

# Recent Regulatory Changes in Indirect Taxes

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CA Vivek Baj

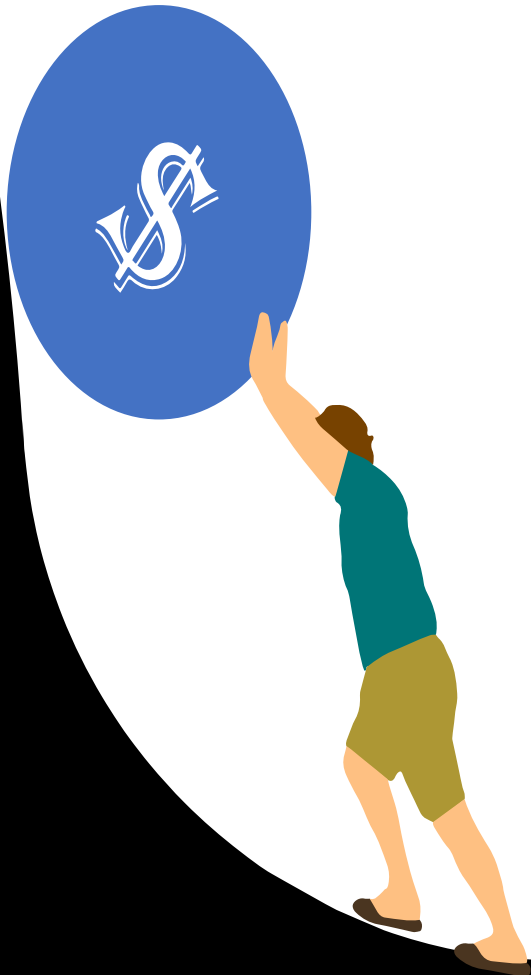
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- 03 Budget Expectations



# RECENT REGULATORY DEVELOPMENTS

# Amendments in CGST Act and CGST Rules



## QRMP Scheme

The registered person who has filed Form GSTR-3B and whose aggregate turnover in the preceding financial year is up to INR 5 crores, is eligible for QRMP Scheme

**Rule 61 A**

## Claim of ITC

Restriction of claim of ITC in respect of invoices/debit notes not furnished by the suppliers reduced to 5% of the credit available in GSTR-2B

**Rule 36(4)**

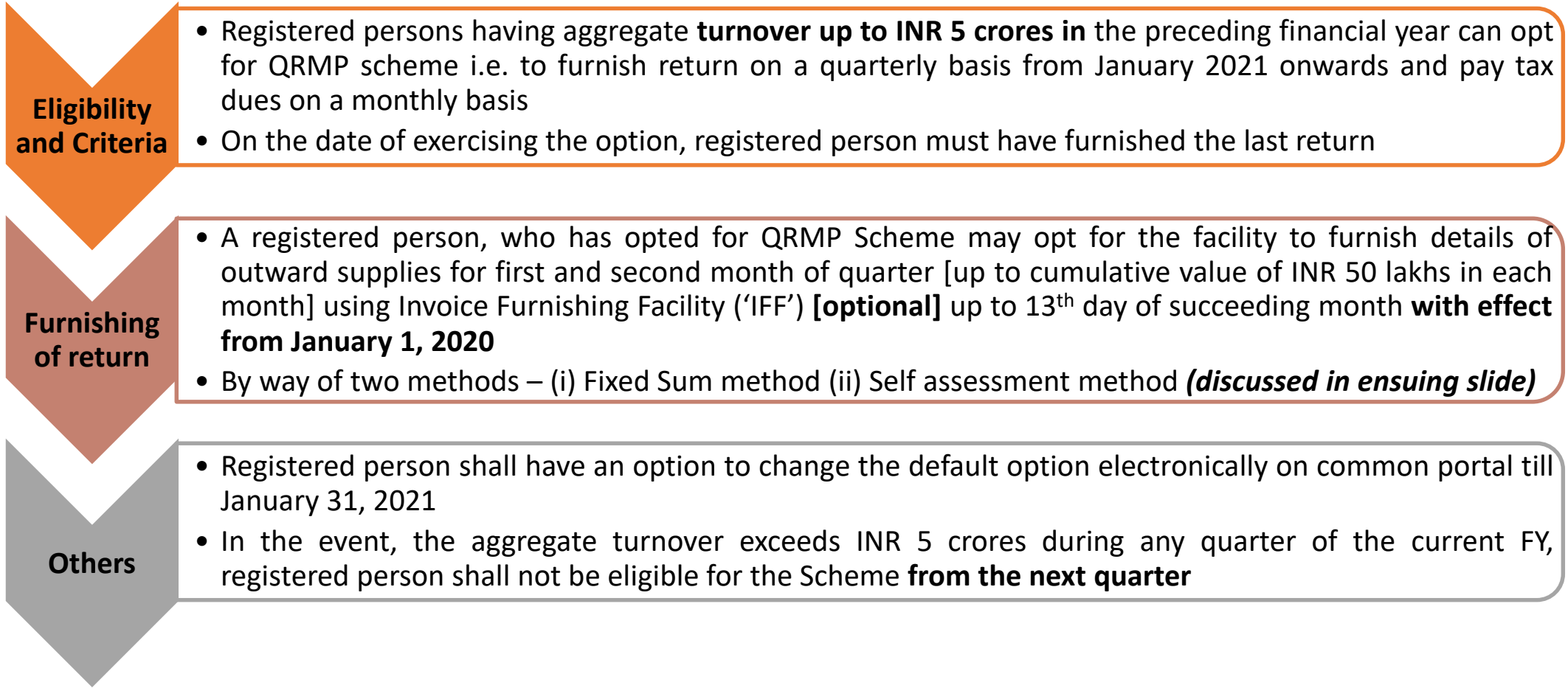
## Cash Payment

Where taxable supply (other than exempt supply and zero-rated), in a month exceeds INR 50 lakhs, taxpayer shall pay 1% of the tax liability through electronic cash ledger

**Rule 86 (B)**

# QRMP Scheme – Rule 61(A)...

Criteria to be verified GSTIN wise



**Due date for filing of quarterly GSTR-1 has been extended from 11<sup>th</sup> of the succeeding quarter to 13<sup>th</sup> day of the succeeding quarter with effect from January 1, 2021**

# ...QRMP Scheme – Rule 61(A)...

**Fixed Sum Method (FSM)**

If registered person has sufficient balance in cash and credit ledger to discharge liability

Not required to deposit any amount in cash

**Self Assessment Method (SAM)**

Registered person may opt for any method

S. No	Type of taxpayer	Tax to be Paid
1.	Returns are furnished <b>quarterly</b>	35% of tax liability paid by debiting electronic cash ledger in the return for preceding quarter
2.	Returns are furnished <b>monthly</b>	100% of tax liability paid by debiting electronic cash ledger for last month of immediately preceding quarter

	Tax paid in cash basis last filed return		Tax required to be paid in each of the months -April and May 2021	
	Quarterly: Jan to March 2021	Monthly March 2021	35% of the tax liability paid in Jan-Mar 2021	100% of the tax liability in March 2021
CGST	100	50	35	50
SGST	100	50	35	50
IGST	100	80	35	80

Pay the tax dues after considering available input tax credit and pay the balance amount in cash

# ...QRMP Scheme – Rule 61(A)- Example

	Tax paid in cash basis last filed return		Tax required to be paid in each of the months -April and May 2021	
	Quarterly: Jan to March 2021	Monthly March 2021	35% of the tax liability	100% of the tax liability
CGST	100	50	35	50
SGST	100	50	35	50
IGST	100	80	35	80

Situation I	Situation II
Tax liability payable in cash for the month April-May 2021 is INR 70	Tax liability payable in cash for the month April-May 2021 is INR 20
The assessee may opt for fixed sum method and	If the assessee opts for fixed sum method, there would be revenue blockage- advisable to opt for self assessment

# Amendments in CGST Rules 36(4) – ITC restriction ...

Restriction to claim ITC in respect of invoices/debit notes not furnished by the suppliers reduced to 5% of the credit available in GSTR-2B (auto-populated from GSTR-1 uploaded by the supplier)

## History of ITC Restriction

- Upto October 8, 2019 – No restriction
- October 9, 2019 to December 31, 2019 – 20%
- January 1, 2020 to December 31, 2020 – 10%
- January 1, 2021 onwards – 5%

Sr. No.	Particulars	Amount [Upto October 8, 2019]	Amount [Upto December 31, 2019]	Amount [Upto December 31, 2020]	Amount [From January 1, 2021]
A	Eligible ITC as per Purchase register for any particular month	1,00,000	1,00,000	1,00,000	1,00,000
B	Eligible ITC as per GSTR-2A	60,000	60,000	60,000	60,000
C	ITC that can be claimed as provisional credit (10%)/ (5%)	1,00,000	12,000 (60,000*20%)	6,000 (60,000*10%)	3,000 (60,000*5%)
D=B+C	Total ITC that can be claimed in the return	1,00,000	72,000	66,000	63,000
A-D	<b>ITC not allowed to be claimed in the return</b> [To be carried forward in the subsequent month]	-	28,000	34,000	37,000

It is necessary that supplier shall upload the details of outward supplies and pay the taxes in timely manner



## ...Amendments in CGST Rules 36(4) – ITC restriction

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**The 5% restriction shall be seen on Act-wise basis or on a cumulative basis?**

As of now no clarity has been provided on the same. However, it seems that the restriction would be seen Act wise as the CGST, SGST and IGST are different Acts

# ...Amendments in CGST Rules 86(B) – Cash Payment...

The registered person shall not use electronic credit ledger in excess of 99% to discharge output tax liability in cases where the value of taxable supply **other than exempt supply and zero-rated supply** in a month **exceeds INR 50 Lakhs**

To curb tax evasion by way of fake invoicing

## Exceptions

- a** • The said person or the proprietor or karta or the managing director or any of its two partners, whole-time Directors, Members of Managing Committee of Associations or Board of Trustees have paid more than INR 1 Lakhs as income tax in each of the last two financial years *(discussed in ensuing slide)*
- b** • The registered person has **received** a refund amount of more than INR 1 lakh on account of inverted duty structure or export under LUT
- c** • The registered person has cumulatively discharged his liability towards output tax through the electronic cash ledger for an amount which is in excess of 1% of the total output tax liability *(discussed in ensuing slide)*
- d** • The registered person is government department, PSU, local authority, statutory body

Particulars	
Total no. of assesses as per GSTN portal	1.2 Crores
No. of assesses having monthly supply value more than INR 50 Lakhs	4 Lakhs
Assesses paying less than 1% GST liability in cash out of above	1.5 lakhs
Assesses which may get covered under exceptions	1.05 lakhs
No. of assesses impacting due to this provision	45,000

# ...Amendments in CGST Rules 86(B) – Cash Payment...

## Exception (a) to Rule 86B

The **said person**/proprietor/karta/managing director/ any two partners, whole-time Directors have paid more than INR 1 Lakhs as income tax in each of the last two financial years

Definition of “person” as per Section 2(84) of the CGST Act includes any individual, HUF, Company, firm, LLP, local authority

Accordingly, if any Company or managing director or any two whole time directors have paid Income tax in excess of INR 1 lakh in F.Y 2018-19 and 2019-20 shall not be required to deposit 1% tax liability in cash




# ...Amendments in CGST Rules 86(B) – Cash Payment...

Exception (c) to Rule 86B -The registered person has cumulatively not used the electronic credit ledger in excess of 99% of the total output tax liability

State	Total tax liability (a)	Tax paid through cash (b)	Tax paid through ITC (c )	% of liability paid through ITC (d=c/a)
April 2020	100	0	100	100%
May 2020	100	80	20	20%
June 2020	100	90	10	10%
July 2020	100	0	100	100%
August 2020	100	75	25	25%
September 2020	100	50	50	50%
October 2020	100	0	100	100%
November 2020	100	0	100	100%
December 2020	100	0	100	100%
<b>TOTAL</b>	<b>900</b>	<b>295</b>	<b>605</b>	<b>67%</b>

The assessee will be covered under Exception (c) as cumulatively the tax paid through cash is more than 1% of the total tax liability.  
The same exercise would have to be repeated registration-wise and on a monthly basis

# ...Amendments in CGST Rules 86(B) – Issues

	<p>Whether the exceptions provided shall be read as state-wise or PAN wise?</p>	<ul style="list-style-type: none"> <li>• For exceptions (a) and (d) i.e. payment of Income tax upto INR 1 lakh and that of an establishment being a government department, PSU, local authority etc shall be read as PAN wise, else registration wise</li> </ul>
	<p>Whether tax paid under RCM is to be considered for 1% calculation?</p>	<ul style="list-style-type: none"> <li>• The tax liability paid under RCM may not be considered here as the said payment does not per-se mean “output tax”</li> </ul>
	<p>Whether the said Rule is applicable to SEZ unit</p>	<ul style="list-style-type: none"> <li>• The rule may not be applicable to SEZ unit as it specifies applicability to <b>taxable supplies other than exempt supply and zero-rated</b></li> <li>• May apply in a situation where other taxable supply exceeds INR 50 Lakhs in a month</li> </ul>

# Amendments in CGST Act – Section 16(4)...

- A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice ~~or invoice relating to such debit~~ note pertains or furnishing of the relevant annual return, whichever is earlier

## Erstwhile Provision

- A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial **year to which such invoice or debit note pertains** or furnishing of the relevant annual return, whichever is earlier

## Amended Provision

### Rule 36(3) of CGST Rules

*(3) No input tax credit shall be availed by a registered person in respect of any tax that has been paid in pursuance of any order where any demand has been confirmed on account of any fraud, wilful misstatement or suppression of facts*

The assesses may be eligible to avail ITC on debit notes irrespective of the date of corresponding invoices. However, the said debit note shall not have been issued pursuant to demand confirmed on account of fraud, mis-statement etc.

## ...Amendments in CGST Act – Section 16(4)

### **Proviso to Section 16(4) of the CGST Act**

*Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or **invoice relating to such debit note** for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019*

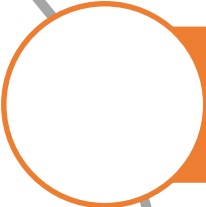
Whether ITC can be claimed with respect to debit notes raised for FY 2017-18, as consequential amendment not made in the proviso to Section 16?

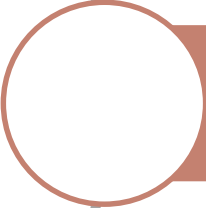
### **Important Factors**

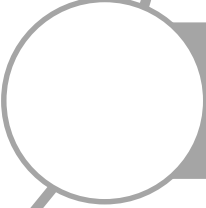
- The proviso is a beneficial provision which allows the assessee to avail ITC upto March 31, 2019
- The whole section, inclusive of the proviso shall be read in such manner that they mutually throw light on each other and result in a harmonious construction - if the principal provision is clear then a proviso cannot expand or limit it. Thus, a proviso may not insert any additional restriction which is not there in the main section
- Proviso is silent about the debit note and it only deals with invoice

# Other Amendments in CGST Rules and CGST Act

## Amendment in Rule 59(4) of CGST Rules Following taxpayers will not be allowed to file GSTR-1

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The person who has not furnished GSTR-3B for preceding two months (normal taxpayers)
- 

The person who has not furnished GSTR-3B for last quarter (person opted for QRMP scheme)
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The person, who is required to pay atleast 1% tax liability through cash ledger has not furnished GSTR-3B for last tax period

## Amendment in Section 10 of the CGST Act in relation to composition scheme

- All the restrictions on eligibility of Composition Scheme are equally applicable to services:**
- Registered person is not engaged in making any supply of services which are not leviable to GST
  - Registered person is not engaged in making any inter-State outward supplies of goods or services
  - Registered person is not engaged in making any supply of services through an electronic commerce operator who is required to collect tax at source u/s 52



# E-way Bill and E-invoicing related Amendments

**E-way Bill related amendments**

- E-way bill valid **for 1 day for every 200 km of travel [which was earlier 100 Kms]**
- An E-way bill will not to be generated when GST returns are not filed for two tax periods
- Persons whose registration has been suspended under Rule 21A (2)/ (2A) of CGST Rules will be restricted from generating e-way bill

**E-invoicing related amendments**

Turnover in the preceding Financial Year	Effective date of E-invoicing
Above INR 500 Crores	October 1, 2020
Above INR 100 Crores	January 1, 2021
Above INR 5 Crores	April 1 ,2021 [Based on tweet, Notification is yet to be issued]

**Assesseees are required to upgrade/ integrate their systems in order to generate e-invoicing with QR code**

# Refund Mechanism

## Rule 89(4) CGST Rules

- 01 Changes in the export turnover definition *qua* the formula prescribed for refund of ITC on account of export
- 02 Original Formula - Ratio of actual export turnover to the total turnover
- 03 Revised Formula- Restricted the export turnover to **1.5 times** the value of like goods domestically supplied by the supplier or similarly placed suppliers
  - What if the supplier is not supplying the goods domestically?
  - What would mean by similar suppliers if the supplier has monopoly?
- 04 Importantly, numerator is restricted to 1.5 times without any corresponding change in the denominator
- 05 Capped the ITC to that reflected in GSTR 2A [*Circular No.135/05/2020 – GST dated March 31, 2020*]



# Rule 89(4) - Illustration (Only export of goods has been considered)

## ▪ Refund amount as Original Formula

1. Export value of goods – INR 100
2. Domestic value of goods - INR 50
3. Net Input Tax Credit – INR 100

$$\frac{\text{Turnover of zero-rated supply of goods}}{\text{Adjusted Total Turnover}} \times \text{Net ITC}$$

$$\text{Refund} = 100/150 * 100 = \text{INR } 66.67$$

## ▪ Refund amount as per Revised Formula

1. Export value of goods – INR 100
2. Domestic value of goods - INR 50
3. Net Input Tax Credit – INR 100
4. Amount reflected in GSTR 2A- INR 80
5. Turnover of zero-rated supply of goods = Value declared by the supplier or 1.5 times the value of goods domestically supplied by the same supplier/ similar supplier, whichever is less

$$\frac{\text{Turnover of zero-rated supply of goods}}{\text{Adjusted Total Turnover}} \times \text{Net ITC}$$

$$\text{Refund} = (50 * 1.5 = 75) / 150 * 80 = \text{INR } 40$$

## Other Amendments...

Considering the increase in fraudulent activities like incorrect invoicing, incorrect availment of ITC, etc. in the GST regime, the Government has modified the penalty /offence related provision wherein all the persons who commit or cause to commit and retain the benefits

### **New subsection (1A) in Section 122**

**To levy penalty equal to the amount of tax evaded or ITC availed or passed on by any person who retains the benefit of the below specified transactions and at whose instance such transaction is conducted**

- Supplies of goods or services or both without issue of any invoice or issuance of incorrect or false invoice;
- Issues invoice or bill without supply of goods or services or both in violation of the provisions of the CGST Act or the rules made thereunder;
- Takes or utilizes ITC without actual receipt of goods or services or both either with fully or partially
- Takes or distributes ITC in contravention of Section 20 of the CGST Act or the rules made thereunder i.e. distribution of credit by an ISD

## ...Other Amendments

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**Maharashtra Trade Circular No. 01T of 2021 dated January 12, 2021**

*Whenever CBIC issues any circular, Maharashtra Government, on its examination, would issue a separate circular regarding its applicability for the implementation of the MGST Act*



What is the way forward? What if a certain Circular issued by CBIC is not notified by the MH government?

# Key Recent Judicial Developments

# Inverted Duty Structure (Section 54 of the CGST Act)

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## **Section 54(3) of CGST Act**

- *“Subject to the provisions of sub-section (10), a registered person may claim refund of any **unutilised input tax credit** at the end of any tax period:*
- *Provided that no refund of **unutilised input tax credit** shall be allowed in cases other than—*
  - *zero-rated supplies made without payment of tax*
  - *where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council (...)*”

The aforesaid Section intends to grant refund of unutilized input tax credit – it does not differentiate between inputs / input services

# Inverted Duty Structure (Section 89 (5) of CGST Rules)...

## Position as introduced

- a) Maximum refund = {(Turnover of inverted rated supply of goods) X Net ITC / Adjusted Total Turnover} – tax payable on such inverted rated supply of goods
- b) Net ITC = ITC availed on inputs and input services during the relevant period
- c) Adjusted Total Turnover = Turnover in a State or a Union territory, as defined under sub-section (112) of section 2, excluding the value of exempt supplies other than zero-rated supplies, during the relevant period;

## Amendment in the formula\*

- a) Maximum refund = {(Turnover of inverted rated supply of goods and services) X Net ITC / Adjusted Total Turnover} – tax payable on such inverted rated supply of goods and services
- b) Net ITC = ITC availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules(4A)or(4B)or both;
- c) Adjusted Total Turnover = As explained in sub-rule (4)

*\*vide Notification 26/2018 dated July 13, 2018 w.e.f. July 1, 2017*



# ...Inverted Duty Structure (Section 89 (5) of CGST Rules)

Challenge to the validity of amended Rule 89(5) of the CGST Rules and Section 54(3)(ii) of the CGST Act to the extent it denied refund of input tax credit relatable to input services in case of inverted duty structure

## **VKC Footsteps India Pvt. Ltd. v. UOI & Others [2020-VIL-340-GUJ]**

High Court held that it cannot be the intent of law to deny refund of tax paid on “input services” and that the taxpayers should be allowed to factor in the tax paid on input services for calculating the claim of refund under the inverted duty structure.

## **Transtunnelstroy Afcons JV and Ors. V. Union of India and Ors. [TS-800-HC-2020(MAD)-NT]**

High Court held restriction on right of refund only in respect of unutilized ITC accumulating on rate of tax on input goods being higher than the rate of tax on output supplies does not infringe Article 14 of the Constitution and thus, it is not necessary to interpret Rule 89(5), especially the definition of Net ITC therein so as to include the words input services.

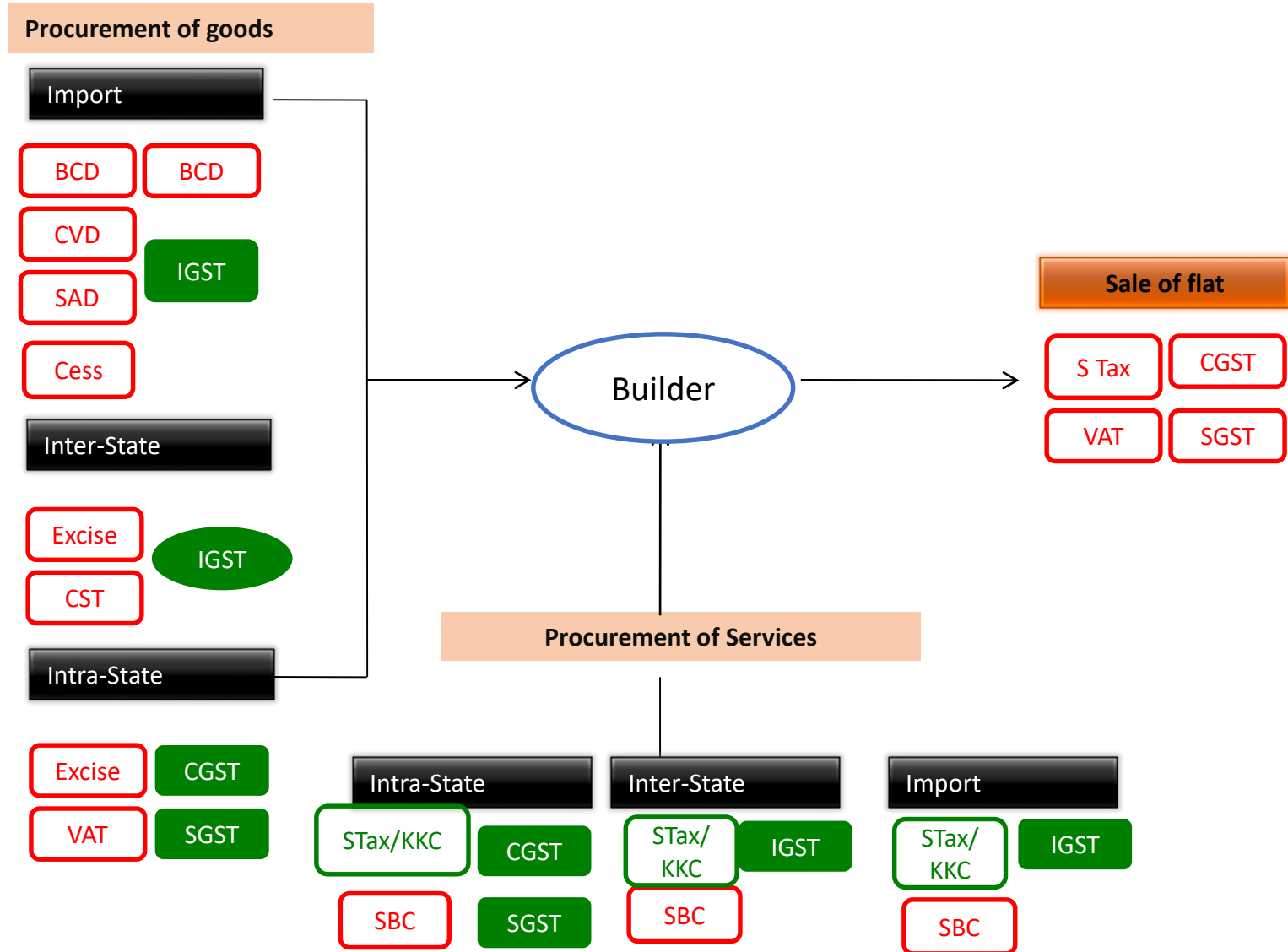
# Rational Approach

**Press Release No. F. No. 296/07/2017-CX.9** "2. Central Excise duty is payable on most construction material @12.5%. It is higher in case of cement. In addition, VAT is also payable on construction material @12.5% to 14.5% in most of the States. In addition, construction material also presently suffer Entry Tax levied by the States. Input Tax Credit of the above taxes is not currently allowed for payment of Service Tax. **Credit of these taxes is also not available for payment of VAT on construction of flats etc. under composition scheme. Thus, there is cascading of input taxes on constructed flats, etc.**

3. As a result, incidence of Central Excise duty, VAT, Entry Tax, etc. on construction material is also currently borne by the builders, which they pass on to the customers as part of the price charged from them. This is not visible to the customer as it forms a part of the cost of the flat.

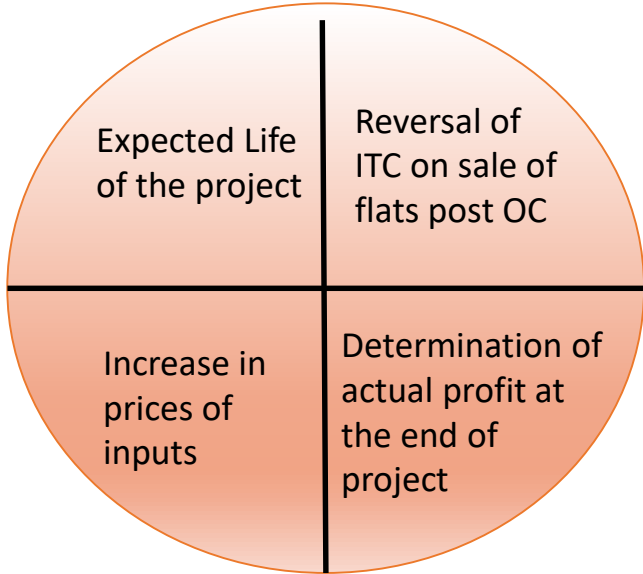
5. This will change under GST. **Under GST, full input credit would be available for offsetting the headline rate of 12%. As a result, the input taxes embedded in the flat will not (& should not) form a part of the cost of the flat....**

6. The builders are expected to pass on the benefits of lower tax burden under the GST regime to the buyers of property by way of reduced prices/ installments..."



# NAA Approach

Factors not considered by NAA



- Basis the trend of NAA rulings, it is the “Developer” who has been served with anti-profiteering notice most of the times
- The landmark decision by NAA in case of Pyramid Infratech Pvt. Ltd has set precedents for other rulings in real estate sector
- In all cases, DGAP has relied on the following equation to determine whether Developer has profited:

$$\frac{\text{ITC availed in GST regime}}{\text{Taxable turnover in GST regime}} - \frac{\text{ITC availed in pre-GST regime}}{\text{Taxable turnover in pre-GST regime}}$$

- If above ratio is positive, reduce the price of apartment to that extent of differential percentage and pass ITC benefit to customers

# Fate of Anti-profiteering

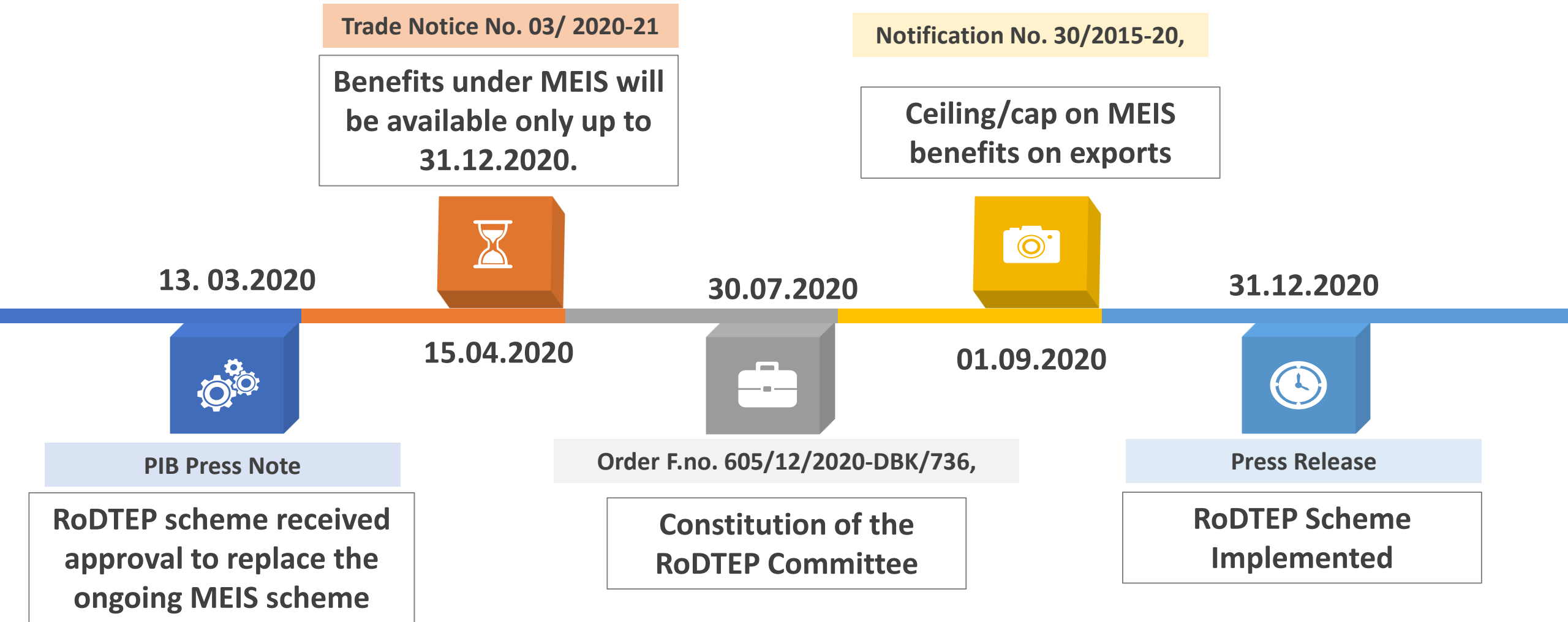
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More than 45 WRITs pending before various High Courts challenging the constitutionality and vires of Section 171 of the CGST Act and the composition of National Anti-Profiteering Authority.









Next date of Hearing before Hon'ble Delhi High Court  
Feb 15, 2021

# **Remission of Duties and Taxes on Exported Products) Incentive (RoDTEP) Scheme**

# Chronology for Implementation of RoDTEP Scheme



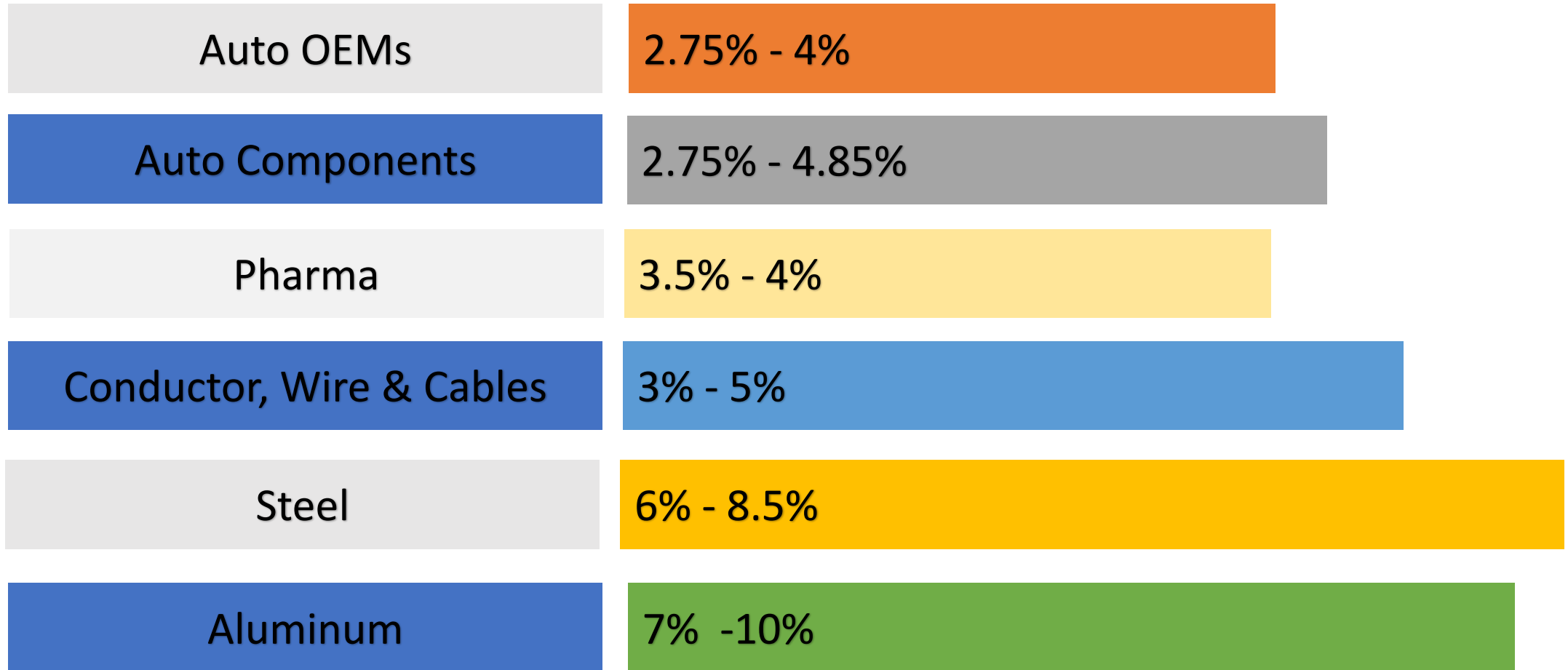
# RoDTEP Scheme Eligibility

Export Incentive Scheme	RoDTEP Scheme Eligibility
Advance License	
Export Promotion Capital Goods (EPCG) Scheme	
Duty Drawback Scheme (DBK)	
EPCG + DBK	
Free Shipping Bill	
Special Economic Zone	
Export Oriented Unit	
No Commercial Value	



# Industry Submissions of Data-Embedded tax cost

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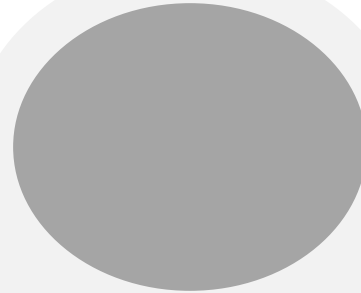
# Clarity Awaited / Way Forward

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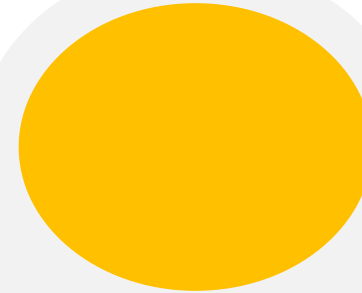
## Rates

Ministry of Commerce yet to announce the schedule of rate and value caps



## Eligible Exports

Ministry to notify eligible exports for RODTEP



## Conditions & Restriction

Notification providing other Conditions / Restrictions such as Foreign Exchange Realization etc for availing the Scheme awaited



Restriction w.r.t other Export Schemes not expressly provided but system generated



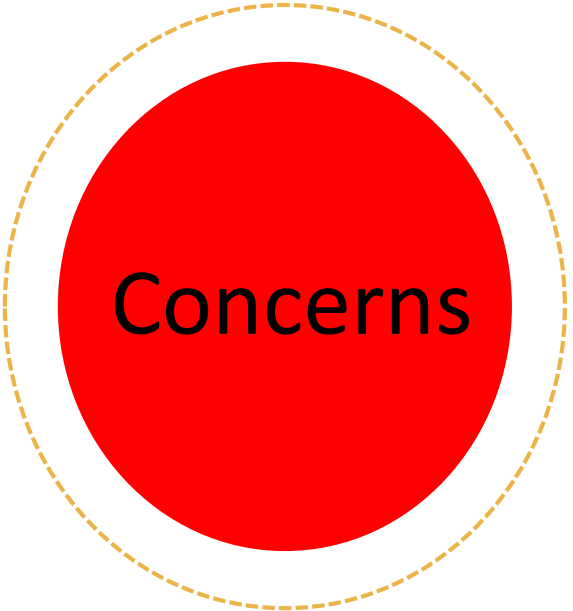
Fresh evaluation by the exporters available most optimal export benefits



In case of shortfall in realization of export proceeds within FEMA prescribed time-line



FOC supply with an option to purchase the Product



# Modus Operandi / Mechanism to avail the benefit

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**01**

Mandatory to indicate in shipping bill whether or not exporter intend to claim RoDTEP benefits

**02**

Exporters required to create RoDTEP credit ledger in their ICEGATE Account

**03**

Once EGM is filed, claim will be processed by Customs

**04**

Once processed a scroll would be generated and made available in the users account at ICEGATE

**05**

Scripts can be used for debiting Basic Customs Duty

**06**

Scripts can either be used for own imports or can be transferred to another IEC holder

# Declaration to be filed as part of shipping bill or bill of export

ICEGATE

Advisory No. 01/2021  
Date: 1<sup>st</sup> January, 2021

## Annexure B

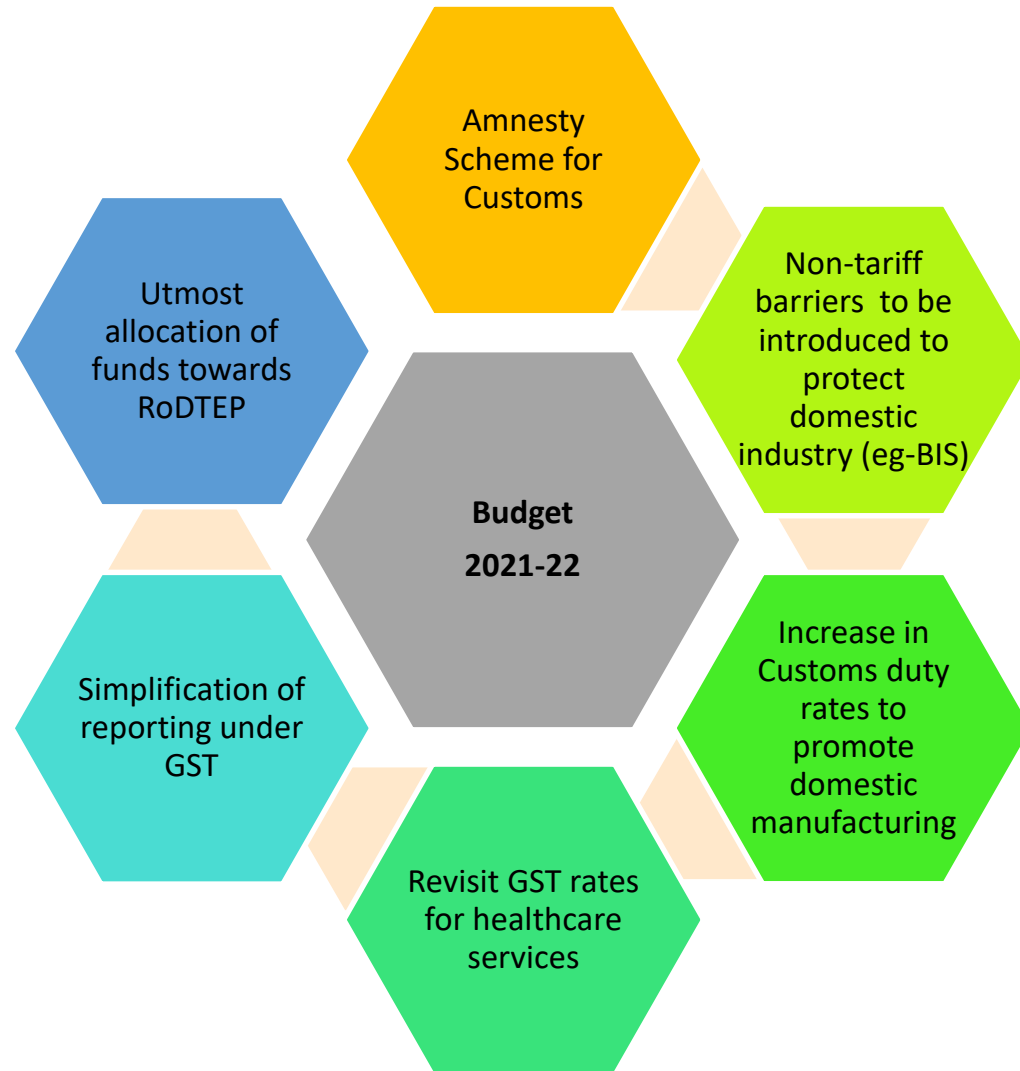
### **DECLARATION TO BE FILED AS PART OF SHIPPING BILL OR BILL OF EXPORT FOR EXPORT OF GOODS UNDER RoDTEP SCHEME**

“I/We, in regard to my/our claim under RoDTEP scheme made in this Shipping Bill or Bill of Export, hereby declare that:

1. I/ We undertake to abide by the provisions, including conditions, restrictions, exclusions and time-limits as provided under RoDTEP scheme, and relevant notifications, regulations, etc., as amended from time to time.
2. Any claim made in this shipping bill or bill of export is not with respect to any duties or taxes or levies which are exempted or remitted or credited under any other mechanism outside RoDTEP.
3. I/We undertake to preserve and make available relevant documents relating to the exported goods for the purposes of audit in the manner and for the time period prescribed in the Customs Audit Regulations, 2018.”

# Budget 2021-22 Expectations

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THANK YOU

# Disclaimer

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*The conclusions reached and views expressed in this document are matters of opinion. Our opinion is based on our understanding of the law and regulations prevailing as of the date of this memorandum and our past experience with the revenue authorities. However, there can be no assurance that the tax authorities or regulators may not take a position contrary to our views.*

*Legislation, its judicial interpretation and the policies of the regulatory authorities are also subject to change from time to time, and these may have a bearing on the advice that we have given. Accordingly, any change or amendment in the law or relevant regulations would necessitate a review of our comments and recommendations contained in this opinion. Unless specifically requested, we have no responsibility to carry out any review of our comments for changes in laws or regulations occurring after the date of issue of this opinion.*

*Our advice is based on the information given to us by the Company, and the representations made to us by the representatives of the Company and is accordingly, given for a specific purpose. Our conclusions are based on the completeness and accuracy of the above stated facts and assumptions; which if not entirely complete or accurate, should be communicated to us immediately, as the inaccuracy or incompleteness could have a material impact on our conclusions.*

*Further, this opinion may not be used or quoted in whole or in part or otherwise referred to in any document or delivered to any other person or entity without our prior written consent.*