation of the project, whichever is earlier, and those which are not booked by the said date." ;

(*d*) in clause (*g*), –

(*A*) after the letter and words "F" is the total turnover", the words "in the State" shall be inserted ;

(*B*) Before the proviso the following proviso shall be inserted, namely, –

"Provided that in case of supply of services covered by clause (*b*) of paragraph 5 of the Schedule II of the Act, the value of "E/F" for a tax period shall be calculated for each project separately, taking value of E and F as under :

E = aggregate carpet area of the apartments, construction of which is exempt from tax plus aggregate carpet area of the apartments, construction of which is not exempt from tax, but are identified by the promoter to be sold after issue of completion certificate or first occupation, whichever is earlier ;

F = aggregate carpet area of the apartments in the project ;

*Explanation*1 *:* In the tax period in which the issuance of completion certificate or first occupation of the project takes place, value of E shall also include aggregate carpet area of the apartments, which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier.

Explanation 2 : Carpet area of apartments, tax on construction of which is paid or payable at the rates specified for items (*i*), (*ia*), (*ib*), (*ic*) or (*id*), against serial number 3 of the Table in notification No. 11/2017-Central Tax (Rate) published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (*i*) dated 28th June, 2017 *vide* GSR No. 690 (E) dated 28th June, 2017, as amended, shall be taken into account for calculation of value of "E" in view of *Explanation (iv)* in paragraph 4 of the notification No. 11/2017-Central Tax (Rate) published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (*i*) dated the 28th June, 2017 *vide* GSR No. 690 (E) dated 28th June, 2017, as amended." ;

(*C*) in the proviso, for the word "Provided", the words "Provided further" shall be substituted ;

(*e*) after clause (*h*), the following clause shall be inserted, namely, –

"(*i*) The amount Te shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in **FORM GSTR-3B**." ;

(*ii*) for sub rule (2) the following sub rules shall be substituted, namely :

"(2) In case of supply of services covered by clause (b) of paragraph 5 of schedule II of the Act, the amount of common credit attributable towards exempted supplies (Te^{final}) shall be calculated finally for the entire period from the commencement of the project or 1st July, 2017, whichever is later, to the completion or first occupation of the project, whichever is earlier, for each project separately, before the due date for furnishing of the return for the month of September following the end of financial year in which the completion certificate is issued or first occupation takes place of the project, as under :

Te^{final}= [(E1 + E2 + E3) /F] x Tc^{final}, Where,-

E1 = aggregate carpet area of the apartments, construction of which is exempt from tax E2= aggregate carpet area of the apartments, supply of which is partly exempt and partly taxable, consequent to change of rates of tax on 1st April, 2019, which shall be calculated as under, –

E2= [Carpet area of such apartments] x [V_1/ (V_1+V_2)],-

Where, –

V_1 is the total value of supply of such apartments which was exempt from tax ; and

V_2 is the total value of supply of such apartments which was taxable

E3 = aggregate carpet area of the apartments, construction of which is not exempt from tax, but have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier :

F= aggregate carpet area of the apartments in the project ;

Tc^{final} = aggregate of A^{final} in respect of all capital goods used in the project and A^{final} for each capital goods shall be calculated as under,

A^{final}= A x (number of months for which capital goods is used for the project/ 60) and,-

(*a*) where value of Te^{final} exceeds the aggregate of amounts of Te determined for each tax period under sub-rule (1), such excess shall be reversed by the registered person in **FORM GSTR-3B** or through **FORM GST DRC-03** in the month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment ; or

(*b*) where aggregate of amounts of Te determined for each tax period under sub-rule (1) exceeds Te^{final}, such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project.

Explanation.- For the purpose of calculation of Tc^{final}, part of the month shall be treated as one complete month.

(3) The amount Te^{final} and Tc^{final} shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax.

(4) Where any capital goods are used for more than one project, input tax credit with respect to such capital goods shall be assigned to each project on a reasonable basis and credit reversal pertaining to each project shall be carried out as per sub-rule (2).

(5) Where any capital goods used for the project have their useful life remaining on the completion of the project, input tax credit attributable to the remaining life shall be availed in the project in which the capital goods is further used ;" ;

(*iii*) the Explanation shall be numbered as "*Explanation 1*" thereof and after *Explanation* 1 as so numbered the following *Explanation* shall be inserted, namely :-

"*Explanation* 2 : For the purposes of rule 42 and this rule, –

(*i*) the term "apartment" shall have the same meaning as assigned to it in clause (*e*) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016) ;

(*ii*) the term "project" shall mean a real estate project or a residential real estate project ;

(*iii*) the term "Real Estate Project (REP)" shall have the same meaning as assigned to it in in clause (*zn*) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016) ;

(*iv*) the term "Residential Real Estate Project (RREP)" shall mean a REP in which the carpet area of the commercial apartments is not more than 15 per cent. of the total carpet area of all the apartments in the REP ;

(*v*) the term "promoter" shall have the same meaning as assigned to it in in clause (*zk*) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016) ;

(*vi*) "Residential apartment" shall mean an apartment intended for residential use as declared to the Real Estate Regulatory Authority or to competent authority ;

(*vii*) "Commercial apartment" shall mean an apartment other than a residential apartment ;

(*viii*) the term "competent authority" as mentioned in definition of "residential apartment", means the local authority or any authority

created or established under any law for the time being in force by the Central Government or State Government or Union Territory Government, which exercises authority over land under its jurisdiction, and has powers to give permission for development of such immovable property ;

(*ix*) the term "Real Estate Regulatory Authority" shall mean the Authority established under sub- section (1) of section 20 (1) of the Real Estate (Regulation and Development) Act, 2016 (No. 16 of 2016) by the Central Government or State Government ;

(*x*) the term "carpet area" shall have the same meaning assigned to it in in clause (*k*) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016) ;

(*xi*) "an apartment booked on or before the date of issuance of completion certificate or first occupation of the project" shall mean an apartment which meets all the following three conditions, namely-

(*a*) part of supply of construction of the apartment service has time of supply on or before the said date ; and

(*b*) consideration equal to at least one installment has been credited to the bank account of the registered person on or before the said date ; and

(*c*) an allotment letter or sale agreement or any other similar document evidencing booking of the apartment has been issued on or before the said date.

(*xii*) The term "ongoing project" shall have the same meaning as assigned to it in Notification No. 11/2017- Central Tax (Rate), dated the 28th June, 2017, published *vide* GSR No. 690(E) dated the 28th June, 2017, as amended ;

(*xiii*) The term "project which commences on or after 1st April, 2019" shall have the same meaning as assigned to it in notification No. 11/2017- Central Tax (Rate), dated the 28th June, 2017, published vide GSR No. 690(E) dated the 28th June, 2017, as amended ;".

5. In the said rules, after rule 88, the following rule shall be inserted, namely :-

"88A. *Order of utilization of input tax credit.* – Input tax credit on account of integrated tax shall first be utilised towards payment of integrated tax, and the amount remaining, if any, may be utilised towards the payment of central tax and State tax or Union territory tax, as the case may be, in any order :

Provided that the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully.".

6. With effect from 1st April, 2019, in the said rules, for rule 100, the following rule shall be substituted, namely :–

"100. *Assessment in certain cases.* – (1) The order of assessment made under sub-section (1) of section 62 shall be issued in **FORM GST ASMT-13** and a summary thereof shall be uploaded electronically in **FORM GST DRC-07**.

(2) The proper officer shall issue a notice to a taxable person in accordance with the provisions of section 63 in **FORM GST ASMT-14** containing the grounds on which the assessment is proposed to be made on best judgment basis and shall also serve a summary thereof electronically in **FORM GST DRC-01**, and after allowing a time of fifteen days to such person to furnish his reply, if any, pass an order in **FORM GST ASMT-15** and summary thereof shall be uploaded electronically in **FORM GST DRC-07**.

(3) The order of assessment under sub-section (1) of section 64 shall be issued in **FORM GST ASMT-16** and a summary of the order shall be uploaded electronically in **FORM GST DRC-07.**

(4) The person referred to in sub-section (2) of section 64 may file an application for withdrawal of the assessment order in **FORM GST ASMT–17.**

(5) The order of withdrawal or, as the case may be, rejection of the application under sub-section (2) of section 64 shall be issued in **FORM GST ASMT-18**.".

7. With effect from 1st April, 2019, in the said rules, for rule 142, the following rule shall be substituted, namely :–

"142. *Notice and order for demand of amounts payable under the Act.* – (1) The proper officer shall serve, along with the

(*a*) notice issued under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, a summary thereof electronically in **FORM GST DRC-01**,

(*b*) statement under sub-section (3) of section 73 or sub-section (3) of section 74, a summary thereof electronically in **FORM GST DRC-02**, specifying therein the details of the amount payable.

(2) Where, before the service of notice or statement, the person chargeable with tax makes payment of the tax and interest in accordance with the provisions

of sub-section (5) of section 73 or, as the case may be, tax, interest and penalty in accordance with the provisions of sub-section (5) of section 74, or where any person makes payment of tax, interest, penalty or any other amount due in accordance with the provisions of the Act he shall inform the proper officer of such payment in **FORM GST DRC-03** and the proper officer shall issue an acknowledgement, accepting the payment made by the said person in **FORM GST DRC–04**.

(3) Where the person chargeable with tax makes payment of tax and interest under sub-section (8) of section 73 or, as the case may be, tax, interest and penalty under sub-section (8) of section 74 within thirty days of the service of a notice under sub-rule (1), or where the person concerned makes payment of the amount referred to in sub-section (1) of section 129 within fourteen days of detention or seizure of the goods and conveyance, he shall intimate the proper officer of such payment in **FORM GST DRC-03** and the proper officer shall issue an order in **FORM GST DRC-05** concluding the proceedings in respect of the said notice.

(4) The representation referred to in sub-section (9) of section 73 or sub-section (9) of section 74 or sub-section (3) of section 76 or the reply to any notice issued under any section whose summary has been uploaded electronically in **FORM GST DRC-01** under sub-rule (1) shall be furnished in **FORM GST DRC-06.**

(5) A summary of the order issued under section 52 or section 62 or section 63 or section 64 or section 73 or section 74 or section 75 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 shall be uploaded electronically in **FORM GST DRC-07**, specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax.

(6) The order referred to in sub-rule (5) shall be treated as the notice for recovery.

(7) Where a rectification of the order has been passed in accordance with the provisions of section 161 or where an order uploaded on the system has been withdrawn, a summary of the rectification order or of the withdrawal order shall be uploaded electronically by the proper officer in **FORM GST DRC-08**.".

8. With effect from 1st April, 2019, in the said rules, for **FORM GST DRC-01**, the following FORM shall be substituted, namely :–

FORM GST DRC-01*

[*See rule 100 (2) & 142(1)(a)*]

9. With effect from 1st April, 2019, in the said rules, for FORM GST DRC-02, the following FORM shall be substituted, namely :

FORM GST DRC-02*

[*See rule 142(1)(b)*]

10. With effect from 1st April, 2019, in the said rules, for FORM GST DRC-07, the following FORM shall be substituted, namely :

FORM GST DRC-07*

[*See rule 100(1), 100(2), 100(3) & 142(5)*]

11. With effect from 1st April, 2019, in the said rules, for FORM GST DRC-08, the following FORM shall be substituted, namely :

FORM GST DRC-08*

[*See rule 142(7)*]

12. With effect from 1st April, 2019, in the said rules, for FORM GST ASMT-13, the following FORM shall be substituted, namely:–

FORM GST ASMT-13*

[*See rule 100(1)*]

13. With effect from 1st April, 2019, in the said rules, for FORM GST ASMT-15, the following FORM shall be substituted, namely :

FORM GST ASMT-15*

[*See rule 100(2)*]

14. With effect from 1st April, 2019, in the said rules, for FORM GST ASMT-16, the following FORM shall be substituted, namely:–

FORM GST ASMT-16*

[*See rule 100(3)*]

**For Forms refer www.cbic.gov.in*

15. With effect from 1st April, 2019, in the said rules, in FORM GST CPD-02, for the table and Note below the table, the following table and Note shall be substituted, namely:–

"Sr. No.	*Offence*	*Act*	*Compounding amount (Rs.)*
(1)	*(2)*	*(3)*	*(4)*

Note : (1) In case the offence committed by the taxable person falls in more than one category specified in Column (2), the compounding amount shall be the amount specified in column (3), which is the maximum of the amounts specified against the categories in which the offence sought to be compounded can be categorised.

(2) This amount will be deposited under minor head "Other".". ❖❖❖

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NOTIFICATIONS

Extension of the due date for furnishing of Form GST ITC-04 for the period July 2017 to March 2019 till 30th June 2019 – *GSR 242(E)/Notification No. 15/2019-Central Tax, dated 28th March, 2019*

In pursuance of section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) and sub-rule (3) of rule 45 of the Central Goods and Services Tax Rules, 2017 ('the said rules'), and in supercession of the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 78/2018-Central Tax, dated the 31st December 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (*i*) *vide* number GSR 1255(E), dated the 31st December, 2018, except as respects things done or omitted to be done before such supercession, the Commissioner, hereby extends the time limit for furnishing the declaration in FORM GST ITC-04 of the said rules, in respect of goods dispatched to a job worker or received from a job worker, during the period from July 2017 to March 2019 till the 30th day of June 2019. ❖❖❖

GST rates of various services as recommended by Goods and Services Tax Council for real estate sector – Amendment in Notification No. 11/2017-Central Tax (Rate) – *GSR 250(E)/Notification No.03/2019-Central Tax (Rate), dated 29th March, 2019*

This notification seeks to amend rates on construction services effective 1st April, 2019 :

- **Reduced rates are being notified for residential and other real estate projects without the availability of ITC.**
- **Option is being given for ongoing projects to either continue with the old rates with ITC or to opt for new rates without ITC (In case new rates are opted, transitional provisions are also provided).**
- **Conditions are being prescribed to bring to ensure major portion of real estate sector is formalized into the economy.**
- **Definitions are majorly borrowed from RERA to ensure uniformity.**
- **Changes are explained with illustrations.**
- **Form for intimation to the department of the rates opted to be given.**

In exercise of the powers conferred by sub-sections (1), (3) and (4) of section 9, sub-section (1) of section 11, sub-section (5) of section 15, sub-section (1) of section 16 and section 148 of the Central Goods and Services Tax Act, 2017 (12

of 2017), the Central Government, on the recommendations of the Council, and on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue) No.11/2017-Central Tax (Rate), dated the 28thJune, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (*i*), *vide* number GSR 690(E), dated the 28thJune, 2017, namely:-

In the said notification, -

(*i*) in the opening paragraph,

(*a*) after the word, brackets and figures "conferred by sub-section (1),", the word, brackets and figures "sub-section (3) and sub-section (4)" shall respectively be inserted;

(*b*) the word "and" after the words and figures "sub-section (5) of section 15" shall be substituted by the symbol ",";

(*c*) after the word, brackets and figures "section (16)", the words and figure "and section 148" shall be inserted;

(*ii*) in the Table, –

(*a*) against serial number 3, for item (i), and the entries relating thereto in column (3), (4) and (5), the following items and entries shall be substituted, namely, –

Table

(3)	*(4)*	*(5)*
"(*i*) Construction of affordable residential apartments by a promoter in a Residential Real Estate Project (herein after referred to as RREP) which commences on or after 1st April, 2019 or in an ongoing RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (*ie*) or (*if*) below, as the case may be, in the manner prescribed therein, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion	0.75	Provided that the central tax at the rate specified in column (4) shall be paid in cash, that is, by debiting the electronic cash ledger only : Provided also that credit of input tax charged on goods and services used in supplying the service has not been taken except to the extent as prescribed in Annexure I in the case of REP other than RREP and in Annexure II in the case of RREP; Provided also that the registered person shall pay, by debit in the electronic credit ledger or electronic cash ledger, an amount

certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)		equivalent to the input tax credit attributable to construction in a project, time of supply of which is on or after 1st April, 2019, which shall be calculated in the manner as prescribed in the Annexure I in the case of REP other than RREP and in Annexure II in the case of RREP; Provided also that where a registered person (landowner- promoter) who transfers development right or FSI (including additional FSI) to a promoter (developer- promoter) against consideration, wholly or partly, in the form of construction of apartments, - (*i*) the developer- promoter shall pay tax on supply of construction of apartments to the landowner-promoter, and (*ii*) such landowner – promoter shall be eligible for credit of taxes charged from him by the developer promoter towards the supply of construction of apartments by developer- promoter to him, provided the landowner-promoter further supplies such apartments to his buyers before issuance of completion certificate or first occupation, whichever is earlier, and pays tax on the same which is not less than the amount of tax charged from him on construction of such apartments by the developer-promoter.
(*ia*) Construction of residential apartments other than affordable residential apartments by a promoter in an RREP which commences on or after 1st April, 2019 or in an ongoing RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (*ie*) or (*if*) below, as the case may be, in the manner prescribed therein, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)	3.75	

(*ib*) Construction of commercial apartments (shops, offices, godowns etc.) by a promoter in an RREP which commences on or after 1st April, 2019 or in an ongoing RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item 3.75(*ie*) or (*if*) below, as the case may be, in the manner prescribed therein, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)	3.75	*Explanation*. - (*i*) "developer- promoter" is a promoter who constructs or converts a building into apartments or develops a plot for sale, (*ii*) "landowner- promoter" is a promoter who transfers the land or development rights or FSI to a developer-promoter for construction of apartments and receives constructed apartments against such transferred rights and sells such apartments to his buyers independently. Provided also that eighty percent of value of input and input services, [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas], used in supplying the service shall be received from registered supplier only; Provided also that inputs and input services on which tax is paid on reverse charge basis shall be deemed to have been purchased from registered person;
(*ic*) Construction of affordable residential apartments by a promoter in a Real Estate Project (herein after referred to as REP) other than RREP, which commences on or after 1st April, 2019 or in an ongoing REP other than RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (*ie*) or (*if*) below, as the case may be, in the manner prescribed therein, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion	0.75	

certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)		Provided also that where value of input and input services received from registered suppliers during the financial year (or part of the financial year till the date of issuance of completion certificate or first occupation of the project, whichever is earlier) falls short of the said threshold of 80 per cent., tax shall be paid by the promoter on value of input and input services comprising such shortfall at the rate of eighteen percent on reverse charge basis and all the provisions of the Central Goods and Services Tax Act, 2017 (12 of 2017) shall apply to him as if he is the person liable for paying the tax in relation to the supply of such goods or services or both; Provided also that notwithstanding anything contained herein above, where cement is received from an unregistered person, the promoter shall pay tax on supply of such cement at the applicable rates on reverse charge basis and all the provisions of the Central Goods and Services Tax Act, 2017 (12 of 2017), shall apply to

(*id*) Construction of residential apartments other than affordable residential apartments by a promoter in a REP other than a RREP which commences on or after 1st April, 2019 or in an ongoing REP other than RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (*ie*) or (*if*) below, as the case may be, in the manner prescribed therein, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)	3.75	him as if he is the person liable for paying the tax in relation to such supply of cement; (Please refer to the illustrations in annexure III) *Explanation*. - 1. The promoter shall maintain project wise account of inward supplies from registered and unregistered supplier and calculate tax payments on the shortfall at the end of the financial year and shall submit the same in the prescribed form electronically on the common portal by end of the quarter following the financial year. The tax liability on the shortfall of inward supplies from unregistered person so determined shall be added to his output tax liability in the month not later than the month of June following the end of the financial year. 2. Notwithstanding anything contained in *Explanation 1* above, tax on cement received from unregistered person shall be paid in the month in which cement is received.

(*ie*) Construction of an apartment in an ongoing project under any of the schemes specified in sub-item (*b*), sub-item (*c*), sub-item (*d*), sub-item (*da*) and sub-item (db) of item (*iv*); sub-item (*b*), sub-item (*c*), sub-item (*d*) and sub-item (*da*) of item (*v*); and sub-item (*c*) of item (*vi*), against serial number 3 of the Table, in respect of which the promoter has exercised option to pay central tax on construction of apartments at the rates specified for this item. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)	6	3. Input Tax Credit not availed shall be reported every month by reporting the same as ineligible credit in GSTR-3B [Row No. 4 (D)(2)]. Provided that in case of ongoing project, the registered person shall exercise one time option in the Form at Annexure IV to pay central tax on construction of apartments in a project at the rates as specified for item (*ie*) or (*if*), as the case may be, by the 10th of May, 2019; Provided also that where the option is not exercised in Form at annexure IV by the 10th of May, 2019, option to pay tax at the rates as applicable to item (*i*) or (*ia*) or (*ib*) or (*ic*) or (*id*) above, as the case may be, shall be deemed to have been exercised; Provided also that invoices for supply of the service can be issued during the period from 1st April 2019 to 10th May 2019 before exercising the option, but such invoices shall be in accordance with the option to be exercised.;
(*if*) Construction of a complex, building, civil structure or a part thereof, including,- (*i*) commercial apartments (shops, offices, godowns, etc.) by a promoter in a REP other than RREP, (*ii*) residential apartments in an ongoing project, other than affordable residential apartments, in respect of which the promoter has exercised option to pay central tax on construction of apartments at the rates as specified for this item in the manner prescribed herein, but excluding supply by way of services specified	9	

at items (*i*), (*ia*), (*ib*), (*ic*), (*id*) and (*ie*) above intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. *Explanation*. - For the removal of doubt, it is hereby clarified that, supply by way of services specified at items (*i*), (*ia*), (*ib*), (*ic*), (*id*) and (*ie*) in column (3) shall attract central tax prescribed against them in column (4) subject to conditions specified against them in column (5) and shall not be levied at the rate as specified under this entry. (Provisions of paragraph 2 of this notification shall apply for valuation of this service		

(*b*) against serial number 3, –

(*a*) item (*ii*) and the entries relating thereto in columns (3), (4) and (5) shall be omitted;

(*b*) in item (iv) in column (3), -

(*1*) after the figures "2017", the words, brackets, figures and letters "other than that covered by items (*i*), (*ia*), (*ib*), (*ic*), (*id*), (*ie*) and (if) above" shall be inserted;

(*c*) in item (v) in column (3), -

(*1*) after the figures "2017", the words, brackets, figures and letters "other than that covered by items (*i*), (*ia*), (*ib*), (*ic*), (*id*), (*ie*) and (if) above" shall be inserted;

(*d*) after item (*v*) and entries relating thereto in column (3), (4) and (5), the following items and entries shall be inserted, namely, -

(3)	(4)	(5)
(*va*) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, other than that covered by items (*i*), (*ia*), (*ib*), (*ic*), (*id*), (*ie*) and (*if*) above, supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of affordable residential apartments covered by sub-clause (*a*) of clause (*xvi*) of paragraph 4 below, in a project which commences on or after 1st April, 2019, or in an ongoing project in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (*ie*) or (*if*), as the case may be, in the manner prescribed therein,	6	Provided that carpet area of the affordable residential apartments as specified in the entry in column (3) relating to this item, is not less than 50 per cent of the total carpet area of all the apartments in the project; Provided also that for the purpose of determining whether the apartments at the time of supply of the service are affordable residential apartments covered by sub-clause (*a*) of clause (*xvi*) of paragraph 4 below or not, value of the apartments shall be the value of similar apartments booked nearest to the date of signing of the contract for supply of the service specified in the entry in column (3) relating to this item; Provided also that in case it finally turns out that the carpet area of the affordable residential apartments booked or sold before or after completion, for which gross amount actually charged was forty five lakhs rupees or less and the actual carpet area was within the limits prescribed in sub-clause (*a*) of clause (*xvi*) of paragraph 4 below, was less than 50 per cent of the total carpet area of all the apartments in the project, the recipient of the service, that is, the promoter shall be liable to pay such amount of

		tax on reverse charge basis as is equal to the difference between the tax payable on the service at the applicable rate but for the rate prescribed herein and the tax actually paid at the rate prescribed herein";

(*e*) in item (*vi*) in column (3), after the figures "2017", the words, brackets, and figures "other than that covered by items (*i*), (*ia*), (*ib*), (*ic*), (*id*), (*ie*) and (if) above" shall be inserted';

(*f*) in item (*xii*) in column (3), for the entry, the following entry shall be substituted, namely :-

"(*xii*) Construction services other than (*i*), (ia), (*ib*), (*ic*), (*id*), (*ie*), (*if*), (*iii*), (*iv*), (*v*), (*va*), (*vi*), (*vii*), (*viii*), (ix), (*x*) and (*xi*) above.

Explanation. - For the removal of doubt, it is hereby clarified that, supply by way of services specified at items (i), (*ia*), (*ib*), (*ic*), (*id*), (*ie*) and (*if*) in column (3) shall attract central tax prescribed against them in column (4) subject to conditions specified against them in column (5) and shall not be levied at the rate as specified under this entry.";

(*c*) against serial number 16, in item (*ii*) in column (3), for the word, brackets and letters "sub-item (*b*), sub-item (*c*), sub-item (*d*), sub-item (*da*) and sub-item (*db*) of item (*iv*); sub-item (*b*), sub-item (*c*), sub-item (*d*) and sub-item (*da*) of item (*v*); and sub-item (*c*) of item (*vi*)", the word, brackets figures and letters "(*i*), (*ia*), (*ib*), (*ic*), (*id*), (*ie*) and (*if*)" shall be substituted;

(*d*) after serial number 38 in column (1) and the entries relating thereto in column (2), (3), (4) and (5) the following serial number and entries shall be inserted, namely: -

(1)	*(2)*	*(3)*	*(4)*	*(5)*
"39.	Chapter 99	Supply of services other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI) by an unregistered person to a promoter for construction of a project on which tax is payable by the recipient of the services under sub- section 4 of section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017), as prescribed in notification No. 07 / 2019- Central Tax (Rate), dated 29th March, 2019, published in Gazette of India *vide* GSR No. _, dated 29th March, 2019. *Explanation*. - This entry is to be taken to apply to all services which satisfy the conditions prescribed herein, even though they may be covered by a more specific chapter, section or heading elsewhere in this notification.	9	-";

(*iii*) in paragraph 2,-

(*a*) for the words, brackets, letters and figures "sub-item (*b*), sub-item (*c*), sub-item (*d*), sub-item (*da*) and sub-item (*db*) of item (*iv*) ; sub-item (*b*), sub-item (*c*), sub-item (*d*) and sub-item (*da*) of item (*v*) ; and sub-item (*c*) of item (*vi*)," the word, brackets, letters and figures " (*i*) (*ia*), (*ib*), (*ic*), (*id*), (*ie*) and (*if*)" shall be substituted ;

(*b*) in the *Explanation*, after the words "this paragraph" the words "and paragraph 2A below" shall be inserted ;

(*iv*) after paragraph 2, the following paragraph shall be inserted, namely, –

"2A. Where a registered person transfers development right or FSI

(including additional FSI) to a promoter against consideration, wholly or partly, in the form of construction of apartments, the value of construction service in respect of such apartments shall be deemed to be equal to the Total Amount charged for similar apartments in the project from the independent buyers, other than the person transferring the development right or FSI (including additional FSI), nearest to the date on which such development right or FSI (including additional FSI) is transferred to the promoter, less the value of transfer of land, if any, as prescribed in paragraph 2 above."

(*v*) in paragraph 4 relating to Explanation, after clause (*xii*), the following clauses shall be inserted, namely: -

"(xiii) an apartment booked on or before the 31st March, 2019 shall mean an apartment which meets all the following three conditions, namely – (*a*) part of supply of construction of which has time of supply on or before the 31st March, 2019 and (*b*) at least one instalment has been credited to the bank account of the registered person on or before the 31st March, 2019 and (*c*) an allotment letter or sale agreement or any other similar document evidencing booking of the apartment has been issued on or before the 31st March, 2019 ;

(*xiv*) the term "apartment" shall have the same meaning as assigned to it in clause (*e*) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016) ;

(*xv*) the term "project" shall mean a Real Estate Project or a Residential Real Estate Project ;

(*xvi*) the term "affordable residential apartment" shall mean, -

(*a*) a residential apartment in a project which commences on or after 1st April, 2019, or in an ongoing project in respect of which the promoter has not exercised option in the prescribed form to pay central tax on construction of apartments at the rates as specified for item (*ie*) or (*if*) against serial number 3, as the case may be, having carpet area not exceeding 60 square meter in metropolitan cities or 90 square meter in cities or towns other than metropolitan cities and for which the gross amount charged is not more than forty five lakhs rupees.

For the purpose of this clause, -

(*i*) Metropolitan cities are Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad,

Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai (whole of MMR) with their respective geographical limits prescribed by an order issued by the Central or State Government in this regard ;

(*ii*) Gross amount shall be the sum total of ; -

A. Consideration charged for the services specified at item (*i*) and (*ic*) in column (3) against sl. No. 3 in the Table ;

B. Amount charged for the transfer of land or undivided share of land, as the case may be including by way of lease or sub lease ; and

C. Any other amount charged by the promoter from the buyer of the apartment including preferential location charges, development charges, parking charges, common facility charges etc.

(*b*) an apartment being constructed in an ongoing project under any of the schemes specified in sub-item (*b*), sub-item (*c*), sub-item (*d*), sub-item (*da*) and sub-item (db) of item (*iv*) ; sub-item (*b*), sub-item (*c*), sub-item (*d*) and sub-item (*da*) of item (*v*) ; and sub-item (*c*) of item (*vi*), against serial number 3 of the Table above, in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (*ie*) or (*if*) against serial number 3, as the case may be.

(*xvii*) the term "promoter" shall have the same meaning as assigned to it in clause (*zk*) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016) ;

(*xviii*) the term "Real Estate Project (REP)" shall have the same meaning as assigned to it in clause (*zn*) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016) ;

(*xix*) the term "Residential Real Estate Project (RREP)" shall mean a REP in which the carpet area of the commercial apartments is not more than 15 per cent of the total carpet area of all the apartments in the REP ;

(*xx*) the term "ongoing project" shall mean a project which meets all the following conditions, namely-

(*a*) commencement certificate in respect of the project, where required

to be issued by the competent authority, has been issued on or before 31st March, 2019, and it is certified by any of the following that construction of the project has started on or before 31st March, 2019 :-

(*i*) an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972) ; or

(*ii*) a chartered engineer registered with the Institution of Engineers (India) ; or

(*iii*) a licensed surveyor of the respective local body of the city or town or village or development or planning authority.

(*b*) where commencement certificate in respect of the project, is not required to be issued by the competent authority, it is certified by any of the authorities specified in sub-clause (*a*) above that construction of the project has started on or before the 31st March, 2019 ;

(*c*) completion certificate has not been issued or first occupation of the project has not taken place on or before the 31st March, 2019 ;

(*d*) apartments being constructed under the project have been, partly or wholly, booked on or before the 31st March, 2019.

Explanation.- For the purpose of sub- clause (*a*) and (*b*) above , construction of a project shall be considered to have started on or before the 31st March, 2019, if the earthwork for site preparation for the project has been completed and excavation for foundation has started on or before the 31st March, 2019.

(*xxi*) "commencement certificate" means the commencement certificate or the building permit or the construction permit, by whatever name called issued by the competent authority to allow or permit the promoter to begin development works on an immovable property, as per the sanctioned plan ;

(*xxii*) "development works" means the external development works and internal development works on immovable property ;

(*xxiii*) "external development works" includes roads and road systems landscaping, water supply, seweage and drainage systems, electricity supply transformer, sub-station, solid waste management and disposal or any other work which may have to be executed in the periphery

of, or outside, a project for its benefit, as may be provided under the local laws ;

(*xxiv*) "internal development works" means roads, footpaths, water supply, sewers, drains, parks, tree planting, street lighting, provision for community buildings and for treatment and disposal of sewage and sullage water, solid waste management and disposal, water conservation, energy management, fire protection and fire safety requirements, social infrastructure such as educational health and other public amenities or any other work in a project for its benefit, as per sanctioned plans ;

(*xxv*) the term "competent authority" as mentioned in definition of "commencement certificate" and "residential apartment" , means the local authority or any authority created or established under any law for the time being in force by the Central Government or State Government or Union Territory Government, which exercises authority over land under its jurisdiction, and has powers to give permission for development of such immovable property ;

(*xxvi*) The term "carpet area" shall have the same meaning assigned to it in in clause (k) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016) ;

(*xxvii*) the term "Real Estate Regulatory Authority" shall mean the Authority established under sub- section (1) of section 20 (1) of the Real Estate (Regulation and Development) Act, 2016 (No. 16 of 2016) by the Central Government or State Government ;

(*xxviii*) "project which commences on or after 1st April, 2019" shall mean a project other than an ongoing project ;

(*xxix*) "Residential apartment" shall mean an apartment intended for residential use as declared to the Real Estate Regulatory Authority or to competent authority ;

(*xxx*) "Commercial apartment" shall mean an apartment other than a residential apartment ;

(*xxxi*) "floor space index (FSI)" shall mean the ratio of a building's total floor area (gross floor area) to the size of the piece of land upon which it is built.".

2. This notification shall come into force with effect from the 1st day of April, 2019.

Annexure I

Real estate project (REP) other than Residential Real estate project (RREP)

Input tax credit attributable to construction of residential portion in a real estate project (REP) other than residential real estate project (RREP), which has time of supply on or after 1st April, 2019, shall be calculated project wise for all projects which commence on or after 1st April, 2019 or ongoing projects in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (*ie*) or (*if*) against serial number 3, as the case may be, in the prescribed manner, before the due date for furnishing of the return for the month of September following the end of financial year 2018-19, in the following manner:

1. Where % completion as on 31st March, 2019 is not zero or where there is inventory in stock

(*a*) Input tax credit on inputs and input services attributable to construction of residential portion in a REP, which has time of supply on or after 1st April, 2019, may be denoted as Tx. Tx shall be calculated as under:

Tx=T-Te

Where,

(*i*) T is the total ITC availed (utilized or not) on inputs and input services used in construction of the REP from 1st July, 2017 to 31st March, 2019 including transitional credit taken on 1st July, 2017;

(*ii*) Te is the eligible ITC attributable to (*a*) construction of commercial portion and (*b*) construction of residential portion, in the REP which has time of supply on or before 31st March, 2019;

(*b*) Te shall be calculated as under: Te=Tc+Tr

Where, –

Tc is the ITC attributable to construction of commercial portion in the REP, calculated as under :

Tc =T * (carpet area of commercial apartments in the REP/ total carpet area of commercial and residential apartments in the REP) and

Tr is the ITC attributable to construction of residential portion in the REP which has time of supply on or before 31st March, 2019 and which shall be calculated as under,

Tr= T* F1 * F2 * F3* F4

Where, -

$$F1 = \frac{\text{Carpet area of residential apartments in REP}}{\text{Total carpet area of commercial and residential apartments in the REP}}$$

$$F2 = \frac{\text{Total carpet area of residential apartment booked on or before 31st March, 2019}}{\text{Total carpet area of the residential apartment in REP}}$$

$$F3 = \frac{\text{Such Value of supply of construction of residential apartments booked on or before 31st March, 2019 which has time of supply on or before 31st March, 2019}}{\text{Total value of supply of construction of residential apartments booked on or before 31st March, 2019}}$$

(F3 is to account for percentage invoicing of booked residential apartments)

$$F4 = \frac{1}{\text{\% Completion of construction as on 31st March, 2019}}$$

Illustration : where one- fifth (twenty per cent of the construction has been completed, F4 shall be 100 ÷ 20 = 5.

Explanation : "% Completion of construction as on 31st March, 2019" shall be the same as declared to the Real Estate Regulatory Authority in terms of section 4 and section 11 of Real Estate (Regulation and Development) Act, 2016 (16 of 2016) and where the same is not required to be declared to the Real Estate Regulatory Authority, it shall be got determined and certified by an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972) or a chartered engineer registered with the Institution of Engineers (India).

(*c*) A registered person shall have the option to calculate 'Te' in the manner prescribed below instead of the manner prescribed in (*b*) above,-

Te shall be calculated as under:

Te = Tc + T1 + Tr

Where, -

Tc is the ITC attributable to construction of commercial portion in the REP, calculated as under:

Tc =T3 * (carpet area of commercial apartments in the REP/ total carpet area of commercial and residential apartments in the REP);

Wherein

T3 = T- (T1 + T2)

T1 = ITC attributable exclusively to construction of commercial portion in the REP T2 = ITC attributable exclusively to construction of residential portion in the REP and

Tr is the ITC attributable to construction of residential portion in the REP which has time of supply on or before 31.03.2019 and which shall be calculated as under,

Tr = (T3 + T2)* F1 * F2 * F3* F4

or

Tr = (T- T1)* F1 * F2 * F3* F4

(*d*) The amounts 'Tx' and 'Te' shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax.

(*e*) Where, Tx is positive, *i.e.* Te<T, the registered person shall pay, by debit in the electronic credit ledger or electronic cash ledger, an amount equal to the difference between T and Te. Such amount shall form part of the output tax liability of the registered person and the amount shall be furnished in FORM GST ITC- 03.

Explanation : The registered person may file an application in FORM GST DRC-20, seeking extension of time for the payment of taxes or any amount due or for allowing payment of such taxes or amount in installments in accordance with the provisions of section 80. The commissioner may issue an order in FORM GST DRC- 21 allowing the taxable person further time to make payment and/or to pay the amount in such monthly installments, not exceeding twenty-four, as he may deem fit.

(*f*) Where Tx is negative, *i.e.* Te>T, the registered person shall be eligible to take ITC on goods and services received on or after 1st April, 2019 for construction of residential portion in the REP, for which he shall not otherwise be eligible, to the extent of difference between Te and T.

(*g*) The registered person may calculate Tc and utilize credit to the extent of Tc for payment of tax on commercial apartments, till the complete accounting of Tx is carried out and submitted.

(*h*) Where percentage completion is zero but ITC has been availed on goods and services received for the project on or prior to 31st March, 2019, input tax credit attributable to construction of residential portion which has time of

supply on or after 1st April, 2019, shall be calculated and the amount equal to Tx shall be paid or taken credit of, as the case may be, as prescribed above, with the modification that percentage completion for calculation of F4 shall be taken as the percentage completion which, as certified by an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972) or a chartered engineer registered with the Institution of Engineers (India), can be achieved with the input services received and inputs in stock as on 31st March, 2019.

2. Where % completion as on 31st March, 2019 is zero but invoicing has been done having time of supply before 31st March, 2019, and no input services or inputs have been received as on 31st March, 2019, "Te" shall be calculated as follows: -

(*a*) Input tax credit on inputs and input services attributable to construction of residential portion in a REP, which has time of supply on or before 31st March, 2019 may be denoted as Te which shall be calculated as under,

Te = Tc + Tr Where, -

Tc is the ITC attributable to construction of commercial portion in the REP, calculated as under:

Tc =Tn* (carpet area of commercial apartments in the REP/ total carpet area of commercial and residential apartments in the REP) and

Tr is the ITC attributable to construction of residential portion in the REP which has time of supply on or before 31st March, 2019 and which shall be calculated as under,

Tr = Tn* F1 * F2 * F3

Where, -

Tn= Tax paid on such inputs and input services on which ITC is available under the CGST Act, received in 2019-20 for construction of REP

F1, F2 and F3 shall be the same as in para 1 above

(*b*) The registered person shall be eligible to take ITC on goods and services received on or after 1st April, 2019 for construction of residential portion in the REP, for which he shall not otherwise be eligible, to the extent of the amount of Te.

(*c*) The amount 'Te' shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax.

3. Notwithstanding anything contained in paragraph 1 or paragraph 2 above, Te shall be determined in the following situations as under:

(*i*) where percentage invoicing is more than the percentage completion and the difference between percentage invoicing (per cent points) and the percentage completion (per cent points) of construction is more than 25 per cent points; the value of percentage invoicing shall be deemed to be percentage completion plus 25 per cent points;

(*ii*) where the value of invoices issued on or prior to 31st March, 2019 exceeds the consideration actually received on or prior to 31st March, 2019 by more than 25 per cent of consideration actually received; the value of such invoices for the purpose of determination of percentage invoicing shall be deemed to beactual consideration received plus 25 per cent of the actual consideration received; and

(*iii*) where, the value of procurement of inputs and input services prior to 1st April, 2019 exceeds the value of actual consumption of the inputs and input services used in the percentage of construction completed as on 31st March, 2019 by more than 25 per cent of value of actual consumption of inputs and input services, the jurisdictional commissioner or any other officer authorized in this regard may fix the Te based on actual per unit consumption of inputs and input services based on the documents duly certified by a chartered accountant or cost accountant submitted by the promoter in this regard, applying the accepted principles of accounting.

Illustration 1:

Sl. No	*Detail of a REP (Res + Com)*			
	A	*B*	*C*	*D*
1	No. of apartments in the project		100	units
2	No. of residential apartments in the project		75	units
3	Carpet area of the residential apartment		70	sqm
4	Total carpet area of the residential apartments	C2 * C3	5250	sqm
5	value of each residential apartment		0.60	crore
6	Total value of the residential apartments	C2 * C5	45.00	crore
7	No. of commercial apartments in the project		25	units
8	Carpet area of the commercial apartment		30	sqm
9	Total carpet area of the commercial apartments	C7 * C8	750	sqm
10	Total carpet area of the project (Resi + Com)	C4 + C9	6000	sqm
11	Percentage completion as on 31.03.2019 [as declared to RERA or determined by chertered engineer]		20%	

12	No of residential apartments booked before transition		40	units
13	Total carpet area of the residential apartments booked before transition	C12 * C3	2800	sqm
14	Value of booked residential apartments	C5 * C12	24	crore
15	Percentage invoicing of booked residential apartments on or before 31.03.2019		20%	
16	Total value of supply of residential apartments having t.o.s. prior to transition	C14 * C15	4.8	crore
17	ITC to be reversed on transition, Tx= T- Te			
18	Eligible ITC (Te)= Tc + Tr			
19	T (*see notes below)		1	crore
20	Tc= T x (carpet area of commercial apartments in the REP/ total carpet area of commercial and residential apartments in the REP)	C19 * (C9/ C10)	0.125	crore
21	Tr= T x F1 x F2 x F3 x F4			
22	F1	C4 / C10	0.875	
23	F2	C13 / C4	0.533	
24	F3	C16 / C14	0.200	
25	F4	1/ C11	5	
26	Tr= T x F1 x F2 x F3 x F4	C19 * C22 * C23 * C24 * C25	0.467	crore
27	Eligible ITC (Te)=Tc + Tr	C26 + C20	0.592	crore
28	ITC to be reversed on transition, Tx= T- Te	C19 - C27	0.408	crore

	* Note:- 1. The value of T at C19 has been estimated for illustration based on weighted average tax on inputs. 2. In actual practice, the registered person shall take 'aggregate of ITC taken as declared in GSTR-3B of tax periods from 1.7.2017 or commencemnt of project which is later and transitional credit taken under section 140 of CGST Act' as value of T.

Illustration 2:

Sl. No	*Details of a REP (Res + Com)*			
	A	*B*	*C*	*D*
1	No. of apartments in the project		100	units
2	No. of residential apartments in the project		75	units
3	Carpet area of the residential apartment		70	sqm
4	Total carpet area of the residential apartments	C2 * C3	5250	sqm
5	value of each residential apartment		0.60	crore
6	Total value of the residential apartments	C2 * C5	45.00	crore
7	No. of commercial apartments in the project		25	units
8	Carpet area of the commercial apartment		30	sqm
9	Total carpet area of the commercial apartments	C7 * C8	750	sqm
10	Total carpet area of the project (Resi + Com)	C4 + C9	6000	sqm
11	Percentage completion (Pc) as on 31.03.2019 [as declared to RERA or determined by chertered engineer]		20%	
12	No of residential apartments booked before transition		40	units
13	Total carpet area of the residential apartments booked before transition	C12 * C3	2800	sqm
14	Value of booked residential apartments	C5 * C12	24	crore
15	Percentage invoicing of booked residential apartments on or before 31.03.2019		60%	

16	Total value of supply of residential apartments having t.o.s. prior to transition	C14 * C15	14.4	crore
17	ITC to be reversed on transition, Tx= T- Te			
18	Eligible ITC (Te)= Tc + Tr			
19	T (*see notes below)		1	crore
20	Tc= T x (carpet area of commercial apartments in the REP/ total carpet area of commercial and residential apartments in the REP)	C19 * (C9/ C10)	0.125	crore
21	Tr= T x F1 x F2 x F3 x F4			
22	F1	C4 / C10	0.875	
23	F2	C13 / C4	0.533	
24	F3	C16 / C14	0.600	
25	F4	1/ C11	5	
26	Tr= T x F1 x F2 x F3 x F4	C19 * C22 * C23 * C24 * C25	1.400	crore
27	Eligible ITC (Te)=Tc + Tr	C26 + C20	1.525	crore
28	ITC to be reversed/ taken on transition, Tx= T- Te	C19 - C27	-0.525	crore
29	Tx after application of cap on % invoicing vis-a-vis Pc			
30	% completion		20%	
31	% invoicing		60%	
32	% invoicing after application of cap (Pc + 25%)	C11+25%	45%	
33	Total value of supply of residential apartments having t.o.s. prior to transition	C14*C32	10.80	crore
34	F3 after application of cap	C33/C14	0.45	

35	Tr= T x F1 x F2 x F3 x F4 (after application of cap)	C19 * C22 * C23 * C34 * C25	1.05	crore
36	Eligible ITC (Te)=Tc + Tr (after application of cap)	C20 + C35	1.18	crore
37	ITC to be reversed / taken on transition, Tx= T- Te (after application of cap)	C19 - C36	-0.18	crore
38	Tx after application of cap on % invoicing vis-a-vis Pc and payment realisation			
39	% invoicing after application of cap(Pc + 25%)		45%	
40	Total value of supply of residential apartments having t.o.s. prior to transition	C33	10.80	crore
41	Consideration received		8.00	crore
42	Total value of supply of residential apartments having t.o.s. prior to transition after application of cap vis-a-vis consideration received	8 cr + 25% of 8 Cr	10.00	crore
43	F3 after application of both the caps	C42 / C14	0.42	
44	Tr= T x F1 x F2 x F3 x F4 (after application of both the caps)	C19 * C22 * C23 * C43 * C25	0.97	
45	Eligible ITC (Te)=Tc + Tr (after application of both the caps)	C20 + C44	1.10	
46	ITC to be reversed / taken on transition, Tx= T- Te (after application of both the caps)	C19 - C45	-0.10	crore

	* Note:- 1. The value of T at C19 has been estimated for illustration based on weighted average tax on inputs. 2. In actual practice, the registered person shall take 'aggregate of ITC taken as declared in GSTR-3B of tax periods from 1.7.2017 or commencemnt of project which is later and transitional credit taken under section 140 of CGST Act' as value of T.

Annexure II

Residential Real estate project (RREP)

Input tax credit attributable to construction of residential and commercial portion in a Residential Real estate project (RREP), which has time of supply on or after 1st April, 2019, shall be calculated project wise for all projects which commence on or after 1st April, 2019 or ongoing projects in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) against serial number 3, as the case may be, in the prescribed manner, before the due date for furnishing of the return for the month of September following the end of financial year 2018-19, in the following manner:

1. Where % completion as on 31st March, 2019 is not zero or where there is inventory in stock

(*a*) Input tax credit on inputs and input services attributable to construction of residential and commercial portion in an RREP, which has time of supply on or after 1st April, 2019, may be denoted as Tx. Tx shall be calculated as under:

Tx=T-Te

Where,

(*i*) T is the total ITC availed (utilized or not) on inputs and input services used in construction of the RREP from 1st July, 2017 to 31st March, 2019 including transitional credit taken on 1st July, 2017;

(*ii*) Te is the eligible ITC attributable to construction of commercial portion and construction of residential portion, in the RREP which has time of supply on or before 31st March, 2019;

(*b*) Te shall be calculated as under :

Te= T* F1 * F2 * F3* F4 Where, -

$$F1 = \frac{\text{Carpet area of residential and commercial apartments in the RREP}}{\text{Total carpet area of apartments in the RREP}}$$

(In case of a Residential Real Estate Project, value of "F1" shall be 1.)

$$F2 = \frac{\text{Total carpet area of residential and commercial apartment booked on or before 31st March, 2019}}{\text{Total carpet area of the residential and commercial apartment in the RREP}}$$

$$F3 = \frac{\text{Such value of supply of construction of residential and commercial apartments booked on or before 31st March, 2019 which has time of supply on or before 31st March, 2019}}{\text{Total value of supply of construction of residential and commercial apartments booked on or before 31st March, 2019}}$$

(F3 is to account for percentage invoicing of booked residential apartments)

$$F4 = \frac{1}{\text{\% Completion of construction as on 31st March, 2019}}$$

Illustration: where one- fifth (twenty per cent of the construction has been completed, F4 shall be 100 ÷ 20 = 5.

Explanation: "% Completion of construction as on 31st March, 2019" shall be the same as declared to the Real Estate Regulatory Authority in terms of section 4 and section 11 of Real Estate (Regulation and Development) Act, 2016 and where the same is not required to be declared to the Real Estate Regulatory Authority, it shall be got determined and certified by an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972) or a chartered engineer registered with the Institution of Engineers (India).

(*c*) The amounts 'Tx' and 'Te' shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax.

(*d*) Where, Tx is positive, *i.e.*, Te < T, the registered person shall pay, by debit in the electronic credit ledger or electronic cash ledger, an amount equal to the difference between T and Te. Such amount shall form part of the output tax liability of the registered person and the amount shall be furnished in FORM GST ITC- 03.

Explanation : The registered person may file an application in FORM GST DRC- 20, seeking extension of time for the payment of taxes or any amount due or for allowing payment of such taxes or amount in installments in

accordance with the provisions of section 80. The commissioner may issue an order in FORM GST DRC- 21 allowing the taxable person further time to make payment and/or to pay the amount in such monthly installments, not exceeding twenty-four, as he may deem fit.

(*e*) Where, Tx is negative, *i.e.* Te>T, the registered person shall be eligible to take ITC on goods and services received on or after 1st April, 2019 for construction of the RREP, for which he shall not otherwise be eligible, to the extent of difference between Te and T.

(*f*) Where percentage completion is zero but ITC has been availed on goods and services received for the project on or prior to 31st March, 2019, input tax credit attributable to construction of residential and commercial portion which has time of supply on or after 1st April, 2019, shall be calculated and the amount equal to Tx shall be paid or taken credit of, as the case may be, as prescribed above, with the modification that percentage completion for calculation of F4 shall be taken as the percentage completion which, as certified by an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972) or a chartered engineer registered with the Institution of Engineers (India), can be achieved with the input services received and inputs in stock as on 31st March, 2019.

2. Where % completion as on 31st March, 2019 is zero but invoicing has been done having time of supply before 31st March, 2019, and no input services or inputs have been received as on 31st March, 2019, "Te" shall be calculated as follows: -

(*a*) Input tax credit on inputs and input services attributable to construction of residential and commercial portion in an RREP, which has time of supply on or before 31st March, 2019 may be denoted as Te which shall be calculated as under,

Te = Tn* F1 * F2 * F3 Where, -

Tn= Tax paid on such inputs and input services on which ITC is available under the CGST Act, received in 2019-20 for construction of residential and commercial apartments in the RREP.

F1, F2 and F3 shall be the same as in para 1 above

(*b*) The registered person shall be eligible to take ITC on goods and services received on or after 1st April, 2019 for construction of residential or commercial portion in the RREP, for which he shall not otherwise be eligible, to the extent of the amount of Te.

(*c*) The amount 'Te' shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax.

3. Notwithstanding anything contained in paragraph 1 or paragraph 2 above, Te shall be determined in the following situations as under:

(*i*) where percentage invoicing is more than the percentage completion and the difference between percentage invoicing (per cent points) and the percentage completion (per cent points) of construction is more than 25 per cent points; the value of percentage invoicing shall be deemed to be percentage completion plus 25 per cent points;

(*ii*) where the value of invoices issued on or prior to 31st March, 2019 exceeds the consideration actually received on or prior to 31st March, 2019 by more than 25 per cent of consideration actually received; the value of such invoices for the purpose of determination of percentage invoicing shall be deemed to be actual consideration received plus 25 per cent of the actual consideration received; and

(*iii*) where, the value of procurement of inputs and input services prior to 1st April, 2019 exceeds the value of actual consumption of the inputs and input services used in the percentage of construction completed as on 31st March, 2019 by more than 25 per cent of value of actual consumption of inputs and input services, the jurisdictional commissioner or any other officer authorized in this regard may fix the Te based on actual per unit consumption of inputs and input services based on the documents duly certified by a chartered accountant or cost accountant submitted by the promoter in this regard, applying the accepted principles of accounting.

Illustration 1:

Sl No	*Details of a residential real estate project (RREP)*			
	A	*B*	*C*	*D*
1	No. of apartments in the project		100	units
2	No. of residential apartments in the project		100	units
3	Carpet area of the residential apartment		70	sqm
4	Total carpet area of the residential apartments	C2 * C3	7000	sqm
5	value of each residential apartment		0.60	crore
6	Percentage completion as on 31st March, 2019 [as declared to RERA or determined by chertered engineer]		20%	

7	No of apartments booked before transition		80	units
8	Total carpet area of the residential apartment booked before transition	C3 * C7	5600	sqm
9	Value of booked residential apartments	C5 * C7	48	crore
10	Percentage invoicing of booked residential apartments on or before 31.03.2019		20%	
11	Total value of supply of residential apartments having t.o.s. prior to transition	C9 * C10	9.6	crore
12	ITC to be reversed on transition, Tx= T- Te			
13	Eligible ITC (Te)=T x F1 x F2 x F3 x F4)			
14	T (*see notes below)		1	crore
15	F1		1	
16	F2	C8 / C4	0.8	
17	F3	C11 / C9	0.2	
18	F4	1/ C6	5	
19	Eligible ITC (Te)=T x F1 x F2 x F3 x F4)	C14 * C15 * C16 * C17 * C18	0.8	crore
20	ITC to be reversed on transition, Tx= T- Te	C14 - C19	0.2	crore
	**Note* : 1. The value of T at C14 has been estimated for illustration based on weighted average tax on inputs. 2. In actual practice, the registered person shall take 'aggregate of ITC taken as declared in GSTR-3B of tax periods from 1.7.2017 or commencemnt of project which is later and transitional credit taken under section 140 of CGST Act' as value of T.			

Illustration 2:

Sl No	*Details of a residential real estate project (RREP)*			
	A	*B*	*C*	*D*
1	No. of apartments in the project		100	units
2	No. of residential apartments in the project		100	units
3	Carpet area of the residential apartment		70	sqm
4	Total carpet area of the residential apartments	C2 * C3	7000	sqm
5	value of each residential apartment		0.60	crore
6	Percentage completion as on 31.03.2019 [as declared to RERA or determined by chertered engineer]		20%	
7	No of apartments booked before transition		80	units
8	Total carpet area of the residential apartment booked before transition	C3 * C7	5600	sqm
9	Value of booked residential apartments	C5 * C7	48	crore
10	Percentage invoicing of booked residential apartments on or before 31.03.2019		60%	
11	Total value of supply of residential apartments having t.o.s. prior to transition	C9 * C10	28.8	crore
12	ITC to be reversed on transition, Tx= T- Te			
13	Eligible ITC (Te)=T x F1 x F2 x F3 x F4)			
14	T (*see notes below)		1	crore
15	F1		1	
16	F2	C8 / C4	0.8	
17	F3	C11 / C9	0.6	
18	F4	1/ C6	5	
19	Eligible ITC (Te)=T x F1 x F2 x F3 x F4)	C14 * C15 * C16 * C17 * C18	2.4	crore
20	ITC to be reversed on transition, Tx= T- Te	C14 - C19	-1.4	crore

21	Tx after application of cap on % invoicing vis-a-vis Pc			
22	% completion		20%	
23	% invoicing		60%	
24	% invoicing after application of cap(Pc + 25%)	C6 + 25 %	45%	
25	Total value of supply of residential apartments having t.o.s. prior to transition	C9 * C24	21.60	crore
26	F3 after application of cap	C25/ C9	0.45	
27	Te= T x F1 x F2 x F3 x F4 (after application of cap)	C14 * C15 * C16 * C26 * C18	1.80	crore
28	ITC to be reversed / taken on transition, Tx= T- Te (after application of cap)	C14 - C27	-0.80	crore
29	Tx after application of cap on % invoicing vis-a-vis Pc and payment realisation			
30	% invoicing after application of cap(Pc + 25%)		45%	
31	Total value of supply of residential apartments having t.o.s. prior to transition	C25	21.60	crore
32	consideration received		16.00	crore
33	Total value of supply of residential apartments having t.o.s. prior to transition after application of cap vis-a-vis consideration received	16 cr + 25% of 16 Cr	20.00	crore
34	F3 after application of both the caps	C33/ C9	0.42	
35	Te= T x F1 x F2 x F3 x F4 (after application of both the caps)	C14 * C15 * C34 * C26 * C18	1.67	

36	ITC to be reversed / taken on transition, Tx= T- Te (after application of both the caps)	C14 - C35	-0.67	crore
	*Note :- 1. The value of T at C14 has been estimated for illustration based on weighted average tax on inputs. 2. In actual practice, the registered person shall take 'aggregate of ITC taken as declared in GSTR-3B of tax periods from 1.7.2017 or commencemnt of project which is later and transitional credit taken under section 140 of CGST Act' as value of T.			

Annexure III

Illustration 1:

A promoter has procured following goods and services [other than capital goods and services by way of grant of development rights, long term lease of land or FSI] for construction of a residential real estate project during a financial year.

Sl. No.	*Name of input goods and services*	*Percentage of input goods and services received during the financial year*	*Whether inputs received from registered supplier? (Y/ N)*
1	Sand	10	Y
2	Cement	15	N
3	Steel	20	Y
4	Bricks	15	Y
5	Flooring tiles	10	Y
6	Paints	5	Y
7	Architect/ designing/ CAD drawing etc.	10	Y
8	Aluminium windows, Ply, commercial wood	15	Y

In this example, the promoter has procured 80 per cent of goods and services [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit,

natural gas], from a GST registered person. However, he has procured cement from an unregistered supplier. Hence at the end of financial year, the promoter has to pay GST on cement at the applicable rates on reverse charge basis.

Illustration 2:

A promoter has procured following goods and services [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges, etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas], for construction of a residential real estate project during a financial year.

Sl. No.	*Name of input goods and services*	*Percentage of input goods and services received during the financial year*	*Whetherinputs received from registered supplier? (Y/ N)*
1	Sand	10	Y
2	Cement	15	Y
3	Steel	20	Y
4	Bricks	15	Y
5	Flooring tiles	10	Y
6	Paints	5	N
7	Architect/ designing/ CAD drawing etc.	10	Y
8	Aluminium windows, Ply, commercial wood	15	N

In this example, the promoter has procured 80 per cent of goods and services including cement from a GST registered person. However, he has procured paints, aluminum windows, ply and commercial wood, etc., from an unregistered supplier. Hence at the end of financial year, the promoter is not required to pay GST on inputs on reverse charge basis.

Illustration 3:

A promoter has procured following goods and services [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas], for construction of a residential real estate project during a financial year.

Sl. No.	*Name of input goods and services*	*Percentage of input goods and services received during the financial year*	*Whether inputs procured from registered supplier? (Y/ N)*
1	Sand	10	N
2	Cement	15	N
3	Steel	15	Y
4	Bricks	10	Y
5	Flooring tiles	10	Y
6	Paints	5	Y
7	Architect/designing/CAD drawing etc.	10	Y
8	Aluminium windows	15	N
9	Ply, commercial wood	10	N

In this example, the promoter has procured 50 per cent of goods and services from a GST registered person. However, he has procured sand, cement and aluminum windows, ply and commercial wood, etc., from an unregistered supplier. Thus, value of goods and services procured from registered suppliers during a financial year falls short of threshold limit of 80 per cent To fulfill his tax liability on the shortfall of 30 per cent from mandatory purchase, the promoter has to pay GST on cement at the applicable rate on reverse charge basis. After payment of GST on cement, on the remaining shortfall of 15 per cent., the promoter shall pay tax @ 18 per cent under RCM.

Annexure IV*

**For Annexure IV refer www.cbic.gov.in* ❖❖❖

Amendment in Notification No. 12/2017-Central Tax (Rate) so as to exempt certain services as recommended by Goods and Services Tax Council for real estate sector – *GSR 251 (E)/Notification No. 04/2019-Central Tax (Rate), dated 29th March, 2019*

This notification seeks to exempt various Construction Sector related Services such as TDR, upfront amounts, etc.

In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations

of the Council, hereby makes the following further amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No.12/2017- Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (*i*), *vide* number GSR 691(E), dated the 28th June, 2017, namely:-

In the said notification, -

(*i*) in the opening paragraph, for the word, brackets and figures "sub-section (1) of section 11" the word, brackets and figures ", sub-section (3) and sub-section (4) of section 9, sub-section (1) of section 11,sub-section (5) of section 15 and section 148," shall be substituted;

(*ii*) in the Table, -

(*a*) after serial number 41 and the entries relating thereto, the following serial numbers and entries shall be inserted, namely: -

(1)	*(2)*	*(3)*	*(4)*	*(5)*
"41A	Heading 9972	Service by way of transfer of development rights (herein refer TDR) or Floor Space Index (FSI) (including additional FSI) on or after 1st April, 2019 for construction of residential apartments by a promoter in a project, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. The amount of GST exemption available for construction of residential apartments in the project under this notification shall be calculated as under: [GST payable on TDR	Nil	Provided that the promoter shall be liable to pay tax at the applicable rate, on reverse charge basis, on such proportion of value of development rights, or FSI (including additional FSI), or both, as is attributable to the residential apartments, which remain un¬booked on the date of issuance of completion certificate, or first occupation of the project, as the case may be, in the following manner - [GST payable on TDR or FSI (including additional FSI) or both for construction of the residential apartments in the project but for the exemption contained herein] x (carpet area of the residential apartments in the project which remain un-booked on the date of issuance of completion certificate or first occupation ÷ Total carpet area of the residential apartments in the project) Provided further that tax payable in terms of the first

		or FSI (including additional FSI) or both for construction of the project] x (carpet area of the residential apartments in the project ÷ Total carpet area of the residential and commercial apartments in the project)		proviso hereinabove shall not exceed 0.5 per cent of the value in case of affordable residential apartments and 2.5 per cent of the value in case of residential apartments other than affordable residential apartments remaining un-booked on the date of issuance of completion certificate or first occupation The liability to pay central tax on the said portion of the development rights or FSI, or both, calculated as above, shall arise on the date of completion or first occupation of the project, as the case may be, whichever is earlier.
41B	Heading 9972	Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease of thirty years, or more, on or after 01.04.2019, for construction of residential apartments by a promoter in a project, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. The amount of GST exemption available	Nil	Provided that the promoter shall be liable to pay tax at the applicable rate, on reverse charge basis, on such proportion of upfront amount (called as premium, salami, cost, price, development charges or by any other name) paid for long term lease of land, as is attributable to the residential apartments, which remain un-booked on the date of issuance of completion certificate, or first occupation of the project, as the case may be, in the following manner - [GST payable on upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for long term lease of land for construction of the residential apartments in the project but for the exemption contained herein] x (carpet area of the residential apartments in the project which remain un-booked on the date of issuance of completion certificate or first occupation ÷ Total carpet area

		for construction of residential apartments in the project under this notification shall be calculated as under: [GST payable on upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for long term lease of land for construction of the project] x (carpet area of the residential apartments in the project ÷ Total carpet area of the residential and commercial apartments in the project).		of the residential apartments in the project); Provided further that the tax payable in terms of the first proviso shall not exceed 0.5 per cent of the value in case of affordable residential apartments and 2.5 per cent of the value in case of residential apartments other than affordable residential apartments remaining un-booked on the date of issuance of completion certificate or first occupation. The liability to pay central tax on the said proportion of upfront amount (called as premium, salami, cost, price, development charges or by any other name) paid for long term lease of land, calculated as above, shall arise on the date of issue of completion certificate or first occupation of the project, as the case may be.

(*iii*) after paragraph 1, the following paragraphs shall be inserted, namely, –

"1A. Value of supply of service by way of transfer of development rights or FSI by a person to the promoter against consideration in the form of residential or commercial apartments shall be deemed to be equal to the value of similar apartments charged by the promoter from the independent buyers nearest to the date on which such development rights or FSI is transferred to the promoter.

1B. Value of portion of residential or commercial apartments remaining un-booked on the date of issuance of completion certificate or first occupation, as the case may be, shall be deemed to be equal to the value of similar apartments charged by the promoter nearest to the date of issuance of completion certificate or first occupation, as the case may be."

(*iv*) in paragraph 3 relating to Explanation, after clause (iv), the following clause shall be inserted, namely: -

"(*v*) The term "apartment" shall have the same meaning as assigned to it in clause (*e*) under section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2017).

(*vi*) The term "affordable residential apartment" shall have the same meaning as assigned to it in the notification No. 11/2017-Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (*i*) dated 28th June, 2017 *vide* GSR number 690(E) dated 28th June, 2017, as amended.

(*vii*) The term "promoter" shall have the same meaning as assigned to it in clause (*zk*) under section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2017).

(*viii*) The term "project" shall mean a Real Estate Project or a Residential Real Estate Project.

(*ix*) the term "Real Estate Project (REP)" shall have the same meaning as assigned to it in clause (*zn*) under section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2017).

(*x*) The term "Residential Real Estate Project (RREP)" shall mean a REP in which the carpet area of the commercial apartments is not more than 15 per cent of the total carpet area of all the apartments in the REP;

(*xi*) The term "carpet area" shall have the same meaning as assigned to it clause (*k*) under section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2017).

(*xii*) "an apartment booked on or before the date of issuance of completion certificate or first occupation of the project" shall mean an apartment which meets all the following three conditions, namely-

(*a*) part of supply of construction of the apartment service has time of supply on or before the said date ; and

(*b*) consideration equal to at least one instalment has been credited to the bank account of the registered person on or before the said date; and

(*c*) an allotment letter or sale agreement or any other similar document evidencing booking of the apartment has been issued on or before the said date.

(*xiii*) "floor space index (FSI)" shall mean the ratio of a building's total floor area (gross floor area) to the size of the piece of land upon which it is built.".

2. This notification shall come into force with effect from the 1st day of April, 2019.

Amendment in Notification No. 13/2017-Central Tax (Rate) so as to specify services to be taxed under Reverse Charge Mechanism (RCM) as recommended by Goods and Services Tax Council for real estate sector – *GSR 252 (E)/Notification No. 05/2019-Central Tax (Rate), dated 29th March, 2019*

This notification seeks to specify various Inputs/Services related to Construction Sector on which tax shall be payable on reverse charge basis.

In exercise of the powers conferred by sub-section (3) of section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No.13/2017- Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (*i*), *vide* number GSR 692(E), dated the 28thJune, 2017, namely :

In the said notification, -

(*i*) in the Table, after serial number 5A and the entries relating thereto, the following serial number and entries shall be inserted, namely: -

(1)	*(2)*	*(3)*	*(4)*
"5B	Services supplied by any person by way of transfer of development rights or Floor Space Index (FSI) (including additional FSI) for construction of a project by a promoter	Any person	Promoter.
5C	Long term lease of land (30 years or more) by any person against consideration in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name) and/or periodic rent for construction of a project by a promoter.	Any person	Promoter.";

(*ii*) in the *Explanation*, after clause (*h*), the following clauses shall be inserted, namely: -

"(*i*) The term "apartment" shall have the same meaning as assigned to it in clause (*e*) under section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2017).

(*j*) the term "promoter" shall have the same meaning as assigned to it in clause (*zk*) under section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2017).

(*k*) the term "project" shall mean a Real Estate Project (REP) or a Residential Real Estate Project (RREP);

(*l*) "the term "Real Estate Project (REP)" shall have the same meaning as assigned to it in clause (*zn*) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016).

(*m*) The term "Residential Real Estate Project (RREP)" shall mean a REP in which the carpet area of the commercial apartments is not more than 15 per cent. of the total carpet area of all the apartments in the REP.

(*n*) "floor space index (FSI)" shall mean the ratio of a building's total floor area (gross floor area) to the size of the piece of land upon which it is built.".

2. This notification shall come into force with effect from the 1st of April, 2019. ❖❖❖

Amendments in Notification No. 06/2019- Central Tax (Rate) so as to notify certain class of persons by exercising powers conferred under section 148 of CGST Act, 2017 – *GSR 253 (E)/Notification No. 06/2019-Central Tax (Rate), dated 29th March, 2019*

This notification seeks to prescribe time of supply of various Construction Sector related Services.

In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby notifies the following classes of registered persons, namely :

(*i*) a promoter who receives development rights or Floor Space Index (FSI) (including additional FSI) on or after 1st April, 2019 for construction of a project against consideration payable or paid by him, wholly or partly, in the form of construction service of commercial or residential apartments in the project or in any other form including in cash;

(*ii*) a promoter, who receives long term lease of land on or after 1st April, 2019 for construction of residential apartments in a project against consideration payable or paid by him, in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name),

as the registered persons in whose case the liability to pay central tax on, –

(*a*) the consideration paid by him in the form of construction service of

commercial or residential apartments in the project, for supply of development rights or FSI (including additional FSI);

(*b*) the monetary consideration paid by him, for supply of development rights or FSI (including additional FSI) relatable to construction of residential apartments in project;

(*c*) the upfront amount (called as premium, salami, cost, price, development charges or by any other name) paid by him for long term lease of land relatable to construction of residential apartments in the project; and

(*d*) the supply of construction service by him against consideration in the form of development rights or FSI(including additional FSI), -

shall arise on the date of issuance of completion certificate for the project, where required, by the competent authority or on its first occupation, whichever is earlier.

2. *Explanation*:- For the purpose of this notification,-

(*i*) The term "apartment" shall have the same meaning as assigned to it in clause (*e*) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

(*ii*) the term "promoter" shall have the same meaning as assigned to it in clause (*zk*) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

(*iii*) the term "project" shall mean a Real Estate Project (REP) or a Residential Real Estate Project (RREP);

(*iv*) the term "Real Estate Project (REP)" shall have the same meaning as assigned to it in clause (*zn*) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);.

(*v*) the term "Residential Real Estate Project (RREP)" shall mean a REP in which the carpet area of the commercial apartments is not more than 15 per cent. of the total carpet area of all the apartments in the REP.

(*vi*) the term "floor space index (FSI)" shall mean the ratio of a building's total floor area (gross floor area) to the size of the piece of land upon which it is built.

(*vii*) Tax on services covered by sub-para (*i*) and (*ii*) of paragraph 1 above is required to be paid under reverse charge basis in accordance with notification No. 13/2017-Central Tax (Rate), dated 28th June, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (*i*), *vide* GSR No. 692(E), dated 28th June, 2017, as amended.

3. This notification shall come into force with effect from the 1st day of April, 2019. ❖❖❖

Amendments in Notification Central Tax (Rate) so as to notify certain services to be taxed under RCM under section 9(4) of CGST Act as recommended by Goods and Services Tax Council for real estate sector – *GSR 254(E)/Notification No. 07/2019-Central Tax (Rate), dated 29th March, 2019*

This notification seeks to specify various Inputs/Services related to Construction Sector on which tax shall be payable on reverse charge basis if purchased from unregistered persons.

In exercise of the powers conferred by sub-section (4) of section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby notifies that the registered person specified in column (3) of the table below, shall in respect of supply of goods or services or both specified in column (2) of the Table below, received from an unregistered supplier shall pay tax on reverse charge basis as recipient of such goods or services or both, namely :

Table

Sl. No.	*Category of supply of goods and services*	*Recipient of goods and services*
(1)	*(2)*	*(3)*
1	Supply of such goods and services or both [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI)] which constitute the shortfall from the minimum value of goods or services or both required to be purchased by a promoter for construction of project, in a financial year (or part of the financial year till the date of issuance of completion certificate or first occupation, whichever is earlier) as prescribed in notification No. 11/ 2017- Central Tax (Rate), dated 28th June, 2017, at items (*i*), (*ia*), (*ib*), (*ic*) and (*id*) against serial number 3 in the Table, published in Gazette of India *vide* GSR No. 690, dated 28th June, 2017, as amended.	Promoter.

2	Cement falling in chapter heading 2523 in the first schedule to the Customs Tariff Act, 1975 (51 of 1975) which constitute the shortfall from the minimum value of goods or services or both required to be purchased by a promoter for construction of project, in a financial year (or part of the financial year till the date of issuance of completion certificate or first occupation, whichever is earlier) as prescribed in notification No. 11/ 2017- Central Tax (Rate), dated 28th June, 2017, at items (*i*), (*ia*), (*ib*), (*ic*) and (*id*) against serial number 3 in the Table, published in Gazette of India *vide* GSR No. 690, dated 28th June, 2017, as amended.	Promoter.
3	Capital goods falling under any chapter in the first schedule to the Customs Tariff Act, 1975 (51 of 1975) supplied to a promoter for construction of a project on which tax is payable or paid at the rate prescribed for items (*i*), (*ia*), (*ib*), (*ic*) and (id) against serial number 3 in the Table, in notification No. 11/ 2017- Central Tax (Rate), dated 28th June, 2017, published in Gazette of India *vide* GSR No. 690, dated 28th June, 2017, as amended.	Promoter

Explanation. - For the purpose of this notification, -

(*i*) the term "promoter" shall have the same meaning as assigned to it in in clause (zk) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

(*ii*) "project" shall mean a Real Estate Project (REP) or a Residential Real Estate Project (RREP);

(*iii*) the term "Real Estate Project (REP)" shall have the same meaning as assigned to it in clause (*zn*) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

(*iv*) "Residential Real Estate Project (RREP)" shall mean a REP in which the carpet area of the commercial apartments is not more than 15 per cent of the total carpet area of all the apartments in the REP.

(*v*) the term "floor space index (FSI)" shall mean the ratio of a building's total floor area (gross floor area) to the size of the piece of land upon which it is built.

2. This notification shall come into force with effect from the 1st of April, 2019. ❖❖❖

Amendment in Notification No. 1/2017- Central Tax (Rate) so as to notify CGST rate of certain goods as recommended by Goods and Services Tax Council for real estate sector – *GSR 255(E)/Notification No. 08/2019-Central Tax (Rate), dated 29th March, 2019*

This notification seeks to notify tax rates to be applied for various goods related to Construction Sector.

In exercise of the powers conferred by sub-section (1) of section 9 and sub- section (5) of section 15 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.1/2017-Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 673(E), dated the 28th June, 2017, namely :

In the said notification, in Schedule III - 9%, after serial number 452P in column (1) and the entries relating thereto, the following serial number and entries shall be inserted, namely: -

(1)	*(2)*	*(3)*
"452Q	Any chapter	Supply of any goods other than capital goods and cement falling under chapter heading 2523 in the first schedule to the Customs Tariff Act, 1975 (51 of 1975), by an unregistered person to a promoter for construction of the project on which tax is payable by the promoter as recipient of goods under sub- section 4 of section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017), as prescribed in notification No. 07 / 2019- Central Tax (Rate), dated 29th March, 2019, published in Gazette of India *vide* GSR No. _, dated 29th March, 2019 *Explanation*. For the purpose of this entry,– (*i*) the term "promoter" shall have the same meaning as assigned to it in clause (*zk*) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016). (*ii*) "project" shall mean a Real Estate Project (REP) or a Residential Real Estate Project (RREP). (*iii*) the term "Real Estate Project (REP)" shall have the same meaning as assigned to it in clause (*zn*) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016). (*iv*) "Residential Real Estate Project (RREP)" shall mean a REP in which the carpet area of the commercial apartments is not more than 15 per cent. of the total carpet area of all the apartments in the REP.

		(*v*) This entry is to be taken to apply to all goods which satisfy the conditions prescribed herein, even though they may be covered by a more specific chapter/ heading/ sub heading or tariff item elsewhere in this notification.

2. This notification shall come into force with effect from the 1st of April, 2019. ❖❖❖

Application of composition rules to persons opting to pay tax under Notification No. 2/2019- Central Tax (Rate) – Amendment to Notification No. 02/2019- Central Tax (Rate) – *GSR 268(E)/ Notification No. 09/2019 – Central Tax (Rate), dated 29th March, 2019*

In exercise of the powers conferred by sub-section (1) of section 9, sub-section (1) of section 11, sub-section (1) of section 16 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (herein after referred to as the "said Act"), the Central Government, on the recommendations of the Council, and on being satisfied that it is necessary in the public interest so to do, hereby makes the following amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue) No.02/2019- Central Tax (Rate), dated the 7th March, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (*i*), *vide* number GSR 189(E), dated the 7th March, 2019, namely :-

In the said notification, –

(*i*) in the Table, in column 3, after clause 7, the following clause shall be inserted, namely :-

"8. Where any registered person who has availed of input tax credit opts to pay tax under this notification, he shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods as if the supply made under this notification attracts the provisions of section 18(4) of the said Act and the rules made there-under and after payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse.";

(*ii*) in paragraph 3, in the *Explanation*, after clause (*ii*), the following clause shall be inserted, namely: -

"(*iii*) the Central Goods and Services Tax Rules, 2017, as applicable to a person paying tax under section 10 of the said Act shall, mutatis mutandis, apply to a person paying tax under this notification.".

2. This notification shall come into force on the 1st day of April, 2019.

Extension of the exemption from IGST tax and compensation cess upto 31st March 2020 on goods imported against AA/EPCG authorisations – *GSR 236(E)/ Notification No. 08/2019-Customs, dated 25th March, 2019*

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in each of the notifications of the Government of India in the Ministry of Finance (Department of Revenue), specified in column (2) of the Table below, in the manner as specified in the corresponding entry in column (3) of the said Table, namely :

Table

S. No.	*Notification number and date*	*Amendments*
(1)	*(2)*	*(3)*
1	16/2015-Customs, dated the 1st April, 2015 [*vide* number GSR 252(E), dated the 1st April, 2015]	In the said notification, in the opening paragraph, in the proviso to clause (*iii*), for the figures, letters and word "31st March, 2019", the figures, letters and word "31st March, 2020" shall be substituted.
2	18/2015-Customs, dated the 1st April, 2015 [vide number GSR 254 (E), dated the 1st April, 2015]	In the said notification, in the opening paragraph, in condition (*xiii*), for the figures, letters and word "31st March, 2019", the figures, letters and word "31st March, 2020" shall be substituted.
3	20/2015-Customs, dated the 1st April, 2015 [*vide* number GSR 256(E), dated 1st April, 2015]	In the said notification, in the opening paragraph, in condition (*xiv*), for the figures, letters and word "31st March, 2019", the figures, letters and word "31st March, 2020" shall be substituted.
4	22/2015-Customs, dated the 1st April, 2015 [*vide* number GSR 258(E), dated the 1st April, 2015]	In the said notification, in the opening paragraph, in condition (*xiii*), for the figures, letters and word "31st March, 2019", the figures, letters and word "31st March, 2020" shall be substituted.

5	45/2016-Customs, dated the 13th August, 2016 [*vide* number GSR 795(E), dated the 13th August, 2016]	In the said notification, in the opening paragraph, in condition (*xii*), for the figures, letters and word "31st March, 2019", the figures, letters and word "31st March, 2020" shall be substituted.

❖❖❖

Extension of exemption from IGST and compensation cess to EOUs on imports till 31st March 2020 – Amendment to Notification No.52/2003-Customs dated 31st March, 2003 – *GSR 238(E)/ Notification No. 9/2019-Customs, dated 25th March, 2019*

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 52/2003-Customs, dated the 31st March, 2003, published in the Gazette of India, Extraordinary, *vide* number GSR 274(E), dated the 31st March, 2003, namely :

In the said notification, in the opening paragraph, in the proviso, for the figures, letters and words "1st day of April, 2019", the figures, letters and words "1st day of April, 2020" shall be substituted. ❖❖❖

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ORDERS

Appointment of common authority for the purpose of exercise of powers under sections 73, 74, 75 and 76 of the CGST Act, 2017 – *Order No. 2/2019-GST /CBEC-20/16/15/2018-GST dated 12th March, 2019*

In exercise of the powers conferred by sub-section (1) of section (5) of the Central Goods and Services Tax Act, 2017 (12 of 2017), hereinafter referred to as the "said Act", read with Notification No. 02/2017-Central Tax dated 19th June, 2017, the Central Board of Indirect Taxes and Customs hereby assigns the case specified at Column (2) of the Table below to the Central Tax officer specified at Column (3) of the said Table for the purpose specified at Column (4) of the said Table.

Sl. No.	*Description of the case*	*Central Tax Officer to whom the case is being assigned*	*Purpose*
(1)	*(2)*	*(3)*	*(4)*
	Case that is being investigated by the office of Commissioner of Central Tax, Mumbai Central vide the bearing F.No.V/AE/MC/TF-III/LAOPL/142/2018 relating to taxpayers with following GSTINs : (*i*) 27AADCB1093N1ZG (*ii*) 27AAACP6317L1Z8 (*iii*) 27AAJCM2232N1Z8 (*iv*) 27AADCH4147D1ZU (*v*) 27AACCL6362P1ZX (*vi*) 27AABCW0381Q1ZU (v*ii*) 27AADCH4138C1ZX (*viii*) 27AAFCR9092M1ZL (*ix*) 27AAECT2696Q1ZG (*x*) 27AAECG7528G1ZH (*xi*) 27AAFCG5520K1ZJ (*xii*) 27AAFCB8613G1ZP	Commissioner of Central Tax, Mumbai Central	Exercise of powers under sections 73, 74, 75 and 76 of the said Act in respect of the taxpayers mentioned in Column (2)

	(xiii) 27AAGCK3701P1Z9 (*xiv*) 27AAHCR6968G1ZT (*xv*) 27AAICM1771F1ZG (*xvi*) 27AADCS0967L1ZY (*xvii*) 27AAHCA0613R1ZH		

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Central Goods and Services Tax (Third Removal of Difficulties) Order, 2019 – *SO 1218(E)/Order No. 3/2019-Central Tax dated 8th March, 2019*

Whereas, clause (*c*) of sub-section (3) of section 31 the Central Goods and Services Tax Act, 2017 (12 of 2017) ('the said Act') provides that a registered person supplying exempted goods or services or both or paying tax under the provisions of section 10 shall issue, instead of a tax invoice, a bill of supply, and, therefore, any person not covered by the said clause has to issue a tax invoice;

Now, Therefore, in exercise of the powers conferred by section 172 of the said Act, the Central Government, on recommendations of the Council, hereby makes the following Order, to remove the difficulties, namely :–

Short title.

1. This Order may be called the Central Goods and Services Tax (Third Removal of Difficulties) Order, 2019.

2. For the removal of difficulties, it is hereby clarified that provisions of clause (*c*) of sub- section (3) of section 31 of the said Act shall apply to a person paying tax under Notification No. 2/2019-Central Tax (Rate) dated 7th March, 2019 published in the Gazette of India, Extraordinary, *vide* number GSR No.189(E), dated the 7th March, 2019. ❖❖❖

Central Goods and Services Tax (Fourth Removal of Difficulties) Order, 2019 – *SO 1492(E)/Order No. 4/2019-Union Territory Tax, dated 29th March, 2019*

Whereas, sub-section (2) of section 17 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this Order referred to as the "said Act") provides that the input tax credit shall be restricted to so much of input tax as is attributable to the taxable supplies;

And whereas sub-section (3) of section 17 of said Act provides that the value for the purpose of sub-section (2) of section 17 of the said Act shall be such as prescribed by rules;

Now, therefore, in exercise of the powers conferred by section 172 of the said Act, the Central Government, on recommendations of the Council, hereby makes the following Order, namely :-

Short title.

1. This Order may be called the Central Goods and Services Tax (Fourth Removal of Difficulties) Order, 2019.

2. For the removal of difficulties, it is hereby clarified that in case of supply of services covered by clause (*b*) of paragraph 5 of Schedule II of the said Act, the amount of credit attributable to the taxable supplies including zero rated supplies and exempt supplies shall be determined on the basis of the area of the construction of the complex, building, civil structure or a part thereof, which is taxable and the area which is exempt.

3. This Order shall come into force with effect from the 1st day of April, 2019. ❖❖❖

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CIRCULARS

Refund related issues under GST clarified – *Circular No 94/13/2019-GST/F. No.CBEC-20/16/04/2018 – GST, dated 28th March, 2019*

Various representations have been received seeking clarifications on certain issues relating to refund. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168(1) of the Central Goods and Services Tax Act, 2017 ('CGST Act'), hereby clarifies the issues as detailed hereunder :

Sl. No.	*Issue*	*Clarification*
1.	Certain registered persons have reversed, through return in FORM GSTR-3B filed for the month of August, 2018 or for a subsequent month, the accumulated input tax credit (ITC) required to be lapsed in terms of notification No. 20/2018- Central Tax (Rate) dated 26.07.2018 read with circular No. 56/30/2018-GST dated 24th August, 2018 ('the said notification'). Some of these registered persons, who have attempted to claim refund of accumulated ITC on account of inverted tax structure for the same period in which the ITC required to be lapsed in terms of the said notification has been reversed, are not able to claim refund of accumulated ITC to the extent to which they are so eligible. This is because of a validation check on the common portal which prevents the value of input tax credit	(*a*) As a one-time measure to resolve this issue, refund of accumulated ITC on account of inverted tax structure, for the period(s) in which there is reversal of the ITC required to be lapsed in terms of the said notification, is to be claimed under the category "any other" instead of under the category "refund of unutilized ITC on account of accumulation due to inverted tax structure" in FORM GST RFD-01A. It is emphasized that this application for refund should relate to the same tax period in which such reversal has been made. (*b*) The application shall be accompanied by all statements, declarations, undertakings and other documents which

	in Statement 1A of FORM GST RFD-01Afrom being higher than the amount of ITC availed in FORM GSTR-3B of the relevant period minus the value of ITC reversed in the same period. This results in registered persons being unable to claim the full amount of refund of accumulated ITC on account of inverted tax structure to which they might be otherwise eligible. What is the solution to this problem?	are statutorily required to be submitted with a "refund claim of unutilized ITC on account of accumulation due to inverted tax structure". On receiving the said application, the proper officer shall himself calculate the refund amount admissible as per rule 89(5) of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "CGST Rules"), in the manner detailed in para 3 of Circular No. 59/33/2018-GST dated 04.09.2018. After calculating the admissible refund amount, as described above, and scrutinizing the application for completeness and eligibility, if the proper officer is satisfied that the whole or any part of the amount claimed is payable as refund, he shall request the taxpayer, in writing, to debit the said amount from his electronic credit ledger through FORM GST DRC-03. Once the proof of such debit is received by the proper officer, he shall proceed to issue the refund order in FORM GST RFD-06 and the payment advice in FORM GST RFD-05. (*c*) All refund applications for unutilized ITC on account of accumulation due to inverted tax structure for subsequent tax period(s) shall be filed

		in FORM GST RFD-01A under the category "refund of unutilized ITC on account of accumulation due to inverted tax structure".
2	The clarification at Sl. No. 1 above applies to registered persons who have already reversed the ITC required to be lapsed in terms of the said notification through return in FORM GSTR-3B. What about those registered persons who are yet to perform this reversal?	It is hereby clarified that all those registered persons required to make the reversal in terms of the said notification and who have not yet done so, may reverse the said amount through FORM GST DRC-03 instead of through FORM GSTR-3B.
3	What shall be the consequence if any registered person reverses the amount of credit to be lapsed, in terms the said notification, through the return in FORM GSTR-3B for any month subsequent to August, 2018 or through FORM GST DRC-03 subsequent to the due date of filing of the return in FORM GSTR-3B for the month of August, 2018?	(*a*) As the registered person has reversed the amount of credit to be lapsed in the return in FORM GSTR-3B for a month subsequent to the month of August, 2018 or through FORM GST DRC-03 subsequent to the due date of filing of the return in FORM GSTR-3B for the month of August, 2018, he shall be liable to pay interest under sub-section (1) of section 50 of the CGST Act on the amount which has been reversed belatedly. Such interest shall be calculated starting from the due date of filing of return in FORM GSTR- 3B for the month of August, 2018 till the date of reversal of said amount through FORM GSTR-3B or through FORM GST DRC-03, as the case may be.

		b) The registered person who has reversed the amount of credit to be lapsed in the return in FORM GSTR-3B for any month subsequent to August, 2018 or through FORM GST DRC-03 subsequent to the due date of filing of the return in FORM GSTR-3B for the month of August, 2018 would remain eligible to claim refund of unutilized ITC on account of accumulation due to inverted tax structure w.e.f. 1st August, 2018. However, such refund shall be granted only after the reversal of the amount of credit to be lapsed, either through FORM GSTR-3B or FORM GST DRC-03, along with payment of interest, as applicable.
4	How should a merchant exporter claim refund of input tax credit availed on supplies received on which the supplier has availed the benefit of the Government of India, Ministry of Finance, notification No. 40/2017-Central Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (*i*), *vide* number GSR 1320(E), dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (*i*), *vide* number G.S.R 1321(E), dated the 23rd October, 2017 ('the said notifications')?	(*a*) Rule 89(4B) of the CGST Rules provides that where the person claiming refund of unutilized input tax credit on account of zero-rated supplies without payment of tax has received supplies on which the supplier has availed the benefit of the said notifications, the refund of input tax credit, availed in respect of such inputs received under the said notifications for export of goods, shall be granted. (*b*) This refund of accumulated ITC under rule 89(4B) of the CGST Rules shall be applied under the category "any other" instead of under the category "refund of unutilized ITC on account of exports without payment of

		tax" in FORM GST RFD-01A and shall be accompanied by all supporting documents required for substantiating the refund claim under the category "refund of unutilized ITC on account of exports without payment of tax". After scrutinizing the application for completeness and eligibility, if the proper officer is satisfied that the whole or any part of the amount claimed is payable as refund, he shall request the taxpayer, in writing, to debit the said amount from his electronic credit ledger through FORM GST DRC-03. Once the proof of such debit is received by the proper officer, he shall proceed to issue the refund order in FORM GST RFD-06 and the payment advice in FORM GST RFD-05.
5	*Vide* Circular No. 59/33/2018-GST dated 4th September, 2018, it was clarified that after issuance of a deficiency memo, the input tax credit is required to be re-credited through FORM GST RFD-01B and the for refund. Accordingly, in several cases, the ITC amounts were recredited after issuance of deficiency memo. However, it was later represented that the common portal does not allow a taxpayer to file a fresh application for the same period after issuance of a deficiency memo. Therefore, the matter was reexamined and it was subsequently clarified, *vide*	In such cases, the claimant may resubmit the refund application manually in FORM GST RFD-01A after correction of deficiencies pointed out in taxpayer is expected to file a fresh application the deficiency memo, using the same ARN. The proper officer shall then proceed to process the refund application as per the existing guidelines. After scrutinizing the application for completeness and eligibility, if the proper officer is satisfied that the whole or any part of the amount claimed is payable as refund, he shall request the taxpayer, in writing, to debit the

	Circular No. 70/44/2018- GST dated 26.10.2018 that no re-credit should be carried out in such cases and taxpayers should file the rectified application, after issuance of the deficiency memo, under the earlier ARN only. It was also further clarified that a suitable clarification would be issued separately for cases in which such re-credit has already been carried out. However, no such clarification has yet been issued and several refund claims are pending on this account.	said amount from his electronic credit ledger through FORM GST DRC-03. Once the proof of such debit is received by the officer, he shall proceed to issue the refund order in FORM GST RFD-06 and the payment advice in FORM GST RFD-05.

2. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

3. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. ❖❖❖

Verification of applications for grant of fresh registration – *Circular No 95/14/2019-GST / F. No. CBEC-20/16/04/2018 – GST, dated 28th March, 2019*

Recently, a large number of registrations have been cancelled by the proper officer under the provisions of sub-section (2) of section 29 of the Central Goods and Services Act, 2017 ('CGST Act') read with rule 21 of the Central Goods and Services Rules, 2017 ('CGST Rules') on account of non-compliance of the said statutory provisions. In this regard, instances have come to notice that such persons, who continue to carry on business and, therefore, are required to have registration under GST, are not applying for revocation of cancellation of registration as specified in section 30 of the CGST Act read with rule 23 of the CGST Rules. Instead, such persons are applying for fresh registration. Such new applications might have been made as such person may not have furnished requisite returns and not paid tax for the tax periods covered under the old/cancelled registration. Further, such persons would be required to pay all liabilities due from them for the relevant period in case they apply for revocation of cancellation of registration.

Hence, to avoid payment of the tax liabilities, such persons may be using the route of applying for fresh registration. It is pertinent to mention that as per the provisions contained in proviso to sub-section (2) of section 25 of the CGST Act, a person may take separate registration on same PAN in the same State.

2. In order to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168(1) of the CGST Act, hereby issues the following instructions.

3. Sub-section (10) of section 25 of the CGST Act read with rule 9 of the CGST Rules provide for rejection of application for registration if the information or documents submitted by the applicant are found to be deficient. It is possible that the applicant may suppress some material information in relation to earlier registration. Some of the information that may be concealed in the application for registration in FORM GST REG-01 are S. No. 7 "Date of Commencement of Business", S. No. 8 "Date on which liability to register arises", S. No. 14 "Reason to obtain registration", etc. Such persons may also not furnish the details of earlier registrations, if any, obtained under GST on the same PAN.

4. *It is hereby instructed that the proper officer may exercise due caution while processing the application for registration submitted by the taxpayers, where the tax payer is seeking another registration within the State although he has an existing registration within the said State or his earlier registration has been cancelled. It is clarified that not applying for revocation of cancellation of registration along with the continuance of the conditions specified in clauses (b) and (c) of sub-section (2) of section 29 of the CGST Act shall be deemed to be a "deficiency" within the meaning of sub-rule (2) of rule 9 of the CGST Rules.* The proper officer may compare the information pertaining to earlier registrations with the information contained in the present application, the grounds on which the earlier registration(s) were cancelled and the current status of the statutory violations for which the earlier registration(s) were cancelled. The data may be verified on common portal by fetching the details of registration taken on the PAN mentioned in the new application vis-a-vis cancellation of registration obtained on same PAN. The information regarding the status of other registrations granted on the same PAN is displayed on the common portal to both the applicant and the proper officer. Further, if required, information submitted by applicant in S. No. 21 of FORM GST REG-01 regarding details of proprietor, all partner/Karta/ Managing Directors and whole time Director/Members of Managing Committee of Associations/Board of Trustees, etc., may be analysed vis-a-vis any cancelled registration having same details.

5. While considering the application for registration, the proper officer shall ascertain if the earlier registration was cancelled on account of violation of the provisions of clauses (*b*) and (*c*) of sub-section (2) of section 29 of the CGST Act and whether the applicant has applied for revocation of cancellation of registration. If proper officer finds that application for revocation of cancellation of registration has not been filed and the conditions specified in clauses (*b*) and (*c*) of sub-section (2) of section 29 of the CGST Act are still continuing, then, the same may be considered as a ground for rejection of application for registration in terms of sub-rule (2) read with sub-rule (4) of rule 9 of CGST Rules. *Therefore, it is advised that where the applicant fails to furnish sufficient convincing justification or the proper officer is not satisfied with the clarification, information or documents furnished, then, his application for fresh registration may be considered for rejection.*

6. It is requested that suitable trade notices may be issued to publicise the contents of these instructions.

7. Difficulty, if any, in the implementation of these instructions may be brought to the notice of the Board. ❖❖❖

Transfer of input tax credit in case of death of sole proprietor – *Circular No 96/15/2019-GST/ F. No. CBEC-20/16/04/2018 – GST, dated 28th March, 2019*

Doubts have been raised whether sub-section (3) of section 18 of the Central Goods and Services Tax Act, 2017 ('CGST Act') provides for transfer of input tax credit which remains unutilized to the transferee in case of death of the sole proprietor. As per sub-rule (1) of rule 41 of the Central Goods and Services Rules, 2017 ('CGST Rules'), the registered person (transferor of business) can file FORM GST ITC-02 electronically on the common portal along with a request for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee. Further, clarification has also been sought regarding procedure of filing of FORM GST ITC-02 in case of death of the sole proprietor. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of the law, the Board, in exercise of its powers conferred by section 168(1) of the CGST Act, hereby clarifies the issues raised as below.

2. Clause (*a*) of sub-section (1) of section 29 of the CGST Act provides that reason of transfer of business includes "death of the proprietor". Similarly, for uniformity and for the purpose of sub-section (3) of section 18, sub-section (3) of section 22, sub-section (1) of section 85 of the CGST Act and sub-rule (1) of

rule 41 of the CGST Rules, it is clarified that transfer or change in the ownership of business will include transfer or change in the ownership of business due to death of the sole proprietor.

3. *In case of death of sole proprietor if the business is continued by any person being transferee or successor, the input tax credit which remains un-utilised in the electronic credit ledger is allowed to be transferred to the transferee as per provisions and in the manner stated below* :

(*a*) *Registration liability of the transferee/successor* : As per provisions of sub-section (3) of section 22 of the CGST Act, the transferee or the successor, as the case may be, shall be liable to be registered with effect from the date of such transfer or succession, where a business is transferred to another person for any reasons including death of the proprietor. While filing application in FORM GST REG-01 electronically in the common portal the applicant is required to mention the reason to obtain registration as "death of the proprietor".

(*b*) *Cancellation of registration on account of death of the proprietor* : Clause (*a*) of sub-section (1) of section 29 of the CGST Act, allows the legal heirs in case of death of sole proprietor of a business, to file application for cancellation of registration in FORM GST REG-16 electronically on common portal on account of transfer of business for any reason including death of the proprietor. In FORM GST REG-16, reason for cancellation is required to be mentioned as "death of sole proprietor". The GSTIN of transferee to whom the business has been transferred is also required to be mentioned to link the GSTIN of the transferor with the GSTIN of transferee.

(*c*) *Transfer of input tax credit and liability* : In case of death of sole proprietor, if the business is continued by any person being transferee or successor of business, it shall be construed as transfer of business. Sub-section (3) of section 18 of the CGST Act, allows the registered person to transfer the unutilised input tax credit lying in his electronic credit ledger to the transferee in the manner prescribed in rule 41 of the CGST Rules, where there is specific provision for transfer of liabilities. As per sub-section (1) of section 85 of the CGST Act, the transferor and the transferee/successor shall jointly and severally be liable to pay any tax, interest or any penalty due from the transferor in cases of transfer of business "in whole or in part, by sale, gift, lease, leave and license, hire or in any other manner whatsoever". Furthermore, sub-section (1) of section 93 of the CGST Act provides that where a person, liable to pay tax, interest or penalty under the CGST Act, dies, then the person who continues business after his death, shall be liable to pay tax, interest or penalty due from such person under this Act. It is, therefore, clarified that the transferee/successor shall be liable to pay any tax,

interest or any penalty due from the transferor in cases of transfer of business due to death of sole proprietor.

(*d*) Manner of transfer of credit: As per sub-rule (1) of rule 41 of the CGST Rules, a registered person shall file FORM GST ITC-02 electronically on the common portal with a request for transfer of unutilised input tax credit lying in his electronic credit ledger to the transferee, in the event of sale, merger, de-merger, amalgamation, lease or transfer or change in the ownership of business for any reason. In case of transfer of business on account of death of sole proprietor, the transferee/successor shall file FORM GST ITC-02 in respect of the registration which is required to be cancelled on account of death of the sole proprietor. FORM GST ITC-02 is required to be filed by the transferee/successor before filing the application for cancellation of such registration. Upon acceptance by the transferee/successor, the un-utilised input tax credit specified in FORM GST ITC-02 shall be credited to his electronic credit ledger.

4. It is requested that suitable trade notices may be issued to publicize the contents of this circular.

5. Difficulty if any, in the implementation of this Circular may be brought to the notice of the Board. ❖❖❖

Exercise of option to pay GST under Notification No. 2/2019-CT(R) dated 7th March 2019 – *Circular No 97/16/2019-GST/F. No. CBEC-20/16/04/2018 – GST (Pt. I), dated 5th April, 2019*

Attention is invited to Notification No. 02/2019-Central Tax (Rate) dated 7th March, 2019 ('the said notification') which prescribes rate of central tax of 3% on first supplies of goods or services or both upto an aggregate turnover of fifty lakh rupees made on or after the 1st day of April in any financial year, by a registered person whose aggregate annual turnover in the preceding financial year was fifty lakh rupees or below. The said notification, as amended by notification No. 09/2019-Central Tax (Rate) dated 29th March, 2019, provides that Central Goods and Services Tax Rules, 2017 ('the said rules'), as applicable to a person paying tax under section 10 of the Central Goods and Services Tax Act, 2017 ('the said Act') shall, *mutatis mutandis*, apply to a person paying tax under the said notification.

2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168(1) of the said Act, hereby clarifies the issues raised as below :

(*i*) a registered person who wants to opt for payment of central tax at 3 per cent by availing the benefit of the said notification, may do so by filing intimation in the manner specified in sub-rule 3 of rule 3 of the said rules in FORM GST CMP-02 by selecting the category of registered person as "Any other supplier eligible for composition levy" as listed at Sl. No. 5(*iii*) of the said form, latest by 30th April, 2019. Such person shall also furnish a statement in FORM GST ITC-03 in accordance with the provisions of sub-rule (3) of rule 3 of the said rules.

(*ii*) any person who applies for registration and who wants to opt for payment of central tax at 3 per cent by availing the benefit of the said notification, if eligible, may do so by indicating the option at Serial Nos. 5 and 6.1(*iii*) of FORM GST REG-01 at the time of filing of application for registration.

(*iii*) the option of payment of tax by availing the benefit of the said notification in respect of any place of business in any State or Union territory shall be deemed to be applicable in respect of all other places of business registered on the same Permanent Account Number.

(*iv*) the option to pay tax by availing the benefit of the said notification would be effective from the beginning of the financial year or from the date of registration in cases where new registration has been obtained during the financial year.

3. It may be noted that the provisions contained in Chapter II of the said Rules shall *mutatis mutandis* apply to persons paying tax by availing the benefit of the said notification, except to the extent specified in para 2 above.

4. Difficulty if any, in the implementation of this circular may be brought to the notice of the Board. ❖❖❖

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Summary of Notifications /Circulars and Orders under GST Legislations

CENTRAL TAX NOTIFICATIONS

Notification	*Date*	*Summary*
15/2019	28-03-2019	Notification to extend the due date for furnishing of Form GST ITC-04 for the period July 2017 to March 2019 till 30th June 2019 issued.
16/2019	29-03-2019	CGST (Second Amendment) Rules, 2019

CENTRAL TAX NOTIFICATIONS (RATE)

Notification	*Date*	*Summary*
03/2019	29-03-2019	Seeks to amend Notification No. 11/2017-Central Tax (Rate) so as to notify CGST rates of various services as recommended by Goods and Services Tax Council for real estate sector.
04/2019	29-03-2019	Seeks to amend Notification No. 12/2017-Central Tax (Rate) so as to exempt certain services as recommended by Goods and Services Tax Council for real estate sector.
05/2019	29-03-2019	Seeks to amend Notification No. 13/2017-Central Tax (Rate) so as to specify services to be taxed under Reverse Charge Mechanism (RCM) as recommended by Goods and Services Tax Council for real estate sector
06/2019	29-03-2019	Seeks to notify certain class of persons by exercising powers conferred under section 148 of CGST Act, 2017.
07/2019	29-03-2019	Seeks to notify certain services to be taxed under RCM under section 9(4) of CGST Act as recommended by Goods and Services Tax Council for real estate sector.
08/2019	29-03-2019	Seeks to amend notification No. 1/2017- Central Tax (Rate) so as to notify CGST rate of certain goods as recommended by Goods and Services Tax Council for real estate sector.

09/2019	29-03-2019	Seeks to amend Notification No. 02/2019-Central Tax (Rate) so as to provide for application of Composition rules to persons opting to pay tax under Notification No. 2/2019-Central Tax (Rate).

CGST ORDER

Notification	*Date*	*Summary*
02/2019	12-03-2019	Appointment of common authority for the purpose of exercise of powers under sections 73,74, 75 and 76 of the CGST Act, 2017

CGST REMOVAL OF DIFFICULTY ORDERS

Circulars	*Date*	*Summary*
Order No. 3/2019	08-03-2019	To remove difficulty in implementation of Notification No. 2/2019- Central Tax (Rate)
Order No. 4/2019	29-03-2019	To remove difficulty in case of supply of services covered by clause (*b*) of paragraph 5 of Schedule II of the CGST Act, 2017

CIRCULARS – CGST

Circulars	*Date*	*Summary*
94/2019	28-03-2019	Clarifications on refund related issues under GST
95/2019	28-03-2019	Verification of applications for grant of new registration
96/2019	28-03-2019	Clarification in respect of transfer of input tax credit in case of death of sole proprietor
97/2019	05-04-2019	Clarification regarding exercise of option to pay tax under Notification No. 2/2019- CT(R) dated 7th March, 2019

INTEGRATED TAX NOTIFICATIONS (RATE)

Notification	*Date*	*Summary*
03/2019	29-03-2019	Seeks to amend Notification No. 8/2017-Integrated Tax (Rate) so as to notify IGST rates of various services as recommended by Goods and Services Tax Council for real estate sector.

04/2019	29-03-2019	Seeks to amend Notification No. 9/2017-Integrated Tax (Rate) so as to exempt certain services as recommended by Goods and Services Tax Council for real estate sector.
05/2019	29-03-2019	Seeks to amend Notification No. 10/2017-Integrated Tax (Rate) so as to specify services to be taxed under Reverse Charge Mechanism (RCM) as recommended by Goods and Services Tax Council for real estate sector.
06/2019	29-03-2019	Seeks to notify certain class of persons by exercising powers conferred under section 148 of CGST Act, 2017.
07/2019	29-03-2019	Seeks to notify certain services to be taxed under RCM under section 5(4) of IGST Act as recommended by Goods and Services Tax Council for real estate sector.
08/2019	29-03-2019	Seeks to amend Notification No. 1/2017-Integrated Tax (Rate) so as to notify IGST rate of certain goods as recommended by Goods and Services Tax Council for real estate sector.

UNION TERRITORY TAX NOTIFICATIONS (RATE)

Notification	*Date*	*Summary*
03/2019	29-03-2019	Seeks to amend Notification No. 11/2017-Union Territory Tax (Rate) so as to notify UTGST rates of various services as recommended by Goods and Services Tax Council for real estate sector.
04/2019	29-03-2019	Seeks to amend Notification No. 12/2017-Union Territory Tax (Rate) so as to exempt certain services as recommended by Goods and Services Tax Council for real estate sector.
05/2019	29-03-2019	Seeks to amend Notification No. 13/2017- Union Territory Tax (Rate) so as to specify services to be taxed under Reverse Charge Mechanism (RCM) as recommended by Goods and Services Tax Council for real estate sector.

06/2019	29-03-2019	Seeks to notify certain class of persons by exercising powers conferred under section 148 of CGST Act, 2017.
07/2019	29-03-2019	Seeks to notify certain services to be taxed under RCM under section 7(4) of UTGST Act as recommended by Goods and Services Tax Council for real estate sector.
08/2019	29-03-2019	Seeks to amend Notification No. 1/2017-Union Territory Tax (Rate) so as to notify UTGST rate of certain goods as recommended by Goods and Services Tax Council for real estate sector.
09/2019	29-03-2019	Seeks to amend Notification No. 02/2019-Union Territory Tax (Rate) so as to provide for application of Composition rules to persons opting to pay tax under Notification No. 2/2019- Union Territory Tax (Rate).

UTGST REMOVAL OF DIFFICULTY ORDERS

Circulars	*Date*	*Summary*
Order No. 2/2019	08-03-2019	To remove difficulty in implementation of Notification No. 2/2019- Union Territory Tax (Rate)
Order No. 3/2019	29-03-2019	To remove difficulty in case of supply of services covered by clause (*b*) of paragraph 5 of Schedule II of the CGST Act, 2017.

CUSTOM NOTIFICATIONS – TARIFF

Notification	*Date*	*Summary*
08/2019	25-03-2019	Seeks to extend the exemption from Integrated Tax and Compensation Cess upto 31st March, 2020 on goods imported against AA/EPCG authorisations.
09/2019	25-03-2019	Amendment to Notification No.52/2003 - Customs dated 31st March, 2003 for extending exemption from IGST and compensation cess to EOUs on imports till 31st March, 2020.

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Security Services under Reverse charge Mechanism under CGST Act, 2017

*S N Kapoor**

This article is intended to explain security services under the reverse charge mechanism under the CGST Act, 2017

Introduction

Security service is a service wherein a person supplies security personnel to another person for a consideration. Earlier in service tax regime, security services provided by individual, HUF or partnership firm to a body corporate were covered under reverse charge mechanism (RCM). However, with the enactment of the CGST Act, 2017 the concept of RCM on security services was abolished and the supplier of security service was made liable to pay GST.

RCM on security service

Considering the numerous problems in tax collection from small security service providers, such service has been brought under the purview of RCM. Hence, RCM on security services has been introduced in GST by the Government *vide* Notification No. 29/2018-Central Tax (Rate) dated 31st December, 2018, with effect from 1st January 2019, any registered person receiving security services (services provided by way of supply of security personnel) from any person other than a body corporate is required to pay GST on RCM basis.

Who would be liable to pay tax under RCM with effect from 1st January, 2019?

With the aforesaid amendment, requiring the service recipient would be liable to pay tax under RCM with effect from 1st January, 2019, the confusion had come up in the industry as to who would be liable to pay tax for supplies made during the transition phase i.e., in cases, wherein security service has been rendered upto 31st December, 2018, however, neither the invoice has been issued nor payment has been received till that date. The moot point arises as to who would be liable

* You can reach the author at snk170@gmail.com

to pay tax in such cases. In order to clarify, the above raised issue let us now refer to the provisions of the CGST/SGST (Act), 2017. Further, section 9(1) of the Act states that GST is levied on 'supply' and shall be paid by a taxable person. In case of supply of services, the time at which the liability to pay tax arises is determined as per the provisions contained in section 13 of the Act, dealing with time of supply of services.

On examination of the relevant provisions of the Act, it is apparent that prior to determining the 'time of supply of a service', one has to determine whether tax is to be paid by supplier or a recipient on reverse charge basis as sub-section (1) of section 13 would cover cases of forward charge and sub-section (2) of that section would cover reverse charge situations. Further, Government using the powers of sub-section (3) of section 9 specifies the categories of supplies on which recipient shall be liable to pay tax on RCM. Once the person liable to pay tax is assessed, 'time of supply' provisions would be applied accordingly.

In the instant case, the Government brought into effect RCM on security services with effect from 1st January, 2019, meaning thereby from the said date, the time of supply of security service would be governed by sub-section (2) of section 13. Hence, in case any of the conditions laid under sub-section (1) of that section gets fulfilled upto 31st December, 2018, the supplier of the service would pay tax. The cases wherein supply was completed by 31st December, 2018, however neither of the condition of sub-section (1) of section 13 got satisfied upto 31st December, 2018, the provisions of sub-section (2) of that section pertaining to time of supply of services covered under RCM would apply and the recipient would pay tax accordingly.

Further to illustrate, if an assessee has entered in a monthly retainer agreement of security service, the supplier raises invoice on every 7th of the month succeeding the month of rendering service and receives payment thereafter. For the services rendered during December, 2018 the invoice would be raised on 7th, January, 2019 and payment would be received thereafter. In such a case, RCM would apply and the service recipient would be liable to pay tax at the time of supply as determined under section 13(2).

Conclusion

Government Department/Establishment/Agency who have taken registration under GST only for TDS purpose and those paying tax under section 10 dealing with Composition Scheme are not required to pay GST on RCM basis. Therefore, if any registered person is receiving security services from any security agency (other than body corporate) he is required to pay GST on RCM basis with effect from 1st January, 2019. ❖❖❖

[2019] 5 GSTPT (PV) 25

Reverse Charge are Outward Taxable Supplies Or Other Outward Supplies

CA Mohit Golchha • CA Alakto Majumder***

This article is to understand whether services covered under reverse charge are outward taxable supplies or other outward supplies (nil rated is exempted) as well as the tables in which the said amount is to be shown in both Forms GSTR 1 and GSTR 3B.

Outward taxable supplies

Mr. *X* is a registered transporter, having taxable outward supplies of Rs.1,00,000 under RCM. Mr. *X* wants to know where to show the amount in GSTR 3B.

Option A : Under outward taxable supplies (other than zero rated is nil rated/ exempted)

Option B : Other outward supplies (nil rated/exempted)

Terms 'reverse charge' and 'output tax' explained

Reverse charge **–** As per clause (*98*) of section 2, it means the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both under sub-section (3) or (4) of section 9, or under sub-section (3) or (4) of section 5 of the Integrated Goods and Services Tax Act, 2017.

Sub-section (3) of section deals with **levy and collection of reverse charge it states that** the Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

Output tax – As per clause (*82*) of section 2, it means, in relation to a taxable person, the tax chargeable under the Act, on taxable supply of goods or services or both made by him or by his agent but excludes tax payable by him on reverse charge basis.

* You can reach the author at camohitgolchha@gmail.com

** You can reach the author at alakto.ca@gmail.com

Outward Taxable Supply Explained

'Outward taxable supply' is not defined in the Act. But if we combine two definitions of 'outward supply' and 'taxable supply' defined in the Act, we **may** understand the meaning of outward taxable supply.

'Outward supplies' – As per clause (*83*) of section 2 of the CGST Act 2017, it means, in relation to a taxable person, supply of goods or services or both, whether by sale, transfer, barter, exchange, licence, rental, lease or disposal or any other mode, made or agreed to be made by such person in the course or furtherance of business.

'Taxable supply' – As per clause (*108*) of section 2 of the CGST Act 2017, it means a supply of goods or services or both which is leviable to tax under the Act.

From the above, the services provided under reverse charge is an outward taxable supply on which tax is levied under the Act, and payable by recipient under reverse charge mechanism under sub-section (3) of section 9.

Other Outward Supplies (nil rated is exempted)

Other outward supplies are those supplies which are neither other taxable supplies nor zero rated nor non-GST outward supplies. Thus, other outward supplies include nil rated exempted supplies.

In terms of clause (*47*) of section 2, 'exempt supply' means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11 or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply;

The supplies covered under reverse charge mechanism are not covered under other outward supplies as they are not a nil rated as well as nor exempted supply.

Conclusion

From the above discussion on, it can be concluded that the services provided under reverse charge is an outward taxable supply on which tax is levied under the Act, and payable by recipient under reverse charge mechanism under sub-section (3) section 9.Thus, the supplies covered under reverse charge mechanism will be shown under **Option A :** *i.e.,* outward taxable supplies (other than zero rated/nil rate/ exempted) and output tax would be zero as the definition of, 'output tax' specifically excludes the **tax payable by him on reverse charge basis.** In Form GSTR 1 it would be shown in Table 4B as taxable outward supplies made to registered person (including UIN holders) attracting tax on reverse charge basis. ❖❖❖

[2019] 5 GSTPT (PV) 27

Impact of New Rates on Real Estate Developers

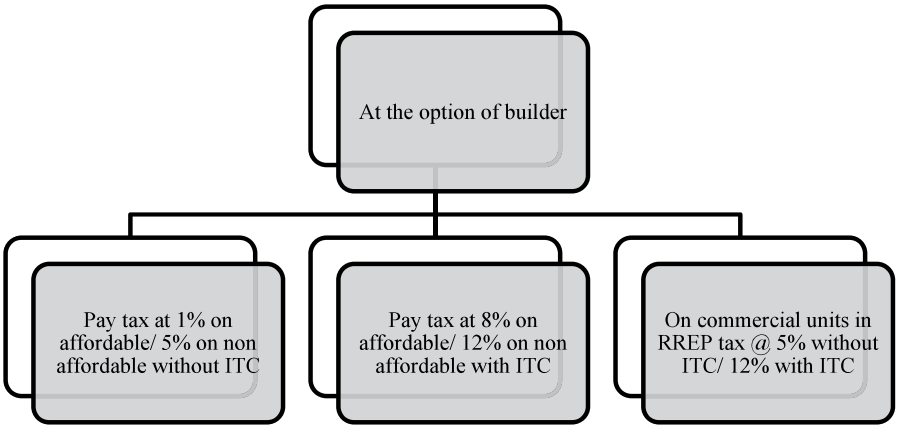
*CA Pooja Jajwajni**

This article throws light on impact of new rates on real estate developers.

Residential Real Estate Projects/ Real Estate Projects

"Residential Real Estate Project (RREP)" shall mean a REP in which the carpet area of the commercial apartments is not more than 15 per cent. Of the total carpet area of all the apartments in the Rep. "Real Estate Project (REP)" shall have the same meaning as assigned to it in clause (*zn*) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016)

On-going residential real-estate projects (RREP) and residential units in other real-estate projects (REP)



Conditions for exercise of option by the builder for an on-going project :

One-time option to be exercised by filing specified form before 10th May, 2019. On non-filing of specified options, the project shall be taxable at 1%/5%. If opting for new scheme then, proportionate project wise ITC reversal as per the prescribed

* You can reach the author at pooja.jajwani@smaca.in.

method to be done before the due date for furnishing of the return for the month of September following the end of financial year 2018-19. Builder can pay tax at 1%/5% on instalments received from 1st April to 10th May.

"Ongoing project" shall mean project which meets all the following conditions, namely –

(*a*) commencement certificate issued on or before 31st March, 2019 and it is certified by any of the following that construction of the project has started on or before 31st March, 2019 :-

(*i*) an architect,

(*ii*) a chartered engineer,

(*iii*) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;

(*b*) where commencement certificate is not required, it is certified by any of the authorities specified in sub clause (*a*) above that construction of the project has started on or before the 31st March, 2019;

(*c*) completion certificate has not been issued or first occupation of the project has not taken place on or before the 31st March, 2019;

(*d*) apartments being constructed under the project have been, partly or wholly, booked on or before the 31st March, 2019.

– Construction of a project shall be considered to have started on or before the 31st March, 2019, if the earthwork for site preparation for the project has been completed and excavation for foundation has started on or before the 31st March, 2019.

– An apartment booked on or before the 31st March, 2019 shall mean an apartment which meets all the following three conditions, namely-

(*a*) part of supply of construction has time of supply on or before the 31st March, 2019 and

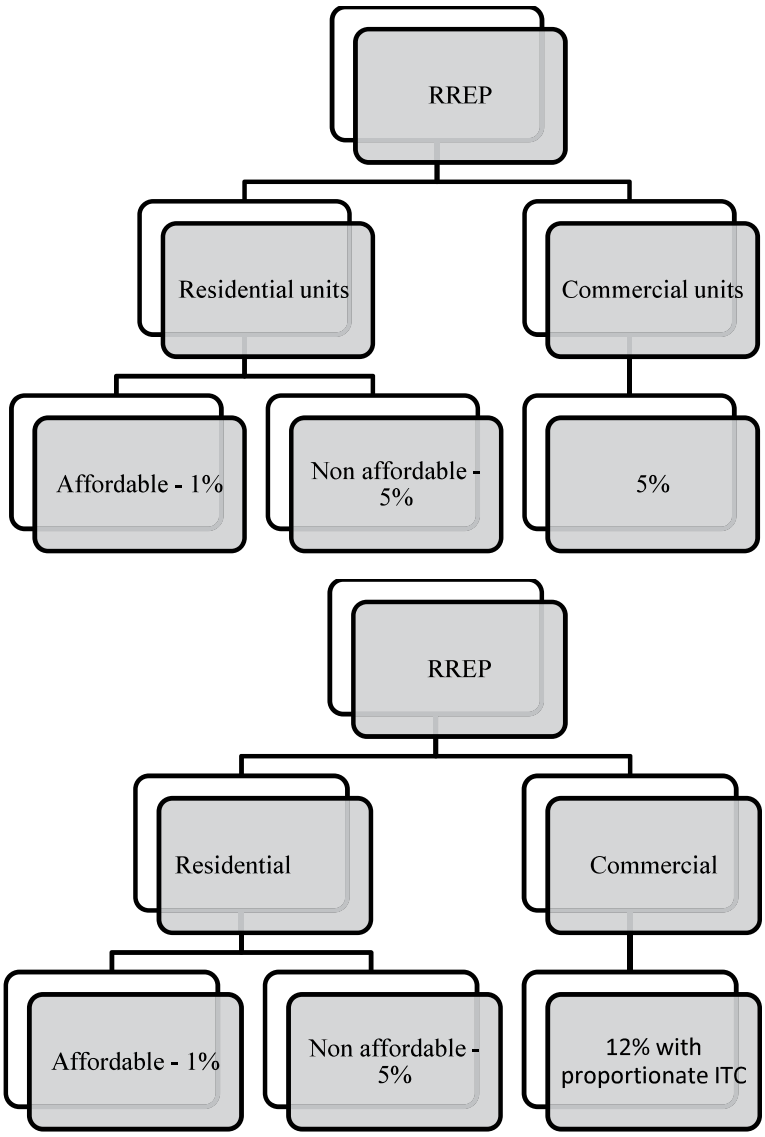
(*b*) at least one instalment has been credited to the bank account of the registered person on or before the 31st March, 2019 and

(*c*) an allotment letter or sale agreement or any other similar document evidencing booking of the apartment has been issued on or before the 31st March, 2019.

On-going commercial units in other real-estate projects (REP)

Tax @ 12% with proportionate ITC.

On new projects



Conditions for paying tax at reduced rates of 1%/5% :

- Tax @ 1%/5% has to be paid through cash.
- ITC can-not be availed for units on which tax @ 1%/5% is paid.

- ITC not availed has to be reported in GSTR 3B separately.
- 80% of value of input and input services [other than TDR, long term lease, FSI, electricity, high speed diesel, motor spirit, natural gas], used shall be received from registered supplier only.
- If less than 80% of value of input and input service is procured from unregistered dealer, RCM @ 18% on services and goods other than cement and RCM @ 28% on cement, to be paid by the developer. The calculation of 80% criteria has to be done at the end of every financial year.
- If capital goods are procured from unregistered dealer then, RCM at applicable rates to be paid by the developer.
- Developer has to maintain project wise accounts including project wise records of inwards supplies received from registered and unregistered dealers.
- In affordable housing projects, if the contractor has opted to pay GST @ 12% as per entry (*va*) of Notification 11/2017 and the conditions specified therein is violated then, the developer shall pay differential 6% tax on RCM basis.

Some relevant definitions

"*Apartment*" shall have the same meaning as assigned to it in clause (e) of section 2 of the Real Estate (Regulation and Development) Act, 2016, in terms of which "apartment", whether called block, chamber, dwelling unit, flat, office, showroom, shop, godown, premises, suit, tenement, unit or by any other name, means a separate and self-contained part of any immovable property, including one or more rooms or enclosed spaces, located on one or more floors or any part thereof, in a building or on a plot of land, used or intended to be used for any residential or commercial use such as residence, office, shop, showroom or godown or for carrying on any business, occupation, profession or trade, or for any other type of use ancillary to the purpose specified.

"*Affordable residential apartment*" shall mean, -

(*a*) a residential apartment in a project which commences on or after 1st April, 2019, or in an ongoing project in respect of which the promoter has not exercised option to pay tax at 2 per cent, as the case may be, having carpet area not exceeding 60 square meter in metropolitan cities or 90 square meter in cities or towns other than metropolitan cities and for which the gross amount charged is not more than Rs. 45 lakh.

[Metropolitan cities are Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai (whole of MMR) with their respective geographical limits prescribed by an order issued by the Central or State Government in this regard] ;

(*b*) an apartment being constructed in an ongoing project under any of the schemes specified in sub-item (*b*), sub-item (*c*), sub-item (*d*), sub-item (*da*) and sub-item (*db*) of item (*iv*) ; sub-item (*b*), sub-item (*c*), sub-item (*d*) and sub-item (*da*) of item (*v*) ; and sub-item (*c*) of item (*vi*), against serial number 3, in respect of which the promoter has not exercised option to pay tax at 8%, as the case may be.

"*Commencement certificate*" means the commencement certificate or the building permit or the construction permit, by whatever name called issued by the competent authority to allow or permit the promoter to begin development works on an immovable property, as per the sanctioned plan. ❖❖❖

Impact of New Scheme on Contractors

This article highlights the impact of new scheme on contractors.

Fate of existing lower rate entries

The existing lower rate entries are not omitted and, therefore, contractors shall be eligible to claim lower rate benefits under those entries.

Insertion of a new entry

A new entry with a tax rate of 12 per cent is inserted for contractors. The following entry is inserted in Notification 11/2017 dated 28th June, 2017:

Description of works – 'Composite supply of works contract' as defined in clause *(119)* of section 2 of the CGST Act, 2017, other than that covered by items *(i), (ia), (ib), (ic), (id), (ie)* and *(if)*, supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of affordable residential apartments covered by sub- clause *(a)* of clause *(xvi)* of paragraph 4, in a project which commences on or after 1st April, 2019, or in an ongoing project in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item *(ie)* or *(if)*, as the case may be, in the manner prescribed therein.

Conditions for lower rate benefits – Carpet area of the affordable residential

apartments, as specified in the entry in column (3) relating to this item, should not be less than 50 per cent. of the total carpet area of all the apartments in the project. For the purpose of determining whether the apartments at the time of supply of the service are affordable residential apartments covered by sub clause (*a*) of clause (xvi) of paragraph 4 or not, value of the apartments shall be the value of similar apartments booked nearest to the date of signing of the contract for supply of the service specified in the entry in column (3) relating to this item. In case it finally turns out that the carpet area of the affordable residential apartments booked or sold before or after completion, for which gross amount actually charged was Rs. 45 lakh or less and the actual carpet area was within the limits prescribed in sub- clause *(a)* of clause *(xvi)* of paragraph 4, was less than 50 per cent of the total carpet area of all the apartments in the project, the recipient of the service, that is, the promoter shall be liable to pay such amount of tax on reverse charge basis as is equal to the difference between the tax payable on the service at the applicable rate but for the rate prescribed herein and the tax actually paid at the rate prescribed herein. ❖❖❖

Impact of New Scheme on Joint Development Agreements

This article is intended to explain new scheme on joint development agreement applicable from 15th April, 2019.

Taxability of transfer of development rights or long term lease

Calculation of amount eligible for exemption

Particulars	*Amount (Rs. lakh)*
Value of development rights/long term lease (A)	200
GST payable on development rights (B=A*18%)	36
Carpet area of residential units (C)	8000 sq. meter
Carpet area of commercial units (D)	2000 sq. meter
Total Carpet area (E=C+D)	10,000 sq. meter
Exemption of GST on TDR/lease as attributable to residential units (F=B*C/E)	28.8
GST on TDR/Lease as attributable to commercial units payable by developer on RCM basis (G=B*D/E)	7.2

Some relevant points for exemption -

- Long term lease means lease for a period of 30 years or more.
- Developer shall be liable to pay tax, on RCM, as is attributable to the residential units, which remain un booked on the date of issuance of completion certificate, or first occupation of the project, as the case may be.
- The tax payable shall be calculated as :

Particulars	*Amount (Rs. lakh)*
Exemption of GST on TDR/lease as attributable to residential units (A)	28.8
Carpet area of residential units booked before receipt of CC(B)	6000 sq. meter
Carpet area of residential units booked after receipt of CC(C)	2000 sq. meter
Total Carpet area of residential units (D=C+A)	8,000 sq. meter
GST to be paid by developer on RCM basis for units booked after receipt of CC (E=A*C/D)	7.2

- Tax paid as per above working should not exceed 1% of value of affordable housing unit; 5% of value of non-affordable housing unit.

  For example :-

Particulars	*Amount (Rs. lakhs)*
Tax payable as per above working (A)	7.2
Total value of non-affordable unbooked units (B)	20
5% of B above (C)	1
Tax to be paid (D=lower of A and C)	1

- Value of units for the purpose of above working, shall be the value of similar unit booked nearest to the date of issuance of completion certificate or first occupation, whichever is earlier. ❖❖❖

Impact of New Scheme on Area Sharing Agreements

This article is intended to highlight impact of new scheme on area sharing agreements

Tax on residential units transferred to landowner by developer

In this transaction, the land already belongs to the landowner and therefore, for the purpose of calculation of tax liability, the value of units constructed by developer for landowner shall not include land value.

As land value is not included, the tax rate that should be charged by the developer shall be 1.50% and 7.50% for affordable and non-affordable residential units, respectively.

Tax on residential units sold by landowner to third parties

Landowner will pay 1%/5% GST on flats sold by him to third parties before issuance of completion certificate or first occupation, whichever is earlier.

Landowner will be eligible to take credit of 1.50%/7.50% tax charged by developer to him subject to the condition that tax liability of landowner is more than the tax charged to him by the developer, and landowner should sell the units to third parties independently.

Valuation for payment of tax by developer on units allotted to landowner

Particulars	*Amount*
Value of similar units sold nearest to the date of transfer of development rights	100
Less : 1/3rd amount representing land value	-33
Value of construction on which the developer has to pay tax	67

Value of development rights received against provision of construction services by the developer will be value as arrived in above example, *i.e.*, Rs. 67.

Time of supply for payment of tax

Particulars	*Person liable to pay tax*	*Time at which liability to pay tax will arise*
Supply of development rights by the landowner	Developer (unless exempted) under RCM	On the date of issuance of completion certificate or first occupation, whichever is earlier
Supply of construction services by developer in exchange of development rights	Developer	On the date of issuance of completion certificate or first occupation, whichever is earlier

❖❖❖

[2019] 5 GSTPT (WA) 13

QUERIES AND ANSWERS FROM EXPERTS*

ANSWERED BY CA ARSH GAUR, PUNJAB

We are registered in Delhi and import goods from China via sea port of Chennai and from Chennai we sell those goods directly to a party in Maharashtra without bringing the goods to Delhi. Do we need registration in Maharashtra? Or do we only have to issue tax invoice and e-way bill ?

Since you would have been issuing invoices from registered place of business, that is Delhi, and Chennai is only the place of sending the goods, you need not get registered there. Further, you will be applying IGST on the supply

My friend has income from youtube and online selling products. Which GSTR should be filed ?

There are commonly two GSTR, GSTR 3B to be filed monthly in which summary and payment details are given, and GSTR 1 in which supply figures are to be given. But please make sure there might be TCS getting collected on payments made to you under section 52 of the CGST Act , which you can use while filing GSTR 3B to pay off your liabilities.

Suggest GST rate to be charged in case of tent and lighting service provided, place at which these service are provided is of service receiver. Also specify whether input can be availed of service received from other by service provider?

Since there is no specific SAC Code for tent services, and no specific rate, GST is to be charged at 18%. Further, general place of supply rules will apply and in case recipient is registered, place of supply will be the registered place of business of recipient. ITC is available on inputs availed by person providing tent and light services.

ANSWERED BY CA RAMAN KHATUWALA, RAJENDRA PLACE

An individual providing consultancy service to foreign company in relation to procurement of goods and Indian vendor is to ensure handover of products, other support services to the foreign company. Whether this will be treated as export under GST ?

*Edited extracts from www.expertspanel.in

Intermediary services and hence place of supply as per section 13 of IGST Act, is India. Therefore it will not qualify for export.

ANSWERED BY CA ARSH GAUR, PUNJAB AND BY CA RAMAN KHATUWALA, RAJENDRA PLACE

Mr. A in India is providing consultancy service and market research to US based company. Agreement is between Mr. A and US based company for monthly retainership. Remittance is being received from US company directly. Whether this transaction will be treated as export under GST?

As per section 2(6) of the IGST Act, export of services means the supply of any service when,

(*i*) the supplier of service is located in India;

(*ii*) the recipient of service is located outside India;

(*iii*) the place of supply of service is outside India;

(*iv*) the payment for such service has been received by the supplier of service in convertible foreign exchange;

(*v*) the supplier of service and the recipient of service are not merely establishments of a distinct person.

Since the consultancy service does not fall under the purview of Intermediary services and general place of supply rules apply, the place of supply will be the address of the service recipient. Since all the above conditions for export of services are fulfilled, it will be treated as export under GST. It will qualify for export if payment is received in convertible foreign exchange.

ANSWERED BY CA VIRANDER KUMAR CHAUHAN, DELHI AND BY CA RAMAN KHATUWALA, RAJENDRA PLACE

Mr. A has purchased a motor car for Rs.10 lakh (+GST+Cess) and given the same to a company on monthly rental of Rs. 50,000 (+GST) along with driver. What is the rate of GST to be charged by Mr. A on car rental of Rs. 50,000 ? Is Mr. A eligible to claim ITC on the purchase of the car against the output liability of car rental?

Car rentals are taxable at 18% and ITC is not available on purchase of car in terms of section 17(5) of the CGST Act. ITC will be available.

One of my client is a travel agent. He books air tickets and hotels and provide tour packages also. As he is a non-IATA Agent, he books tickets from IATA

agents and sell it to direct customer after adding a margin. The IATA Agent also gives him commission/discount on hotel booking/air ticket booking. Now the query is –

What% of GST should be charged to direct consumer on ticket and on what value ?

Is there any liability to pay GST on the discount/commission earned from IATA Agent ?

What is the format of invoice ?

To whom input of GST paid on tickets or hotel booking is available ?

Whatever inward supplies you receive through tax invoices at whatever rate of tax, you need to bill at the same rate after adding your margin to the customer. Normally a non-IATA agent can also get the billing done in the name of the customer. If the client is charging the same amount as charged by the supplier, no GST will be levied as he is acting as pure agent. He needs to charge GST only on service charges as levied by him separately from his customer

Insurance company pays the premium amount to Indian broker. Indian broker cuts his portion of commission and remit the balance premium to the foreign broker for re-insurance. What is GST impact for Indian insurance broker?

This is an import of insurance services, therefore, GST on RCM is payable. Re-insurance is done by insurance company.

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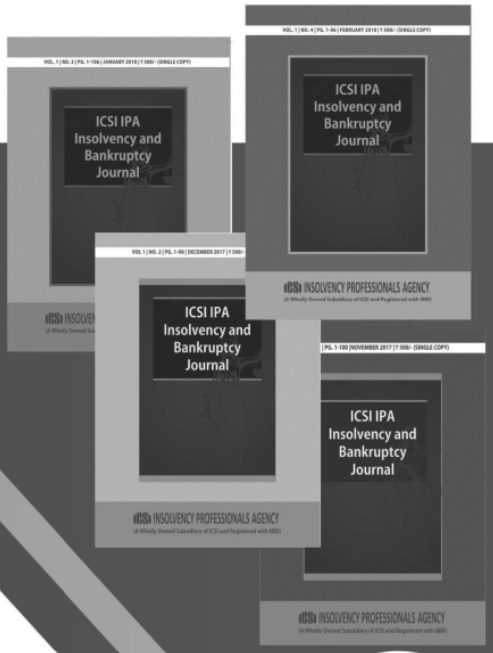

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CONSTITUTION OF INDIA

[2019] 5 GSTPT 153 (Utt.)

HIGH COURT OF UTTARAKHAND

KUNDAN SINGH

v.

STATE AND OTHERS

Writ Petition No. 116 of 2018 (PIL)
Rajiv Sharma & Sharad Kumar Sharma, JJ
12th November 2018

'Salary', being the property within the meaning of article 300A of the Constitution, no GST or service tax can be deducted from the salary without any authority of law

Constitution of India – Article 300-A read with Para 1st of Schedule III of CGST Act, 2017 – Right to property – Services by an employee in course of his employment – Whether salary is properly within meaning of article 300A – Persons appointed by the State Government through agency of UPNL being employees of State Government and paid fixed salary – Whether no GST can be deducted from salary?

Salary, being the property within the meaning of article 300A of the Constitution, no GST or service tax can be deducted from the salary of the petitioners without any authority of law it is because the principal employer is the State Government and the master-servant relationship exists between the State Government and its employees, even though sponsored by the UPNL and the employees sponsored by UPNL are discharging similar duties which are being discharged by their counterparts.

Appellant Rep by:

Mr. M.C. Pant, Amicus Curiae Respondent

Rep by:

Mr S.S. Chauhan, Deputy Adv General

Case laws cited:

Basti Sugar Mills Ltd. v. *Ram Ujagar* AIR 1964 SC 355.

JUDGMENT

1. Uttarakhand UPNL Savinda Karamchari Sangh through its General Secretary has filed Impleadment Application No.16484 of 2018 highlighting therein the exploitation of the workmen by the State Government as well as local bodies. It is stated in the application that though, the workmen are being paid the honorarium of Rs.8,400, however, the GST at 18 per cent and 2.5 per cent Service Tax are also deducted from their salary. It is also highlighted that the administrative, disciplinary and financial control on each and every employee is of the establishment, in which, they are working. They are discharging the same duties which are being discharged by their counterparts. There is only a meager increase in their honorarium from time-to-time.

2. In view of the aforesaid facts, the impleadment application is allowed.

3. The State Government was directed to apprise the court on the following aspects *vide* order dated 29th August, 2018 :

"(*i*) Whether there is any scheme in contemplation for regularising the services of the persons employed through UPNL and other agencies.

(*ii*) Whether the persons engaged through UPNL are only paid fixed salary or they are paid dearness allowance also taking into consideration the inflationary trends.

(*iii*) Whether the State Government has ever upgraded their honorarium/salary component from time to time as per the labour index.

(*iv*) The State Government is also directed to give exact number of persons employed/deployed through UPNL in various departments of the State in a tabular form and what is the basic pay/salary structure of the persons appointed through UPNL vis-a-vis their regularly appointed counterparts in the government department.

(*v*) The State Government is further directed to give the date of engagement of every employee/workman through UPNL in a tabular form.

(*vi*) The State Government and UPNL are directed to ensure that no displeasure is shown to any person or employee in highlighting the difficulties faced by them."

4. In sequel to the directions issued by this Court, the State Government has filed the comprehensive affidavit. According to the averments made in the affidavit, the employees have been engaged in the various Government Departments and other institutions/corporations/local bodies, etc., through outsource. The Government of Uttarakhand issued GO dated 12th June, 2013 by which after fixing the categories

of the officers/personnel, the honorarium was also fixed for the employees engaged through outsourcing. The honorarium of the personnel sponsored through UPNL was revised on 10th May, 2018. The honorarium has been increased to Rs.8,400.

5. A copy of memorandum and articles of association was placed on record by learned amicus curiae for the petitioners.

6. On 9th June, 2016 and 5th July, 2016, the Government has taken a decision to sponsor the Ex-Army personnel and their dependants through UPNL only.

7. To the queries raised by the court, it is stated that the persons engage through UPNL on honorarium basis and who are working in different departments of the State Government and State Government undertakings, the government has not made any plan or scheme to regularise them. The persons sponsored through UPNL are being paid the fixed salary and apart from that they are not being given any dearness allowance. The salary/honorarium of the persons engaged through UPNL has been revised from time-to-time.

8. In Garhwal Region, total 12,118 persons (unskilled, semi-skilled, skilled, highly skilled and officers) are engaged through UPNL, whereas in Kumaon Region 5953 (unskilled, semi-skilled, skilled, highly skilled and officers) have been engaged through UPNL.

9. The Cabinet in its meeting held on 20th September, 2018 has discussed the matter and decided that the matter is covered by the judgment of hon'ble Supreme Court rendered in the case of "*State of Karnataka* v. *Uma Devi*". Thus, the persons engaged through UPNL cannot be regularised.

10. It would be apt at this stage to take into consideration the memorandum and articles of association of Uttarakhand Purv Sainik Kalyan Nigam Limited (as amended *vide* extraordinary general meeting held on 1st September, 2015). The main objects of the company are to provide employment/self employment to Ex-servicemen and their dependants and in case suitable Ex-servicemen/their dependants are not available, employment can be provided to others to meet the requirements of Principal Employer.

11. Thus, it is evident that it is only when suitable Ex-servicemen/their dependants are not available, then the employment could be provided to others to meet the requirements of Principal Employer.

12. The main object of the company is also to provide financial assistance to the ex-servicemen, their dependants, family members of ex-servicemen including imparting them necessary training.

13. The Contract Labour Abolition and Contract Act, 1970 was in force in the State

of Uttar Pradesh. The same is also now in force in the State of Uttarakhand. The State of Uttarakhand has also framed "Uttarakhand Contract Labour (Regulation and Abolition) Rules, 2003". The State Government has appointed Registering Officers from time to time and presently Registering Officers have been appointed vide Government Order dated 24th May, 2017. The State Government has appointed Licensing Officer under section 11 of the Act *vide* Government Order date 24th May, 2017.

14. The provisions of Contract Labour (Regulation and Abolition) Act, 1970 is applicable to the establishment or the contractor who employs more than 20 workmen on any day of the preceding 12 months as Contract Labour.

15. "Establishment" means any office or department of the Government of a local authority or any place where any industry, trade, business, manufacture or occupation is carried out.

16. "Principal employer" means in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the Government or the local authority, as the case may be, may specify in that behalf.

17. It is evident from the memorandum and articles of association of UPNL, the UPNL was required to provide employment/self-employment to Ex-servicemen and their dependants and in case suitable Ex-servicemen/their dependants are not available employment can be provided to others to meet the requirements of Principal Employer.

18. The State Government in its own wisdom vide letter dated 9th June, 2016 had directed that in future UPNL will sponsor ex-servicemen only and thereafter, vide letter dated 5th July, 2016 UPNL has been allowed to sponsor dependants of ex-servicemen also.

19. The UPNL is neither registered under Section 7 of the Act nor it has got license as contractor under Section 12.

20. The UPNL has sponsored the names of thousands of employees for engagement by State Government. The funds are provided by the State Government. The disciplinary control is also of the State Government. The agency of UPNL has been used as intermediary only to deny the benefits of regularization and regular salary to the workmen. The UPNL was never intended to sponsor the names of all employees except ex-servicemen and their dependants and it was only when suitable ex-servicemen/their dependants are not available, the names of other candidates could be sponsored. The persons appointed by the State Government through agency of UPNL are only a camouflage.

21. The moment the veil is lifted, it is evident that the Principal employer is State Government.

22. The workmen employed through agency of UPNL are being paid salary of Rs.8,400. The persons appointed in the corresponding posts are getting regular pay-scale. The dearness allowance is also not being paid to them.

23. The State must act like a Modal employer. Something which cannot be done directly cannot be permitted to be done indirectly. The agreement entered into between the UPNL and its employees is unconstitutional. Thus, violative of articles 14 and 16 of the Constitution of India. The employees working through agency of UPNL, deployed by the State Government and local bodies are entitled to at least minimum of pay-scale, which is being paid to their counterparts on the principle of "Equal Pay for Equal Work." The employees sponsored through UPNL are working without being regularized for decades together. It amounts to begaar.

24. The State Government while filing the affidavit has overlooked section 2(*i*) (*iv*) and 2(*z*) of the Industrial Disputes Act, 1947.

25. In AIR 1964 SC 355, in the case of *Basti Sugar Mills Ltd.* v. *Ram Ujagar*, the Constitution Bench of hon'ble Supreme Court has held as under :-

"6. Section 2(*i*) of the Act contains an inclusive definition of employer. The effect of sub-clause (*iv*) of section 2(*i*) is that where the owner of any industry in the course of or for the purpose of conducting the industry contracts with any person for the execution by or under such person of the whole or any part of any work which is ordinarily a part of the industry, the owner of such industry is an employer within the meaning of the Act. Mr. Pathak's suggestion that the effect of this definition is that the owner of the industry becomes the employer of the contractor is wholly untenable and can even be described as fantastic to deserve serious consideration. The obvious purpose of this extended definition of the word "employer" is to make the owner of the industry, in the circumstances mentioned in the sub-clause, the employer of the workmen engaged in the work which is done through contract. The words used in the sub-clause are clearly sufficient to achieve this purpose.

7. It is true, as pointed out by Mr. Pathak, that the definition of the word "workmen" did not contain any words to show that the contract labour was included. That however does not affect the position. The words of the definition of workmen in section 2(*z*) to mean "any person (including an apprentice) employed in any industry to do any skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied" are by themselves sufficiently wide to bring in persons

doing work in an industry whether the employment was by the management or by the contractor of the management. Unless however the definition of the word "employer" included the management of the industry even when the employment was by the contractor the workmen employed by the contractor could not get the benefit of the Act since a dispute between them and the management would not be an industrial dispute between "employer" and workmen. It was with a view to remove this difficulty in the way of workmen employed by contractors that the definition of employer has been extended by sub-clause (*iv*) of section 2(*i*). The position, thus, is : (*a*) that the respondents are workmen within the meaning of section 2(*z*), being persons employed in the industry to do manual work for reward, and (*b*) they were employed by a contractor with whom the appellant-company had contracted in the course of conducting the industry for the execution by the said contractor of the work of removal of press-mud which is ordinarily a part of the industry. It follows therefore from section 2(*z*) read with sub-clause (*iv*) of section 2(*i*) of the Act that they are workmen of the appellant-company and the appellant Company is their employer. There is no substance, therefore, in the first point raised by the learned counsel for the appellant."

26. In the instant case also, the arrangement made by the State Government through UPNL is a sham. The Principal Employer is State Government.

27. In (1985) 3 SCC 545, in the case of *Olga Tellis* v. *Bombay Municipal Corp*., their Lordships of the hon'ble Supreme Court have held as under :

"40. Just as a mala fide act has no existence in the eye of law, even so, unreasonableness vitiates law and procedure alike. It is therefore essential that the procedure prescribed by law for depriving a person of his fundamental right, in this case the right to life, must conform to the norms of justice and fair play. Procedure, which is unjust or unfair in the circumstances of a case, attracts the vice of unreasonableness, thereby vitiating the law which prescribes that procedure and consequently, the action taken under it. Any action taken by a public authority which is invested with statutory powers has, therefore, to be tested by the application of two standards : the action must be within the scope of the authority conferred by law and secondly, it must be reasonable. If any action, within the scope of the authority conferred by law, is found to be unreasonable, it must mean that the procedure established by law under which that action is taken is itself unreasonable. The substance of the law cannot be divorced from the procedure which it prescribes for, how reasonable the law is, depends upon how fair is the procedure prescribed by it. Sir Raymond Evershedf says that, 'from the point of view of the ordinary citizen, it is the procedure

that will most strongly weigh with him. He will tend to form his judgment of the excellence or otherwise of the legal system from his personal knowledge and experience in seeing the legal machine at work'. Therefore, 'he that takes the procedural sword shall perish with the sword'."

28. The State Government has wrongly relied upon the ratio of the judgment passed by hon'ble Supreme Court in *Uma Devi* case. The State Government in its own has framed the regularization rules from time-to-time but has not made them applicable qua persons sponsored by UPNL. In *Uma Devi* case, their Lordships of the hon'ble Supreme Court have directed that the courts cannot issue directions for framing of scheme but State Governments of their own could frame the scheme for regularisation.

29. The action of the State Government of not regularising the employees sponsored through agency of UPNL and to deny them minimum of pay-scale including dearness allowance is arbitrary and unreasonable.

30. The employees have a legitimate, statutory and fundamental rights to be regularised. The workmen are being paid meager honorarium and out of the same, GST and Service Tax are also deducted. Every workman is entitled to living and fair wage to make both ends meet. The UPNL has not obtained the license as Contractor nor has registered under the Act qua most of the departments and local bodies.

31. Salary is the property within the meaning of article 300A of the Constitution of India. No GST or Service Tax can be deducted from the salary of the petitioners without any authority of law.

32. It is reiterated that the Principal Employer is the State Government. The master-servant relationship exists between the State Government and its employees, even though sponsored by the UPNL. The employees sponsored by UPNL are discharging similar duties which are being discharged by their counterparts. They are qualified and fulfill other eligible criteria, as per the recruitment and promotion rules.

33. The State Government should make appointments to public posts through agencies of Public Service Commission, Service Selection Boards in conformity with articles 14 and 16 of the Constitution of India instead of restricting it to agency which was primarily setup for sponsoring the names of ex-servicemen and their dependants.

34. Accordingly, the writ petition is disposed of with the following directions :

A. The State Government is directed to regularize the employees sponsored through UPNL in a phased manner within a period of one year as per regularisation schemes framed from time-to-time.

B. The State Government is directed to ensure that the employees sponsored by UPNL get minimum of payscale with dearness allowance along with arrears to be paid within a period of six months from today.

C. The respondents are directed not to deduct any GST or Service Tax from the salary of the employees sponsored by UPNL.

34. Pending application, if any, also stands disposed of.

FINANCE ACT

[2019] 5 GSTPT 160 (AAR)

AUTHORITY FOR ADVANCE RULING – GUJARAT

NATIONAL DAIRY DEVELOPMENT BOARD, *In re.*

Advance Ruling No. GUJ/GAAR/RULING/2019/1
R B Mankodi, Member & G C Jain, Member
22nd February 2019

National Dairy Development Board is to be considered as 'Financial Institution' for the purpose of sub-section (4) of section 17 of the CGST / GGST Act, 2017.

GST Act, 2017 – Section 17(4) – Input tax credit – Apportioned by financial institution – Whether NDDB can be considered as financial institution for the purpose of availing credit to the extent of fifty per cent of input tax credit, as prescribed in Section 17 of CGST Act, 2017?

As per the activities performed by the applicant, NDDB can be considered as a financial institution as they seem to be satisfying the requirement as provided in section 45-I(C) of the RBI Act. Besides, NDDB is also declared as a 'public of financial institution' under the Companies Act, 1956 *vide* Notification No. SO 219(E) dated 23rd February, 2004.

RULING

1. The applicant, NDDB, is a statutory body constituted by an Act of Parliament, namely, the National Dairy Development Board Act, 1987 (NDDB Act); the objectives of NDDB include promoting dairy and other agriculture based industries; and the activities undertaken by NDDB, to fulfill its objectives, not only include technical or administration assistance but also financial assistance.

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[as amended by Companies (Amendment) Second Ordinance, 2019]

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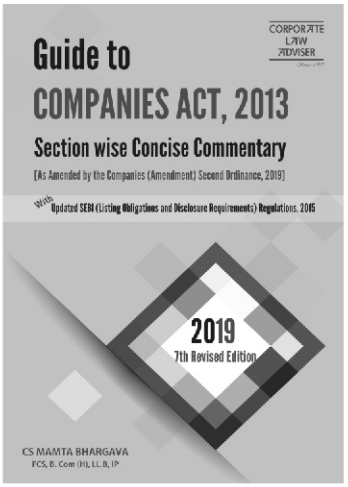

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