

GST NEWSLETTER

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**LEADING FINANCIAL
ADVISORY AND BUSINESS
CONSULTING FIRM**

ABOUT US

In an era of rapid change, heightened scrutiny, and unprecedented technological change, quality of thinking and delivery are more important than ever. Since inception, our mission has been to provide quality services without compromising on ethics and values.

Quality and integrity is at the heart of everything we do. We are continuously investing in technology, people, and innovation to enhance our professional services. This investment of InCorp Advisory will benefit our organization and clients we serve.

**GST Newsletter:
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ARTICLE

Non Supplies Under GST

✓ An Overview

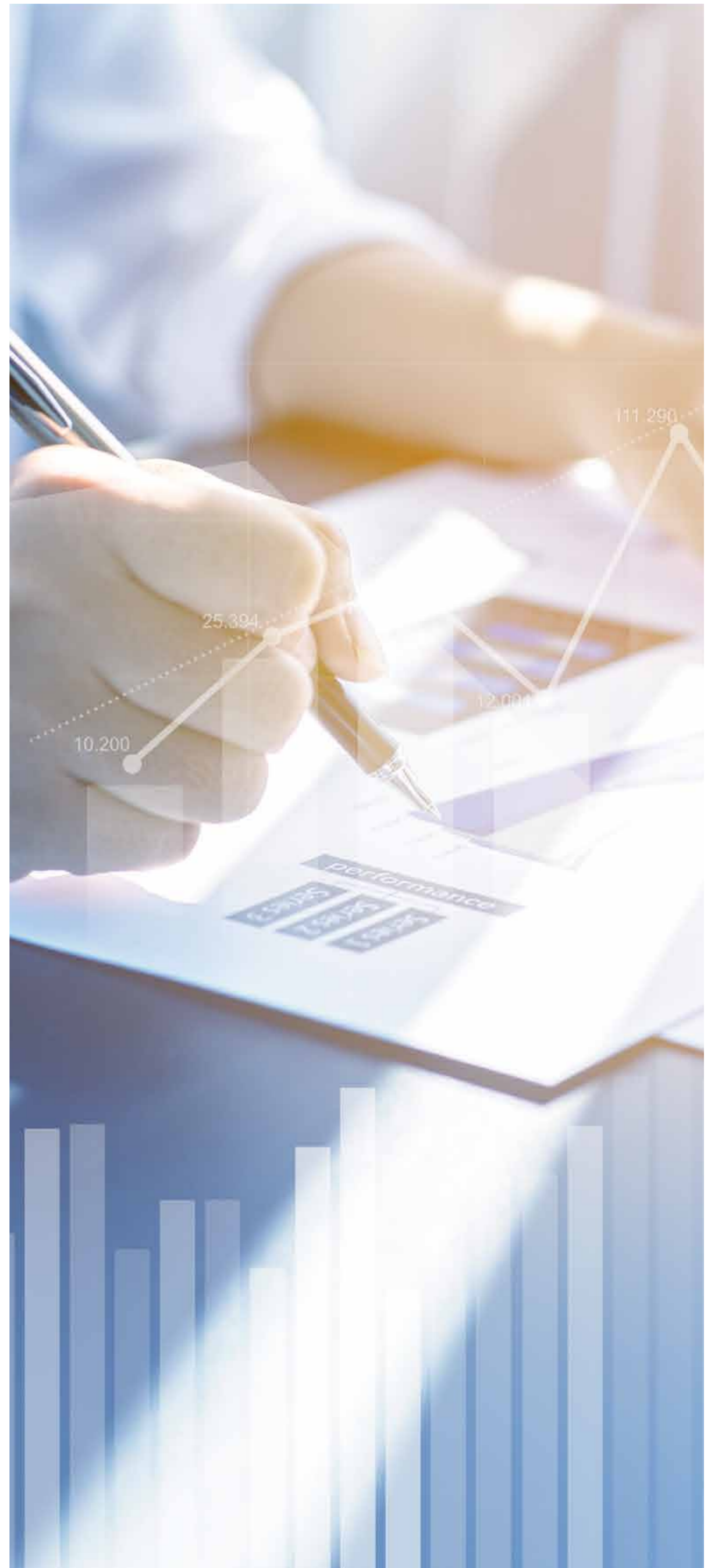
GST is a destination based tax applicable on all transactions involving SUPPLY of goods and services for a consideration subject to certain exceptions. Some activities/ transactions are beyond the scope of GST, i.e., GST will not apply to them as they are neither supply of goods nor services in the first instance. Schedule III of the CGST Act covers activities or transactions which can be neither treated as the supply of goods nor the rendering of services also known as non-supplies. This schedule deals with those goods/services other than:

- Alcoholic liquor of human consumption
- Items for which applicability of GST has been deferred (petroleum crude, High Speed Diesel, Aviation Turbine Fuel, Motor Spirit and Natural Gas).

Apart from Schedule III, the government has also notified some activities vide notifications and issued clarification by way of circulars to classify certain transactions as non-supplies.

✓ What Constitutes As Non- Supplies In Schedule III Under GST?

There are at present 8 entries in the Schedule III of the CGST Act, given in the same order as the GST law and further details:





1 Services By An Employee To An Employer In The Course Of Employment:

This shall include salary, premature termination amount, wages provided to casual workers, and so on which GST shall not be charged. However, services provided on principal-to-principal contract basis or amount paid to employee for not joining competitive business shall not be considered services provided in the normal course of business and hence it shall attract GST. Further, service by an employer to an employee such as providing cafeteria, recreation, sports facilities shall also be a taxable service, which is covered by Schedule I-Entry 2 read with Valuation rules.

2 Services By Court Or Tribunal Court/tribunal Services:

Services by any court such as District Court, High Court, Supreme Court or Tribunal are included in Schedule III, which indicates that Courts will not charge GST to pass judgements. However, it must be noted that services by the arbitral tribunal to any business entity are subject to tax on a reverse charge basis.

3 Duties Performed By The Following Government Authorities:

- a. The functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities:
- b. The duties performed by any person who holds any post in pursuance of the Constitution such as Prime Minister, President, Vice-President, Chief Justice of India, Speaker of Lok Sabha, Chief Election Commissioner, Comptroller and Auditor General of India, Chairman of UPSC, Attorney General of India in that capacity: or
- c. The duties performed by any person as a chairperson or a member or a director in a body established by the Central Government or a State Government or Local Authority and who is not deemed an employee before the commencement of this clause.

4 Services Of A Funeral, Burial, Crematorium Or Mortuary:

There are no taxes on funeral services, burial, crematorium, or mortuary for any religion, along with the charges for transportation of the deceased.



5 Sale Of Land And Subject To Clause 5(B) Of Schedule Ii Sale Of Building:

Clause 5(b) of Schedule II stipulates that “Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly” shall be treated as supply of service except where the entire consideration was received after issuance of the completion certificate, where required, by the competent authority or after its first occupation whichever is earlier. Hence, GST is not applicable on ready to move in or completed property. It is applicable on under constructed property.

6 Actionable Claims, Other Than Lottery, Betting And Gambling:

“Actionable claim” in simplified terms means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property such as right to recover insurance money, claim for arrears of rent, unsecured loans, unsecured debentures, bills of exchange, bank guarantee, promissory notes, fixed deposit receipt, and so on. These actionable claims are kept out of the ambit of supply except for lottery, betting and gambling. Hence, GST is chargeable only on lottery, betting, and gambling services, not other actionable claims.

7 Merchant Trade Transactions Outside India:

Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India is kept out of purview of GST. Hence, GST is chargeable only if goods enter into taxable territory of India.

8 High Sea Sales:

High Sea Sales are sales carried out between the original importer and another buyer while the goods are in transit on high seas. Thus, when the original importer sells the goods to a third person after its dispatch from the port of loading and before the arrival at the port of discharge for customs clearance, such transactions are termed as ‘High Sea Sale Transactions’. These transactions are kept out of purview of GST, thereby GST will not be charged on such import and export.



9

Transactions In Customs Port:

- a. Supply of warehoused goods to any person before clearance for home consumption; (The expression “warehoused goods” shall have the same meaning as per the Customs Act, 1962.)
- b. Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.

✔ What Constitutes As Non- Supplies Specified Vide Notification:

The given activities/ transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council shall be treated neither as a supply of goods nor a supply of services.

1

Activity In Relation To Panchayat/municipality Functions:

Services by way of any activity in relation to a function entrusted to a “Panchayat under article 243G of the Constitution” and “Municipality under article 243W of the Constitution” undertaken by the Central Government or State Government or Union territory or any local authority in which they are engaged as public authority are treated neither as supply of goods nor as supply of services.

2

Grant Of Alcoholic Liquor Licence:

“Service by way of grant of alcoholic liquor licence, against consideration in the form of licence fee or application fee or by whatever name it is called” undertaken by the State Governments in which they are engaged as public authorities are kept outside GST permit. This special dispensation is applicable only to service by way of grant of liquor licenses by the State Government as an agreement between the central and state. Hence this is not applicable in relation to grant of other licenses, privileges, mining rights, natural resources such as spectrum for a fee in other situations, where GST is payable. Tax is required to be paid by the business entities on such services under reverse charge.

✓ What Constitutes As Non- Supplies By Way Of Clarification:

1 Inter-state Movement Of Various Modes Of Conveyance:

CBIC has clarified that Inter-state movement of various modes of conveyance including Trains, Buses, Trucks, Tankers, Trailers, Vessels, Containers, Aircrafts between distinct persons, not involving further supply of such conveyance,

(a) carrying goods or passengers or both;

(b) for repairs and maintenance,

shall be treated 'neither as a supply of goods or supply of service' and therefore not be leviable to GST. However, applicable CGST/SGST/IGST, as the case may be, shall be leviable on repairs and maintenance done for such conveyance.

2 Inter-state Movement Of Rigs, Tools And Spares, And All Goods On Wheels:

Above circular shall mutatis mutandis apply to inter-state movement of rigs, tools and spares, and all good on wheels (like cranes), not involving further supply of such goods. Such inter-state movement shall be treated neither as a supply of good or service, and consequently no GST would be applicable. However, applicable CGST/SGST/IGST, as the case may be, shall be leviable on repairs and maintenance done for such goods.

Conclusion

Thus, supplies which don't come under the scope of the GST are termed as Non-GST supplies. It is important to determine first whether the given activity or transactions are classified as Supply under GST or not and whether it is goods or services or neither of them and then tax rate is to be determined accordingly.

CASE LAWS

Effect Of ITC Claimed Due To Cancellation Of GST Registration Of Suppliers

Facts Of The Case

Sanchita Kundu & Anr vs The Assistant Commissioner of State Tax, Bureau of Investigation, South Bengal & Ors – High Court of Calcutta (TS-249-HC(CAL)-2022-GST/ W.P.A. 7231/7232 of 2022) dated 05-05-2022.

- The petitioner has claimed ITC on various goods from suppliers whose GST registration has been cancelled. The cancellation was made effective retrospectively from an earlier date in the cancellation order which also cover the period for which the ITC was claimed.
- The petitioners filed the current writ petition on the basis that the transactions in question are genuine and valid based on the supporting documents and contended that the suppliers in question are registered as taxable person and the same was available at the Government portal which showed their registrations as valid and existing at the time the transactions were made.

Provision Of Law

- The petitioner relied upon a similar case in the case of M/s. LGW Industries Limited & Ors. Vs. Union of India & Ors. in W.P.A No.23512 of 2019.
- The petitioner also relied upon the fact that the ITC in question is reflected in the GSTR 2A of the petitioner.
- As per Rule 36(4) of the CGST Rules, 2017 – which was effective till 31/12/2021 - Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37 in FORM GSTR-1 or using the invoice furnishing facility, shall not exceed 5 per cent of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers under sub-section (1) of section 37 in FORM GSTR-1 or using the invoice furnishing facility."

Directions By The High Court

The Hon'ble Calcutta High Court held that:

- The Calcutta HC observed that benefit of ITC cannot be denied where all the transaction are proved to be genuine before the cancellation of registration of the suppliers
- It also observed that without any further verification it cannot be said that there was any failure on petitioner's part in compliance of any obligation required under the statute before entering the transactions and that there was no verification of the genuineness of the suppliers.
- Based on these observations, the Calcutta HC directed the Respondent Department to consider afresh the entitlement of petitioner in the context of whether payments on purchase in question along with GST were actually paid or not, whether the transactions and purchases were made before or after the cancellation of registration of the suppliers and whether petitioner complied with the statutory obligation of verifying the supplier's identity.

*InCorp Advisory is happy to inform our readers that our team of Advocates comprising of **Adv. T.R. Rajesh, Adv. Prateek J, Adv. Rakesh Bhargav, and Adv. Chidanand Kulkarni**, have collectively compiled, drafted, and argued a similar matter belonging to the erstwhile Karnataka Value Added Tax Act, 2003 in the Karnataka High Court. The appeal was filed by the Commercial Taxes Department of Karnataka against an earlier order by the Tax Tribunal and the hon'ble Karnataka HC decided the matter in the*

*favour of our **client in the judgement - The Asst. Commissioner of Commercial Taxes (Audit & Recovery 4.9) vs M/s Surfaces in Sales Tax Revision Petition (STRP) no. 8/2020 dated 29th March 2022***

CASE LAWS

GST On Ocean Freight

Facts Of The Case

Union of India vs. Mohit Minerals Pvt Ltd – Supreme Court of India (TS-246-SC-2022-GST / Civil Appeal No. 1390 of 2022) dated 19-05-2022

- The Respondent is in the business of importing coal from various countries under the 'Cost-Insurance-Freight' basis.
- The service of shipping in these CIF contracts is availed by the non-taxable exporter who engages and pays a foreign shipping line of their choice, without the involvement of the importer.
- The Appellant had levied GST under RCM on the ocean freight incurred by the Respondent in terms of notification no. 10/2017- Integrated Tax (Rate) dated 28th June 2017.
- The Gujrat High Court has however, held that these notifications in respect of the ocean freight is ultra vires the GST Act.

Provision Of Law

- As per notification no. 10/2017- Integrated Tax (Rate) dated 28th June 2017 – 'Services supplied by a person located in non- taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India' is liable to GST under RCM by the Importer, as defined in clause (26) of section 2 of the Customs Act, 1962(52 of 1962), located in the taxable territory.
- As per Section 2(26) of the Customs Act, 1962 – 'importer, in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner, beneficial owner or any person holding himself out to be the importer.

Judgement By The Supreme Court

The Hon'ble Supreme Court held that:

- IGST levy on Ocean Freight as a violation of the principle of 'Composite Supply' which is the transaction between the exporter outside India and the importer inside India. The transaction between the foreign exporter and the shipping company is an entirely different contract not connected to the Indian importer.
- The Department's contention that:
 - a. for the sake of levy of GST on ocean freight the importer should be deemed to be the recipient by reading the contract with the exporter as connected to the contract between the exporter and shipping company.
 - b. for the sake of identification of the type of supply as composite or independent, the contract between the exporter and importer must be read independently without reference to the contract between the exporter and shipping company.was held to be un-acceptable.
- The decisions of the GST Council are made binding on the Government only when it exercises its power to notify secondary legislation to give effect to the uniform taxation system.
- Merely because a few of the recommendations of the GST Council are binding on the Government under the provisions of the CGST Act and IGST Act, it cannot be argued that all of the GST Council's recommendations are binding.
- Hence, the import of goods by a CIF contract constitutes an "inter-state" supply which can be subject to IGST where the importer of such goods would be the recipient of shipping service and hence, since the Indian importer is liable to pay IGST on the 'composite supply', comprising of supply of goods and supply of services of transportation, insurance, etc. in a CIF contract, a separate levy on the Indian importer for the 'supply of services' by the shipping line would be in violation of Section 8 of the CGST Act.

NOTIFICATIONS AND CIRCULARS FOR THE MONTH OF MAY 2022

✓ Three Central Tax Notification. - [Click here](#)

✓ One Central Instructions. - [Click here](#)

Sl. No	Subject	Notifications/Circulars No. Date of Issue
1.	Seeks to extend the due date of filing FORM GSTR-3B for the month of April, 2022	05/2022-Central Tax Dated: 17-May-2022.
2.	Seeks to extend the due date of payment of tax, in FORM GST PMT-06, for the month of April, 2022 by taxpayers who are under QRMP scheme	06/2022-Central Tax Dated: 17-May-2022.
3.	Seeks to waive off late fee under section 47 for the period from 01.05.2022 till 30.06.2022 for delay in filing FORM GSTR-4 for FY 2021-22	07/2022-Central Tax Dated: 26-May-2022.
4.	Deposit of tax during the course of search, inspection or investigation	Instruction No. 01/2022-23[GST-INV]

DUE DATES OF GST FOR THE MONTH OF JUNE 2022

JUNE

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1	2	3	4
5	6	7	8	9	GSTR-8, GSTR-7 10	* GSTR-1 11
12	* IFF, (Optional) (May 2022), GSTR-6 13	Generation of Form GSTR 2B 14	15	16	17	CMP-08 (Apr-Jun 2022) 18
19	* GSTR-3B, GSTR-5, GSTR-5A 20	21	22	23	24	* PMT-06 25
26	27	28	29	30		

2022

* Monthly returns for taxpayers with Annual Turnover more than Rs. 5 Crores or Taxpayer who has opted Monthly return option.

* Quarterly returns for taxpayers with Annual Turnover less than Rs. 5 Crores and opted for quarterly return monthly payment option (QRMP).




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