RECENT DEVELOPMENTS IN GST



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Last updated: 9-Nov-2024

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Statutory Compliance



GST TDS and RCM on Metal Scrap purchase



GST TDS and RCM on Metal Scrap purchase Notification No. 06/2024 Central Tax (Rate), Dt 08/10/2024

Reverse Charge Mechanism (RCM): If a registered buyer purchases metal scrap from an unregistered seller, the buyer must pay 18% GST under RCM. The buyer needs to issue a self-invoice within 30 days of receiving the scrap and avail Input credit.

- **TDS on Metal Scrap:** When both buyer and seller are registered, the buyer must deduct 2% TDS (1% CGST + 1% SGST) if the contract value exceeds ₹2.5 lakh.
- Buyer must get new GST registration using Form GST REG-07 as tax deductor apart from regular registration. File TDS returns in GSTR-7 by the 10th of next month. A TDS certificate (GSTR-7A) should be issued to the seller, who can then use the TDS credit for GST payments.
- **Additional Note:** Seller of metal scrap should obtain GST registration if aggregated turnover exceeds threshold (40 lakhs / 20 lakhs) and charge 18% on metal scrap sales; and obtain credit of tax deducted in e-cash ledger.
- Metal Scrap (Chapters 72 to 81). Chapters 72 to 81 deals with different metals like Iron and Steel, Articles of Iron and Steel, Copper and Articles, Nickel and Articles, Aluminium, Lead, Zinc, Tin and other base metals.

TDS for interstate supply

Proviso to Sec 51(1):

Provided that no deduction shall be made if the location of the supplier and the place of supply is in a State or Union territory which is different from the State or as the case may be, Union territory of registration of the recipient.

Inference:

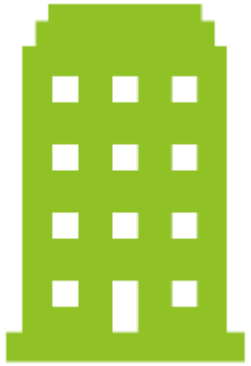
a. Location of the supplier and place of supply are in one state
b. It is different from the state of registration of the recipient

Sl. No	Location of customer (LOC)	Location of supplier (LOS)	Place of supply (POS)	Tax charged by supplier	Applicability of deduction of TDS	Remarks
1	Telangana	Andhra Pradesh	Andhra Pradesh	CGST and APGST	NA	Since LOS and POS are in same State that is different from LOC
2	Telangana	Telangana	Andhra Pradesh	IGST	Applicable	Since POS **and** LOS are **NOT** in same State
3	Telangana	Maharashtra	Andhra Pradesh	IGST	Applicable	Since POS **and** LOS are **NOT** in same State.
4	Telangana	Telangana	Telangana	CGST and TSGST	Applicable	Since POS **and** LOS are **NOT** in a State different than the customer registration State.


RESIDENTIAL
COMMERCIAL
THREE DOCUMENTS
PROPERTY TAX
EB RELATED
DOCUMENTS
LEASE AGREEMENT
YOUR LEASE OR
RENTAL AGREEMENT


COMMERCIAL PROPERTY
LAND OWNER
TENANT
REGISTERED
FCM@18%
REGISTERED
REGISTERED
FCM@18%
UN REGISTERED
UN REGISTERED
NO TAX
UN REGISTERED
NEW
UN REGISTERED
RCM
REGISTERED

GST RCM on Rent paid for Commercial Property to unregistered owner Notification No. 09/2024-Central Tax (Rate), Dt 08/10/2024.



Applicability: Tax has to be paid under RCM by the Registered person/entity paying rent on commercial property to an unregistered person at the rate of 18% and issue a self-invoice within 30 days



Impact on Input Tax Credit: It is important to note that eligible taxpayers can claim Input Tax Credit (ITC) for the tax paid under RCM, provided they meet all eligibility criteria as prescribed in the provisions of CGST Act. However, taxpayers who are not eligible to claim ITC should ensure they refrain from availing it in this context.

GST Clarification for Goods Transport Agencies (GTA)-Circular 234/28/2024 GST dated 11/10/2024

Composite Services: When a GTA provides services like loading, unloading, or storage along with transportation, they are treated as a single supply. GST must be paid on the total value under RCM.

Separate Billing: If these extra services are billed separately, only the transportation service is taxed under RCM, and the rest are taxed independently. Thus, careful evaluation should be done on the total GTA charges, including all other ancillary services rather than merely drawing GTA expenses from the expense ledger.

Post supply Discounts- Circular No. 212/1/2024-GST dated June 26, 2024

Discounts given post-supply can be excluded from taxable value if:

- The discount is agreed upon in advance.
- It is directly linked to invoices.
- The recipient reverses the corresponding ITC.

Currently, online portal does not allow suppliers or tax officers to verify ITC reversals by recipients. To address this, suppliers must now obtain a certificate from the recipient, signed by a Chartered Accountant (CA) or Cost Accountant (CMA), confirming ITC reversal if the tax on discounts exceeds ₹5,00,000 in a financial year. This certificate must include details such as credit note numbers, related invoices, ITC reversal amount, and a UDIN for verification. For discounts under ₹5,00,000, an undertaking from the recipient suffices, confirming ITC reversal without needing a CA/CMA certification. These certificates or undertakings serve as proof during audits or scrutiny. The circular advises retrospective application, meaning such documentation should be maintained for past transactions if relevant.

Section 74A- Applicable for FY 24-25 onwards

Aspect	Details
Introduction	Section 74A was introduced following the recommendations of the 53rd GST Council to standardize the time limits for issuing demand notices and orders, irrespective of fraud, suppression, or misstatement.
Applicability	No notices will be issued for tax defaults less than Rs. 1,000.
Notice Deadline	**Notices must be served within 42 months from the date of filing the annual return or the date of the erroneous refund.**
Order Issuance Deadline	**Orders must be issued within 12 months from the date of the notice. This period can be extended by an additional 6 months upon request.**
Penalty Structure	Non-Fraudulent Cases: Penalty of 10% of the tax due or Rs. 10,000, whichever is higher. Fraudulent Cases: Penalty equal to the tax due.
Penalty Waivers and Payments	Non-Fraudulent Cases: - Payments made before the notice avoid penalties & Payments within 60 days post-notice waive penalties. Fraudulent Cases: - Penalties vary from 15% to 50% based on the timing of the payment.
Underpayment Notice	If the payment made is less than the actual amount owed, a notice will be issued under Section 74A(1).
Deadline for Admitted Tax Payment	The admitted tax must be paid within 30 days; otherwise, penalties under Section 74(5) will apply.

Amendment of Section 75- General provisions relating to determination of tax

- Insertion of Section 74A: The amendment adds references to Section 74A in Sub-sections (1), (10), (11), (12), and (13) of Section 75, aligning it with the provisions of Sections 73 and 74.
- New Sub-section (2A): If an Appellate Authority, Appellate Tribunal, or court determines that a penalty for fraud or willful misstatement (under clause (ii) of sub-section (5) of Section 74A) is invalid due to lack of proven charges, the individual will still be required to pay a penalty under clause (i) of sub-section (5) of Section 74A.
- Objective: This amendment ensures that penalties apply, even if fraud allegations are not substantiated, reinforcing compliance and accountability.

Section 122- Penalty for certain offences - Retrospective Amendment:

- With effective from October 1, 2023, sub-section (1B) is amended to specify that the phrase "Any electronic commerce operator who" is replaced with "Any electronic commerce operator, who is liable to collect tax at source under section 52,".

Section 171 - Antiprofiteering measure

- Insertion of below proviso and Explanation after sub-section (2).
- New Proviso: The Government may, based on the Council's recommendations, **set a date from which the Authority will no longer** accept requests to verify if input tax credits or tax rate reductions have led to a corresponding price drop in goods or services supplied.
- Explanation : "Request for examination" refers to a written application submitted by an applicant seeking such examination.
- Explanation 2: The term "Authority" is defined to include the “Appellate Tribunal.”

Amendment to Schedule III

- Following are added after the para 8 of Schedule III:
- The activity of apportionment of co-insurance premium by the lead insurer to the co-insurer, where the Lead insurer pays the tax.
- Thereby, the activity of apportionment of co-insurance premium by the lead insurer to the co-insurer for the insurance services jointly supplied by the lead insurer and the co-insurer to the insured in coinsurance agreements shall be treated as neither supply of goods nor supply of services, provided that the lead insurer pays the tax liability on the entire amount of premium paid by the insured

Amendment to Section 54- Refund of tax

- A new sub-section (15) is added to section 54 of the Central Goods and Services Tax Act, removing the second proviso of sub-section (3). It specifies that no refund of unutilized input tax credit or integrated tax will be granted for zero-rated supply of goods when those goods are subject to export duty.
- **This ensures that tax benefits are not exploited in export situations where goods are subject to taxation under both scenarios (export with payment and without payment of tax)**

Notification No. 02/2024-Central Tax (Rate)-Date 12th July 2024 and Circular No. 229/23/2024-GST - Date 15th July 2024



Increase in Rate - 12% for milk cans made of steel, iron, and aluminum



Reduction in GST rate on cartons, boxes, and cases of both corrugated and non-corrugated paper or paper-board from 18% to 12%



All solar cookers whether single or dual energy source, will attract 12% GST.



To clarify that all types of sprinklers including fire water sprinklers will attract 12% GST and to regularize the past practice on ‘as is where is’ basis in view of genuine interpretational issues.

Notification Awaited

- Imports of ‘Parts, components, testing equipment, tools and tool-kits of aircrafts, irrespective of their HS classification to provide a fillip to MRO activities for aircraft subject to specified conditions will now attract 5%.
- GST rate reduced from 18% to 12% for extruded/expanded savory products (except unfried /uncooked snack pellets).
- Railway AC Units: Roof Mounted Package Unit (RMPU) air conditioning machines for railways to attract 28% GST.
- Car & Motorcycle Seats: Car seats to be classified under HSN 9401 with 28% GST (increased from 18%).
- PLC for construction services to be treated as part of the composite supply of the main construction service.
- Exempt supply of R&D services by Government Entities, universities, or institutions notified under Section 35 of the Income Tax Act.

Notification No. 12/2024 - Central Tax 10th July 2024

- Change in due date for filing of return in FORM **GSTR-4 for composition taxpayers from 30 April to 30 June** from FY 24-25 onwards.
- Amendment to provide that amount in the **Electronic Cash Ledger on the due date of filing GSTR-3B**, and debited while filing the return, are **not included in calculating interest** for delayed filing, if the amount is lying from due date to filing date.
- Introduction of **GSTR 1A** facilitating amendment of GSTR 1 before filing GSTR 3B.
- **DRC 03A**- Adjustment of Pre-deposit paid through DRC 03
- The threshold for reporting of **B2C inter-State supplies invoice-wise** in Table 5 of FORM GSTR-1 reduced from Rs 2.5 Lakh to **Rs 1 Lakh**

Notification No. 04/2024- Central Tax (Rate) Dated 12th July 2024

Notification No. 01/2024- Integrated Tax dated 10th July 2024



Exemption for accommodation services up to Rs. 20,000 per month per person, provided for a minimum continuous period of 90 days.



Reduction of Tax Collected at Source (TCS) rate for supplies made through Electronic Commerce Operators (ECOs) from 1% (0.5+0.5) to 0.5% (0.25+0.25).

I. Circular 207/1/2024-GST dated 26-06-2024

Monetary limit for filing appeals by Department to reduce litigation:

- GSTAT (GST Appellate Tribunal) - Rs. 20 lakhs
- High Court - Rs. 1 crore
- Supreme Court - Rs. 2 crores

II. Circular 209/1/2024-GST dated 26-06-2024

- Place of Supply for Goods Supplied to Unregistered Persons Section 10(ca) of IGST:
  - Place of supply will be the **delivery address** if it differs from the billing address in the invoice
- E-commerce transactions:
  - For orders placed online, the **delivery address** determines the place of supply
- Note: The clause (ca) provides that where the supply of goods is made to an unregistered person, the place of supply would be the **location as per the address of the said person recorded in the invoice** and the location of the supplier where the address of the said person is not recorded in the invoice

Circular 216/1/2024-GST dated 26-06-2024 Ref Previous Circular No. 195/07/2023-GST dated 17.07.2023

- Apart from FOC parts replacement, even if the **entire goods is replaced as warranty, GST is not applicable, and ITC reversal not required**
- Applicable for both distributors and manufacturers replacing the goods
- If extended warranty against payment is provided by the supplier of the goods itself, it shall be a composite supply. But if the supplier of goods (Dealer / Distributor) and the supplier of extended warranty (manufacturer) are different, the supply of extended warranty would be a distinct supply of service and not a composite supply.

1. Section 9(1) Of The CGST Act 2017 - Notification no: 17/2024 Central tax dated 27.09.2024.

- **Section 114 of Finance Act, 2024: Tax Exemption for Input Materials of Alcohol:** Un-denatured extra-neutral alcohol or rectified spirit used to produce alcoholic liquor for human consumption is outside the purview of GST. Supply of the same shall be treated as Non-GST Supply.

  Effective date of Amendment: 01/11/2024.

I. Circular No. 226/20/2024-GST dated-11.07.2024

- Introduction of a mechanism for claiming a refund of **additional IGST paid due to upward price revisions after export** - Until new form is implemented refund can be claimed under "Any Other" specifying the quoted remarks "Refund of additional IGST paid on account of increase in price subsequent to export of goods"

II. Circular No.210/4/2024-GST dated 26th Jun 2024

- For services provided by a foreign affiliate to a related domestic entity eligible for full ITC, the invoice value is considered the open market value. If no invoice is issued, the value is treated as Nil, also deemed the open market value, as per Rule 28(1) of the CGST Rules.

Circular no: 231/25/2024-GST 11-Sep-2024

ITC Eligibility on **Demo vehicles**:

- Demo vehicles used for further supply and sold after a specified period qualify for ITC. If demo vehicles are capitalized, ITC is still available, provided no depreciation has been claimed on the tax component
- Covered under "*except when they are used for making following taxable supplies, namely:*

  A. *further supply of **such** motor vehicles;*"

Usage of the words "such" motor vehicles instead of "said" motor vehicles.

POS relating to Advertising Services: **Circular 230/24/2024-GST - 10-9-2024**

An advertising company located in India provides a comprehensive service to the foreign client, the POS is the location of the foreign client making it eligible for export benefits

POS relating to Data Hosting Services: **Circular 232/26/2024-GST - 10-9-2024**

The GST Council clarified that data hosting providers are not intermediaries. Data hosting services by Indian companies to overseas cloud entities are treated as exports and are zero-rated under GST

Sec 13 of CGST Act 2017 – Time of Supply of services in relation to RCM

- Sec 13(3)(b) is amended by substituting the Word "*by the supplier, in cases where invoice is required to be issued by the supplier; or*" instead of *by the supplier*

Insertion of New Clause (c):

- New Clause(c): "*the date of issue of invoice by the recipient, in cases where invoice is to be issued by the recipient:*"
- This to give the effect for considering the invoice date of self-generated invoice u/s 16(4) to avail the input tax credit by the recipient.
- First Proviso is amended by adding the term clause (c) after the words, brackets and letter "or clause (b)"

Sec 31 of CGST Act, 2017 – Tax Invoice.

- The amendment states that the invoice has to be issued within the time limit prescribed by the recipient who is liable to pay tax under reverse charge mechanism.
- It inserted the explanation which clarifies that the person registered solely for the purposes of deducting under TDS under 51 of CGST act shall be treated as a person not registered for the purposes of clause (f) of section 31 (3) of the act.

Effect of amendments in Sec 13 & 31 : 30 days time limit for RCM Self invoice and ITC time limit to be calculated on that basis.

Sec 30 of CGST Act, 2017- Revocation of cancellation of registration.

- The amendment to Section 30 enables the government to prescribe specific conditions for the revocation of cancelled GST registrations.



GST Portal Compliance

Auto-populate the HSN-wise summary from e-Invoices into Table 12 of GSTR-1

- Automates HSN-wise summary data in Table 12.
- Uses e-Invoice data to auto-draft the HSN details.
- Reduces manual data entry and chances of errors.
- Reconciliation Requirement:
- The auto-populated data is provided for convenience.
- Action: Taxpayers must reconcile this data with their records.
- Manual Adjustments: Any discrepancies or missing data should be manually corrected before final submission.

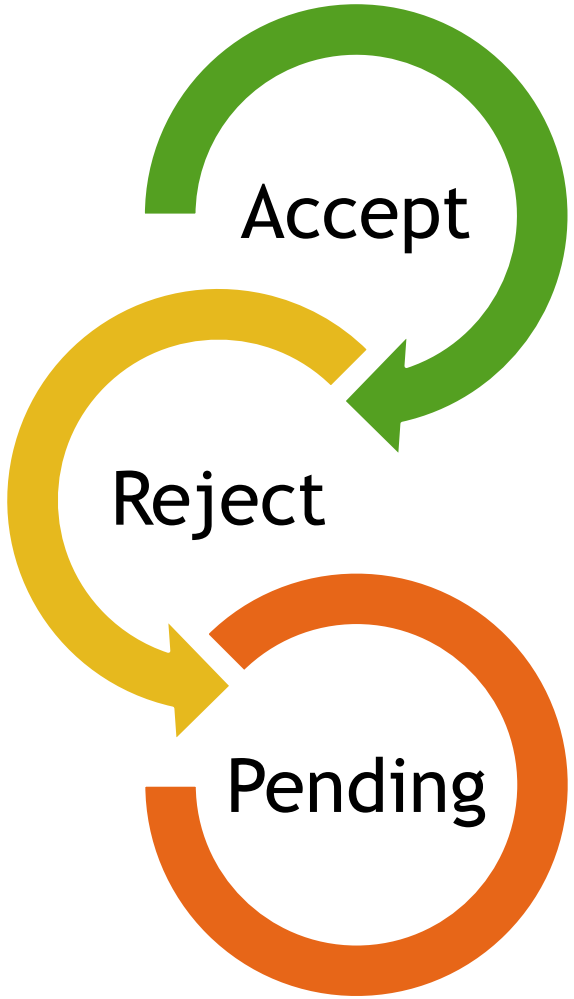
Invoice Management System:

- GSTIN has launched the Invoice Management System (IMS) on the portal, effective October 1, 2024, to enhance Input Tax Credit (ITC) matching for taxpayers.
- Despite the original plan for GSTR-2 being scrapped in 2017, the commitment to ITC reconciliation remains steadfast.
- IMS framework streamlines invoice matching, helping taxpayers align their invoices with those issued by suppliers, thereby simplifying ITC claims and strengthening the GST compliance ecosystem.
- When a supplier uploads an invoice in GSTR 1/IFF/1A, the same will be reflected in the IMS dashboard of the recipient. The recipient has the options to select either of the following three options viz. accept, reject or pending for future consideration.

Invoice Management System:

- This action can be taken by the taxpayer anytime between the invoice getting reflected on their IMS dashboard till the date of filing GSTR 3B even after the cutoff date on which GSTR 2B (14th of the subsequent month) is being generated.
- Based on the action taken by the taxpayer and the cut-off dates for filing GSTR 1, a draft GSTR 2B will be generated.
- When no action is taken it shall be considered as deemed to be accepted. If the recipient taxpayer takes any action after the 14th of the subsequent month, then the taxpayer has to recompute GSTR 2B.
- **Caution- Till GSTR 3B is filed by the taxpayer, GSTR 2B for the subsequent month shall not be generated.**
- If a supplier has amended any invoice in GSTR-1 or through GSTR-1A, the amended value will be reflected in the IMS dashboard. However, the corresponding amended invoice will only be visible in the subsequent GSTR-2B.

Flow of IMS:



Accepted Records forms a part of ITC available in GSTR 2B and auto populates in GSTR 3B.

Rejected Records will become a part of ITC rejected in GSTR 2B and will not auto- populate in GSTR 3B.

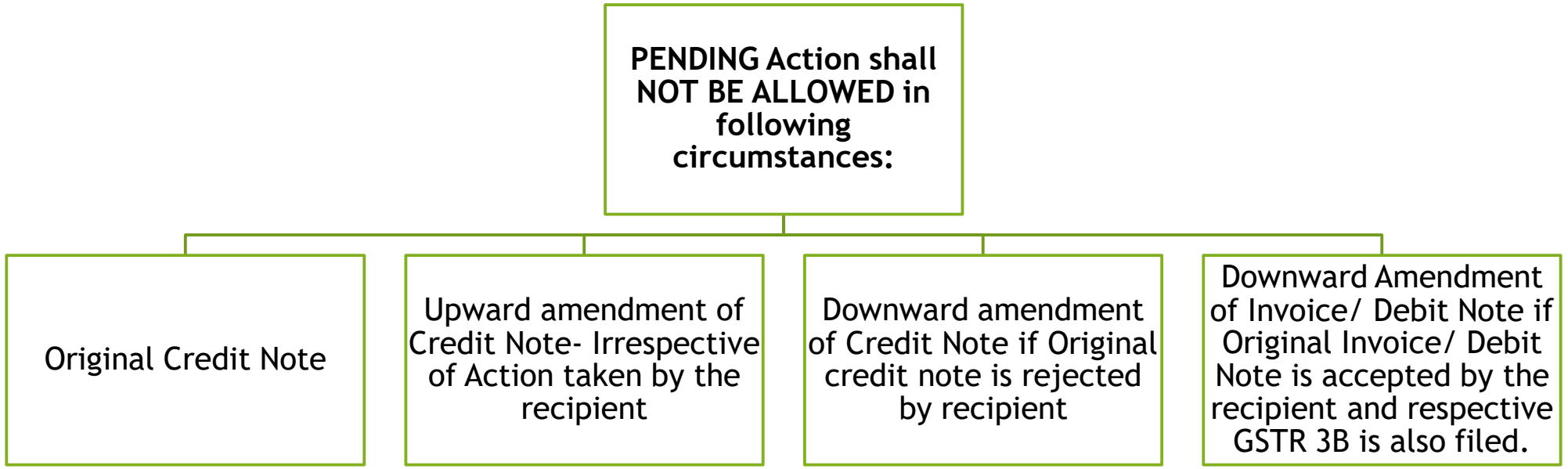
Pending records will not become a part of GSTR 2B and will continue to remain in IMS Dashboard

Note:

1. ***When no action taken it is considered as deemed to be accepted.***
2. ***All the accepted/ deemed accepted/ rejected records will move out of IMS dashboard after filing of respective GSTR 3B.***

Invoice Management System:

Invoices marked as pending will remain available to the taxpayer for availing input tax credit at any time within the time limit prescribed under Section 16(4) of the CGST Act, which is after the 13th day of November.



Invoice Management System:

Points to remember:

- If no action is taken till the time of generation of GSTR 2B, all records will be considered as **Deemed to Accepted**.
- Inward RCM reported in Table 4B of IFF / GSTR 1 or GSTR 1A and supplies where ITC is not eligible due to section 16(4) of CGST Act or on account of POS rule shall **NOT BE REFLECTED IN IMS**.
- •Records flow to the IMS dashboard when the supplier saves them in the form. The recipient can act on these records in IMS, but they will only appear in GSTR 2B after the supplier files GSTR-1/IFF/1A.
- •If the original record and the amended record belong to different periods it is necessary to act on the original record and file the relevant GSTR 3B, before taking action on the amended record. If both the records belong to the same period, then only the amended record will be considered.

Frequently Asked Questions: Invoice Management System (IMS)

S.NO	Question	Reply
1	What is Invoice Management System (IMS)?	Invoice Management System (IMS) is a facility in GST system, where the invoices/records saved/filed by the supplier in GSTR-1/1A/IFF, can be accepted, rejected or kept pending by recipients in order to correctly avail ITC.
2	How can I access IMS?	IMS can be accessed using below path on GST Portal : Dashboard > Services > Returns > Invoice Management System (IMS) Dashboard
3	When will IMS be made available to taxpayers?	IMS will be launched on the GST Portal from 1st October 2024 and shall be available to the taxpayers for taking actions on the received invoices/records from 14th October 2024 onwards.

Frequently Asked Questions: Invoice Management System (IMS)

S.NO	Question	Reply
4	What all records will be available in IMS for taking an action?	All the saved or filed original invoices/records and their amendments by suppliers through GSTR1/1A/IFF will be available to the recipient for taking actions in IMS. However, the documents where ITC is not eligible either due to: i. POS rule or ii. Section 16(4) of the CGST Act, will not appear on IMS and will directly go to 'ITC Not Available' section of GSTR-2B.
5	What will happen to the accepted and rejected record?	All the accepted/rejected records belonging to a particular GSTR-2B period will be removed from IMS on filing of GSTR-3B for that particular period. Only the pending record and the invoices/records belongs to future tax period shall remain in IMS.

Frequently Asked Questions: Invoice Management System (IMS)

S.NO	Question	Reply
6	When will the documents be flown to IMS?	The documents will be available in IMS as soon as they are saved by the supplier in their corresponding GSTR-1/1A/IFF.
7	When can the recipient taxpayer take action on a record?	As soon as a supplier/ taxpayer saves an Invoice/ records in GSTR-1/1A/IFF, it is shown and is available to the recipient taxpayer in IMS for taking actions.
8	What all documents will not be made available in IMS but will be part of GSTR-2B?	Below records will not be part of IMS but will directly flow to GSTR-2B: 1. Document flowing from the following forms: • GSTR 5 • GSTR 6 2. ICEGATE documents 3. RCM records 4. Document where ITC is ineligible due to: • POS rules • Section 16(4) of CGST Act 5. Documents where ITC to be reversed on account of Rule 37A

Frequently Asked Questions: Invoice Management System (IMS)

S.NO	Question	Reply
9	Who will have access to IMS functionality?	Taxpayers registered as normal taxpayers (including SEZ unit/Developer) and casual taxpayers will be able to access IMS functionality
10	What are the actions that I can take on an IMS ?	Below actions are allowed to take in IMS: i. Accept ii. Reject iii. Pending Note: By default all the records will flow into “No Action” category and records with “No Action” will be deemed accepted at the time of GSTR-2B generation

Frequently Asked Questions: Invoice Management System (IMS)

S.NO	Question	Reply
11	Are there any invoices/records where pending action is not allowed in IMS?	Yes, for the following 4 scenarios, pending action would not be available : - A. Original Credit note B. Upward amendment of the credit note irrespective of the action taken by recipient on the original credit note C. Downward amendment of the credit note if original credit note was rejected by him, D. Downward amendment of Invoice/ Debit note where original Invoice/ Debit note was accepted by him and respective GSTR 3B has also been filed
12	Can I take actions multiple time on a document?	Yes, action can be taken multiple times on an invoice/record before filling of GSTR 3B. In case of multiple actions on a record, latest action will overwrite the previous action. However, the action taken will be frozen at the time of filing the corresponding GSTR-3B by the recipient.

Frequently Asked Questions: Invoice Management System (IMS)

S.NO	Question	Reply
13	What happens to the original Tax Invoice/Debit Note if the same record is amended by the supplier?	If original and amended Tax Invoice/Debit Note belongs to 2 different GSTR 2B return period, then it is mandatory to take action on original Tax Invoice/Debit Note and file the respective GSTR 3B before taking action on amended Tax Invoice/Debit Note (amended through GSTR-1/1A/IFF). In case if recipient take the action on amended Tax Invoice/Debit Note first then system will not allow to save the action in IMS. In case both the original Tax Invoice/Debit Note and amended Tax Invoice/Debit Note belong to same period GSTR-2B, the action taken on amended Tax Invoice/Debit Note will prevail over the action taken on original Tax Invoice/Debit Note. However, you need to first bring the original invoice/ debit note from pending status to either accept or reject status before taking action of amended invoice/debit note as otherwise system will not allow you to take any action on amended invoice

Frequently Asked Questions: Invoice Management System (IMS)

S.NO	Question	Reply
14	What happens to the original Credit Note if the same is amended by the supplier?	If original and amended credit note both are available in IMS whether it belong to two different GSTR-2B period or same GSTR-2B period, the action taken on amended credit note will prevail over the action taken on original credit note
15	What will happen to documents on which taxpayers has taken an action on IMS?	The documents will be treated in following manner based on different kind of action: i. Accept –Accepted records will become part of 'ITC Available' section of respective GSTR 2B. ITC of accepted records will auto-populate in GSTR 3B. ii. Reject –Rejected records will become part of 'ITC Rejected' section of respective GSTR 2B. ITC of rejected records will not auto-populate in GSTR 3B. iii. Pending –Pending records will not become part of GSTR 2B and GSTR 3B. Such records will remain on IMS dashboard till the time same is accepted or rejected or till the time timeline prescribed in Section 16(4) of CGST Act. iv. iv. No Action - records with "No Action" status will be deemed accepted at the time of GSTR-2B generation.

Frequently Asked Questions: Invoice Management System (IMS)

S.NO	Question	Reply
16	Which documents will be considered for GSTR-2B generation?	All the filed and accepted (no action will be treated as deemed accepted) or rejected records will be considered for GSTR-2B generation as per the cut-off dated of GSTR-2B.
17	What If I have taken an action on a document in saved status but the same is edited/changed by the supplier before filing his GSTR-1?	In case a saved record is edited before filing of GSTR-1 by the supplier, the edited record will replace the saved document in IMS and the action taken on such record by the recipient will be reset. Thus, the edited record will be available for recipient for fresh action in IMS. Similarly, if a document is deleted before filing of GSTR-1/1A/IFF by supplier then such document will be removed from IMS also.
18	Will Reverse Charge document received from registered suppliers also form part of IMS ?	No, RCM invoices are not part of IMS but will continue to be part of GSTR-2B as it is being reflected today.

Frequently Asked Questions: Invoice Management System (IMS)

S.NO	Question	Reply
19	As a taxpayer what all will I be able to view on the IMS?	The IMS has two different view: i. Recipient view : As a recipient, a taxpayer will have an "inward supply" view to see all the specified documents which are saved or filed by your respective supplier. These documents will be available for actions by the recipient. ii. Supplier view: As a supplier, a taxpayer will have an "Outward supply" view to see actions taken on all the specified documents by their respective recipient. *It will be made available shortly.
20	What happens if recipient reject a record?	1. If the recipient rejects the record before filling of GSTR 1 by supplier, then the invoice/record can be edited and supplier can file the GSTR 1 with revised detail. This edited record will be made available in the IMS for action by the recipient. 2. If the recipient rejects after filling of GSTR 1 by supplier, then the supplier needs to amend/add the invoice/record in GSTR-1A or in subsequent GSTR 1/ IFF with same or revised details, as the case may be. Amended record will be made available in the IMS for action by the recipient

Frequently Asked Questions: Invoice Management System (IMS)

S.NO	Question	Reply
21	What will happen to the documents in IMS on filing of GSTR 3B by recipient?	All the accepted/rejected records belonging to a particular GSTR-2B period will be removed from IMS on filing of GSTR-3B for that particular period
22	What will happen to the documents kept pending in IMS?	Pending records will continue to be in IMS till the time of cut-off date as per section 16(4) of CGST Act, 2017. Once records crossed the timeline prescribed in section 16(4) of CGST Act, it will be removed from IMS
23	Can I download all the data available in IMS?	Yes, excel download facility is available to download the IMS data
24	What is draft GSTR 2B?	GSTR-2B will continue to be generated on 14th of every month with the same logic as current GSTR-2B which will now be considered as draft GSTR 2B. This draft will consist of all the accepted / deemed accepted records and rejected records. Here, rejected records are for view only and will not flow in GSTR-3B

Frequently Asked Questions: Invoice Management System (IMS)

S.NO	Question	Reply
25	Can I take any action after generation of draft GSTR 2B?	Yes, the recipient will be allowed to take an action on any record available in draft GSTR 2B also, till the filing of GSTR-3B. In such cases, at the time of filling GSTR-3B recipient will require to recompute his GSTR 2B to have impact of actions taken after 14th in his GSTR-3B
26	Is there any scenario where draft GSTR 2B will not be generated by system on 14th of subsequent month?	Yes, In case the previous period GSTR 3B is not filed by the taxpayer then the system will not generate their draft GSTR 2B on 14th of the subsequent month. However, the taxpayer can generate their GSTR 2B from the IMS dashboard after filing their previous GSTR 3B
27	How many times can I regenerate GSTR 2B?	Before filling of GSTR 3B, there is no restriction on number of times such GSTR-2B can be recomputed/regenerated

Frequently Asked Questions: Invoice Management System (IMS)

S.NO	Question	Reply
28	What about GSTR-2B for quarterly taxpayers?	For quarterly taxpayers, GSTR-2B will not be generated for the months M1 and M2 of the quarter. However, GSTR-2BQ for the quarter (M1, M2 and M3 combined) will be generated on 14th of Q+1 month and re-computation of 2B will be allowed on or after 14th of Q+1 month till filing of corresponding GSTR-3B. The same logic as is there for monthly GSTR-2B / 3B will be applicable.
29	What will happen to GSTR2A?	GSTR-2A shall continue to be generated as it is
30	Is it mandatory to recompute GSTR 2B?	If there is any change made by recipient on IMS dashboard after draft GSTR 2B generation by system, it is mandatory to re-compute GSTR 2B

Frequently Asked Questions: Invoice Management System (IMS)

S.NO	Question	Reply
31	How to take an action on records available on IMS dashboard	1. Action on Individual record: To take action on individual record, recipient can select the action by clicking on the radio button available at line-item level and then click on save button to save the action taken. 2. Action on multiple records: To take action on multiple records in one go, recipient can select multiple records or all the records through checkbox option available on screen. After selecting multiple records, system will enable main action buttons on heading of action radio buttons with count of selected records. Through these action buttons recipient can take action on multiple records in one go. Note: On all the multiple selected records, only one type of action can be taken
32	What will happen if the recipient rejects the Tax Invoice or Debit Note for the supplies of FY 23-24 which was eligible for GSTR 2B of Oct'24, given the deadline to avail the ITC by 30th November?	Taxpayer are advised to reconcile their records before filling of their GSTR 1 for October 2024 tax period for which due date is 11th November 2024. The Taxpayer can accept/reject the record on IMS after due verification. The ITC for the rejected record will not flow to GSTR 2B for Oct'24. However, recipient can change the action from rejected to accepted in IMS and recompute GSTR 2B at the time of filing GSTR 3B and take corresponding ITC in the GSTR 3B for Oct'24.

Frequently Asked Questions: Invoice Management System (IMS)

S.NO	Question	Reply
33	Can a supplier amend FCM invoice to RCM invoice and what will the impact on the ITC?	Yes, the supplier can amend an Invoice from FCM to RCM subject to the time limit as per GST law. The system shall reduce the ITC of the amended FCM Invoice in case the said invoice was accepted by the recipient. Further, the RCM invoice shall flow to GSTR 2B of the recipient
34	Can the place of supply be changed by the supplier in the GSTR 1 and what will be the impact on the ITC?	Yes, place of supply can be changed by the supplier in the GSTR 1 subject to the time limit given in the GST law. Further if the ITC become ineligible due to change in place of supply, then recipient should reverse the ITC in the Table 4B1
35	What will happen if the recipient rejects the original Credit Note or upward amended Credit Note?	If the recipient rejects the Credit note and furnished the GSTR 3B then the corresponding liability will be added to the supplier liability in the GSTR 3B of subsequent tax period.

Additional FAQ on IMS: Invoice Management System (IMS)

S.NO	Question	Reply
1	Which invoices are visible on IMS dashboard since 14th Oct 2024?	IMS is launched from GSTR-2B return period of Oct'24. Hence, all the records eligible for GSTR2B of Oct'24 return period onwards will be made available on the IMS dashboard. All the invoices which are part of GSTR2B of Sep'24 or older return periods will not be reflecting in IMS.
2	Which is the first GSTR2B prepared using actions taken on IMS?	The first draft GSTR-2B on the basis of actions taken on invoices/records in the Invoice Management System dashboard would be generated and made available to all the taxpayers on 14th Nov 2024 for the return period Oct'24.
3	Can taxpayer take action after 14th Nov,2024 and regenerate GSTR-2B of Oct'24 return period?	Taxpayer can take action on the invoices/records in their IMS dashboard and recompute their GSTR-2B of Oct 24' return period even after 14th November 2024 till the time the taxpayer files his GSTR-3B
4	Is it mandatory to act on IMS? What happens if no action is taken?	It is not mandatory to act on records in IMS dashboard for GSTR2B generation. The records where no action is taken by the recipient would be treated as accepted by the system and a GSTR-2B would be generated as it is generated presently

Additional FAQ on IMS: Invoice Management System (IMS)

S.NO	Question	Reply
5	When should an invoice/debit note be rejected?	Rejection of an invoice/debit note should be done very carefully as rejection will result in no ITC for the recipient. A record may be rejected if it does not pertain to the recipient, or the detail of the record is erroneous to such an extent that CN and DN cannot handle the situation.
6	In light of the time limit to avail ITC being till 30th November for FY 2023-24 or furnishing of annual return whichever is earlier, how can the ITC of erroneously rejected invoice in IMS, be taken by the recipient in the FY 2023-24?	In case the recipient taxpayer erroneously rejects an invoice in IMS, then the same invoice can be accepted in IMS again before filing of GSTR-3B. After accepting the said invoice, the recipient taxpayer should recompute the updated GSTR-2B for availing the credit in GSTR 3B for the FY 2023-24.
7	How can recipient accept a genuine credit note issued by supplier in IMS as it will result further reduction of the recipient ITC, however recipient had reversed ITC corresponding to invoice itself because of 17(5), Rule 42, 38, 43 etc., or not availed the ITC at all because of POS or 16(4) etc., ineligibility?	In such cases recipient can accept the said credit note in IMS. As recipient had already reversed the ITC, there is no need for reversal of ITC again in case of such credit note.

Additional FAQ on IMS: Invoice Management System (IMS)

S.NO	Question	Reply
8	What action shall be available on upward amended invoice/debit notes, where the upward amended invoice/debit notes is Saved by supplier and the same is not filed?	The recipient will not be able to take an action on an upward amended invoice/debit notes, if the said amended record has only been saved by supplier in GSTR-1/GSTR-1A/IFF but the same record has not been filed. The recipient will be able to take action once the supplier files such record.
9	What to do in case wrong invoice is corrected by issuance of Credit Note by the supplier instead of amending the same and such Credit note has been rejected by the recipient?	In the absence of linkage of Credit Note with the corresponding invoices, system cannot understand whether original invoice for this Credit Note was accepted or rejected. Therefore, if the invoice is not correct, then it is advisable to rectify the mistake through amendment of invoices in the GSTR 1 instead of issuance of a Credit Note.

Additional FAQ on IMS: Invoice Management System (IMS)

S.NO	Question	Reply
10	Can the Credit Note be kept as pending in IMS? If no, then why?	Credit Note cannot be kept pending in the IMS by the recipient as the supplier has reduced its outward tax liability at the time of issuance of credit note. IMS does not change the existing flow where the documents/records reported by the supplier in the GSTR 1 is accepted and corresponding impact is reflected in the GSTR 2B. Now because of IMS, an additional option has been provided to recipient to reject the credit note if it does not belong to him.
11	Whether liability can be added in the same GSTR 3B in case where credit note has been rejected by the recipient before filing of GSTR 3B by the supplier?	No, if a credit note is rejected by the recipient, the liability of the supplier is increased on the portal to that extent in the GSTR 3B of subsequent tax period and not in the GSTR 3B of same tax period.

Archival of GST Data: GSTN advisory dt 24th Sep & 29th Sep

- As per GST portal data policy, data for view of taxpayer to be retained for seven years only.
- In accordance with this provision, GSTN initiated the archival of past data starting from 1st August 2024, when the return data for July 2017 was archived, followed by the archival of August 2017 data on 1st September 2024.
- Going forward, this will be a monthly activity, with the data for September 2017 scheduled for archival on 1st October 2024, and subsequent months to follow in a similar manner.
- However, as part of a trade facilitation measure, GSTN has restored the data for the periods of July 2017 and August 2017, as recommended in the advisory released on 29th September 2024 and it is mentioned that archival policy shall be implemented again after giving advance information.

GSTIN Advisory on RCM Liability and reporting of opening balance

- **Reporting Requirements:**

RCM obligations under Table 3.1(d) and related ITC claims in Tables 4A(2) and 4A(3) of GSTR-3B must be accurately reported.

- **RCM ITC Opening Balance:**

Declaring Positive balance represents excess RCM liability was paid but ITC not claimed.

Declaring Negative balance represents ITC was claimed without corresponding RCM obligation.

- **Deadlines:**

Opening balances must have been reported by **October 31, 2024, with adjustments allowed until November 30, 2024.**

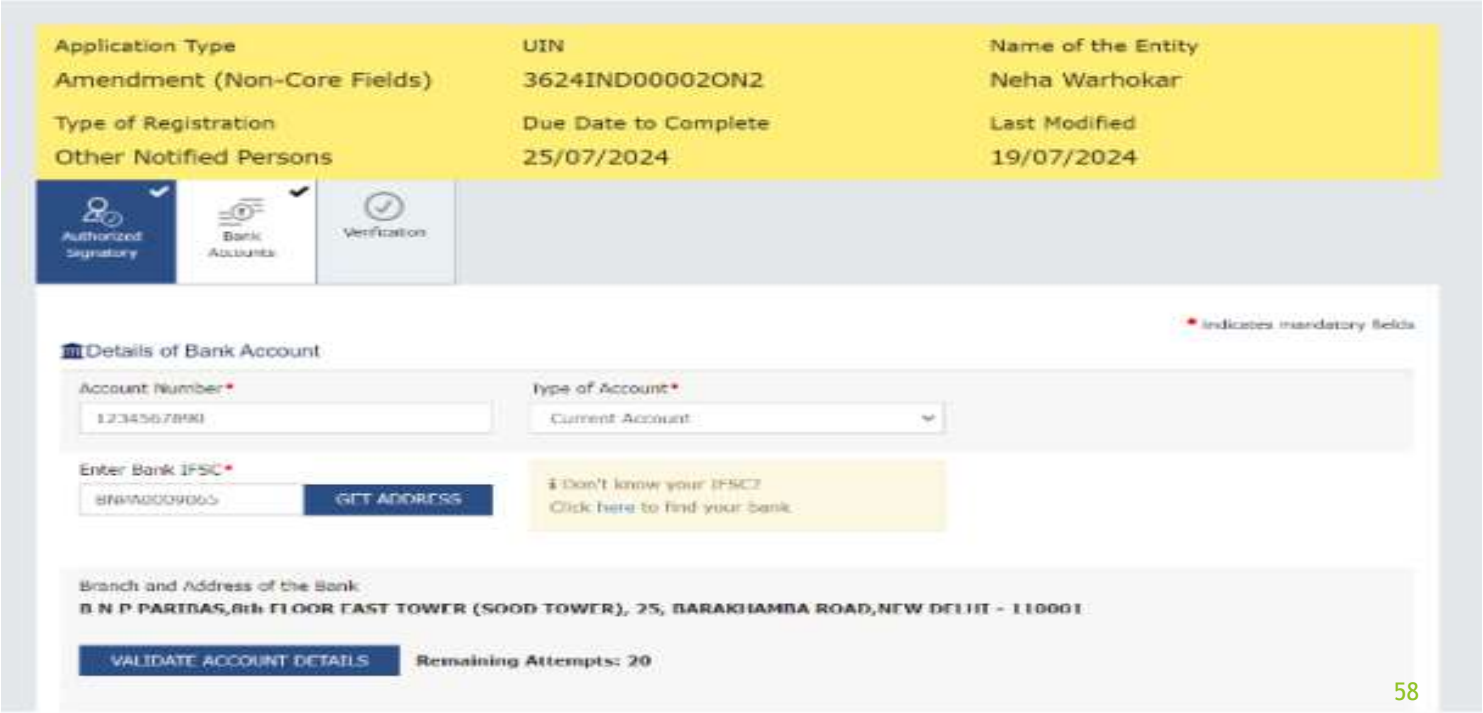
After this, balances will be locked and reviewed by the Jurisdictional Tax Officer.

GSTN Advisory on ITC Statement - Advisory on Reversal and reclaim ledger

- Taxpayers are given a final chance to report any cumulative ITC reversals (previously reversed ITC not yet reclaimed) as an opening balance in the "Electronic Credit Reversal and Re-claimed Statement" before the reversal and reclaim ledger is permanently locked.
- Deadlines: The functionality to report the opening balance will be available from **15th September 2024 to 31st October 2024**. The **amendments in the declared opening balance will be available till 30th November 2024.**

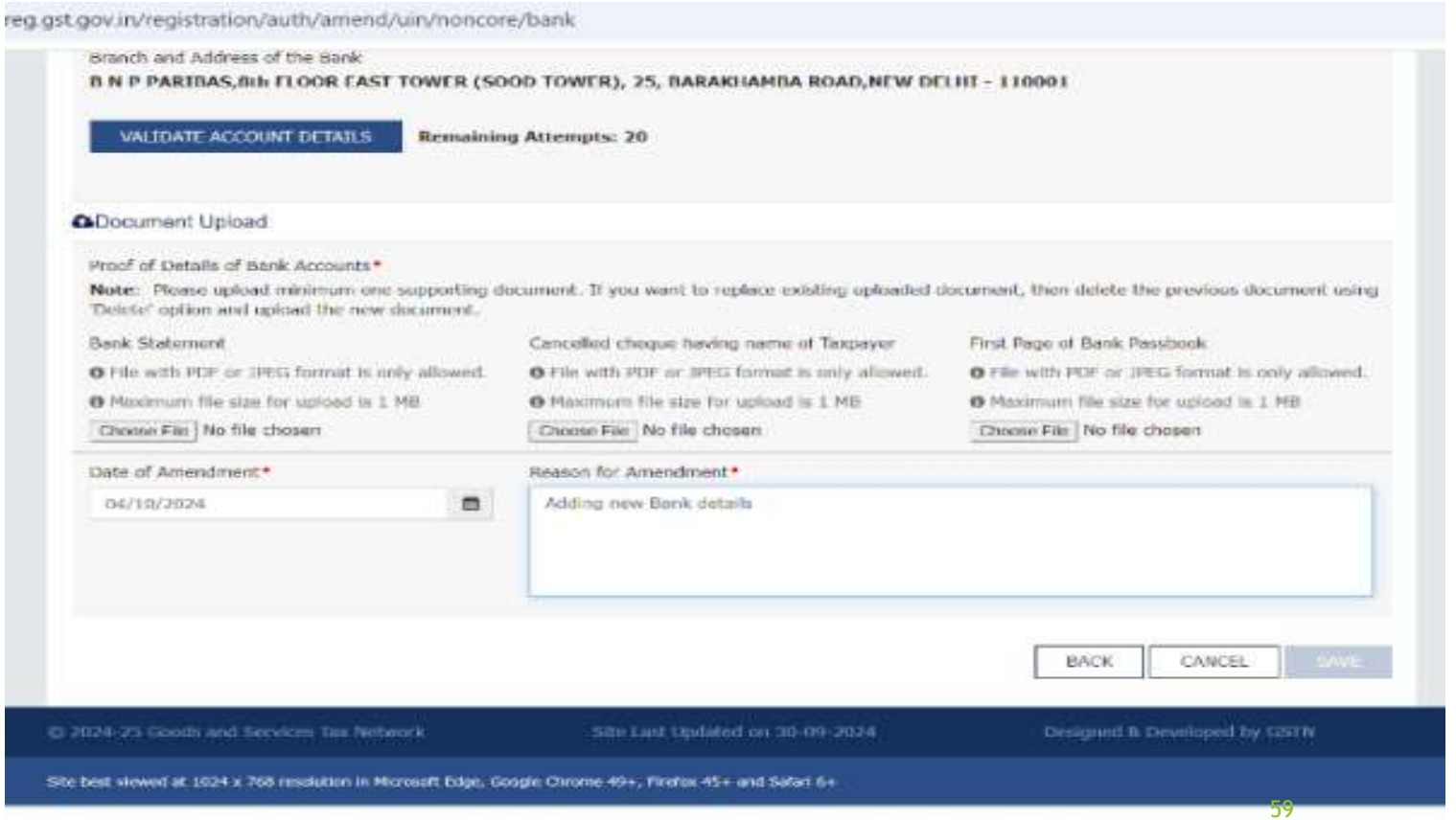
Advisory issued in GST registration

- GSTN has introduced a validation process for updating bank account details as a non-core amendment. Taxpayers are requested to follow the procedure outlined below while adding bank account details on the portal.
- (I) When the bank account details are entered, the taxpayer is required to click on “VALIDATE ACCOUNT DETAILS” button.



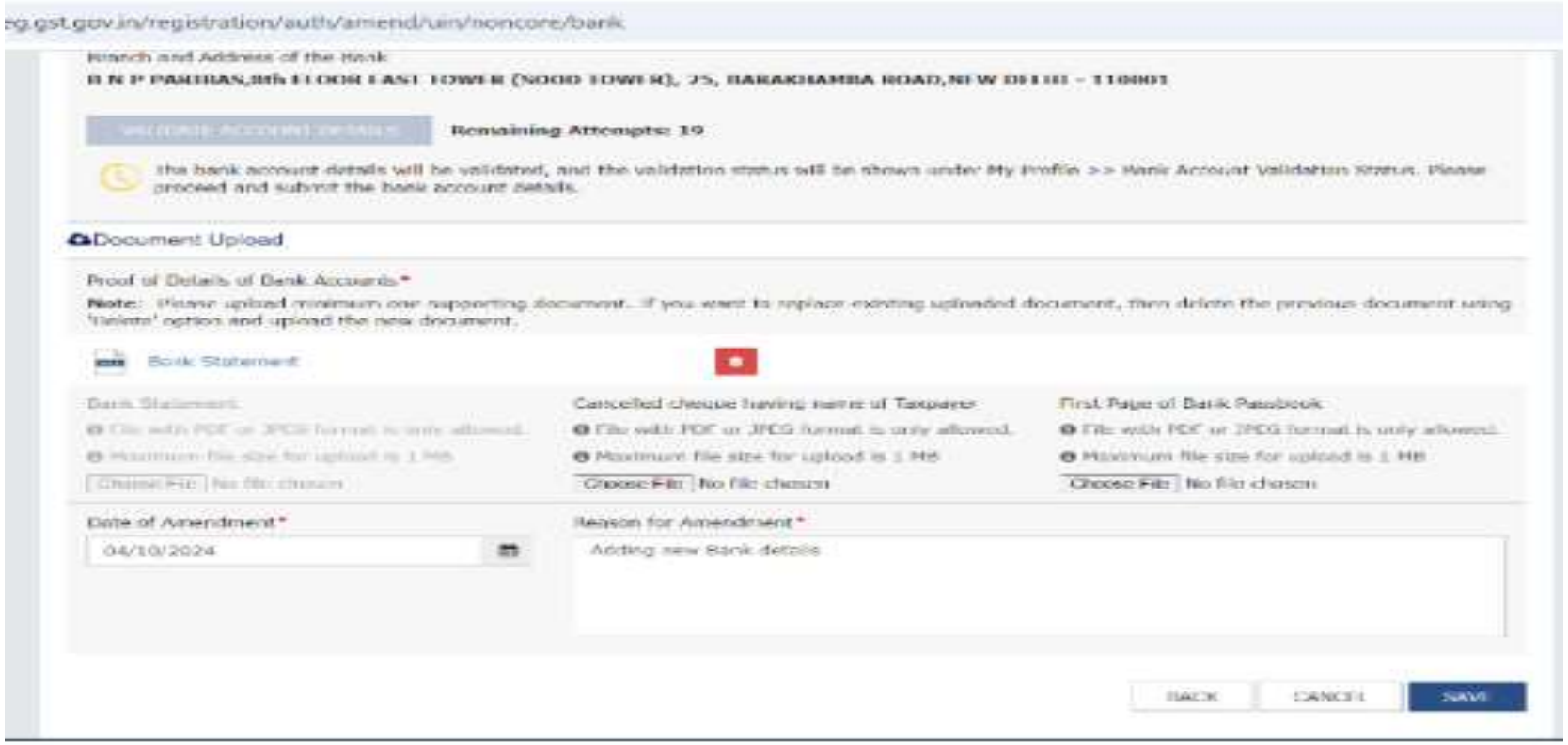
Advisory issued in GST registration

- (II) Prior to clicking the "Validate Account" button, the "Save" button at the bottom of the screen as shown remains disabled.



Advisory issued in GST registration

- (III) The "Save" button will become active only after the "Validate Account Details" button is clicked.



Advisory for Biometric-Based Aadhaar Authentication and Document Verification for GST Registration

- An advisory has been issued for GST registration applicants in Kerala, Nagaland, and Telangana regarding biometric Aadhaar authentication. Applicants will either receive a link for OTP-based authentication or for booking an appointment at a GST Suvidha Kendra (GSK) for document verification. Original documents, Aadhaar, and PAN must be presented during the visit.
- List of states for which Biometric- Based Aadhaar authentication is mandatory:

Andhra Pradesh	Bihar	Chandigarh
Dadra & Nagar Haveli and Daman & Diu	Delhi	Gujarat
Jammu & Kashmir	Karnataka	Kerala
Odisha	Puducherry	Punjab
Telangana	Uttarakhand	West Bengal

GSTR 9 – FORM Update

New row after G "G1" is inserted in Table 4

- Supplies on which E-commerce operator is required to pay tax as per sec 9(5) has to be reported under "4G1-E-commerce operator to report".

New row after C "C1" is inserted in Table 5

- Supplies on which E-commerce operator is required to pay tax as per sec 9(5) has to report under "5C1-Supplier to report".

From FY 23-24 onwards Table 8A details auto populated with GSTR-2B.

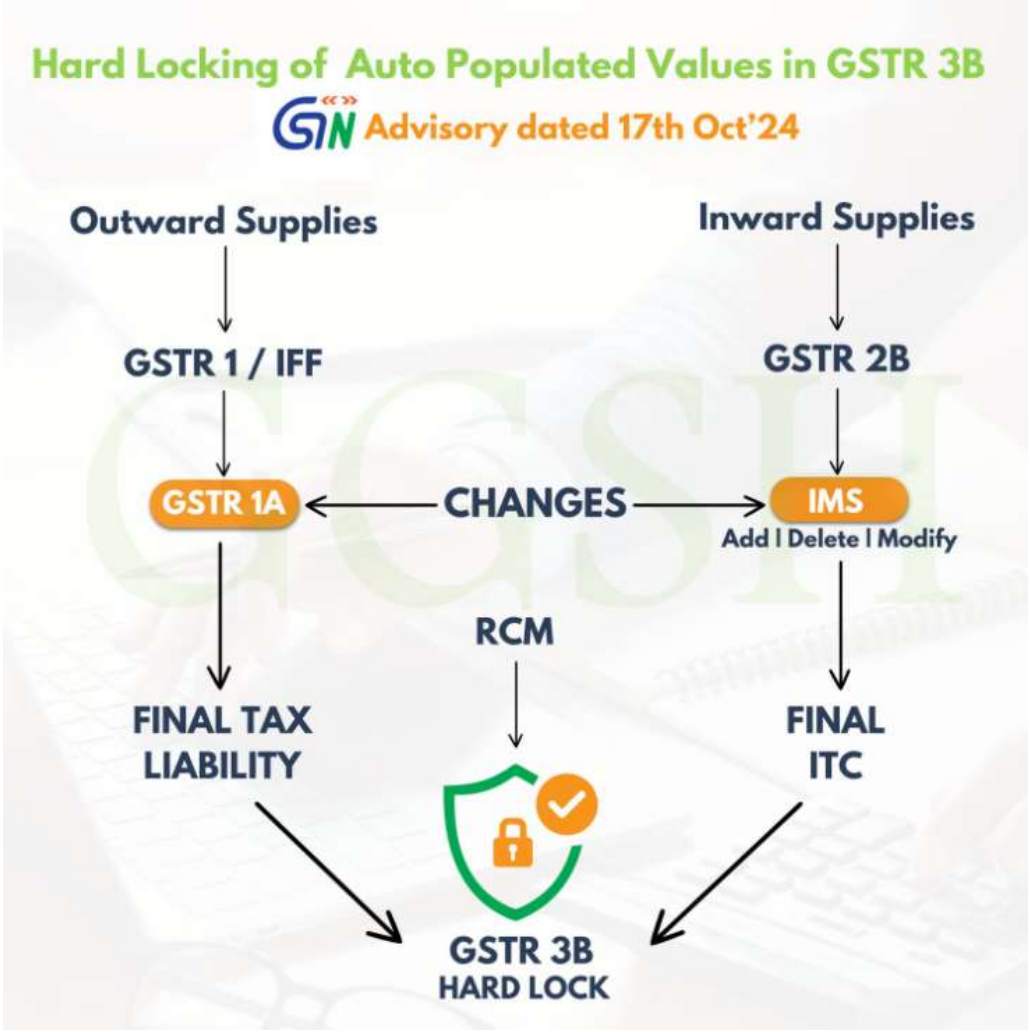
- Earlier in GSTR 9 **table 8A** was auto populated with the inward data that has reflected in GSTR-2A now the same will be reflected from the inward data that has reflected in **GSTR 2B From FY 23-24**.

ITC reversal under Rule 37A

- Rule 37A: As part of compliance measures introduced in FY 2022-23, Rule 37A mandates the reversal of Input Tax Credit (ITC) if the supplier fails to file GSTR-3B.
- The reversal amount is now system-generated, making it easier for taxpayers to ensure they are compliant. This move addresses long-standing concerns regarding ITC claims when suppliers haven't paid taxes.
- **Now, recipients can view the amount to be reversed in respect of Rule 37A in G2B under "ITC Reversal section"**

GSTIN Advisory Hard locking - Tax liability in GSTR-1 and 3B:

- To assist the taxpayers the GST portal introduces a pre-filled GSTR-3B means the taxpayers will not be able to edit the liabilities auto-populated reported in GSTR-1 and ITC auto populates, based on GSTR-2B.
- Now, taxpayers also have a facility to amend their incorrectly declared outward supplies in GSTR-1/IFF through GSTR-1A, allowing them an opportunity to correct their liabilities before filing their GSTR-3B.
- Tentatively from tax period Jan-25 onwards the GST portal will not allow the taxpayers to edit the auto-populated liability in GSTR-3B based on GSTR-1 / IFF / GSTR2B.



GSTIN Advisory for Form GST DRC-03A

- Since some taxpayers have mistakenly used Form DRC-03 instead of the designated ‘Payment towards demand’ option for satisfying demands, leading to unclosed entries in the electronic liability register.
- To resolve this, Form GST DRC-03A was introduced via Notification No. 12/2024 on July 10, 2024.
- This form links payments made using DRC-03 to the corresponding demand order.
- Only DRC-03 forms labeled as ‘Voluntary’ or ‘Others’ can be used in DRC-03A.
- Taxpayers must enter the ARN of DRC-03 and the relevant demand order number on the GST portal.
- The system will auto-populate necessary details from both forms.
- Once linked, the taxpayer’s liability ledger will reflect the adjusted demand status.

FAQ in DRC-03A

Q- What is Form GST DRC-03A?

A- Form GST DRC 03A has been introduced in the GST portal to adjust payments made through Form GST DRC 03 against any outstanding demand in electronic liability register.

Q- Who can file DRC-03A?

A- Taxpayers against whom demand is raised in Form GST DRC 07/DRC 08/MOV 9/MOV 11/APL 04 and for which the payment has been done through Form GST DRC-03 under 'Voluntary' or 'Others' categories can file Form GST DRC-03A.

Q- Which demand orders can be adjusted through Form GST DRC-03A filing?

A- Any outstanding demand order (DRC-07/DRC 08/MOV 09/MOV 11/APL 04) which has not yet been completely paid can be adjusted through Form DRC-03 A filing.

Q- What details do taxpayers need to enter while filing Form GST DRC03A?

A- Taxpayers need to enter the ARN of Form GST DRC-03 and the demand order number is to be selected using a drop-down. The details of the demand order and the payment done through FORM GST DRC-03 will be displayed

FAQ in DRC-03A

Q- Can a taxpayer **adjust the amount paid in Form GST DRC 03 partially against a demand** using Form GST DRC 03A?

A- Yes, a taxpayer can adjust amount paid in Form GST DRC-03 partially against a single demand order or multiple demand orders. The taxpayer has to fill the tables available in Form GST DRC 03A accordingly.

Q- Can a taxpayer use **multiple Form GST DRC-03s to adjust a single demand and vice-versa**? A- Yes, a taxpayer can adjust multiple Form GST DRC-03s against a single demand order & a single Form GST DRC-03 can also be used for adjustment against multiple demand orders.

Note – The taxpayer has to file separate DRC-03A for each DRC-03 if multiple DRC-03 are to be adjusted against a single demand order.

Q- What is **DRC 03 Register** and its purpose?

A- DRC 03 Register is available in GST portal to help the taxpayer in ascertaining the accurate **remaining balance of DRC-03 after adjustments** made against a demand through DRC-03A.The path to access the DRC-03 register in GST system is User Service à DRC-03 Register

Note: DRC 03 register is presently available for DRC 03s which are used in DRC 03A form

GST Litigation Updates



GSTIN Advisory on Validity of GST Notice/ Order without Digital Signature

- With respect to SCN/Orders without the Digital signatures on the pdf document downloaded from the common portal, GSTN mentioned that such **documents are generated on the common portal from the login of the officer, who logs in through Digital Signatures.**
- It is also mentioned that the validity in question vis-à-vis who and for what purpose these documents have been issued can also be verified by the taxpayer pre-login as well as after login from the GST common portal by navigating to **"Verify RFN"** under "User Services".

GST Instruction dated 05/11/24 to Conduct Personal Hearing in Virtual Mode

- **Personal hearing in virtual mode is mandatory in <u>all quasi-judicial adjudication and appeal cases</u>** in CBIC formations. Includes GST, customs, excise and service tax cases.
- Exception to allow personal hearing in **Physical mode** by the concerned authorities may be resorted to on receipt of **specific request** from the party concerned, and **after recording the reasons for the same in writing**

Section 70(1A):Power to summon persons to give evidence

- A person summoned is bound to attend, either in **person or by an authorized representative**, as directed by the officer. Person appearing shall state the truth and produce documents as required.

Amendment to Section 112 - Appeals to Appellate Tribunal Notification no:17/2024 CT dt 27.09.2024 w.e.f: 01/11/2024

The amendments to Section 112 of the Central Goods and Services Tax Act, effective from August 1, 2024, include the following:

1. Sub-section (1) & (3): The **time limit for filing an appeal** before the Appellate Tribunal will be the **later of two dates**—either the communication of the order being appealed or a government-notified date recommended by the GST Council. **Three months to be calculated from this date.**

3. Sub-section (6): An additional allowance is introduced, permitting the filing of an application within **three months after the standard time period** in sub-section (3) expires.

4. Sub-section (8), Clause (b): Two changes are made:

(i)The **pre-deposit** requirement is reduced from 20% to 10% in addition to pre-deposit in first appellate authority.

(ii) The **maximum pre-deposit** amount is lowered from ₹50 crores CGST & ₹50 crores SGST to ₹20 crores CGST & ₹20 crores SGST.

Pre-Deposit Limit in Appeals

Notification no:17/2024 Central tax dated 27.09.2024.

Effective date of amendment: 01/11/2024

Sec 107 - The maximum amount for filing appeal with the **appellate authority** has been reduced from Rs. 25 crores CGST and Rs. 25 crores SGST to Rs. 20 crores CGST and Rs. 20 crores SGST.

Sec 112 - Pre-deposit for filing appeal with the **Appellate Tribunal** has been reduced from 20% with a maximum amount of Rs. 50 crores CGST and Rs. 50 crores SGST to 10 % with a maximum of Rs. 20 crores CGST and Rs. 20 crores SGST

Circular 224 dt 11-07-2024 (1/2)

Guidelines for recovery of outstanding dues, in cases wherein first appeal has been disposed of, till Appellate Tribunal (GSTAT) comes into operation

- Taxpayers waiting due to the non-operation of the Appellate Tribunal
- **Additional 10% Pre-deposit** payments for filing appeals before GSTAT

  Services >> Ledgers >> Payment towards demand from their dashboard (Electronic Liability Ledger).
- File a **declaration with the jurisdictional proper officer**, committing to appeal in Tribunal once it is operational, within the timelines specified u/s 112.
- Upon submitting this undertaking and paying additional pre-deposit, **recovery** of remaining confirmed demand will be **stayed** u/s 112(9).

Circular 224 dt 11-07-2024 (2/2)

- **RECOVERY PROCEEDINGS can be initiated in TWO SCENARIOS:**

1. When taxpayer fails to pay pre-deposit or does not provide declaration to the proper officer as stated above.

2. When the taxpayer paid the pre-deposit and duly intimated the proper officer, but fails to file appeal within the specified time limit when the Tribunal comes into operation

- Amounts paid inadvertently through DRC-03 can be adjusted by filing an application in DRC-03A on the common portal.
- Since FORM DRC-03A is not yet available on the common portal, taxpayers can notify the proper officer. The officer may not insist on recovering the remaining amount due from the taxpayer until the FORM DRC-03A functionality is available on the portal.

Objective: Steps to stay recovery proceedings pending GSTAT

Other Key Updates

Section 73 & 74 shall be applicable only up to the FY 2023-24. From FY 2024-25 section 74A shall only be applicable.

TDS Deductors must file the returns mandatorily every month whether or not any deductions have been made during the month. (Sec 39(3) amendment)

ITC on immovable property – 17(5)(c) & (d)

Section 17(5) – ITC shall not be available in respect of:

(c) **works contract services** when supplied for construction of an immovable property (other than plant **and** machinery) except where it is an input service for further supply of works contract service;

(d) **goods or services or both** received by a taxable person for construction of an immovable property (other than plant **or** machinery) **on his own account** including when such goods or services or both are used in the course or furtherance of business.

Explanation.-For the purposes of clauses (c) and (d), the expression "**construction**" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;

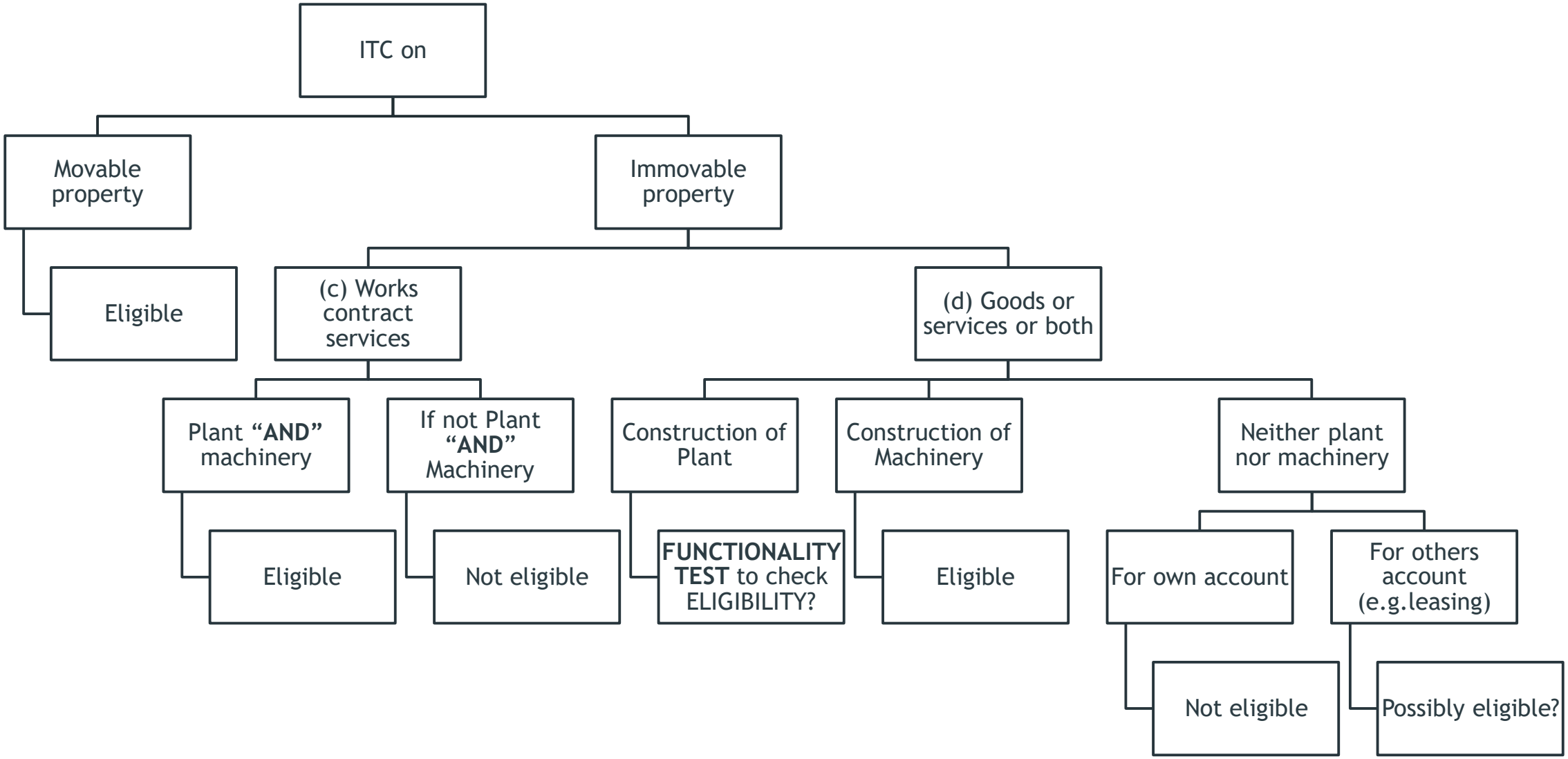
Explanation.- For the purposes of this Chapter and Chapter VI, the expression "**plant and machinery**" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes-

(i) land, building or any other civil structures;

(ii) telecommunication towers; and

(iii) pipelines laid outside the factory premises.

ITC on immovable property - 17(5)(c) & (d)



ITC on immovable property – Court decision

Safari Retreats - Supreme Court decision (CIVIL APPEAL NO. 2948 OF 2023 dt 3rd Oct 2024)

Dispute involved: **ITC eligibility on construction of shopping mall (immovable property)** for the purpose of letting out premises in the malls to different tenants on which GST output liability to be paid. Key decisions:

- Constitutional validity of clauses (c) and (d) of Section 17(5) was **UPHELD.**
- "**plant or machinery**" used in Section 17(5)(d) cannot be given the same meaning as "**plant and machinery**" defined by explanation to Sec 17 – Thus, clause **(c) and (d) are different.**
- **Supreme Courts sets the interpretation of 17(5)(d) to be followed by applying Functionality test for deciding whether building is 'Plant' and the issue must be decided in appropriate proceedings in which adjudication can be made on facts.**
- Whether a mall, warehouse, or building can be classified as a "plant" is a **factual question** which has to be determined based on registered person's business and role that building plays in the said business.
- Supreme Court **remanded the case to the Orissa High Court** for limited purposes of deciding whether, in the facts of the case, the shopping mall is a "plant" as per Sec 17(5)(d)

ITC on immovable property – Functionality Test

Para 51 & 52: FUNCTIONALITY TEST of **"whether a building qualifies to be a plant?"**

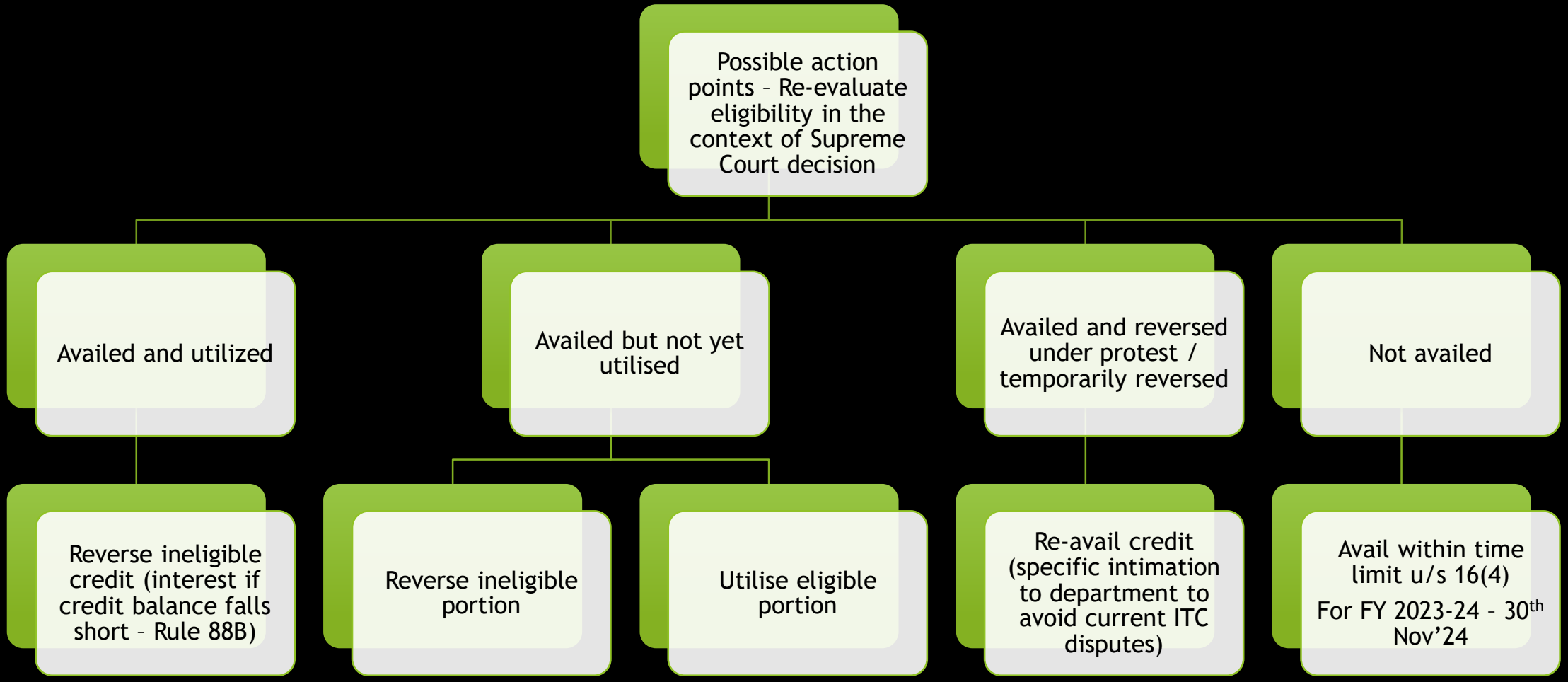
- ✓ whether a building is a plant is a question of fact.
- ✓ If it is found on facts that a **building has been so planned and constructed as to serve an assessee's special technical requirements**, it will qualify to be treated as a plant for the purposes of investment allowance
- ✓ Goods or Services cannot emerge without the use of such item / property. Without the property, it is impossible to provide the output service / manufacture the goods.
- ✓ In the case of Commissioner of Income Tax, Karnataka v. **Karnataka Power Corporation**, Supreme Court held that an electricity power generating station building would have to be treated as a plant as it would satisfy the functional test or test of essentiality.
- ✓ Judgment in the case of **Anand Theatres** would be limited to buildings used for **hotels or cinemas/theatres**. (Does not qualify as a Plant and hence credit not eligible).
- ✓ Para 51: *Decision of Anand Theatres cannot be applied while considering the question of whether a mall or warehouse or a building other than a hotel or a cinema theatre can be said to be a "plant".*
- ✓ Other decisions: Scientific Engineering House Pvt Ltd vs Commissioner of Income Tax, AP (AIR 1986 SC 338) - held that Capital asset acquired by the assessee, namely, the technical know-how in the shape of drawings, designs charts, plans, processing data and other literature falls within the definition of 'plant' and therefore a depreciable asset. Drawings and patterns which constitute know-how and are fundamental to the assessee's manufacturing business are 'plant'.

ITC on immovable property – Key inferences

Key inferences from the Supreme Court decision:

- **If building is a mere housing of the men & machinery who are revenue generators, credit is not eligible. Building / structure by itself should be the revenue generators.**
- Buildings constructed for services like renting or leasing may qualify as a '**plant**', **subject to a functionality test.** Construction of a **mall** intended to be given on rent / lease – **Possible to avail credit** (Para 32: *Construction is said to be on a taxable person's "**own account**" when (i) it is made for his **personal use** **and not for service** or (ii) it is to be used by the person **constructing as a setting in which business is carried out**. However, **construction cannot said to be on a taxable person's "own account" if it is intended to be sold or given on lease or license**.)* However, if works contract services are received for construction of mall, it would be restricted under clause (c).
- Other possible leasing / renting activities – E.g. Warehouse, cold storage, car parking structure, co-working spaces, dry docks, ponds, etc. – Possible to establish functionality test.
- Civil structure with "special technical requirements" – eligible for credit
- Building for **administrative purpose - not eligible** – does not qualify as "plant", as there is neither special technical requirement nor used for other than own account.
- **Hotel / Cinema theatre -** ITC would be disputable and to be contested to establish the functionality test.
- Lift, escalators, centralized AC, DG sets, sewage & water treatment plants, electrical appliances – to be tested in relation to the main immovable property.
- Bottomline: **Each case will have to be decided on** the facts and **its merit by applying the functionality test in terms of this judgment.**

ITC on immovable property - ACTION POINTS



Note: In the case of transactions pending finalization, evaluate possibility of structuring to optimize tax credits.

AMNESTY SCHEME

THE FINANCE (No. 2) ACT, 2024

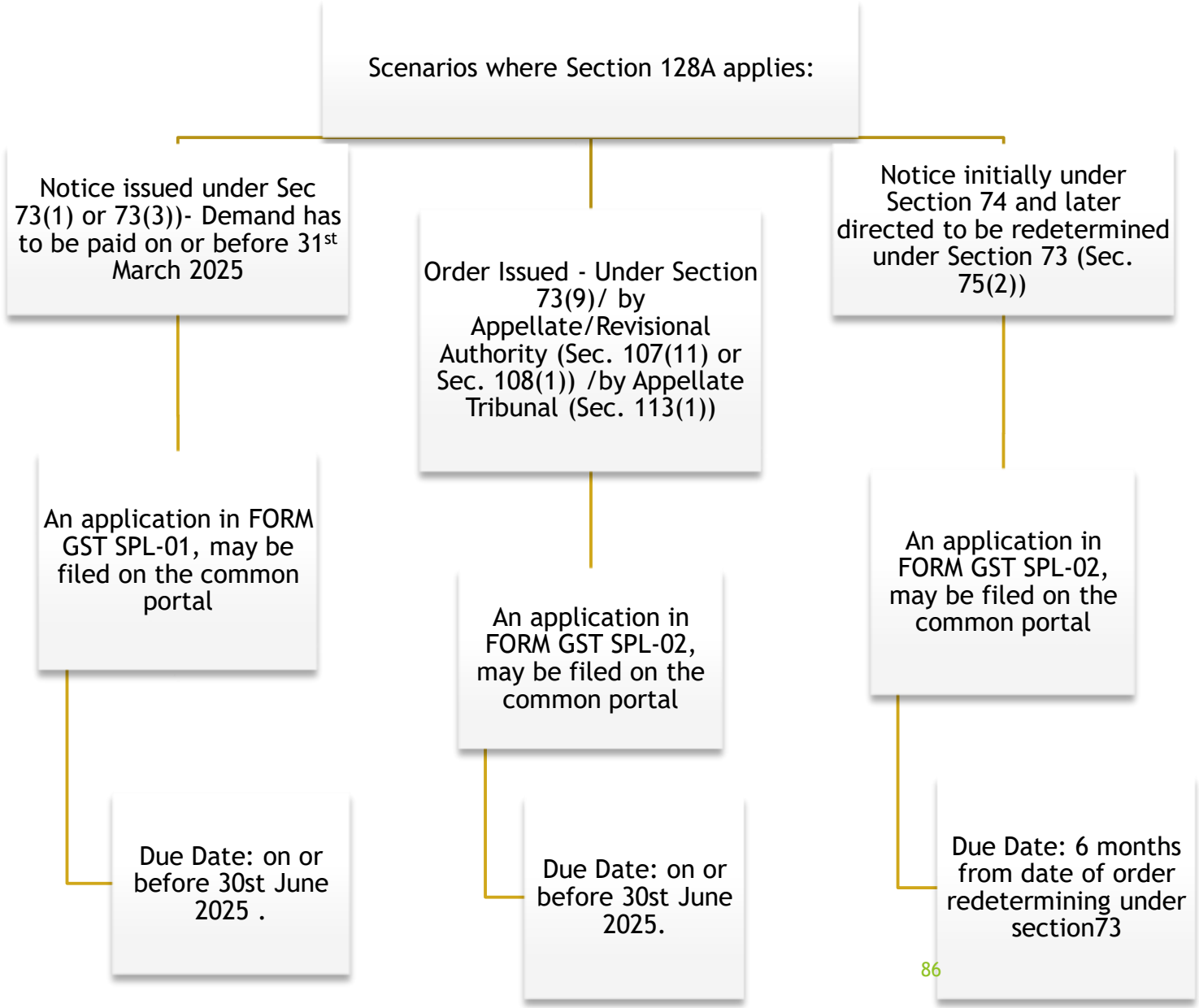
Section 128A - Notification no: 17/2024 Central tax dated 27.09.2024

- Tax Payment Benefit: Taxpayers who pay the full tax related to certain notices or orders for FY 2017-18, 2018-19, and 2019-20 by March 31, 2025, will incur no interest or penalty, and related proceedings will be deemed concluded.
- No Refund for Previous Payments: Any interest or penalty already paid will not be refunded.
- The provision does not apply:
  - to erroneous refund cases.
  - if there is a pending appeal or writ petition;
  - Pending appeal not withdrawn on or before the section gets notified
- Once the tax is paid under this section, no further appeals can be filed.
- Subsequently Clarifications issued vide Circular No. 238/32/2024-GST- Dated- 15/10/2024

Section 128A - Notification no: 17/2024 Central tax dated 27.09.2024

- The GST Council introduced Rule 164 to the CGST Rules through Notification No. 20/2024 dated October 8, 2024, outlining the procedure and conditions for closing proceedings under Section 128A.
- Additionally, Notification No. 21/2024, dated the same day, set March 31, 2025, as the deadline for taxpayers to fully pay tax demands to benefit from the waiver of interest or penalties under Section 128A.
- For cases where redetermination of tax is required under Section 73, the payment deadline is six months from the issuance of the redetermined order by the proper officer.

SCOPE OF SECTION 128A



POINTS TO REMEMBER BEFORE FILING SPL FORMS

- Taxpayers must withdraw any appeal or writ petition related to Section 128A proceedings before applying for a waiver of interest or penalty.
- A withdrawal order has to be attached with the application in FORM GST SPL-01 or SPL-02 or submit proof of filing if the order is pending and upload the final order within one month of receipt.
- For multiple notices under Section 73 (July 2017 to March 2020), file a separate FORM GST SPL-01 or SPL-02 for each.
- Waiver applications can only be made after paying the full tax amount, including any incorrect refunds or demands.

EXCLUSIONS

Scenarios where Section 128A does not applies:

- Where the amount is payable on account of erroneous refund
- Where there is an ongoing appeal or writ petition with the Appellate Authority, Appellate Tribunal, or a court, and the same has not been withdrawn by the notified date

PROCESSING OF SPL APPLICATION FORMS

Processing of Waiver Applications (Section 128A):

- Applications in FORM GST SPL-01 (interest/penalty waiver) are handled by the officer who issued Notice u/s 73; applications in FORM GST SPL-02 (recovery) by the Section 79 officer.

Examination:

- The officer has to review applications within 3 months. If likely to be rejected, a notice (FORM GST SPL-03) is issued, allowing a personal hearing.
- The applicant can respond within a month using FORM GST SPL-04.
- Based on the response, the officer will approve (FORM GST SPL-05 or SPL-06) or reject (FORM GST SPL-07) the waiver. If no decision is made within the time frame, the application is deemed approved.

Approval and Modifications:

- SPL-05 (SPL-01 cases) approval doesn't require further orders. For SPL-02, adjustments to earlier demands are made. If new tax is imposed, it must be paid within 3 months, or the waiver becomes void.

PROCESSING OF SPL APPLICATION FORMS

Payment Requirements:	• Waivers are granted only after all relevant taxes are paid for the period under Section 128A.
Additional Interest/Penalty:	• If additional amounts are due for other periods, they must be paid within 3 months, or the waiver is void.
Appeals:	• No appeal is allowed for waiver approval (SPL-05). Rejection (SPL-07) can be appealed under Section 107. If the appeal succeeds, the waiver can be granted via SPL-06.
Restoring Appeals:	• If an appeal was withdrawn for the waiver application and the waiver is rejected (SPL-07), the appeal can be restored. If the rejection is upheld, the appeal remains dismissed; if overturned, the waiver is granted, with no further appeal allowed.

GSTIN Advisory on Section 128A

- It has been informed that Form GST SPL-01 and Form GST SPL-02 are under development and same will be made available on the common portal tentatively from the first week of January 2025.
- In the meantime, taxpayers are advised to pay the tax amount demanded in the notice, statement, or order issued under Section 73 on or before March 31st, 2025, to ensure that they receive the waiver benefits by paying their taxes before the deadline.

Payment Instructions:

- Demand Orders: Use the “payment towards demand” facility.
- Notices: Submit payments via FORM GST DRC-03.
- Already Paid via FORM GST DRC-03: Link the payment to the demand order using FORM GST DRC-03A, now available on the common portal.

Sec 16 of CGST ACT, 2017 - Eligibility and condition to avail ITC.

- ITC claimed by registered persons for invoices from financial years 2017-18 to 2020-21 in any GSTR-3B returns filed until 30th November 2021 shall be eligible.
- Section 16(6) permits taxpayers with revoked cancellations to claim ITC for the period between the cancellation and revocation dates if returns are filed within 30 days of revocation.
- Objective: To resolve all the issues in relation to time barred claim of ITC.

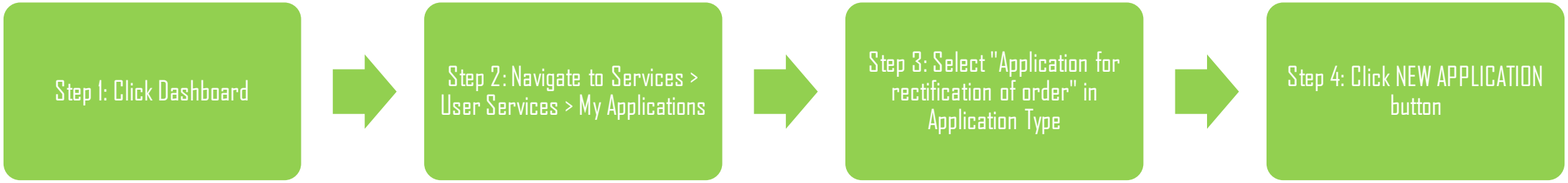
Clarifications issued with regards to implementation of provisions of 16(5) and (6) of the CGST Act 2017.

Instances	Clarifications
3.1 No Demand Notice Issued	If there's an investigation/Proceedings for wrong availment of input tax credit (ITC) under Sec16(4) without a demand notice, authorities/proper officer must consider subsections (5) and (6) of section 16 (effective from 01.07.2017) and take necessary action, including Intimation issued in FORM DRC-01A.
3.2 Demand Notice Issued, No Order	If a demand notice under sections 73 or 74 is issued but no order issued, the Adjudicating Authority must consider subsections (5) and (6) and issue the appropriate order.
3.3 Appeal Filed, No Order Issued	If an appeal is filed after an order under sections 73 or 74 with no order passed, the Appellate Authority must consider subsections (5) and (6) and issue the necessary order.
3.4 Order Issued, Revisional authority Initiated Proceedings	If an order is made and the Revisional Authority has started proceedings under section 108 without an order, they must consider subsections (5) and (6) and issue the appropriate order.
3.5 Order Issued, No Appeal Filed	If an order is issued under sections 73, 74, 107, or 108 confirming violations of 16(4) and no appeal is filed, taxpayers may apply for rectification under section 148 within six months of Notification No. 22/2024 (dated 08.10.2024).

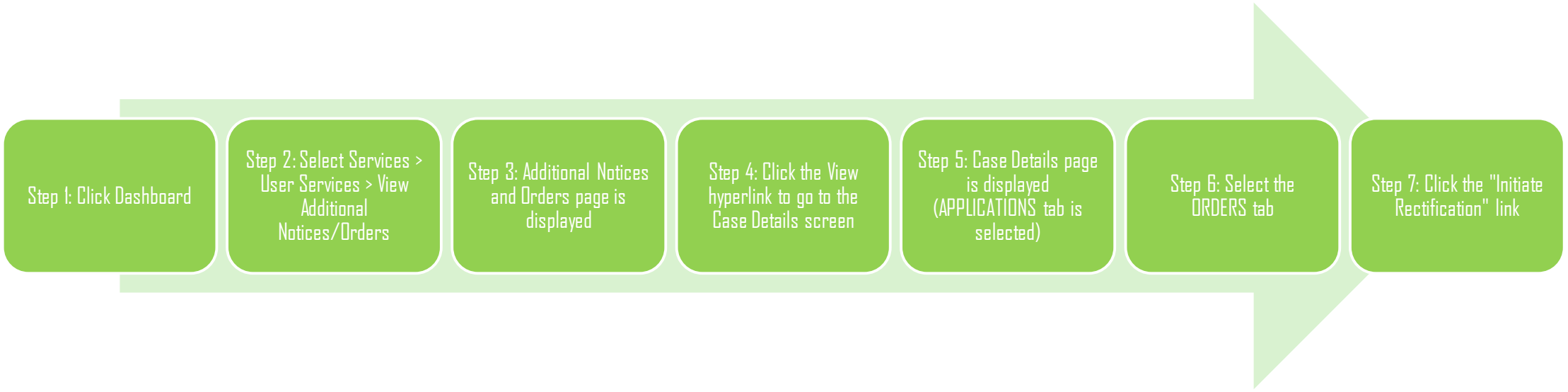
Steps involved for applying

1.Application for rectification:

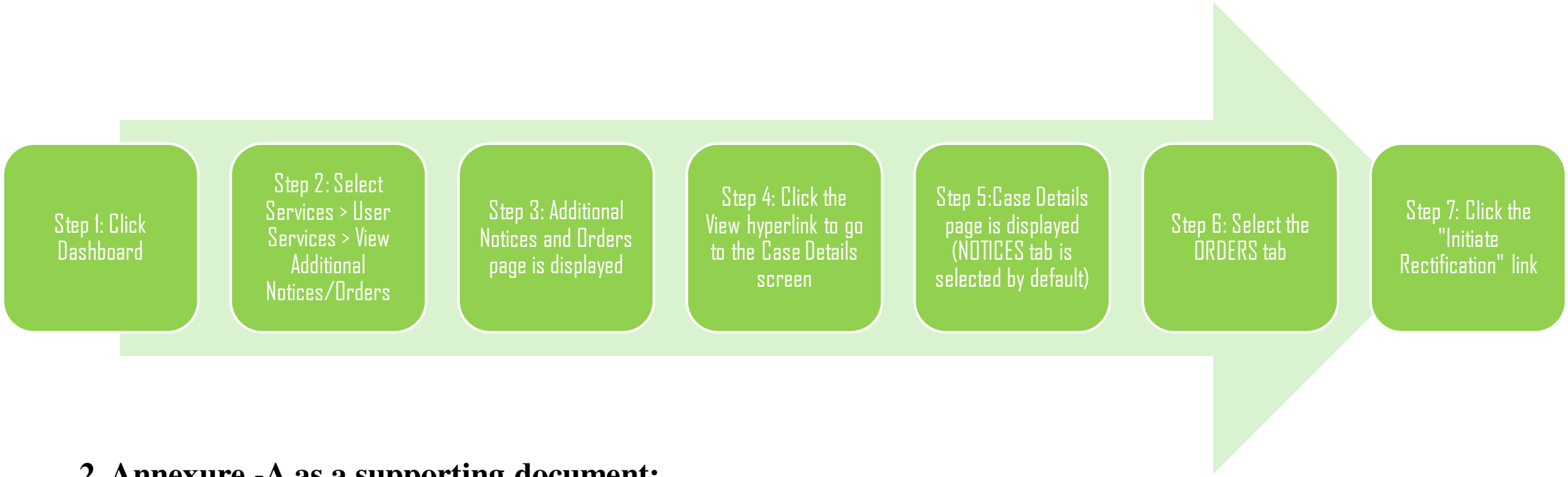
A. In case of order issued under section 73 and 74 of the CGST Act 2017:



B. In case of order issued under section 107 of the CGST Act 2017:



C. In case of order issued under section 108 of the CGST Act 2017:



2. Annexure -A as a supporting document:

While applying rectification of order along with the documents attached **Annexure A** has to be attached as per the **format** prescribed in the **notification No. 22/2024**– CENTRAL TAX dated 08th October 2024.

3.Who has to pass the rectification order:

- The same proper officer who passed an original order has to pass the rectification order **within the three months of application filed.** If a rectification is made, the officer must upload a summary of the rectified order: FORM DRC-08 for sections 73 and 74, and FORM GST APL-04 for sections 107 and 108. The proper officer should consider the other grounds of denial and other than contravention of 16(4) while making decision.

4.Adverse effect:

- Rectification adversely affecting the taxpayer- Principal of natural justice to be followed.

5.Appeal against the rectified order:

- An appeal against the rectified order can be filed under section 107 or section 112 of the CGST Act, within the specified time limit.

No refund of taxes reversed earlier:

- According to section 150 of the Finance (No. 2) Act, 2024, **no refund of tax already paid, or input tax credit reversed** will be available if the tax was paid or the credit reversed due to violations of section 16(4) of the CGST Act. This restriction applies even if the input tax credit is now permissible under sections 16(5) or 16(6) of the CGST Act.

Time limit to apply for this rectification:

- **within six months from the notification date**, specifically for cases involving availment of input tax credit beyond the time limit specified in section 16(4), where the credit is now permissible under sections 16(5) or 16(6).
- If a rectification application is submitted under the **special procedure** but does not involve violation of sec16(4), it will be summarily rejected by the proper officer, with a remark stating that it does not fall under the criteria of notification No. 22/2024.

Rate Change in Basic Custom Duty with effect from 24/07/2024

Rate Change in Basic Custom Duty

Products	Earlier	After budget
Gold and silver	15%	6%
Platinum	15.4%	6.4%
Mobile Phones and PCBA	20%	15%
Leather and textile- Reduction in BCD, subject to conditions, on methylene diphenyl disocyanate (MDI) for manufacture of spandex yarn	7.5%	5%
Broodstock, Polychaete Worms, Shrimp and Fish feed	15%	5%
Telecommunication	10%	15%
Ferronickel and Blister Copper	Various	Nil
Ferrous Scrap and Nickel Cathode	Various	Nil
Copper Scrap	Various	2.5% (Concessional)
Ammonium Nitrate	7.5%	10%





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