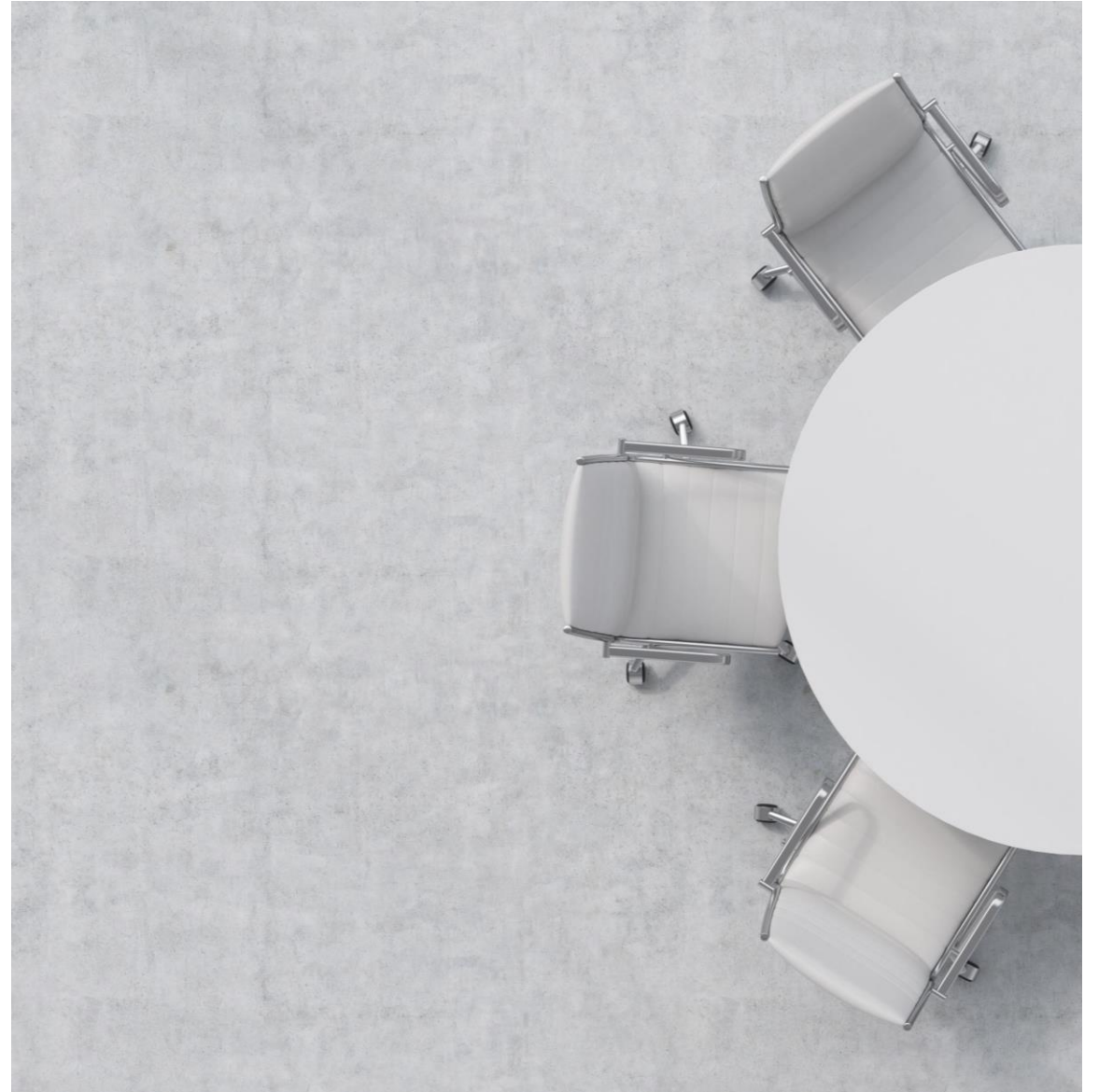


# GST UPDATES! THINGS YOU MUST KNOW!

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CA Pritam Mahure and Associates

[22<sup>nd</sup> August 2022]



# AFTER ATTENDING WEBINARS!



# SYNOPSIS OF THE MEETING!



Key Changes For Every Taxpayer



Rate Rationalisation



Removal Of Exemptions

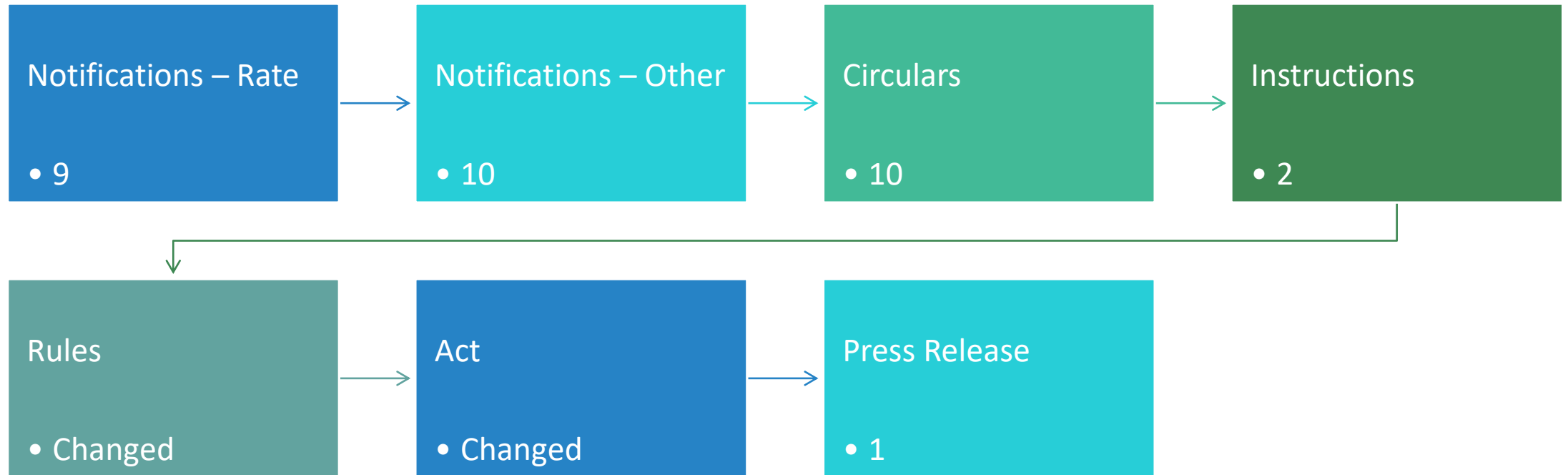


Other Changes



Strategy

# STATUS UPDATE!



# CIRCULARS – 3<sup>RD</sup> AUGUST 2022!

177

- Clarification regarding rates - Services

178

- Clarification regarding damages

179

- Clarification regarding rates - Goods

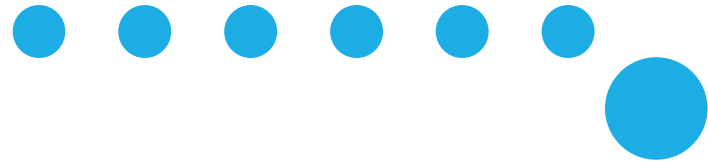
# 1. LD/ PENALTIES ETC

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# TAXABLE EVENT!

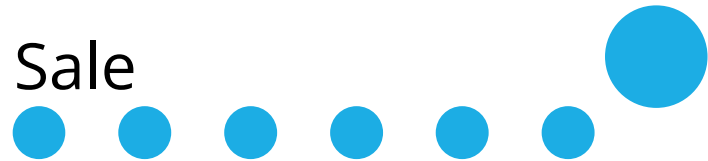
Manufacture



Service



Sale



# ISSUES!

## Sale

- WC
- Food supply

## Manufacture

- Dilution
- Refining, Recording etc
- Packing / repacking

## Service

- Data /Sim card
- Renting

**Deemed sale**  
• 1983



**Deemed manufacture**  
• 28.02.1986 (CN/ SN)  
• FY 2003-04 [2 (f) (iii)]



**Declared Service**  
• 1.07.2012



# 'TAXABLE EVENT'

## Excise

- (f) "**manufacture**" **includes** any process, -
- ... which is **specified** in relation to any goods in the **Section or Chapter** notes of the Fourth Schedule as amounting to manufacture; or ...

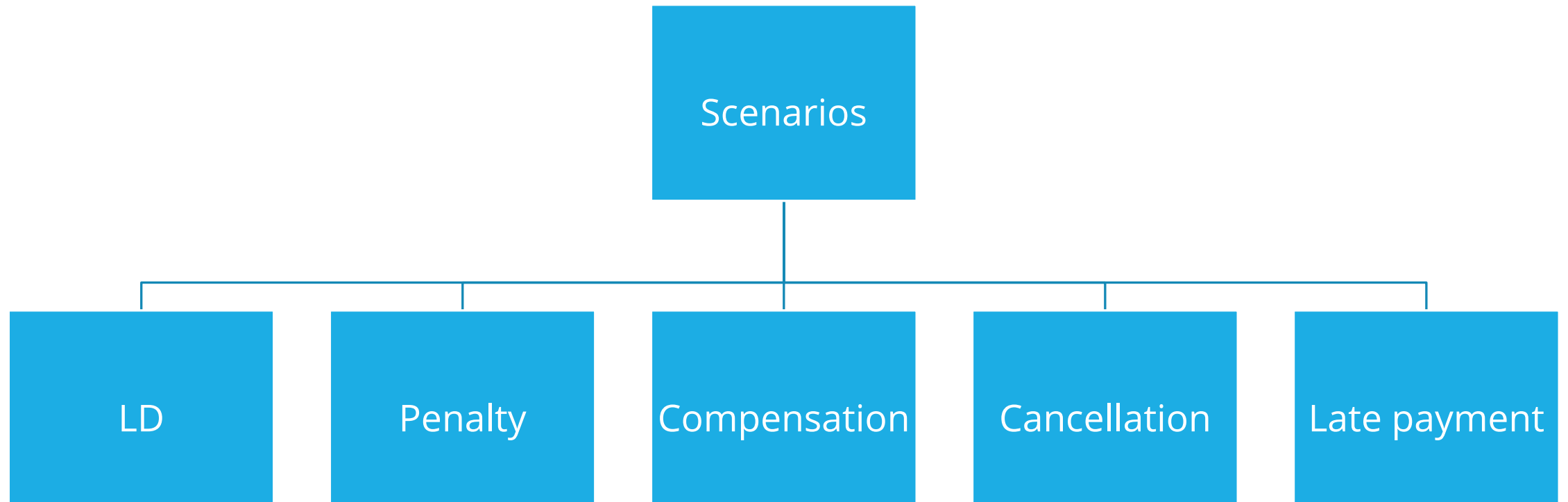
## VAT

- 366 (29A) tax on the **sale** or purchase of **goods includes...**
- ...
- (b) a tax on the transfer of property in goods (whether as goods or in some other form) invoked in the execution of a works contract;
- Sale – Sec. (24) - **Explanation.**— For the purposes of this clause,-... shall be **deemed** to be a sale.

## ST Law

- (44) "**service**" means any activity carried out by a person for another for consideration, and **includes** a declared service, but **shall not include** – (a) an activity which constitutes merely,-...

## LIABLE TO GST?



# BURDEN OF PROOF!

## Supply

- ?

## ITC

- **Section 155 Burden of proof** — *Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on **such person**.*

## SECTION 7. SCOPE OF SUPPLY

(1) For the purposes of this Act, the expression “**supply**” includes —

(a) all forms of **supply** of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made **for a consideration** by a person **in the course or furtherance of business**,

(b) ...

(1A) Where certain activities or transactions, **constitute a supply** in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in **Schedule II**.

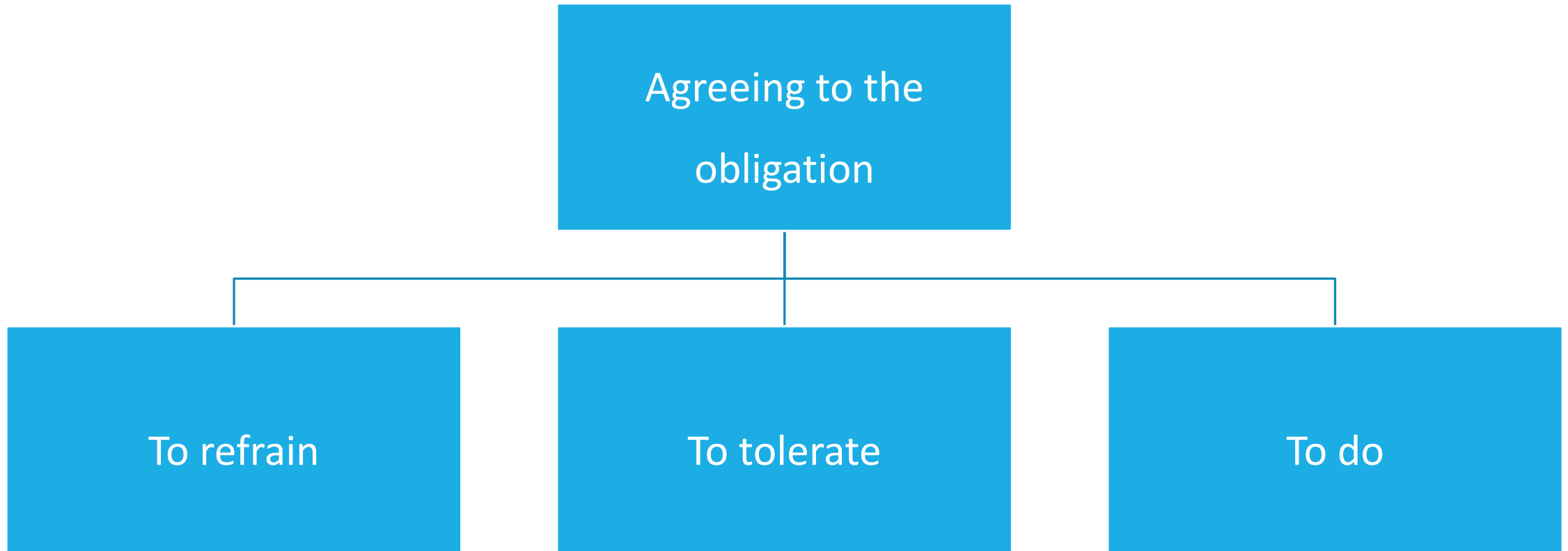
## SCH. II - ACTIVITIES OR TRANSACTIONS TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

### *5. Supply of services*

*The following **shall be treated** as supply of services, namely :— ...*

*(e) agreeing to the obligation **to refrain** from an act, or **to tolerate** an act or a situation, or **to do** an  
act; and*

**SR. NO. 5 (E)**



# EXAMPLES!

Particulars	To Refrain		To Tolerate		Agreeing to do
	I	II	III	IV	V
Amount paid by	Business entity	School	Hawker	School	RWA
Amount received by	Mr. A	Factory	Shopkeeper	RWA	Factory
Supply	Not to compete in an area	Not to operate in early hours	To tolerate	To tolerate	Agreeing to the obligation

# WHAT WAS INTENDED COVERAGE?

3. The description “agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act” was **intended to cover** services such **as** described **above. ...**

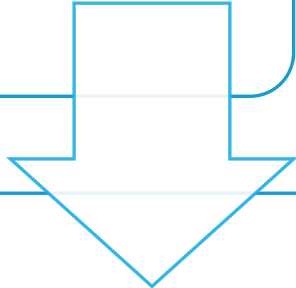
4. ... The element of **contractual relationship**, where one supplies goods or services at the desire of another, is an **essential element** of supply.

6.1 All the three activities **must be under an “agreement”** or a “contract” (whether express or implied). ... Such arrangement or agreement can take the form of an **independent** stand-alone contract or may form **part of** another contract.



# WHAT WAS INTENDED COVERAGE?

6. ... There must be a necessary and **sufficient nexus** between the supply (i.e. agreement to do or to abstain from doing something) and the consideration.



7. ... *An agreement to do an act or abstain from doing an act or to tolerate an act or a situation **cannot be imagined** or presumed to exist **just because** there is a **flow of money***

# LD

7.1.3 It is **argued** that performance is the essence of a contract. **Liquidated damages** cannot be said to be a consideration received for tolerating the breach or non-performance of contract. They are rather **payments for not tolerating** the breach of contract.

7.1.4 In this background a **reasonable view** that can be taken with regard to taxability of liquidated damages is that where the amount paid as 'liquidated damages' is an amount **paid only to compensate** for injury, loss or damage suffered... Such payments do not constitute consideration for a supply and are **not taxable**.

# WHAT WAS INTENDED COVERAGE?

7. ... Further, such amounts do not constitute payment (or consideration) for tolerating an act, because **there cannot be any contract:** (a) **for breach thereof**, or (b) for holding more stock than permitted under the mining contract, or (c) for **leaving the employment** before the agreed minimum period or (d) for doing something leading to the dishonour of a cheque.

# LIABLE OR NOT?

Particulars	Remarks
Liquidated Damages for breach of contract	There cannot be any contract .. for breach thereof
Damages (damage to property, negligence)	- As above -
Forfeiture of salary / Notice pay / Pre-mature leaving	Penalty for dissuading non-serious candidates
Employment bond recovery	There cannot be any contract .. for leaving employment
Cheque dishonour penalty	Fine for not-tolerating
Piracy, unauthorized use of trade name, copyright	Mere flow of money

# LIABLE OR NOT?

Particulars	Remarks
Penalty for delayed construction of houses	Not for getting anything in return from property buyers
Forfeiture of money if not buying immovable property	Mere flow of money
Forfeiture of money bidder failing to act after winning bid	Mere flow of money
Compensation for Coal block cancellation	No agreement and had no option but to accept
Excess minerals beyond permissible limits	No agreement and Penalty under a law
Compensation during Demonitisation period	Nature doesn't change even if paid by another
Fixed capacity charges for electricity	Charges for main supply

# WHAT WAS INTENDED COVERAGE?

7.1.5 ... **Forfeiture** of Earnest money **is** stipulated in such cases not as a consideration for tolerating the breach of contract but as a **compensation** for the losses suffered and as a penalty for discouraging the non-serious buyers or bidders. Such payments being merely flow of money are not a consideration for any supply and are not taxable. **The key** in such cases is to consider **whether** the impugned payments constitute **consideration for another independent contract envisaging tolerating** an act or situation or refraining from doing any act or situation or simply doing an act. **If** the answer is **yes, then** it constitutes a **'supply'** within the meaning of the Act, otherwise it is not a "supply".

# LIABLE OR NOT?

Particulars	Remarks
Pre-payment penalty	Part of commercial terms
Delayed payment charges	Part of commercial terms
No-show charges	Part of commercial terms
Early termination of rental agreement	Part of commercial terms
Hotel accommodation/ event / journey	Part of commercial terms and Service from booking to exit

## KEY JUDGMENTS ON DAMAGES/ PENALTY!

Particulars	<u>MNH Shakti Limited</u>	<u>GE T &amp; D India Ltd</u>	<u>Repco Home Finance Ltd</u>
Income?	Compensation	Notice pay recovery	Pre-payment or closure charges
What is held?	ST <b>not</b> applicable	ST <b>not</b> applicable	ST <b>not</b> applicable
H'ble Court/ Tribunal	Tribunal – Division Bench	Madras High Court	Tribunal Larger Bench
Citation	ST Appeal No. 75218 of 2020	2020-TIOL-183-HC-MAD-ST	2020-TIOL-1039-MAD-LB
Section applicable	Section 66E (e) [Service Tax ('ST')]		



## GE T AND D INDIA LTD [2020-TIOL-183-HC-MAD-ST]

11. The query raised relates to a contra situation, one, where amounts have been received by an employee from the employer by reason of **premature termination of contract of employment**, and the taxability thereof. The Board has answered in the negative, pointing out that such amounts would not be related to the rendition of service. Equally, so in my view, the employer cannot be said to have rendered any service per se much less a taxable service and has merely facilitated the exit of the employee upon imposition of a cost upon him for the sudden exit. The definition in clause (e) of Section 66E as extracted above is not attracted to the scenario before me as, in my considered view, the **employer has not 'tolerated' any act of the employee but has permitted a sudden exit** upon being compensated by the employee in this regard.

## GE T AND D INDIA LTD [2020-TIOL-183-HC-MAD-ST]

12. Though normally, a contract of employment qua an employer and employee has to be read as a whole, there are situations within a contract that constitute rendition of service such as breach of a stipulation of non-compete. **Notice pay**, in lieu of sudden termination however, **does not give rise to the rendition of service** either by the employer or the employee.

## SCHEDULE II AND III

Schedule II	Schedule III
Activities or Transactions to be Treated as Supply of Goods or Supply of Services	Activities or Transactions Which Shall be Treated Neither as a Supply of Goods nor a Supply of Services
<b>5. Supply of services</b> ... (e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and	1. Services <b>by</b> an employee to the employer in the course of or in relation to his employment.

# KEY JUDGMENTS ON DAMAGES/ PENALTY!

Particulars	<u>South Eastern Coalfields Ltd</u>	<u>Lemon Tree Hotel</u>	<u>K.N. Food Industries</u>
Income?	Compensation	Retained cancellation charges	Compensation for financial damage
What is held?	ST <b>not</b> applicable	ST <b>not</b> applicable	ST <b>not</b> applicable
H'ble Court/ Tribunal	Tribunal (Principal Bench)	Tribunal (Single Bench)	Tribunal – Division Bench
Citation	ST Appeal No. 50567 of 2019	2020 (34) G.S.T.L. 220 (Tri.)	2020 (38) GSTL 60
Section applicable	Section 66E (e) [ST]		

# WHAT RATE WILL APPLY?

Particulars	Remarks
Automobile supply	
CA services	
Electricity supply	

## 2. ICE-CREAM!

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# ICE-CREAM?



# ICE-CREME

Particulars	Goods	Services
Description	Ice cream and other edible ice, whether or not containing cocoa	(ii) Supply of 'restaurant service' other than at 'specified premises' ...
Not. No.	1/2017-CT	11/2017-CT
Rate	18% (Sr. No. 22 of Sch. III)	5% (Sr. No. 7 of Sch. III)
Heading / SAC	2105 00 00	Heading 9963 (Accommodation, food and Beverage services)



## SCHEDULE II - ACTIVITIES [OR TRANSACTIONS] TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

### **6. Composite supply**

The following **composite supplies** shall be treated as a supply of **services**, namely :—

(a) Works contract as defined in clause (119) of section 2;

(b) Supply, by way of or as part of any **service** or in any other manner whatsoever, of goods, being **food** or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.

# CIRCULAR NO. 164 /20 /2021-GST

4.2 Ice cream parlors sell already manufactured ice-cream and they **do not have a character** of a restaurant. Ice-cream parlors do not engage in any form of cooking at any stage, whereas, restaurant service involves the aspect of cooking/**preparing** during the course of providing service. Thus, supply of ice-cream parlor stands on a different footing than restaurant service. Their activity entails supply of ice cream as goods (a manufactured item) and not as a service, even if certain ingredients of service are present.

# CIR. NO. 177

*3.4 Considering the overall circumstances of the case, it is clarified that past cases of payment of GST on supply of ice-cream by ice-cream parlors @ 5% without ITC shall be treated as fully GST paid to avoid unnecessary litigation. Since the decision is only to regularize the past practice, no refund of GST shall be allowed, if already paid at 18%. **With effect from 6.10.2021**, the ice Cream parlors are required to pay GST on supply of ice-cream at the rate of **18% with ITC**.*



**CLOUD KITCHENS!**  
**[CIRCULAR 164 DATED 6.10.2021]**

*Service provided by way of cooking and supply of food, by cloud kitchens/central kitchens are covered under “restaurant service” ... and attract **5% without ITC***



## INFORMATION

Dear Guests.

As per the prevalent GST rules, we are having to charge GST at the rate of 18%. Note momos fall under the **HSN code 2106** (Sale of Momos).

Our Momo production is done centrally in our factory to ensure taste, hygiene & consistency which means there is no cooking carried out at the outlets. Momos are garnished and served piping hot at the outlet. Therefore our sale has to be categorised under the said HSN code.

However, for other delicacies such as Sizzlers, Augratin, Momo Burgers we shall be charging only 5% GST as it does not fall under the category of Supply of Momos. For Beverages, tax rates are included in MRP for the respective soft drinks.

Understanding our guests' value and being a **#CustomerFirst** brand, we have **reduced our menu pricing by 10%** to ensure our guests don't be burdened. **This is not only a first time for us; it's possibly the first time a national brand has reduced its prices;** only to support it's consumers.

We hope to get your continuous support, as an organisation we believe that adhering to tax and GST laws is of utmost priority. We strongly feel the path to progress for us as a nation is not by evasion; instead by adherence.

We are ready to address any further query or concern regarding this; do mail us at **knowmore@wowmomo.com**

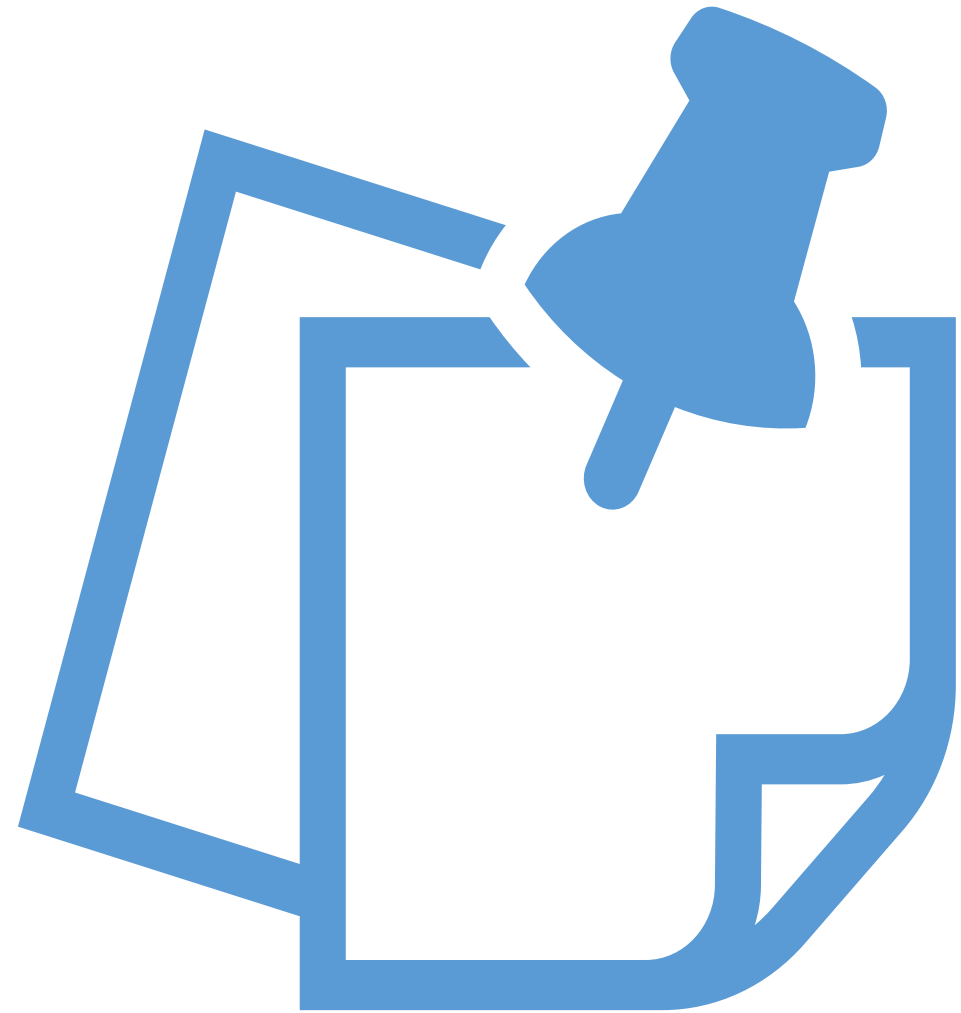
Jai Hind

Regards

Team Wow! Momo

### 3. ENTRANCE/ EXIT FEES!

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# SR. NO. 66 OF 12/2017-CT (R)

*“Services provided –*

a. *by an educational institution **to its students**, faculty and staff;*

aa. *by an educational institution by way of conduct of **entrance** examination against consideration in the form of entrance fee;...”*

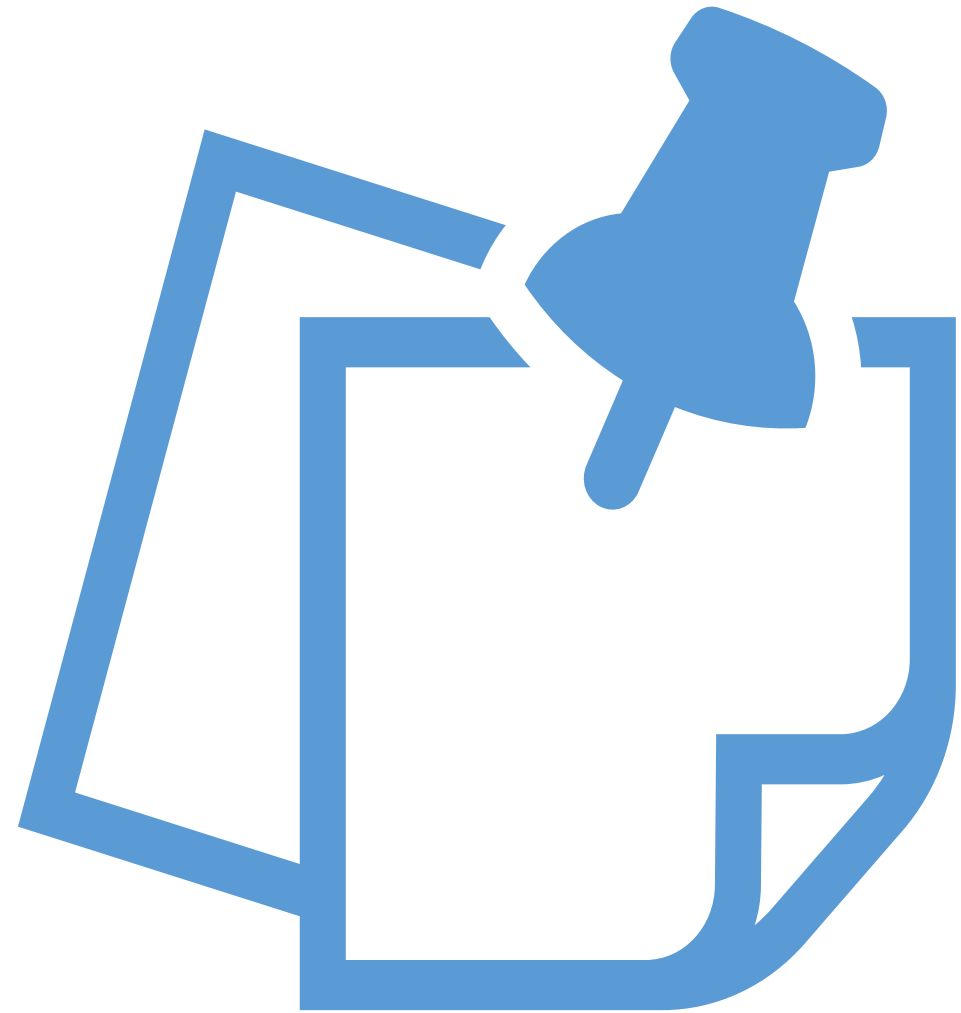


# CIRCULAR 177

Therefore, it can be seen that **all services supplied** by an 'educational institution' **to its students** are **exempt** from GST. ... Consideration charged by the educational institutes by way of entrance fee for conduct of entrance examination is also exempt. The exemption is wide enough to cover the amount or fee charged for **admission** or entrance, or amount charged for application fee for entrance, or the fee charged from **prospective students** for issuance of eligibility certificate to them in the process of their entrance/admission to the educational institution. Services supplied by an educational institution by way of issuance of migration certificate to the leaving or **ex-students** are also covered by the exemption.

### 3. GINNED- COTTON!

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# COTTON!



## R.K.& SONS VS CCE, ROHTAK (TRIB. CHANDIGARH)

*“Cotton (with seeds) as plucked from cotton plants can hardly be called cotton fibre in which case cotton fibre would come into existence only after the seeds are ginned away from cotton plucked from cotton plants. **Cotton fibre obtained by ginning cotton plucked cotton plants is nothing but raw cotton fibre** because there cannot be rawer form of cotton fibre obtained from cotton-with-seeds plucked from cotton plants.”*

# ~~SR. NO. 24B OF 12/2017-CT (R)~~

*Services by way of storage or warehousing of cereals, pulses, fruits, nuts and vegetables, spices, copra, sugarcane, jaggery, **raw vegetable fibres such as cotton, flax, jute** etc., indigo, unmanufactured tobacco, betel leaves, tendu leaves, coffee and tea.*

***[Entry 24B withdrawn from 18.07.2022]***

## 4. TO OR FROM!



# SR. NO. 9B OF 12/2017-CT (R)

*Supply of services associated with transit cargo to Nepal and Bhutan (landlocked countries).*

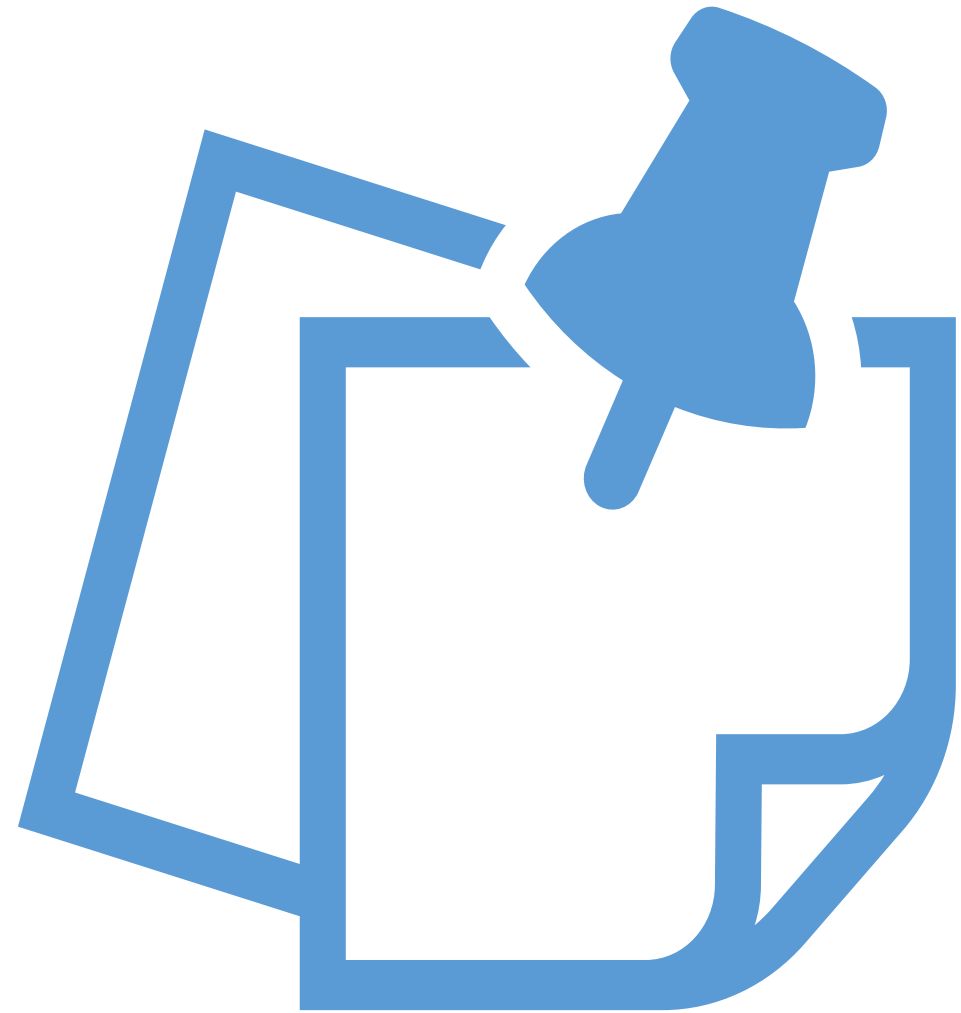
# CIRCULAR 177

6.2 GST on supply of services associated with transit cargo to Nepal and Bhutan was exempted w.e.f 29.09.2017 based on recommendations of the 20th GST Council Meeting. The opening sentence of the Agenda Item 7(ix) placed before the GST Council on this issue, **makes it clear** that the **proposal was to exempt** supply of services associated with transit cargo **both to and from** Nepal and Bhutan.

6.3 Accordingly, as recommended by the GST Council, it is **clarified** that exemption under Sl. No. 9B of Notification 12/2017- Central Tax (Rate) **covers** services associated with transit cargo **both to and from** Nepal and Bhutan.



5. 243W/243G!



# SERVICE BY / TO!

<u>Not. No. 14/2017-CT (R)</u>	<u>Not. No. 12/2017-CT (R)</u>
<p>... hereby notifies that the following activities or transactions undertaken <b>by</b> the Central Government or State Government or any local authority in which they are engaged as public authority, shall be treated <b>neither as a supply of goods nor a supply of service</b>, namely:- “Services by way of <b>any activity</b> in relation to a function entrusted to a Panchayat under <b>article 243G</b> of the Constitution”</p>	<p>Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided <b>to</b> the Central Government, State Government or Union territory or local authority or a Governmental authority [or a Government Entity] by way of any activity in relation to any function entrusted to a Panchayat under <b>article 243G</b> of the Constitution or in relation to any function entrusted to a Municipality under <b>article 243W</b> of the Constitution.</p>

# CIR. NO. 177

7.5 It is clarified that if such services are procured by Indian Army or any other Government Ministry/Department which does not perform any **functions listed in the 11th and 12th Schedule**, in the manner as a local authority does for the general public, the same **are not eligible** for exemption under Sl. No. 3 and 3A of Notification 12/2017- Central Tax (Rate).

# CONDITIONS!

Sr	Condition	Fulfilled
1.	Pure Service (sr. no. 3)	
2.	Provided 'to' qualified entities	
3.	Is it by way of any activity in relation to any function entrusted to a Panchayat/ Municipality	
4.	Is it covered under Sch. 243G/ 243W	

# 11<sup>TH</sup> AND 12<sup>TH</sup> SCHEDULE!

Eleventh Schedule	Twelfth Schedule
1. Agriculture, including agricultural extension	1. Urban planning including town planning. ...
25. Women and child development	14. Burials and burial grounds, cremations and cremation grounds and electric crematoriums.
26. Social welfare, including welfare of the handicapped and mentally retarded.	17. Public amenities including street lighting, parking lots, bus stops, and public conveniences; and
27. Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes.	18. Regulation of slaughterhouses and tanneries.

## 6. AD IN SOUVENIERS

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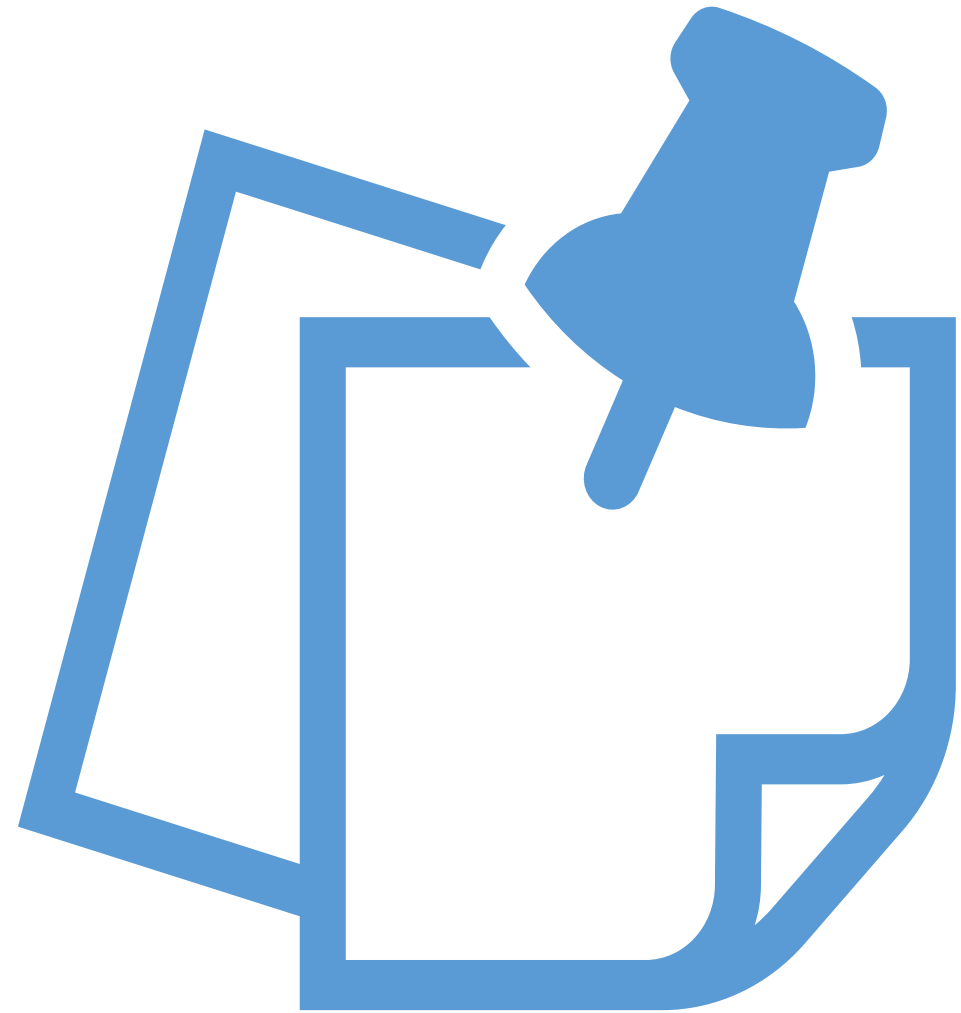
# CIR. NO. 177

8.4 It therefore appears that 'book' has been defined in the Press and Registration of Books Act, 1867 in an **inclusive manner** with a wide ambit which would cover souvenir book also.

8.5 Accordingly, as recommended by the GST Council, it is clarified sale of space for advertisement in souvenir book is covered under serial number (i) of entry 21 of Notification No. 11/2017-Central Tax (Rate) and attracts **GST @ 5%**.

# 7. TRANSPORT VS RENTAL!

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# CIR. NO. 177

9.2 Usually in such cases the vehicles such as **tippers, dumpers, loader, trucks etc.**, are given on hire to the mining lease operator. **Expenses for fuel are generally borne by the recipient of service.**

The vehicles with driver are at the disposal of the mining lease operator for transport of minerals **within the mine area** (mining pit to railway siding, beneficiation plant etc.) as per his requirement **during the period of contract.**

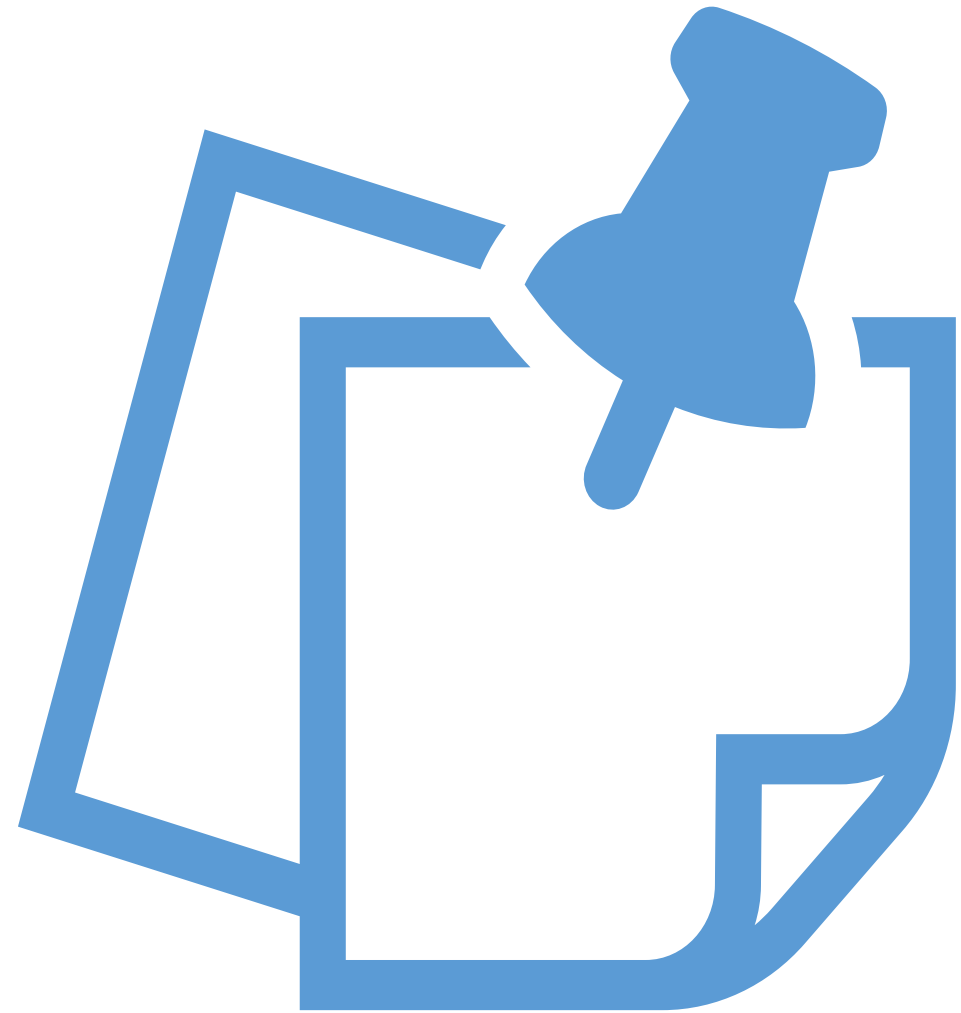
# CIR. NO. 177

9.3 Such services are nothing but “rental services of transport vehicles with operator” which fall under heading 9966 and attract GST @ 18% under Sr. No. 10 part (iii) of notification No. 11/2017- Central Tax (Rate) dated 28.06.2017. The person who takes the vehicle on rent **defines how and when the vehicles will be operated, determines schedules, routes** and other operational considerations. The person who gives the vehicles on rent with operator can not be said to be supplying the service by way of transport of goods.

9.4 On such rental services of goods carriages where the **cost of fuel is included** in the consideration charged from the recipient of service, GST rate has been reduced from 18% to **12% with effect from 18.07.2022**. Prior to 18.07.2022, it attracted GST at the rate of 18%.

# 8. PLC

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# CIR. NO. 177

*10.3 Allowing choice of location of plot is **integral part** of supply of long-term lease of plot and therefore, location charge is nothing but part of consideration charged for long term lease of plot. Being charged upfront along with the upfront amount for the lease, the same is exempt.*

# 9. LAND- DEVELOPMENT!

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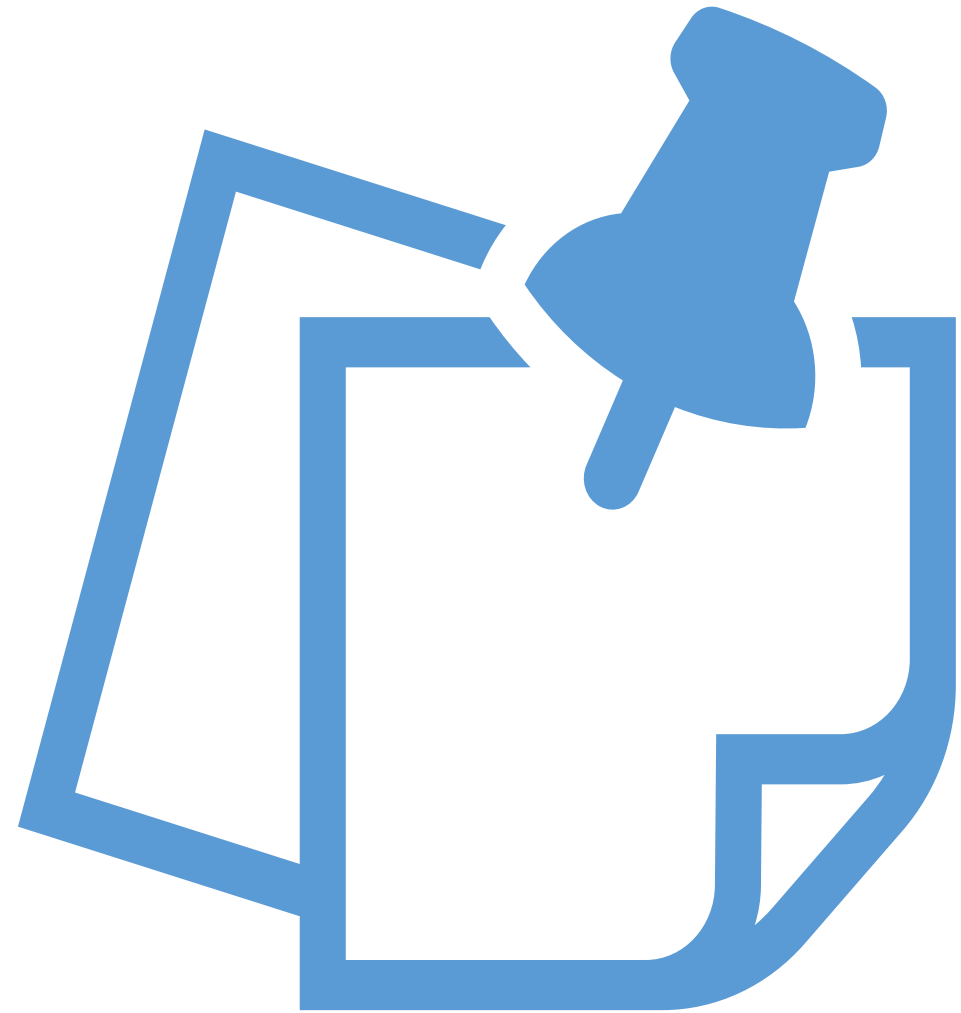


# CIR. NO. 177

*14.3 Land may be sold either as it is or after some development such as levelling, laying down of drainage lines, water lines, electricity lines, etc. It is clarified that sale of such developed land is also sale of land and is covered by Sr. No. 5 of Schedule III of the Central Goods and Services Tax Act, 2017 and accordingly **does not attract GST.***

# 10. IVF!

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# CIR. NO. 177

13.3 Health care services is defined vide 2(zg) of the notification No. 12/2017- Central Tax (Rate) dated 28.06. 2017 as –

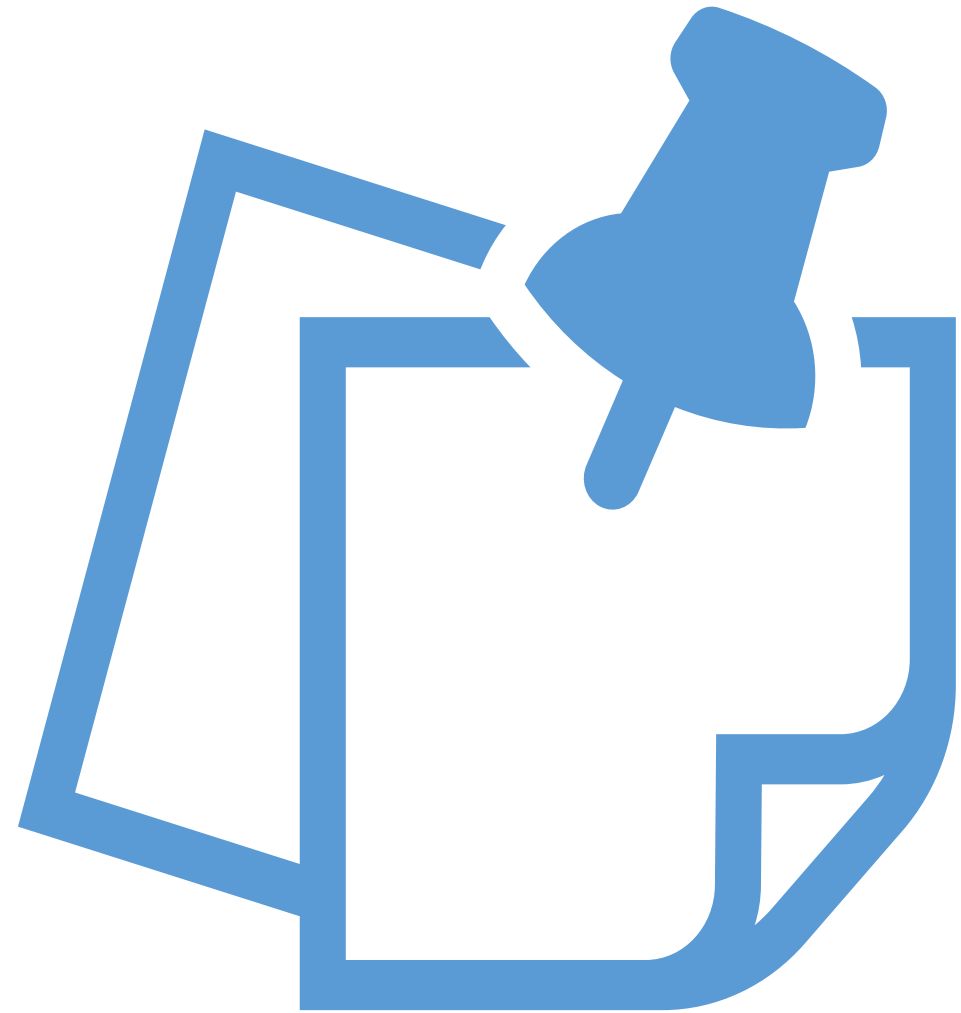
*“health care services” means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma.”*

13.4 The **abnormality/disease/ailment of infertility is treated** using ART procedure such as IVF. It is clarified that services by way of IVF are also **covered under** the definition of health care services for the purpose of above **exemption** notification.



# 11. RENTING VS TRANSPORT!

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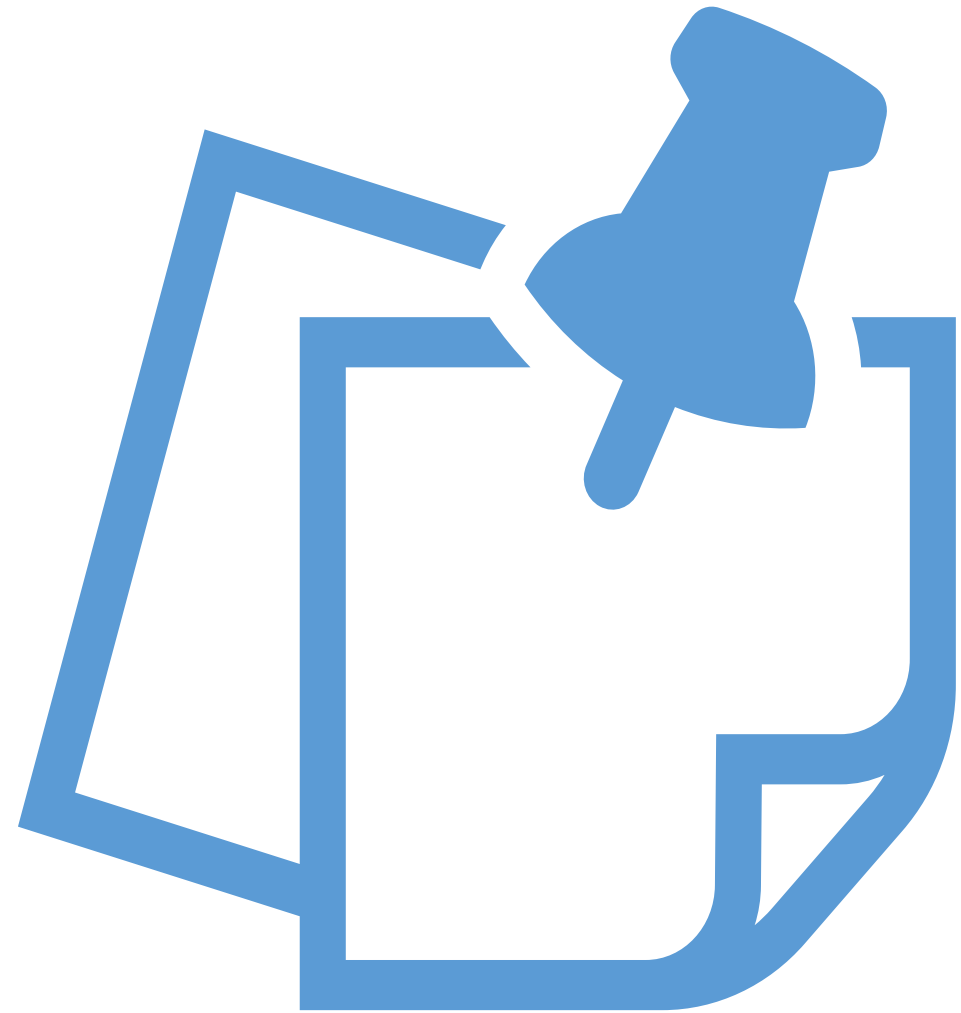
# CIR. NO. 177

*15.2 Representations have been received to clarify whether RCM is applicable on service of transportation of passengers (Heading 9964) or on renting of motor vehicle designed to carry passengers (Heading 9966).*

*15.6 Accordingly, as recommended by the GST Council, it is clarified that where the body corporate hires the motor vehicle (for transport of employees etc.) for a period of time, during which the motor vehicle shall be at the disposal of the body corporate, the service would fall under Heading 9966, and the body corporate shall be liable to pay GST on the same under RCM. It may be seen that reverse charge thus would apply on act of renting of vehicles by body corporate and in such a case, it is for the body corporate to use in the manner as it likes subject to agreement with the person providing vehicle on rent*

## 12. RENTING VS TRANSPORT!

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# CIR. NO. 177

16.1 Representations have been received to clarify whether the engagement of **non-air conditioned contract carriages** by firms for transportation of their employees to and from work is exempt under entry at Sr. No. 15(b) of notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

16.2 Sr. No. 15 (b) of notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 exempts “**transport of passengers**, with or without accompanied belongings, by non-air conditioned contract carriage, other than radio taxi, for transport of passengers, excluding tourism, conducted tour, charter or hire.”

16.4 The exemption shall not be applicable where contract carriage is **hired for a period of time**, during which the contract carriage is at the disposal of the service recipient and the recipient is thus free to decide the manner of usage (route and schedule) subject to conditions of agreement entered into with the service provider.

# 13. RENTING VS TRANSPORT - II!

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# CIR. NO. 177

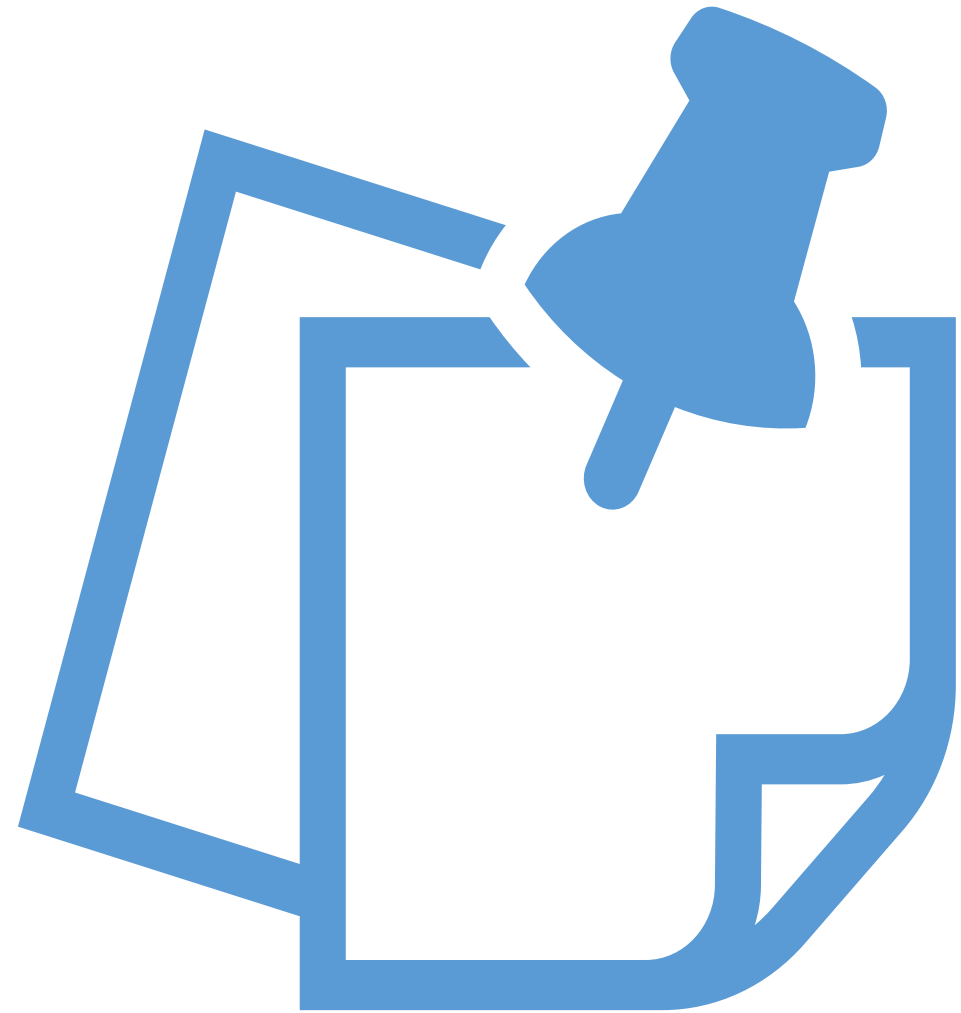
16.1 Representations have been received to clarify whether the engagement of **non-air conditioned contract carriages** by firms for transportation of their employees to and from work is exempt under entry at Sr. No. 15(b) of notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

16.2 Sr. No. 15 (b) of notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 exempts “**transport of passengers**, with or without accompanied belongings, by non-air conditioned contract carriage, other than radio taxi, for transport of passengers, excluding tourism, conducted tour, charter or hire.”

16.4 The exemption shall not be applicable where contract carriage is **hired for a period of time**, during which the contract carriage is at the disposal of the service recipient and the recipient is thus free to decide the manner of usage (route and schedule) subject to conditions of agreement entered into with the service provider.

# 14. WCS!

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# CIR. NO. 177

17.1 Representation has been received seeking clarification regarding the applicable GST rate on service of construction, supply, installation and commissioning of a **2.00 LLPD dairy plant** on turn-key basis.

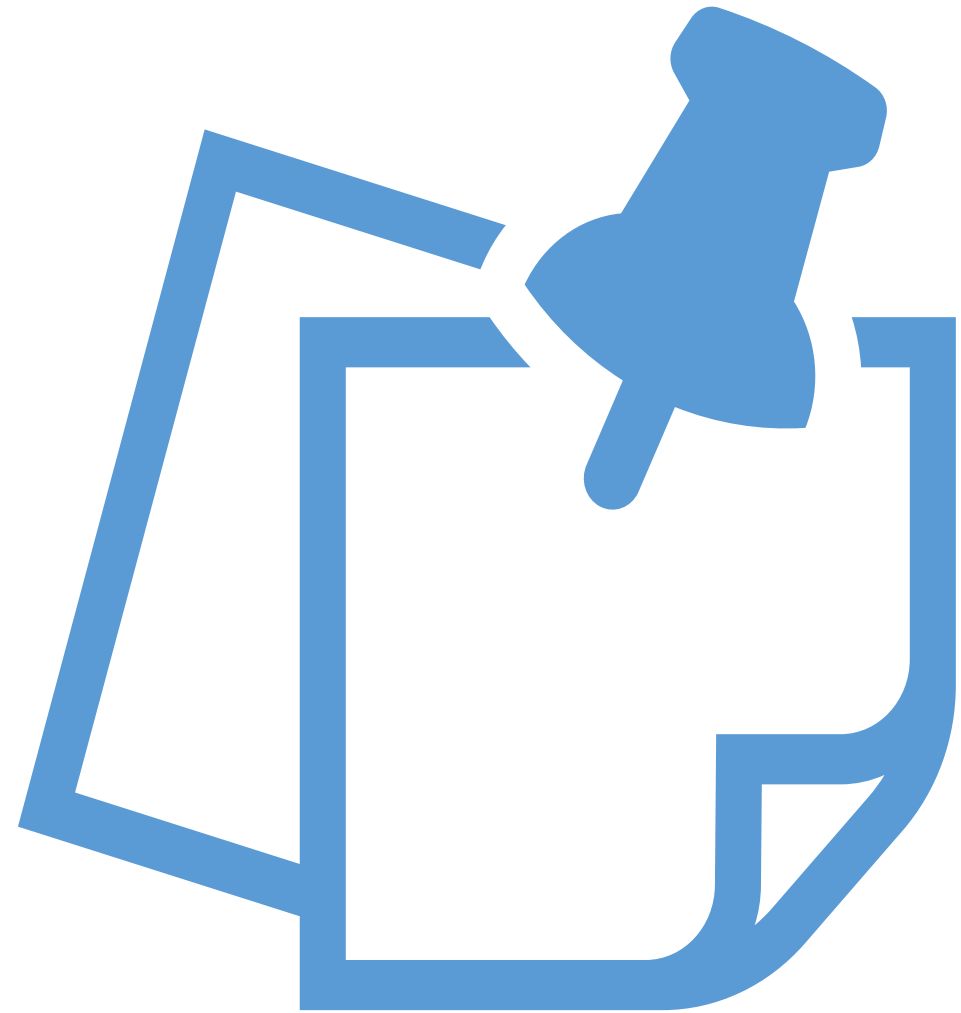
17.3 In this regard, it may be seen that prior to 18.07.2022, serial number **3(v)(f)** of notification no. 11/2017 Central Tax (Rate) dated 28.06.2017 prescribes GST rate of **12 % on the composite supply of works contract** by way of construction, erection, commissioning, or installation of original works pertaining to mechanized food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages.

17.4 It is clarified that a contract of the nature described here for construction, installation and commissioning of a dairy plant constitutes supply of works contract. There is no doubt that **dairy plant** which comes into existence as a result of such contracts is an **immovable property**.



# 15. GUEST ANCHORS

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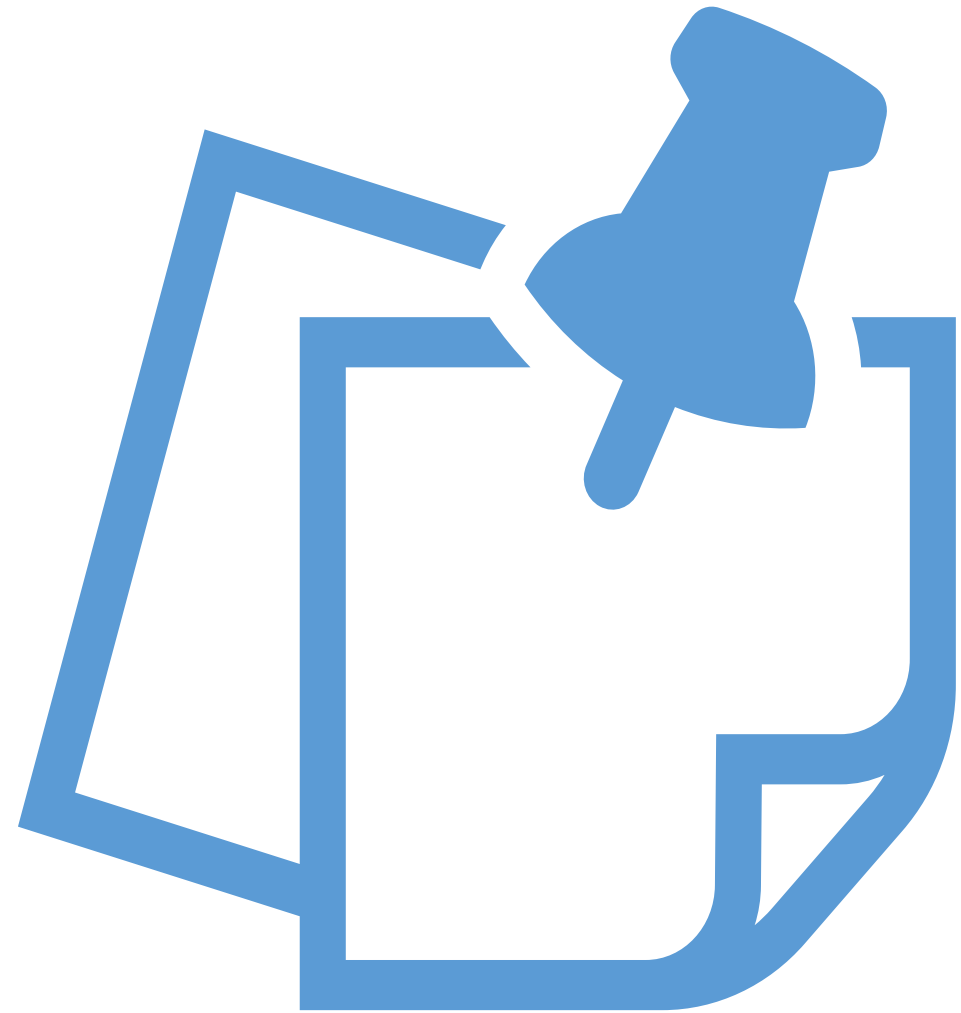


# CIR. NO. 177

*11.2 It is clarified that supply of all goods & services are taxable **unless exempt** or declared as 'neither a supply of goods nor a supply of service'. Services provided by the guest anchors in lieu of honorarium attract GST liability.*

# 16. E-INV DECLARATION!

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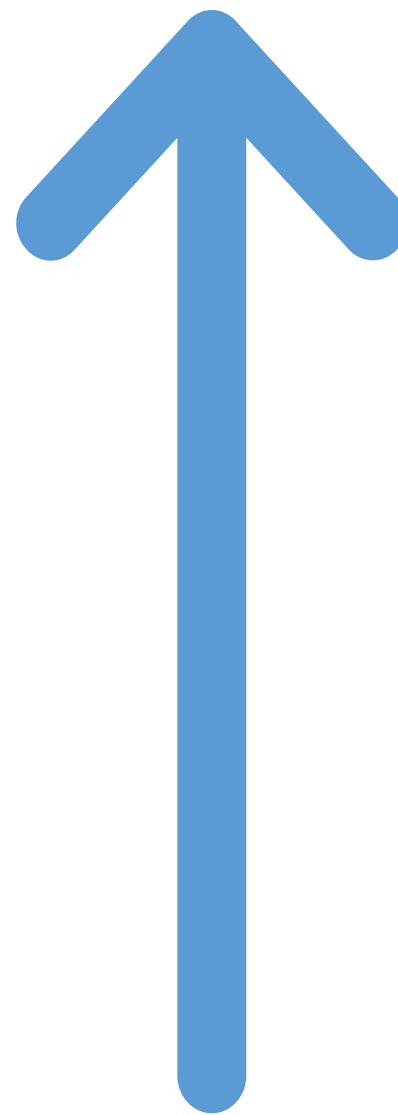
# RULE 46 - DECLARATION

*“(s) a declaration as below, that invoice is not required to be issued in the manner specified under sub-rule (4) of rule 48, in all cases where an invoice is issued, other than in the manner so specified under the said sub-rule (4) of rule 48, by the taxpayer **having aggregate turnover** in any preceding financial year from 2017-18 onwards **more than** the aggregate turnover as notified under the said sub-rule (4) of rule 48:*

*“I/We hereby declare that though our aggregate turnover in any preceding financial year from 2017-18 onwards is more than the aggregate turnover notified under sub-rule (4) of rule 48, **we are not required to prepare an invoice** in terms of the provisions of the said sub-rule.”:*”

B. KEY RATE  
CHANGES!

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# HIGHER GST FOR 'WORKS CONTRACT'!



GST rate on **construction** of **roads, bridges, railways, metro**, etc. **increased to 18%** from current 12%!



Taxpayers need to re-negotiate and ensure correct GST rate is applied!

[Not. No. 3/2022-CT (R) w.e.f. 18.07.2022]

# HIGHER GST FOR 'WORKS CONTRACT'!



GST rate on **works contract services** supplied to **CG/ SG/ UT/ LA, for canal, dam, hospital, pipeline** etc. **increased to 18%** from current 12%!



Taxpayers need to re-negotiate and ensure correct GST rate is applied!

[Not. No. 3/2022-CT (R) w.e.f. 18.07.2022]

# HIGHER GST FOR 'WORKS CONTRACT'!



GST rate on **earth work services** (including sub-contracts) supplied to **CG/ SG/UT/ LA**, **increased to 12%** from current 5%!

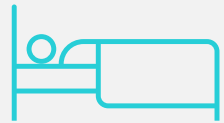


Taxpayers need to re-negotiate and ensure correct GST rate is applied!

[Not. No. 3/2022-CT (R) w.e.f. 18.07.2022]

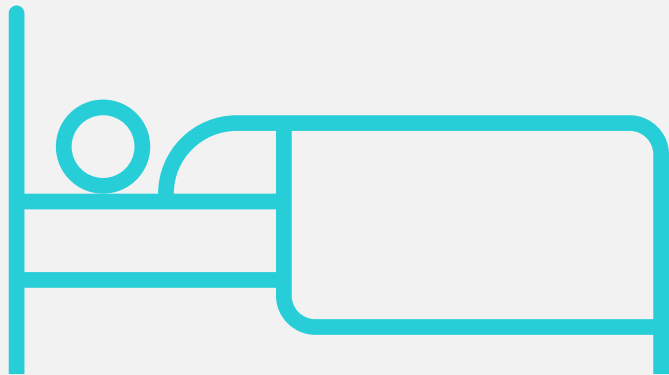


# HOTEL ROOMS EXPENSIVE!



**Hotel rooms** below price of INR 1,000/ day which were earlier exempt would now be **taxable @12%!**

# RELIGIOUS PLACES!



13. Services by a person by way of-

- (a) conduct of any religious ceremony;
- (b) renting of precincts of a religious place meant for general public,...

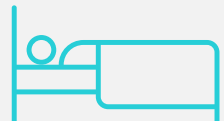
Provided that nothing contained in entry (b) of this exemption shall apply to,-

- (i) renting of rooms where charges are **one thousand rupees** or more per day

# RESIDENTIAL DWELLINGS!



**Renting of residential dwelling to business entities** (registered persons) would be **taxable under RCM!**



Services by way of renting of residential dwelling for use as residence  
**“except where the residential dwelling is rented to a registered person”!**

# RCM

5AA	Services by way of renting of <b>residential dwelling</b> to a registered person	Any person	Any registered person
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# HOSPITALIZATION TO ATTRACT GST!



Services provided by a clinical establishment by way of providing room [other than ICU/CCU /Intensive Cardiac Care Unit (ICCU)/NICU] having room charges **exceeding Rs. 5,000 per day** to a person receiving health care services – GST **at 5% without ITC.**



What is meant by 'room charges'? What will included therein?  
What about relative of patient?

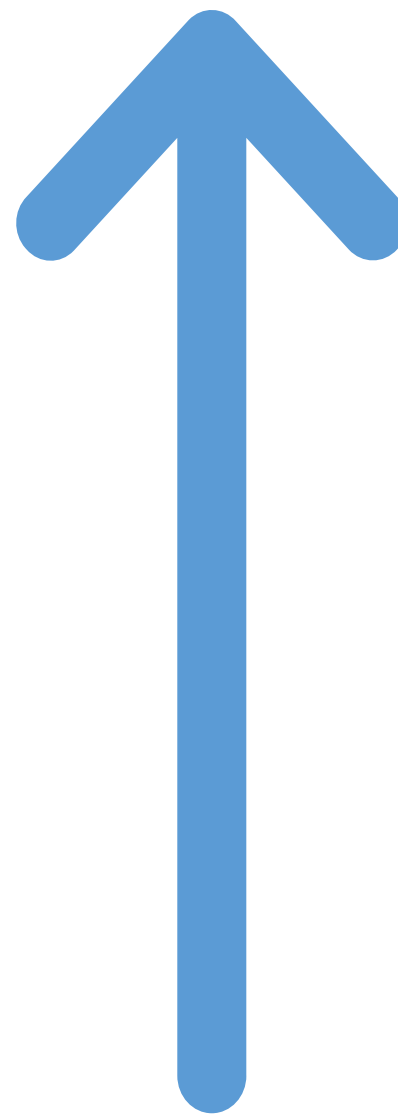
# PRE-PACKAGED FOOD ITEMS/ GRAINS!



Hitherto, GST was exempted on specified food items, grains etc when not branded, or right on the brand has been foregone. It has been recommended to revise the scope of exemption to exclude from it **prepackaged and pre-labelled** retail pack **in terms of Legal Metrology Act**, including pre-packed, pre labelled curd, lassi and butter milk.

C. RCM

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# RESIDENTIAL DWELLINGS!



Tax payable by a '**registered person**' in case of renting of **residential** dwelling to a registered person!

[Not. No. 5/2022-CT (R) w.e.f. 18.07.2022]



# GTA!



*Goods transport agency (GTA) is being given option to pay GST at 5% or 12% under forward charge; option to be exercised at the beginning of Financial Year. RCM option to continue.*

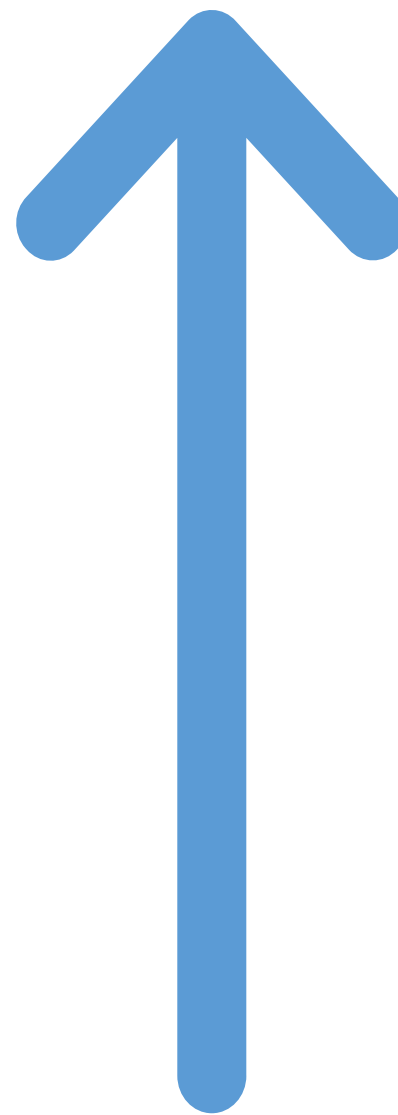
[Not. No. 5/2022-CT (R) w.e.f. 18.07.2022]



**Declaration:** *"I/ We have taken registration under the CGST Act, 2017 and have exercised the **option to pay** tax on services of GTA in relation to transport of goods supplied by us during the Financial Year \_\_\_\_ under forward charge."*

D. OTHER  
CHANGES!

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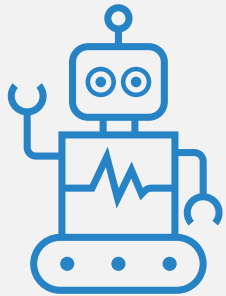


# GSTAT – LIKELY TO BE SET UP SOON!



The Council has decided to constitute a Group of Ministers to address various concerns raised by the States in relation to constitution of GST Appellate Tribunal and make recommendations for appropriate amendments in CGST Act!

# AI FOR NON-COMPLIANT TAXPAYERS!



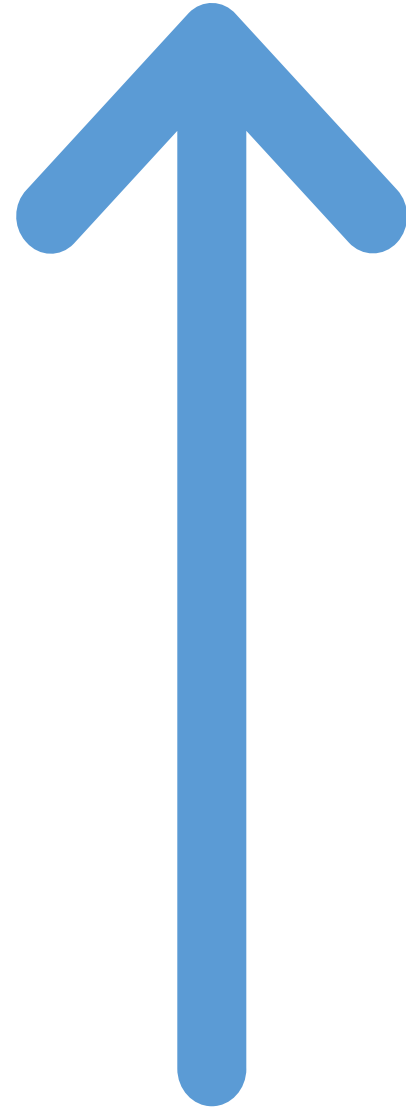
*The GoM on IT Reforms, inter alia, recommended that the GSTN should put in place the AI/ML based mechanism to verify the **antecedents** of the registration applicants and an improved risk-based monitoring of their **behavior post** registration so that non-compliant tax payers could be identified in their **infancy** and appropriate action be taken so as to minimize risk to exchequer.*



**Registration already suspended** for non-filing of returns to be **automatically revoked** when the taxpayers files the pending returns!

D. E-  
INVOICING!

---



# E-INVOICING – EVOLUTION

1.10.2020

[Phase I]

- E-invoicing implemented for above **INR 500** crore entities

1.01.2021

[Phase II]

- Implemented for above **INR 100** crore entities from 1.01.2021

1.04.2021

[Phase III]

- Implemented for above **INR 50** crore entities from 1.04.2021 [Not. No. 5/2021]

1.04.2022

[Phase IV]

- Implemented for above **INR 20** crore entities [Not. No. 1/2022-CT]

1.10.2022

[Phase V]

- Implemented for above **INR 10** crore entities [Not. No. 17/2022-CT]

# 'AGGREGATE TURNOVER' - MEANING!

Section 2(6) of the CGST Act

*“(6) **“aggregate turnover”** means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), **exempt** supplies, **exports** of goods or services or both and **inter-State supplies** of persons having the **same Permanent Account Number**, to be computed **on all India basis** but excludes central tax, State tax, Union territory tax, integrated tax and cess; “*

# FY AND EXPORTS!

[[NOT. NO. 13/2020](#) AMENDED VIDE [NOT. NO. 70/2020](#) AND [NOT. NO. 88/2020](#)]

## Any FY from FY 2017-18!

- “...aggregate turnover in ~~a~~ **financial year** any preceding financial year from 2017-18 onwards exceeds...”

## Exports to be counted!

- “...in respect of supply of goods or services or both to a registered person **or for exports**”



# E-INVOICING – WHAT TO DO?

As a 'supplier'



Is it applicable?

- If yes, comply!
- If no, keep track of future phases!

As a 'recipient'



Is it applicable to vendors?

- If yes, make them comply!
- If no, keep track of future phases!

## RULE 48 - MANNER OF ISSUING INVOICE

...

(4) *The invoice shall be prepared by such class of registered persons as may be notified by the Government, on the recommendations of the Council, by including such particulars contained in **FORM GST INV-01** after obtaining an **Invoice Reference Number** by uploading information contained therein on the Common Goods and Services Tax **Electronic Portal** in **such manner** and subject to such conditions and restrictions as may be specified in the notification.*

*[“Provided that the Commissioner may, on the recommendations of the Council, **by notification, exempt** a person or a class of registered persons from issuance of invoice under this sub-rule for a specified period, subject to such conditions and restrictions as may be specified in the said notification.”]\* [*\*vide [Not. No. 72/2020-CT](#)*]*

(5) *Every invoice issued by a person to whom sub-rule (4) applies in any manner other than the manner specified in the said sub-rule shall **not be treated as an invoice***

# RECIPIENT – IMPLICATIONS!

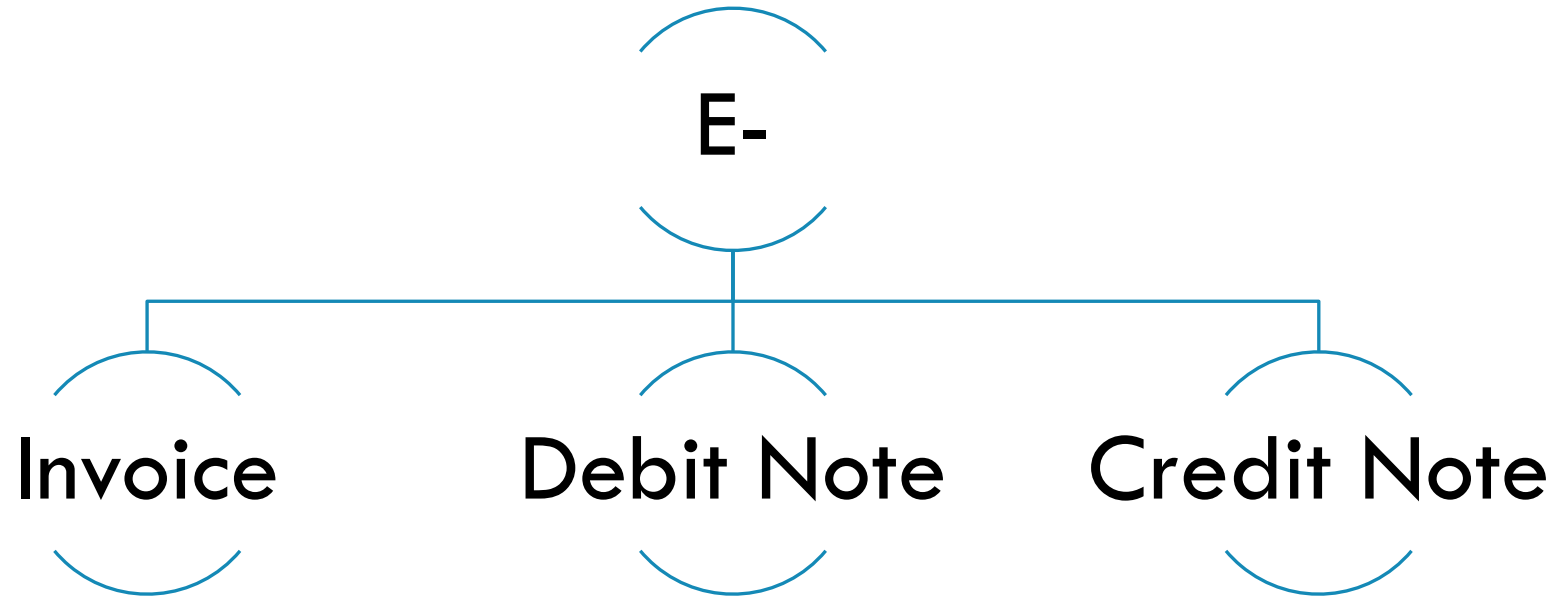
Section 16 Eligibility and conditions for taking input tax credit.

...

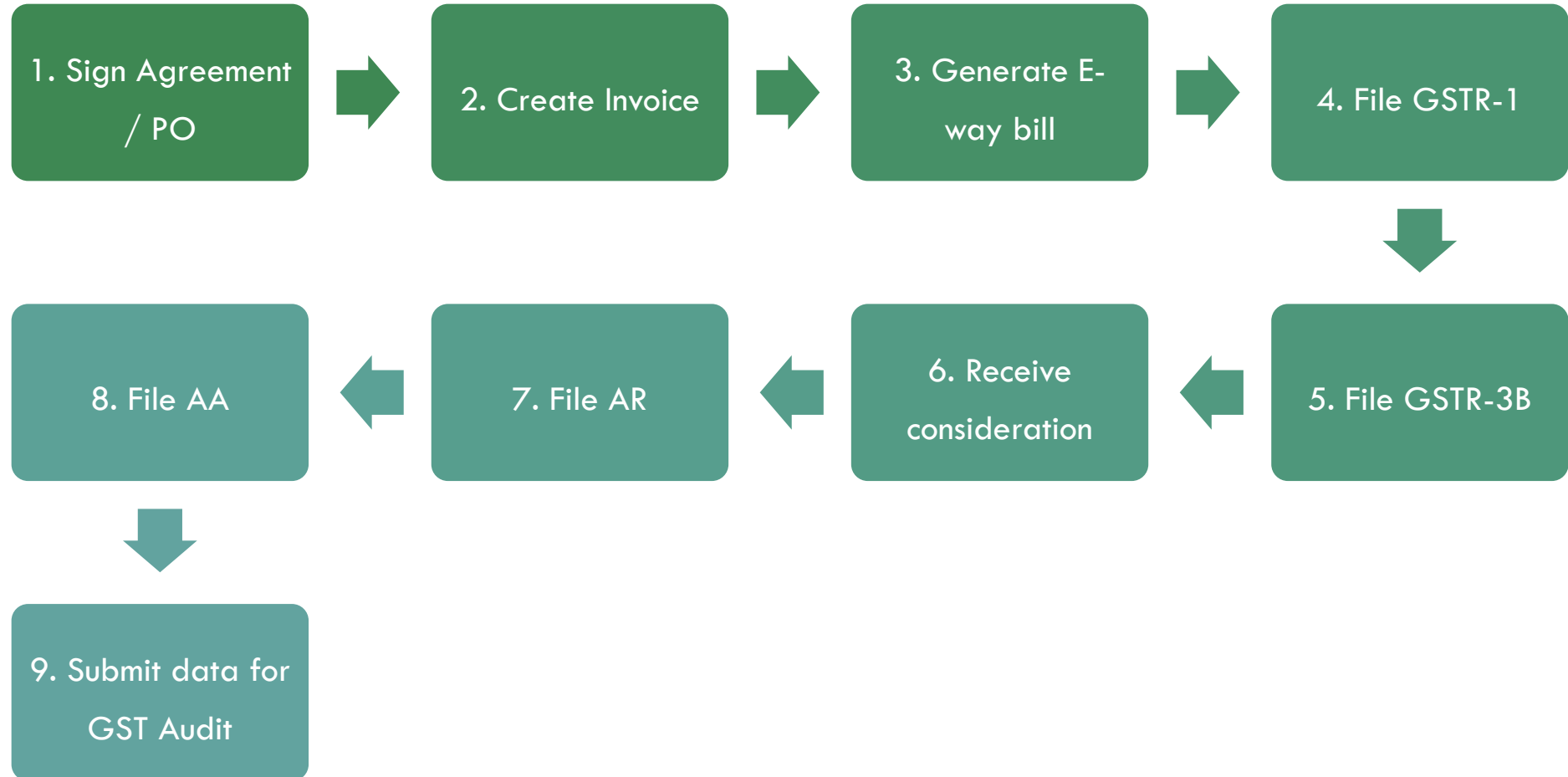
*(2) Notwithstanding anything contained in this section, **no registered person shall be** entitled to the credit of any input tax in respect of any supply of goods or services or both to him **unless**:*

*(a) he is in **possession of a tax invoice or debit note** ...(Section 16)*

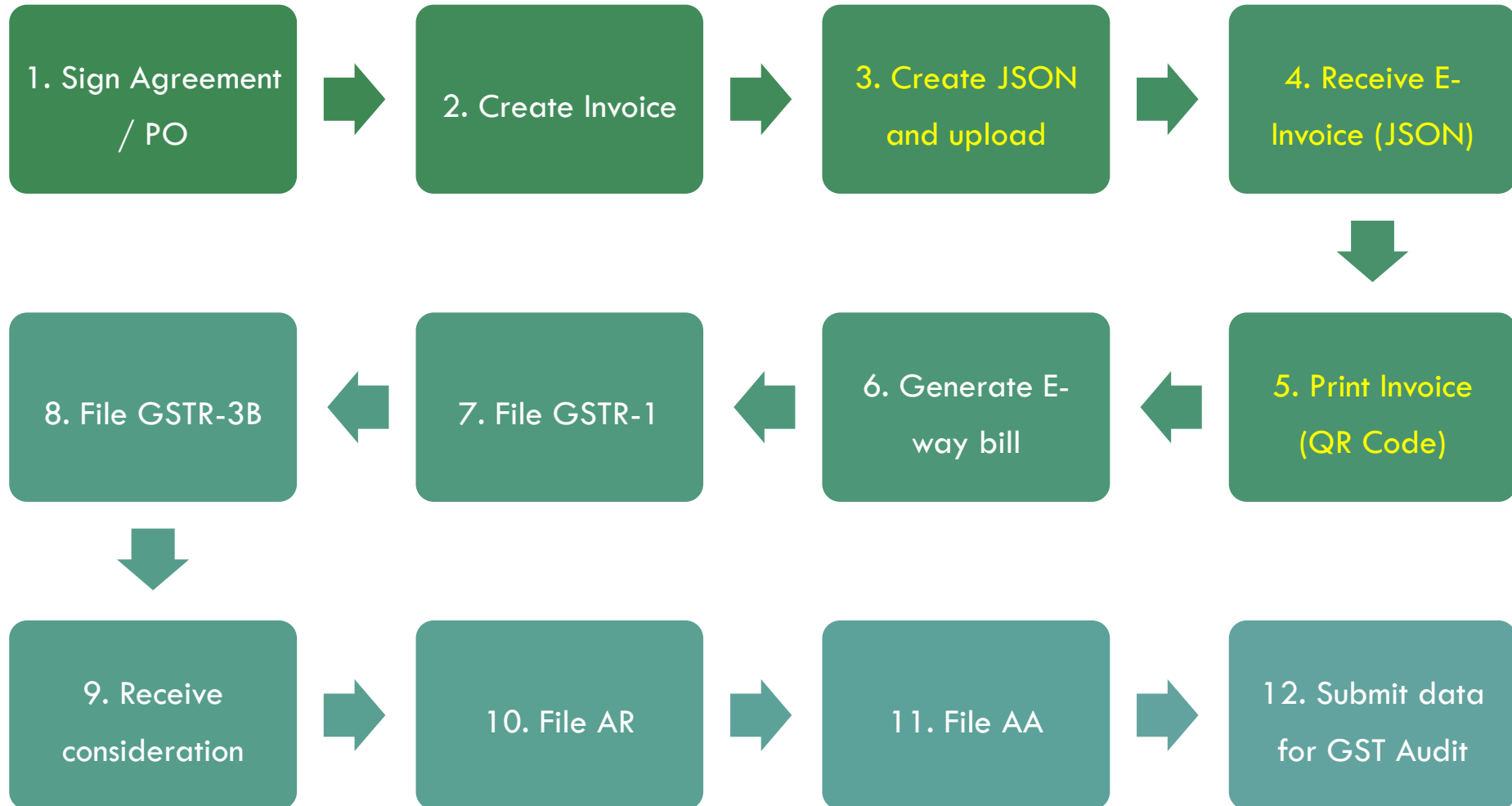
# MY NAME IS...!



# PROCESS – BEFORE!



# PROCESS – AFTER!

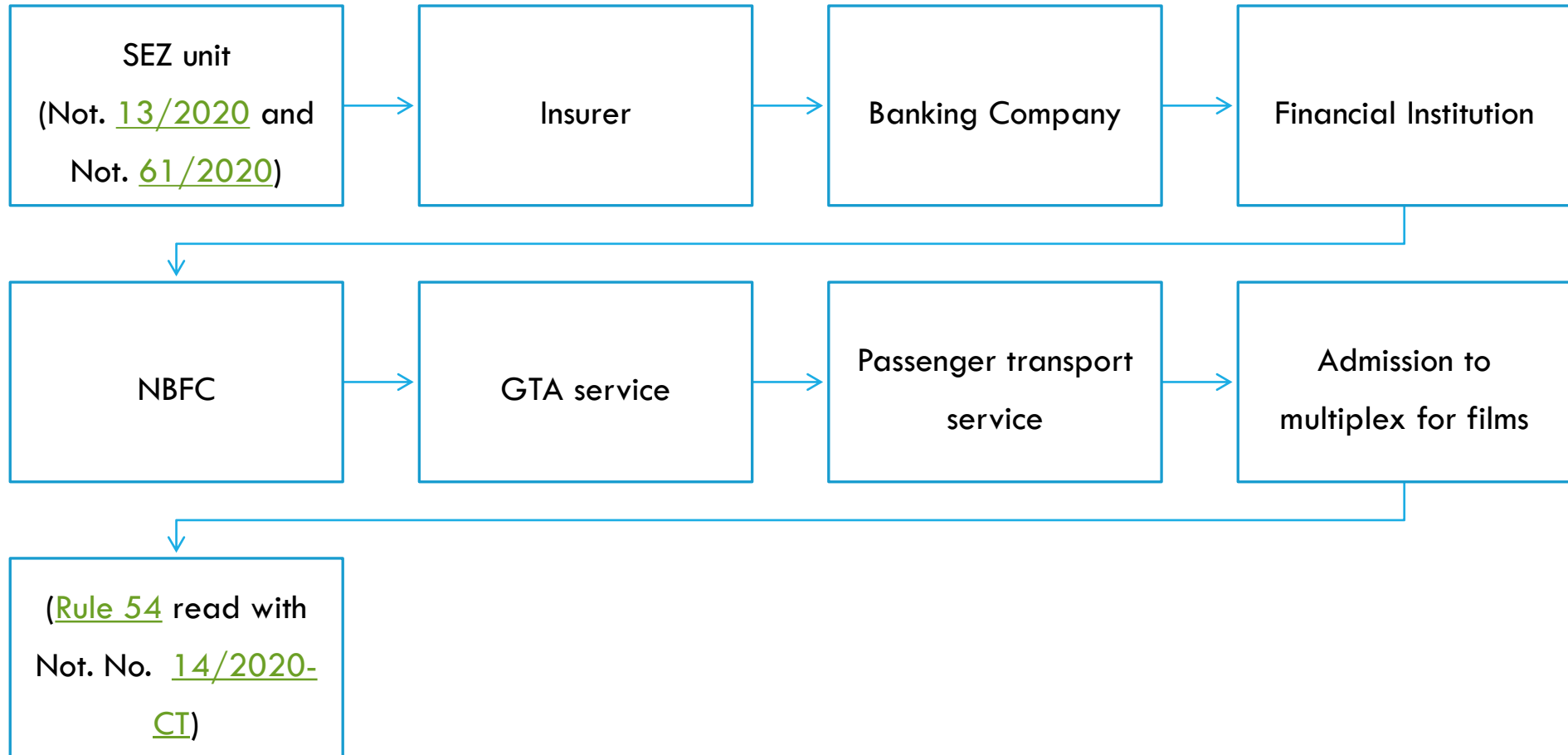




# E-invoicing

Not applicable to whom?

# EXEMPTION FROM E-INVOICING!





# EXEMPTION FROM E-INVOICING!

## SEZ

- Exclusion is for 'SEZ unit' and not 'SEZ Developer'

## Banking etc

- Its qua the 'entity' (updated FAQs)

## ISD

- Not applicable

# THANK YOU

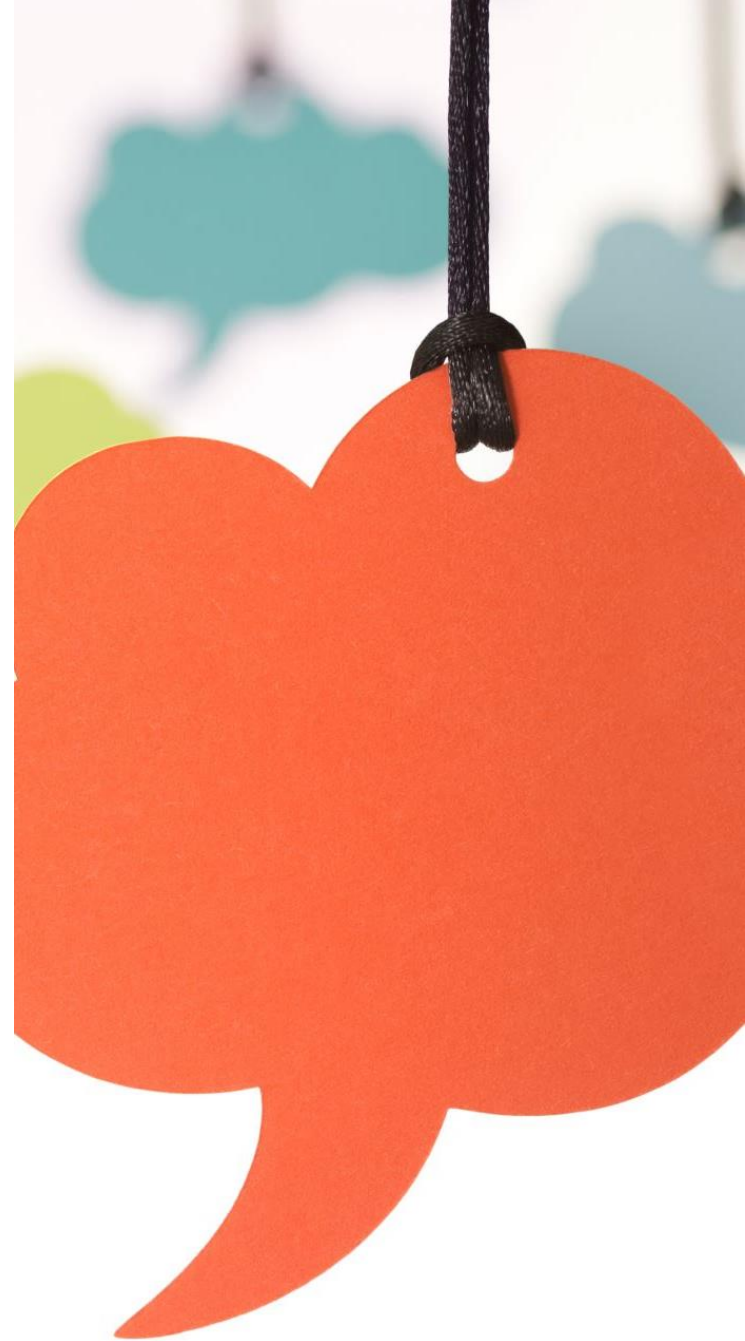
CA Pritam Mahure and Associates

We would love to hear your feedback  
and suggestions!

Contact – 9920644648/ 9098890333

Website – pmaconsulting.in

LinkedIn -  
<https://www.linkedin.com/in/ca-pritam-mahure-66a2441a/>



# NOTIFICATIONS

Not. No.	Particulars
<a href="#"><u>9/2022-CT</u></a>	Interest applicable if ITC utilized
<a href="#"><u>10/2022-CT</u></a>	No Annual Return in FY 2021-22 if turnover upto 2 crore
<a href="#"><u>11/2022-CT</u></a>	CMP-08 related
<a href="#"><u>12/2022-CT</u></a>	Extends date to 28 July 2022
<a href="#"><u>13/2022-CT</u></a>	- Extension to September 2023 (from existing February 2023) - Refund/Erroneous refund (exclusion of COVID period from 1 <sup>st</sup> Mar. 2020 to 28 Feb. 2022)
<a href="#"><u>14/2022-CT</u></a>	Rule related changes

# NOTIFICATIONS

Not. No.	Particulars
<a href="#"><u>15/2022-CT</u></a>	Fly ash
<a href="#"><u>16/2022-CT</u></a>	Fly ash
<a href="#"><u>17/2022-CT</u></a>	E-invoicing limit reduced to INR 10 Crores

# NOTIFICATIONS

Not. No.	Particulars
<a href="#"><u>03/2022-CT (R)</u></a>	Rate rationalization (services)
<a href="#"><u>04/2022-CT (R)</u></a>	Exemptions realignment (services)
<a href="#"><u>05/2022-CT (R)</u></a>	Change in RCM
<a href="#"><u>06/2022-CT (R)</u></a>	Rate rationalization (goods)
<a href="#"><u>07/2022-CT (R)</u></a>	Exemptions realignment (goods)
<a href="#"><u>08/2022-CT (R)</u></a>	Concessional rate for certain petroleum operations changed to 12%

# NOTIFICATIONS

Not. No.	Particulars
<a href="#"><u>09/2022-CT (R)</u></a>	No refund of inverted duty for certain goods
<a href="#"><u>10/2022-CT (R)</u></a>	Fly ash
<a href="#"><u>11/2022-CT (R)</u></a>	Rescinding <a href="#"><u>45/2017-CT (R)</u></a>

# CIRCULARS

Cir. No.	Particulars
<a href="#"><u>170/02/2022-GST</u></a>	Furnishing of information and reporting of ITC
<a href="#"><u>171/03/2022-GST</u></a>	Fake invoicing related clarifications
<a href="#"><u>172/04/2022-GST</u></a>	Ineligible credits, Perquisites etc
<a href="#"><u>173/05/2022-GST</u></a>	Inverted duty structure related clarifications
<a href="#"><u>174/06/2022-GST</u></a>	PMT03A
<a href="#"><u>175/07/2022-GST</u></a>	Export of electricity
<a href="#"><u>176/08/2022-GST</u></a>	International tourists related clarification withdrawn

# CIRCULARS

Cir. No.	Particulars
<a href="#"><u>177/09/2022-TRU</u></a>	GST rate/ exemption to certain services
<a href="#"><u>178/09/2022-TRU</u></a>	GST on liquidated damages/ penalties/ compensation
<a href="#"><u>179/09/2022-TRU</u></a>	GST rate/ exemption to certain goods
<a href="#"><u>Instr. 02/2022-23</u></a>	Guidelines for arrest/ bail
<a href="#"><u>Instr. 03/2022-23</u></a>	Guidelines for summons
<a href="#"><u>Press Release</u></a>	47 <sup>th</sup> GSTC Press Release